

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

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	
STATE OF NEW MEXICO ex rel. STATE	)	
ENGINEER,	)	No. 01cv00072-MV/WPL
	)	
Plaintiffs,	)	ZUNI RIVER BASIN
	)	ADJUDICATION
-v-	)	
	)	
A & R PRODUCTIONS, et. al.,	)	Subfile No. ZRB-2-0038
	)	
Defendants.	)	
_____	)	

**JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN**

Pursuant to Fed. R. Civ. P. 26(f), counsel for Plaintiff United States of America and Plaintiff State of New Mexico (“Plaintiffs”) were able to consult with Defendants Craig and Regina Fredrickson (“Defendants”). The Parties have been able to arrive at this Joint Status Report and Proposed Discovery Plan. The Parties differ only with respect to two points as stated at pages 5 and 7 below. The Parties present to the Court this Joint Status Report and Proposed Discovery Plan that they have prepared, request that the Court resolve the Parties’ differences, and request that the Court issue a Case Management Order that is consistent with this Plan and its decisions.

**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 to this subfile action.

**STIPULATIONS**

The Parties stipulate that venue is proper in this District and 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 that the substantive law governing this case is the law of the State of New Mexico.

The Parties stipulate that the water right for the single well in dispute (designated 10A-5-W06 in the Hydrographic Survey) is made up of two components: a domestic use component and a livestock use component – no other historic beneficial uses are claimed that might form the basis for a water right. The Parties further stipulate that no dispute exists between them concerning the domestic use component of the water right. The Parties stipulate that the domestic use component of the water right from the well are as follows: priority – December 31, 1955; amount – 0.7 AFY; historic beneficial use – Domestic purposes; periods of use – January 1 – December 31; and place of use – existing, single family home located near the well.

**PLAINTIFFS' CONTENTIONS**

The Plaintiffs contend that the Defendants are entitled to a livestock use component of the water right from well 10A-5-W06 only to the extent that they are recognized by Plaintiffs in Attachment 1.<sup>1</sup> The Subfile Answer (Doc. 3161) reflects that Defendants do not agree with

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<sup>1</sup> As stated in Attachment 1, the water quantity associated with well 10A-5-W06 includes a 0.7 AFY quantity associated with the domestic use component to which the Parties stipulate (as described above). Plaintiffs do not stipulate to any fact associated with a livestock use

Plaintiffs. As such, Defendants are required to establish each element of a livestock use component: priority, amount, beneficial use, periods of use, and place of use.

### **DEFENDANTS' CONTENTIONS**

Defendants contend that they are entitled to a livestock use component from well 10A-5-W06 that is different from and greater in quantity than that offered by Plaintiffs. Defendants identified the specific issues and areas of disagreement regarding the livestock use component in their Subfile Answer (Doc. 3161).

### **DISCOVERY PLAN**

Discovery is necessary and should be centered on that material which is relevant to establish or dispel Defendants' contentions. Discovery should begin once the Court issues a Case Management Order adopting the provisions of this Joint Status Report and Proposed Discovery Plan and resolving the Parties remaining differences. The Parties propose the discovery plan outlined in the paragraphs below.

1. The Defendants have the burden to establish all elements of water rights that they assert: the priority, amount, beneficial use, periods of use, and place of use. As such, in any proceeding or trial before the Court, Defendants will first call witnesses to support their claims for water rights asserted in their Subfile Answer (Doc. 3161).

Defendants shall disclose to Plaintiffs within 30 days from the issuance of the Court's

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component. The nature and extent of the total water rights to which Plaintiffs are willing to agree are stated in Attachment 1 titled "US/NM Recognized Water Right." Until final judgment is entered, Plaintiffs do not intend to withdraw their settlement offer concerning the livestock use component. Nevertheless, Plaintiffs' settlement offer is revocable by Plaintiffs at any time and for any reason and Plaintiffs reserve the right to modify their livestock use component settlement offer at any time for any reason. Plaintiffs will notify the Court and Defendants in the event Plaintiffs change their position on their standing settlement offer.

