

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATE OF AMERICA, for Itself	)	
and as Trustee for the Zuni Indian Tribe,	)	
Navajo Nation and Ramah Band of Navahos	)	
	)	
and	)	
	)	
STATE OF NEW MEXICO ex rel. STATE	)	
ENGINEER,	)	<b>No. 01cv00072-MV/WPL</b>
	)	
Plaintiffs,	)	ZUNI RIVER BASIN
	)	ADJUDICATION
and	)	
	)	
ZUNI INDIAN TRIBE, NAVAJO NATION	)	
	)	
Plaintiffs in Intervention	)	
-v-	)	
	)	
A & R PRODUCTIONS, <i>et. al.</i> ,	)	<b>Subfile No. ZRB-2-0014</b>
	)	
Defendants.	)	
	)	

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**JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN**

The Parties request that the Court adopt the provisions and deadlines agreed to by the parties as outlined in the paragraphs below. To the extent that the parties do not agree to any provision, the contentions of the parties regarding such provision are identified and double-underlined in the paragraphs below.

**MEETING OF PARTY REPRESENTATIVES**

Pursuant to Fed. R. Civ. P. 26(f), a telephonic meeting was held on March 28, 2014 and was attended by:

- Guss Guarino for Plaintiff United States of America; and
- Defendants Edward Bawolek and Suzan Bawolek, *pro se.*

The views of counsel for Plaintiff State of New Mexico, Edward Bagley, were shared with counsel for the United States prior to the telephonic meeting and were incorporated into the meeting.

### **NATURE OF THE CASE**

A determination of Defendants' water rights for real property owned by Defendants in this general stream system water rights adjudication.

### **AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES**

Plaintiffs do not intend to file any additional pleadings or join additional parties.

Defendants do not intend to file any additional pleadings or join additional parties.

### **STIPULATIONS**

The parties stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties further stipulate to the following facts: 1) the Plaintiffs recognize that Defendants own the real property on which the water features listed in Attachment A are found; 2) the water rights attributes for the historic water uses (priority, quantity, and beneficial use) are agreed upon to the extent that Plaintiffs recognize a water right (titled "US/NM Recognized Water Right" in Attachment A); 3) Defendants are not required to prove the basis for and extent of the water rights described in Attachment A that the Plaintiffs are willing to recognize; and 4) the law governing this case is the law of the State of New Mexico.

### **PLAINTIFFS' CONTENTIONS**

The Plaintiffs content that the Defendants are entitled to water rights for lands owned in the Zuni River Basin of New Mexico only to the extent that they are recognized by Plaintiffs in Attachment A (titled "US/NM Recognized Water Right").

### **DEFENDANTS' CONTENTIONS**

The Defendants content that the Defendants are entitled to water rights for lands owned in the Zuni River Basin of New Mexico in addition to those recognized by Plaintiffs and as also described in Attachment A (titled "Bawolek Claim"). Defendants further allege all affirmative defenses enumerated in Defendants' First Amended Answer to Amended Complaint (Doc. 2918) in Subfile ZRB-2-0014.

### **DISCOVERY PLAN**

Limited discovery is necessary and shall be centered on that material which is relevant to establish or dispel Defendants' contentions. Discovery shall begin 30 days from the issuance of the Court's scheduling order adopting the provisions of this joint status report and proposed discovery plan. The parties jointly propose to the Court the discovery plan outlined in the paragraphs below.

1. The Defendants have the burden to establish those water rights described in Attachment A to the extent that Defendants claim water right attributes in addition to or different from those recognized by Plaintiffs. As such, in any proceeding before the Court, Defendants will first call as witness(es) to support their claims for water rights described in Attachment A (titled "Bawolek Claim") the following individuals:

- i. Edward J. Bawolek, PE, Phd., 2200 W Sagebrush Court,  
Chandler , AZ 85224 (602) 376-1755, and

- ii. Archeologist (possibly) (identity to be provided no later than May 31, 2014).
2. After the Defendants have presented their testimony and evidence, Plaintiffs may call the following person as a rebuttal witness:
  - i. Scott Turnbull, P.E., Associate Engineer, Natural Resources Consulting Engineers, Inc., 131 Lincoln Ave., Ste. 300, Fort Collins, Colorado 80524 (970) 224-1851, and
  - ii. Rebuttal witness(es) to any additional expert(s) identified by Defendants (identity to be provided no later than June 30, 2014)
3. The Parties may also call witnesses yet to be named to identify or authenticate documents, if necessary.
4. Within 30 days from the issuance of the Court's scheduling order adopting the provisions of this joint status report and proposed discovery plan, the parties shall exchange Initial Disclosure material as described in Fed. R. Civ. P. 26(a)(1). Included in Initial Disclosures, Defendants will provide Plaintiffs all documentary evidence in their possession that they intend to present to the Court to support their claimed water right. Although Plaintiffs have no initial burden of proof, Plaintiffs shall have an ongoing obligation to disclose during discovery any documentary evidence that they intend to introduce to rebut Defendants' evidence and such evidence shall be disclosed 30 days before the close of discovery.
5. Discovery will be needed on the following subjects: the water right attributes (priority, quantity, source, and purpose of use) on water rights claimed by Defendants

and described in Attachment A (titled “Bawolek Claim”). The following procedures shall govern discovery associated with this subfile action.

