

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

UNITED STATES OF AMERICA	)	
and	)	No. 01cv00072-MV-JHR
STATE OF NEW MEXICO, ex rel. STATE	)	
ENGINEER,	)	ZUNI RIVER BASIN
Plaintiffs,	)	ADJUDICATION
v.	)	
	)	Subfile No. ZRB-3-0046
A & R PRODUCTIONS, et al.	)	
Defendants.	)	
_____	)	

**JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN**

Pursuant to Fed. R. Civ. P. 26(f), and the Court’s \_\_\_\_\_ *Order Setting Pretrial Conference* (ECF No. \_\_\_\_), counsel for Plaintiff United States of America and Plaintiff State of New Mexico (“Plaintiffs”) have consulted with counsel for Defendants Paul Davis Survivor’s Trust, Pamela Kay Davis, Kristi Davis, Anita Davis Schafer, and Sage Grae Merrill (“Defendants”). The Parties present to the Court this Joint Status Report and Proposed Discovery Plan and request that the Court issue a Case Management Order that is consistent with this Plan.

**NATURE OF THE CASE**

A determination of Defendants’ water rights for real property owned by Defendants in this general stream system water rights adjudication within Subarea 7.

**AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES**

The Parties 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 to the water rights and the following information for the stockpond found on Defendants' property and identified by the Hydrographic Survey:

#### **POND**

**Map Label:** 7C-1-SP23  
**Purpose of Use:** LIVESTOCK  
**Priority Date:** 10/6/1997  
**Source of Water:** Well  
**Point of Diversion:** Fills from well 7C-1-W14 (Location X(ft): 2,554,957;  
Y(ft): 1,465,711

#### **Amount of Water:**

**Depth (ft):** 1.5

**Surface Area (sq.ft):** 2,139

**Storage Impoundment Volume (ac-ft):** 0.044

**Pond Location:** As shown on Hydrographic Survey Map 7 C - 1

**S. 11 T. 09N R. 15W 1/4, 1/16, 1/64:** NW SW NE

**X(ft):** 2,555,045 **Y(ft):** 1,465,642

New Mexico State Plane Coordinate System, West Zone, NAD 1983

**Dam height (if greater than 9 ft):**

### **DISPUTE AMONG THE PARTIES**

The dispute among the Parties centers on Defendants' water right claims associated with the three wells located on Defendants' property in the basin; these wells have been designated 7C-1-W08, 7C-1-W10, and 7C-1-W14 by the Hydrographic Survey. The litigation between the

Parties will be focused exclusively on Defendants' claims associated with these wells.

**PLAINTIFFS' CONTENTIONS**

The Plaintiffs contend that Defendants have the burden of proving the water rights, inclusive of all elements, associated with the wells in dispute. Plaintiffs contend that Defendants are entitled to no water right based on future needs.

**DEFENDANTS' CONTENTIONS**

. . . .

**DISCOVERY PLAN**

Discovery is necessary concerning the facts material to Defendants' rights to use water from the wells in dispute. Discovery should begin once the Court issues a Case Management Order adopting the provisions of this Joint Status Report and Proposed Discovery Plan. The Parties propose the discovery plan outlined in the paragraphs below.

1. Within 30 days after 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)(A)(i) and (ii).
2. Within 60 days after issuance of the Case Management Order, Defendants shall make disclosures required by to Fed. R. Civ. P. 26(a)(2). Plaintiffs shall make their Fed. R. Civ. P. 26(a)(2) rebuttal disclosures within 30 days after Defendants' initial expert disclosures.
3. Discovery will be needed on the following subjects: the amounts, priorities, places, periods, and purposes of historic beneficial use of water from the wells in dispute.

The following procedures shall govern discovery associated with this subfile action.

- a. Maximum of 25 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. Requests for admission as permitted by Fed. R. Civ. P. 36.
- d. After initial disclosures, each Party is permitted to depose the identified witness(es) of any 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 8 hours unless extended by agreement of the Parties and shall occur at a location 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. Supplementation under Fed. R. Civ. P. 26(e) is due 30 days after the new information has been acquired.
- f. All discovery commenced must be completed by 150 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 150-day discovery period without the consent of all Parties unless upon a finding of good cause by the Court.

**DISPOSITIVE MOTIONS**

The Parties anticipate that motions for summary judgment under Fed. R. Civ. P. 56 may be needed to resolve those issues that do not have a material issue of fact in dispute. The Parties shall, consistent with D.N.M.LR-Civ. 7, submit any such motions within 30 days of the close of discovery.

**TRIAL**

To the extent that issues of material fact remain after the Court rules on dispositive motions, 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**

Plaintiffs and Defendants are willing to continue with settlement discussions and believe that a settlement conference with a judge may be useful.

Respectfully submitted,

/s/ Guss Guarino  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on \_\_\_\_\_, 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/ Guss Guarino  
Guss Guarino