

2200 West Sagebrush Court
Chandler, AZ 85224
July 15, 2004

Stephen G. Hughes, Associate Counsel
State of New Mexico
Commissioner of Public Lands
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, New Mexico 87504-1148

RE: GR-1434, Zuni Water Adjudication

Dear Mr. Hughes:

This is to acknowledge your letter of June 17 requesting correction and additional information concerning our water uses on the grazing lease (copies attached).

The uses enumerated on your listing are essentially correct.

We would also like to take this opportunity to go on record as having had a conversation with Mr. Dwayne Day, USDA Conservation Service, Datil, NM in May 2000 concerning the development of additional water sources on the leased land. Specifically, Mr. Day recommended we consider the installation of an additional pit tank of up to ten acre-feet capacity in the southeast portion of the lease. Additionally, it is our recollection is that we discussed this improvement with Mr. Michael Landon, of the New Mexico State Land Office in August 2000, who explained the permitting process to us. Due to limitations of our time and financial resources, we have not pursued this improvement, but our intention is to seek the required approvals in the future.

This response should not be construed as limiting or as a waiver of any future rights in the matter of the Zuni Water Adjudication.

Very truly yours,

Edward J. Bawolek

Suzan J. Bawolek

2200 West Sagebrush Court
Chandler, AZ 85224
June 16, 2006

Stephen G. Hughes
State Land Office Associate Counsel
State of New Mexico Commissioner of Public Lands
310 Old Santa Fe Trail
Santa Fe, New Mexico 87504-1148

Re: GR-1434; Zuni Basin Adjudication

Dear Mr. Hughes:

Responsive to your letter of May 22, 2006, an exact priority date for well 10C-4-W15 is currently unknown to us. We believe the well to have been drilled substantially prior to the priority date of 3/3/94 referenced in your letter. At a minimum, the well appears on the National Geographic TOPO!® topographic software map series for New Mexico; the reference year for the map in our software is 1972. Therefore, we would argue for a priority date no later than 12/31/1972. We have investigated a limited number of earlier maps of the locale with the assistance of Ms. Laura Gleasner at the Earth Data Analysis Center, University of New Mexico; none of these show the well in question. We are in the process of researching of earlier topographic maps published by USGS with the intention of establishing an earlier priority date. Unfortunately, this process may require us to physically travel out of state and therefore will involve substantial expense and delay. As a result, we cannot commit a specific time for completion of this process.

With respect to the Zuni Basin Adjudication as it relates to our deeded property bordering GR-1434: we have not reached agreement with any of the Department of Justice and the Plaintiffs with respect to our water rights. However, it is our interpretation that there is an agreement in principle with revised values for water quantities of water retained by stock tanks, subject to final tabulation and review. With respect to wells, we object to the quantities of water allocated to livestock wells and have taken the position that our domestic well is entitled to an annual consumption allocation of three acre-feet.

With respect to well 10C-4-W15, given the conservative priority date supported by reference to the USGS topographic series, our position is that the well should be entitled to an allocation substantially larger than a livestock allocation of 0.180 acre-feet per annum referenced in the Hydrographic Survey Report. Well 10C-4-W15 has the potential to service stock pond 10C-4-SP33, for the purpose of maintaining a reliable water supply not only for livestock, but also for support of big game and other indigenous wildlife. In time of drought, the well should be available for completely filling the stock pond, to at least the specified capacity of 4.9 acre-feet. Additionally, we would argue for a larger storage impoundment to be associated with 10C-4-SP33, based on a minimum *uniform* depth of 10 feet, representing an optimally maintained condition for said stock tank.

Stephen G. Hughes

June 16, 2006

Page 2

It is our opinion that the water rights ultimately assigned to GR-1434 will have direct economic impact to us. We therefore urge the Commissioner of Public Lands to vigorously defend said water rights.

Our response supra does not constitute consent that Plaintiff's suit is meritorious. Furthermore, we reserve all rights to correct, amend and to append additional information concerning matters relating to the Zuni Basin Adjudication.

If you have questions or require further information, please do not hesitate to contact us.