**PLAINTIFFS CONTEND:** Discovery is limited to those factual matters associated with establishing the quantity and priority for Defendants’ contested water rights based on prior beneficial use.

**DEFENDANTS CONTEND:** Discovery includes materials associated with any Affirmative Defense raised in Defendants' First Amended Answer to Amended Complaint [2918] in Subfile ZRB-2-0014 including equitable considerations and matters associated with other independent subfile actions.

- a. Maximum of 25 interrogatories (including any subparts) for Plaintiffs and Defendants (responses due 30 days after service).
- b. Maximum of 25 requests for production of documents for Plaintiffs and Defendants (responses due 30 days after service). Copies of documents may be produced in either paper or electronic PDF format at the discretion of the disclosing party.
- c. **PLAINTIFFS’ CONTENTION:** Maximum of 25 requests for admission by Plaintiffs and Defendants (responses due 30 days after service).  
**DEFENDANTS’ CONTENTION:** No limit to requests for admission by Plaintiffs and Defendants (responses due 30 days after service).
- d. Once discovery begins, each party is permitted to depose the other parties (or party representative) and the identified witness(es) of another party. Each deposition shall be arranged through the consent of all parties to the subfile proceeding. Each deposition is limited to a maximum of 4 hours unless

extended by agreement of the parties and shall occur at the location of the witness' principle place of work unless otherwise agreed to by all parties. Costs associated with the deposition shall be borne by the party taking the deposition except that costs associated with the deposed witnesses (expert fees, travel expenses, etc.) shall be borne by the party on whose behalf the witness is to be called.

- e. As contemplated under Fed. R. Civ. P. 26(a)(2), Defendants will prepare and produce a written report from the expert witness Dr. Bawolek to support claims for water rights described in Attachment A that are in excess of those rights recognized by Plaintiffs. Such expert report shall be provided to Plaintiffs 30 days from the issuance of the Court's scheduling order adopting the provisions of this joint status report and proposed discovery plan. In the event that Defendants identify an additional expert witness(es) before June 1, 2014, Defendants shall have 45 days from the date the expert(s) is identified to provide Plaintiffs a written report.
- f. As contemplated under Fed. R. Civ. P. 26(a)(2), Plaintiffs will prepare and produce a written report from Mr. Turnbull to rebut the expert witness Dr. Bawolek. Plaintiffs shall have 45 days from the day Defendants provide their expert report from Dr. Bawolek to produce Mr. Turnbull's expert report. In the event that Defendants identify any additional expert witness(es) before June 1, 2014, Plaintiffs shall have 30 days from the date any additional expert witness report(s) is provided by Defendants to identify any additional rebuttal expert witness(es). Plaintiffs shall have an additional 45 days from the date of

Defendants' additional expert witness report(s) to provide Plaintiffs' additional written rebuttal expert report(s).

- g. Supplementation under Fed. R. Civ. P. 26(e) is due 20 days after the new information has been acquired.
- h. All discovery commenced must be completed by 180 days after the issuance of the Court's scheduling order adopting the provisions of this joint status report and proposed discovery plan. Therefore, any interrogatories, requests for admission, and requests for production must be submitted no later than 30 days before the discovery completion date described here. No deposition may be held beyond the 180-day discovery period without the consent of either the opposing parties or the Court.

### **DISPOSITIVE MOTIONS**

Plaintiffs and Defendants anticipate that they will each file a motion for summary judgment under Fed. R. Civ. P. 56 in an attempt to resolve those issues that do not have a material issue of fact in dispute. The parties will submit motions for summary judgment under the following schedule:

Within 30 days after the close of discovery, Defendants shall submit any motion for summary judgment they think appropriate to establish some or all of the water rights attributes described in Attachment A in excess of those rights recognized by Plaintiffs.

Within 60 days from the close of discovery, Plaintiffs shall submit a combined brief that contains 1) any response they might have to Defendants' motion for summary judgment and 2) any cross-motion for summary judgment on those water rights attributes claimed in addition to those that Plaintiffs are willing to recognize.

Within 75 days from the close of discovery, Defendants shall submit a combined brief that contains 1) any reply they might have to Plaintiffs' response to Defendants motion for summary judgment and 2) any response on Plaintiffs cross-motion for summary judgment.

On any issue not previously raised by Defendants and responded to by Plaintiffs, Plaintiffs shall file a final reply on Defendants' response to the Plaintiffs' cross-motion for summary judgment within 90 days from the close of discovery.

### **TRIAL**

To the extent that an issue of material fact remains after dispositive motions that requires the Court to conduct an evidentiary trial, the parties estimate that any trial would require 1 day. This is a non-jury case and should be scheduled only after dispositive motions have been addressed and resolved. The Court shall schedule a final pretrial conference as contemplated by Fed. R. Civ. P. 16(e) and shall subsequently issue a final trial plan for the parties to follow.

### **SETTLEMENT**

The possibility of settlement in this case is not considered likely. The parties do not request a settlement conference.



Respectfully submitted this 9th day of April 2014.

Electronically Filed

/s/ Andrew "Guss" Guarino

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DEFENDANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on April 9, 2014, I filed the foregoing JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Andrew "Guss" Guarino