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craig.fredrickson@comcast.net

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RE: Zuni Adjudication, ZRB-2-0038 Plaintiffs' Responses to Defendants' Discovery Requests**From :** Guss Guarino (ENRD) <Guss.Guarino@usdoj.gov>

Wed, Apr 13, 2016 11:20 AM

Subject : RE: Zuni Adjudication, ZRB-2-0038 Plaintiffs' Responses to Defendants' Discovery Requests 1 attachment**To :** craig fredrickson <craig.fredrickson@comcast.net>**Cc :** Edward Bagley <edward.bagley@state.nm.us>, Karmen Miller (ENRD) <Karmen.Miller@usdoj.gov>

Mr. Fredrickson,

We have been unable to find additional material that linked to the NMDA website. Nevertheless, as I indicated we have compiled a list of references that Plaintiffs would rely upon to the extent necessary to support the 15 AU per section forage capacity metric. As you know, Plaintiffs used this metric to form the basis for subfile settlement offers. Please keep in mind that because we are resolving your subfile action through litigation, Plaintiffs' settlement metrics and considerations have no real bearing on your ability to establish your water right claims.

You will find the list of references attached. Each of the references listed includes a hyper link that should take you to a copy of the publication. Please let me know if you have any problems accessing the publications listed in the attachment.

Regards,

Guss Guarino
Indian Resources Section
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: 303-844-1343
Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

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From: Guarino, Guss (ENRD)**Sent:** Wednesday, April 06, 2016 10:30 AM**To:** 'craig.fredrickson@comcast.net' <craig.fredrickson@comcast.net>**Cc:** Bagley, Edward <edward.bagley@state.nm.us>; Miller, Karmen (ENRD) <KMiller@ENRD.USDOJ.GOV>**Subject:** RE: Zuni Adjudication, ZRB-2-0038 Plaintiffs' Responses to Defendants' Discovery Requests

Mr. Fredrickson

We are looking into this further and will get back to you shortly. My guess at this point is that the link is so old that the website has been modified substantially even before it was deactivated.

We will let you know what we find. Certainly, we will provide you the basis for the 15 AU per section estimate that was selected previously.

Regards,

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Denver, Colorado 80202
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Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

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From: craig.fredrickson@comcast.net [mailto:craig.fredrickson@comcast.net]
Sent: Tuesday, April 05, 2016 4:59 PM
To: Guarino, Guss (ENRD) <GGuarino@ENRD.USDOJ.GOV>
Cc: Bagley, Edward <edward.bagley@state.nm.us>; Miller, Karmen (ENRD) <KMiller@ENRD.USDOJ.GOV>
Subject: Re: Zuni Adjudication, ZRB-2-0038 Plaintiffs' Responses to Defendants' Discovery Requests

Mr. Guarino, Thank you for your response. Your link, <https://web.archive.org/web/20070416124637/http://nmdaweb.nmsu.edu/links.html>, does not provide a direct link to an actual document. Instead, I see many archived snapshots of the old web page <http://nmdaweb.nmsu.edu/links.html>. It would be appreciated if you could simply provide a PDF file or a hard copy of the particular document that was the basis for the 15 AUs per section estimate. If the document doesn't exist just let me know. Thank you. Craig Fredrickson

From: "Guss Guarino (ENRD)" <Guss.Guarino@usdoj.gov>
To: "craig fredrickson" <craig.fredrickson@comcast.net>
Cc: "Edward C. Bagley, OSE" <edward.bagley@state.nm.us>, "Karmen Miller (ENRD)" <Karmen.Miller@usdoj.gov>
Sent: Tuesday, April 5, 2016 12:37:53 PM
Subject: RE: Zuni Adjudication, ZRB-2-0038 Plaintiffs' Responses to Defendants' Discovery Requests

Mr. Fredrickson,

Thank you for taking the time to specify your concerns associated with Plaintiffs' responses to your various discovery requests. I have now had an opportunity to confer with Ted and other colleagues about your concerns and have the ability to respond. From the level of detail provided in your correspondence below, we believe we understand what you consider a problem.