Very truly yours,

Edward J. Bawolek, PE, PhD

Suzan J. Bawolek

Contact information:

Residence Telephone/Message: 480.899.7157

E. Bawolek Mobile: 602.376.1755

S. Bawolek Mobile: 480.510.0376

Email: badoctor@yahoo.com

VIA ELECTRONIC MAIL

2200 West Sagebrush Court
Chandler, AZ 85224
May 7, 2012

David A. Stevens
Associate Counsel
Commissioner of Public Lands and the
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148

Re. Zuni Adjudication Subfile ZRB-2-0075

Dear Mr. Stevens:

I am the holder of Grazing Lease GR-1434 which is associated with Section 2, Township 5 North, Range 17 West, N.M. P.M. Cibola County New Mexico. This land is within the boundaries of the Zuni River Basin and is referenced in subfile ZRB-2-0075 as part of the ongoing adjudication. (I will hereinafter refer to this land as the "Grazing Property.")

My wife and I own property immediately adjacent to the grazing lease, and are also joined as defendants in the suit. We therefore have a material interest in any settlement which the Commissioner reaches with respect to the leased property.

I am actively following the adjudication, and note that a motion is pending to consolidate all of the state land subfiles. It appears that the Commissioner and Plaintiffs are therefore moving toward active negotiation of the state land water rights. My purpose in writing is to bring several issues to your attention that may be material to guiding your settlement negotiations with Plaintiffs, particularly with concern directed to the Grazing Property:

1. The Grazing Property has one well, identified as 10C-4-W15 in the hydrographic survey (hereinafter "the well"). The original hydrographic survey has assigned a priority date of 3/13/1994 to this well. That priority date is clearly wrong, as the well is present on the on the United States Geological Survey (USGS) topographic survey map, Scale 1:24000, The Dyke quadrangle, dated 1972. Further, said map indicates that the data contained therein were taken from aerial photographs acquired in 1971. In light of this, said well is entitled to a priority date no later than 12/31/1971.

Plaintiffs are aware of this error, but may attempt to ignore it unless challenged directly: On March 8, 2012, we (my wife and I), and our counsel, met with Mr. Edward Bagley, Counsel for the State Engineer in Santa Fe. That meeting was also attended telephonically by Mr. Guss Guarino, Counsel for the United States, and Mr. Kit Nielsen or NRCE. When we brought up the subject of a similar error in priority dates with respect to Well 10C-4-W16 (on our own deeded property), the dating error was met with skepticism by Mr. Nielsen.

VIA ELECTRONIC MAIL

Mr. David A. Stevens
May 7, 2012
Page 2

We subsequently showed Mr. Bagley the actual USGS topographic map and firmly stated our conviction concerning the error. Plaintiffs later corrected the date in a revised proposal for settlement.

At the time we notified Plaintiffs of the error in priority date on our own well, we also informed Plaintiffs that they had made a similar error with respect to the adjacent state land. I tend to believe that the statement was ignored; after all the error is an embarrassment to NRCE and calls into question the degree of care used to complete the hydrographic survey. Additionally, NRCE cannot claim ignorance of the USGS data in establishing the priority dates. Attention is directed to document 175 in this proceeding in which Plaintiffs describe how the proposed adjudication boundaries were established: Reference is explicitly made to NRCE's use of the 7.5 minute USGS map series. Thus, they cannot claim ignorance of the earlier priority date for the Grazing Property well (10C-4-W15).

Discussions concerning the water allocation to this well will be made infra.

2. The Grazing Property has one water impoundment (stock pond) which is identified as 10C-4-SP33 (hereinafter "the stock pond"). The stock pond is assigned a capacity of 4.916 acre-feet with no associated point of diversion. The usage is given as livestock, and the priority date assigned in the hydrographic survey is 1/1/1972. The calculated retention capacity appears reasonable; I lack sufficient information to form a conclusion with respect to the priority date. However, I have questions concerning the point of diversion and the usage:

With respect to point of diversion, stock pond 10C-4-SP33 is in relatively close proximity to, and is vertically lower than, Well 10C-4-W15. In light of their respective locations, it appears possible that Well 10C-4-W15 may have been used to fill stock pond 10C-4-SP33. The evidence for this is circumstantial: There is no other stock pond or retention basin adjacent to the well. On the other hand, we have not identified any piping or channeling which would unequivocally tie the two water features together. Nevertheless, we believe that the situation warrants the benefit of doubt, and strongly urge the Commissioner to pursue recognition of the stock pond as a point of diversion filling from the well. (Where data for a water right are equivocal, Defendants are entitled to the benefit of doubt under NMSA 72-12-5.)