- Case Management Order the names, addresses, and telephone numbers of any witness that they intend to call and shall disclose whether the person identified will be a lay or expert witness.
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 thirty days from the date of disclosure by Defendants of any additional witness(es)).
  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 Case Management Order, the Parties shall exchange Initial Disclosure materials as described in Fed. R. Civ. P. 26(a)(1). Included in Initial Disclosures, Defendants will provide Plaintiffs copies of all documentary evidence in their possession that they intend to present to the Court to support their claimed livestock use component 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 livestock use component water right elements (the priority, amount, historic beneficial use, periods of use, and place of use) as claimed by Defendants in their Subfile Answer (Doc. 3161). The following procedures shall govern discovery associated with this subfile action. Discovery is limited to those factual matters associated with establishing the elements for Defendants' claimed, contested livestock use component water right based on prior beneficial use.
- a. **(PLAINTIFFS' CONTENTION)** Maximum of 25 interrogatories (including any subparts) (responses due 30 days after service). **(DEFENDANTS' CONTENTION)** Maximum of 50 interrogatories (including any subparts) (responses due 30 days after service).
  - b. Maximum of 25 requests for production of documents (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 (responses due 30 days after service). **(DEFENDANTS' CONTENTION)** Maximum of 50 requests for admission (responses due 30 days after service).
  - d. Once discovery begins, each party is permitted to depose the other Parties (or party representatives) and the identified witness(es) of the other 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 (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), if Defendants intend to call an expert witness of any kind, that expert will be identified no later than 30 days from the issuance of the Court's Case Management Order. At this time, Defendants anticipate that they will call Defendant Craig Fredrickson as an expert witness. Every expert witness, including Mr. Fredrickson, must prepare and produce a complete, final written expert report to Plaintiffs no later than 60 days from the issuance of the Court's Case Management Order. The expert report of any expert witness of Defendants, including Mr. Fredrickson's, shall include every expert opinion (and the complete basis thereof) held by the expert to which he/she may give testimony.
- f. As contemplated under Fed. R. Civ. P. 26(a)(2), Plaintiffs will prepare and produce a written expert report from Mr. Turnbull (or another appropriate expert identified by Plaintiffs) to rebut the opinion of any expert witness retained by Defendants. If Defendants do not produce a written expert report, Plaintiffs will nevertheless prepare a written expert report from Mr. Trumbull that established the factual basis for the livestock use component water right described in Attachment 1. Plaintiffs shall have 45 days from the day

Defendants provide their expert report(s) to produce Plaintiffs' expert report(s).

- g. Supplementation under Fed. R. Civ. P. 26(e) is due 20 days after the new information has been acquired.
- h. **(PLAINTIFFS' CONTENTION)** All discovery commenced must be completed by 120 days after the issuance of the Court's Case Management Order. **(DEFENDANTS' CONTENTION)** All discovery commenced must be completed by 180 days after the issuance of the Court's Case Management Order. 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 **(PLAINTIFFS' CONTENTION)** 120-day **(DEFENDANTS' CONTENTION)** 180-day discovery period without the consent of either the opposing Parties or the Court.

#### **DISPOSITIVE MOTIONS**

The Parties anticipate that the Parties may file motions 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 should submit motions for summary judgment under the following schedule:

1. 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 in excess of those rights recognized by Plaintiffs.

2. Within 60 days from the close of discovery, Plaintiffs shall submit a combined brief that contains A) any response they might have to Defendants' motion for summary judgment and B) any cross-motion for summary judgment on those water rights attributes claimed in addition to those that Plaintiffs are willing to recognize. Plaintiffs shall be permitted to submit a single combined brief not to exceed fifty-four (54) double spaced pages (not inclusive of necessary appendices or attachments).
3. 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. Defendants shall be permitted to submit a single combined brief not to exceed forty-eight (48) double spaced pages (not inclusive of necessary appendices or attachments).
4. 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. Plaintiffs shall be permitted to submit a single combined brief not to exceed twenty (20) double spaced pages (not inclusive of necessary appendices or attachments).
5. No oral argument will be permitted on any motion for summary judgment without a party requesting permission for oral argument from the Court and establishing good cause for the need for such oral argument.

**TRIAL**

To the extent that an issue of material fact remains after dispositive motions that requires the Court to conduct an evidentiary trial, Plaintiffs 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. Plaintiffs do not request a settlement conference. As stated above unless otherwise notified, Plaintiffs' settlement offer will remain in place until either the Court enters judgment on this matter or the Plaintiffs give notice that they withdraw their offer.

Submitted this 12th day of January, 2016.