With respect to the link that you have identified as not working, thank you for bringing our attention. The link that I provide here should take you to the web-page that was referenced:

<https://web.archive.org/web/20070416124637/http://nmdaweb.nmsu.edu/links.html>.

Apparently, the previous link went inactive several years ago and no one was made aware that it was no longer working.

With respect to your several requests that we re-verify, re-confirm, or somehow re-affirm the responses that we provided you in response to your discovery requests, such action is not appropriate nor required under the Federal Rules of Civil Procedure. Plaintiffs will not re-affirm or otherwise re-verify the responses we have already provided. Often a discovery response does not conform with a litigant's anticipation of what a responses should be; dissatisfaction with a response does not entitle the litigant to additional response.

In your e-mail below you ask that Plaintiffs provide you a copy of correspondence that you may have sent us over the course of the last 10 years. Obviously, because you are asking for these documents, your discovery requests previously submitted did not include a request for such document – with the burden of proof on defendants to establish contested water right claim, Plaintiffs place no reliance on such material. This request is particularly unusual because it is asking us to return to you litigation correspondence that you previously provided us – the necessity to do so is not apparent as you should have copies of the very litigation documents you created. Nevertheless, we will not require you to more formally submit another request for production of documents. We have reviewed the materials we have on hand and have identified documents from you from 2006, 2008, and 2010. The documents we have found are attached to this e-mail.

With respect to your concerns associated with the verification/signatures provided with the discovery responses, we have complied with the requirements of F.R.C.P. 33. You are simply mistaken that the rule requires something more and Plaintiffs actions are consistent with every other discovery response that Plaintiffs have submitted in every other discovery instance occurring in the Zuni Adjudication. Plaintiffs' responses to your requests were complete, accurate, and thorough and there is no basis to believe that Plaintiffs could disavow the responses provided or that you cannot rely on Plaintiffs' responses for any reason.

These paragraphs and the documents attached address each of the concerns that you raise. Please understand that we have taken into account the fact that are not a lawyer and that you have never engaged in a discovery process before.

Regards,

Guss Guarino
Indian Resources Section
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: 303-844-1343
Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

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Regards,

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From: craig.fredrickson@comcast.net [<mailto:craig.fredrickson@comcast.net>]

Sent: Sunday, April 03, 2016 3:20 PM

To: Guarino, Guss (ENRD) <GGuarino@ENRD.USDOJ.GOV>; Edward C. Bagley, OSE <edward.bagley@state.nm.us>

Subject: Re: Zuni Adjudication, ZRB-2-0038 Plaintiffs' Responses to Defendants' Discovery Requests

Messrs. Guarino and Bagley:

Fed. R. Civ. P. 33 requires that "each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." The response you have provided, both attached to this email and in writing, fails to comply with this requirement. Fed R. Civ. P. 37 requires "that the movant has in good faith conferred or attempted to confer with the person or party failing to

make disclosure or discovery in an effort to obtain it without court action" before "a party may move for an order compelling disclosure or discovery." Please consider this email as a good faith effort to confer with you to make disclosure on the following.

Defendants' Interrogatory Nos. 1, 2 and 3, and Defendants' request for Production Nos. 1 and 2, requested the production of documents containing all assumptions in the hydrographic survey used to calculate the water use of livestock for well 10A-5-W06. In particular, the hydrographic survey assumes that the land carrying capacity is 15 animal units (AUs) per section based upon "information from the New Mexico Department of Agriculture" (at page 3-1). The link, "New Mexico Department of Agriculture. Online. Available <http://nmdaweb.nmsu.edu/links.html>." presumed to be associated with this source document is provided in the hydrographic survey at page 5-1. This link is invalid and no electronic or physical copy of the associated source document was provided in Plaintiffs' response or initial disclosures. Plaintiffs' response further states that "the hydrographic survey report, inclusive of the publicly available references cited within, has been provided or otherwise been made available to Defendants." This statement is inaccurate.