3. Another issue relates to the quantity of water recognized from the well and the usage. These two issues are tied together: The Plaintiffs are making their recognition of water usage based solely on the livestock carrying capacity for the Grazing Property. However, if the well and stock pond are associated, the capacity of the stock pond is such that it could easily contain any output realistically available from the well. Therefore, the well's associated water right should arguably be much larger. I do not have supply capacity data available for the well, based on experience with wind-driven pumping systems currently in operation on my own wells, I believe the 10C-4-W15 is capable of providing approximately 0.8 acre-feet of water per annum.

VIA ELECTRONIC MAIL

Mr. David A. Stevens
May 7, 2012
Page 3

There is a “chicken-or-egg” problem here: Well 10C-4-W15 is currently inoperative; I have made some attempts to restore it to production. At this time, it appears that the well may need to be re-drilled, or minimally may require the assistance of a well driller with substantial capabilities to pull and re-case the well. The issue is that the justification of the capital outlay required relates in some manner to the allowed capacity of the well. In other words, the repairs are only justified if the well can be used to augment the stock pond.

With respect to water usage as livestock, we recommend that the Commissioner negotiate that the well and the stock pond be recognized not only for livestock, but for wildlife watering purposes as well. We have proposed a similar recognition for our own stock ponds on our deeded property, but have encountered stiff resistance from the Plaintiffs. Their reluctance is, according to them, based on concern over precedent and historical usage. However, we feel that the resistance is more likely due to a desire to recognize only the smallest quantity of water possible.

The importance of water to wildlife is unequivocal, and an argument can be made that the more limited the available water sources, the more likely that they are essential to a healthy ecosystem. Further, there is a strong hunting tradition on state lands, and therefore an historical water usage pattern would arguably include configuration of available water sources to provide as much water as practical for the purpose of attracting wildlife in general, and game in particular (for sport and sustenance hunting).

The reluctance of the Plaintiffs to recognize wildlife as a legitimate beneficial water use is especially galling, because in both the original complaint (document 1) and in the Plaintiff’s amended complaint (document 222), the United States asserts a claim to water for wildlife stating in Paragraph 21 “For livestock- and wildlife-watering purposes and for other purposes, ponds, tanks, wells, and other water-control structures and devices have been constructed or installed on certain tracts of the federally owned public land administered by the Bureau of Land Management. For each such pond, tank, well, or other water-control structure or device, the United States claims an appropriative water right under New Mexico State law in an amount based on the amount beneficially used.”

So, if the United States is entitled to use water for the benefit of wildlife under New Mexico law, should the Commissioner of Public Lands be precluded from doing the same? The recognition of water for wildlife opens the negotiation to a more appropriate water allocation for the Grazing Property, and is essential to preserving the value of the property under the Commissioner’s duty of stewardship.

VIA ELECTRONIC MAIL

Mr. David A. Stevens
May 7, 2012
Page 3

To summarize:

- A. The priority date of Well 10C-4-W15 should be negotiated to no later than 12/31/1971
- B. Stock pond 10C-4-SP33 should be negotiated as filling from well 10C-4-W15
- C. Both the well and the stock pond should be recognized as providing water for wildlife in addition to livestock.
- D. The duty of water for 10C4-W15 should be recognized as 0.8 acre-feet per annum or greater, based on the arguments supra.

To conclude, I believe that the Commissioner has a duty to vigorously defend the water rights associated with the Grazing Property. Our familiarity and knowledge of the property exceeds the information which I was able to provide in this brief summary. If I can provide any other information which will assist your case, please feel free to contact me. I would also be willing to make depositions or to testify in person if needed.

I can be reached at the above address, or by email at bawolek@cox.net. I can also be reached on my mobile phone at: 602.376.1755. Please note that I cannot always immediately answer calls; if I am not available, my voice messaging will answer. Also note that I do not, ever, accept calls from blocked numbers.

Respectfully,

Edward J. Bawolek

2200 West Sagebrush Court
Chandler, AZ 85224
May 10, 2012

Mr. Harry Relkin
General Counsel
Commissioner of Public Lands and the
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504

Re. Zuni Adjudication Subfile ZRB-2-0075

Dear Mr. Relkin:

Please find enclosed with this correspondence a copy of a communication electronically transmitted on May 7, 2012 to Mr. David A. Stevens, Associate Counsel in your Office.

Respectfully,

Edward J. Bawolek



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