1) Please provide a copy of the New Mexico Department of Agriculture source document, reference, web page or other form of that document cited within the hydrographic survey that pertains to the 15 AUs per section assumption.

2) Please verify Plaintiffs' response to Interrogatory No. 3 suggesting that the New Mexico Department of Agriculture estimate of 15 AUs per section was based upon an AU "equal to the forage demand of a mature 1,000 lb. beef cow."

Defendant's Interrogatory No. 2 requested Plaintiffs provide the quality assurance records demonstrating that the facts, data and assumptions cited in the hydrographic survey report were internally reviewed and validated before the report was published. Plaintiffs' response, or lack thereof, suggests that no quality assurance review was made of the report by the engineering firm that produced it. Defendants find it difficult to believe that this is true or that NRCE has no quality assurance program that applies to its work products and/or has no records that demonstrate that its quality assurance procedures were applied in the production, review and/or publishing of the hydrographic survey.

1) Please confirm that no quality assurance review process was applied to the hydrographic survey report.

Defendants' Interrogatory No. 5 requested Plaintiffs provide the basis for the 0.5 efficiency factor as assumed in the hydrographic survey. Plaintiffs' response states that "this efficiency factor was simply selected." Defendant's find it difficult to believe that NRCE had no basis, other than simple selection, for an assumption that was used to estimate the amount of water applied to beneficial use in watering livestock and adjudicating associated water rights.

1) Please confirm that there is no basis, other than simple selection, for the 0.5 efficiency factor.

Defendants' Interrogatory Nos. 6 through 11 requested Plaintiffs to provide information in their possession that pertains to well 10A-5-W06. Defendants provided information to Plaintiffs in this regard on several occasions during the past ten years but have incomplete knowledge of what of such information is actually in Plaintiffs' possession. This information addressed the elements of the livestock use component of well 10A-5-W06 and was provided in Defendant's 2006 objection to the initial consent order and in Defendant's 2008 status report to Plaintiffs.

1) Please provide a copy of each set of correspondence, including attachments, that Defendants provided to Plaintiffs over the past ten years. Defendants made this request in 2010 but received no response.

Plaintiffs' responses to Defendants' first and second discovery requests were accompanied by a verification statement signed by Christopher Banet of the Bureau of Indian Affairs and not by counsel of Plaintiffs and United States expert witness, Scott Turnbull. The verification provided appears to be invalid and Defendants are placed in a position of not being able to rely on any of the Plaintiffs' associated responses as being true and correct.

1) Please explain the relationship that Christopher Banet has to this Discovery process and why no verification in writing and under oath was provided by the individuals responsible for preparing the responses. If appropriate, please modify or provide the appropriate verification.

If you have any questions regarding these requests, please feel free to contact me.

Sincerely,
Craig Fredrickson

From: "Karmen Miller (ENRD)" <Karmen.Miller@usdoj.gov>
To: "craig fredrickson" <craig.fredrickson@comcast.net>
Cc: "Guss Guarino (ENRD)" <Guss.Guarino@usdoj.gov>, "Edward C. Bagley, OSE" <edward.bagley@state.nm.us>
Sent: Monday, March 28, 2016 12:10:29 PM
Subject: Zuni Adjudication, ZRB-2-0038 Plaintiffs' Responses to Defendants' Discovery Requests

Mr. Fredrickson,

I have attached to this email and placed in the U.S. mail, the Plaintiffs' Responses to Defendants' First and Second Discovery Requests.

Karmen Miller, Paralegal Specialist
United States Department of Justice
Environment and Natural Resources Division
Indian Resources Section
999 18th Street, South Terrace - 370
Denver, CO 80202
Phone: 303.844.1481
Fax: 303.844.1350
Email: Karmen.Miller@usdoj.gov

 **Livestock References.docx**
16 KB
