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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,

Plaintiffs,

v.

A & R PRODUCTIONS, et al.,

Defendants.

No. 01cv00072-MV/JHR
ZUNI RIVER BASIN
ADJUDICATION
Subfile No. ZRB-1-0148

REMOTE DEPOSITION BY VIDEOCONFERENCE

EDWARD O. MORLAN

TAKEN ON
THURSDAY, FEBRUARY 4, 2021
1:02 P.M.

LAW AND RESOURCE PLANNING ASSOCIATES, PC
201 THIRD STREET NORTHWEST, SUITE 1750
ALBUQUERQUE, NEW MEXICO 97102

1 A. I would say so.
 2 Q. Okay. If I could direct your attention to
 3 the -- the portion of that map located in the
 4 northwest quarter of Section 4, and you'll see down
 5 at the bottom it shows the "access road."
 6 Do you see that?
 7 A. Yes.
 8 Q. And then as you work your way up, above
 9 the access road, it shows a label for "sediment
 10 retention ponds," above that, "petroleum storage."
 11 And just to the right of petroleum storage, the
 12 label depicts a location which is described as
 13 "water wells."
 14 Do you see that?
 15 A. Yes.
 16 Q. Okay. Is there a water well or water
 17 wells, plural, currently located in that general
 18 area?
 19 A. Yes, there is.
 20 Q. Okay. And putting aside whether the wells
 21 are operational or not, how many wells are located
 22 in that area?
 23 A. There are two right there.
 24 Q. Okay. Are both those wells operational?
 25 A. One is. One hasn't been for a while.

10

1 operation since that time?
 2 A. Out of operation.
 3 Q. Okay. What -- the status of Well G-337 is
 4 that it's currently operational; is that right?
 5 A. Yes. Yeah. It's --
 6 Q. Okay. Is -- is G-337 the current water
 7 source for the Tinaja Pit?
 8 A. Yes, it is.
 9 Q. Are there any other sources of water used
 10 by you all up there in operations and processing?
 11 A. That's the only well that -- that we use.
 12 Q. Okay. There's no -- there's no other on-
 13 site water sources?
 14 A. It all comes from that well on-site.
 15 Q. Okay. Are there any surface ponds or
 16 reservoirs utilized in the mining operations up
 17 there at that site or the processing operation?
 18 A. Yes, there is a -- a pond at the wash
 19 plant that -- that we utilize.
 20 Q. What's that used for?
 21 A. That's for washing -- for making our sand
 22 products -- washed gravel products.
 23 Q. And what's the source of the water in
 24 those ponds?
 25 A. It comes from the 337 well.

12

1 Q. Okay. The one that hasn't been for a
 2 while, is that the well that's identified by the
 3 State of New Mexico Office of State Engineer as Well
 4 G-336?
 5 A. Yes. Yeah.
 6 Q. Okay. And the well that's operational
 7 currently, is that the well known or identified by
 8 the Office of State Engineer as Well G-337?
 9 A. Yes.
 10 Q. Okay. Can you recall how long Well G-336
 11 has been out of -- has been nonoperational?
 12 A. I can't give you a date, but it's -- it
 13 was probably back to a couple years after I started
 14 in 2010.
 15 Q. Are you -- do you know the reason why that
 16 well stopped producing?
 17 A. I don't remember exactly. I -- we don't
 18 remember if it caved in or if a casing didn't go far
 19 enough. I -- I'm not really sure what the problem
 20 was, but I know it's going to take a lot more work
 21 to -- to get it active again.
 22 Q. Okay. And since that time a couple of
 23 years after the beginning of your employment that
 24 the well ceased -- ceased to be operational, has it
 25 ever been used since that time, or it's been out of

11

1 Q. Is any -- is water from any other sources
 2 either off-site or on-site utilized in the
 3 operations up there at the Tinaja Pit?
 4 A. They have hauled water in when we've had
 5 issues.
 6 Q. Yeah. And -- and what do you mean when
 7 you say, "when you had issues"?
 8 A. If -- if the well is slowing down, they
 9 have hauled water from Milan.
 10 Q. Okay. Are you -- are you able to tell us
 11 what the -- the current approximate pump -- pumping
 12 capacity of Well G-337 is?
 13 A. It's about 50 gallons per minute.
 14 Q. Has that well's pumping capacity, during
 15 the time of your employment, always been in that
 16 general capacity?
 17 A. Yes.
 18 Q. Could you tell us: In -- in your -- in
 19 your capacity as mine supervisor, tell us what your
 20 responsibilities are.
 21 A. Yeah. Well, basically, all -- all
 22 responsibilities at a mine: safety, all the
 23 operations, where at in the quarry we're going to
 24 crush, where we're going to shoot, hiring, firing.
 25 Just about all operations that take place there.

13

1 Q. Okay. So if we could take a look again at
 2 the Model 170 Recordall, the 2 inch. That
 3 photograph, which, as I understand it, is the meter
 4 currently attached to Well 337. Looking at the
 5 photos, you can see that the -- the meter on it
 6 shows 04883200.

7 Do you see that?

8 A. Yes.

9 Q. And I -- and based on what it says on the
 10 meter face, I assume that the quantity that's being
 11 metered is gallons -- gallons of water?

12 A. Yes.

13 Q. Okay. Could you explain how do you read -
 14 - so the number that's showing on the face of that
 15 meter -- how many gallons would that be?

16 A. To tell you the truth, I don't really
 17 understand how these three numbers in the black
 18 work. I just record them and send them in.

19 Q. Okay. And so let me ask you about that.
 20 And -- well, that makes two of us, I will tell you,
 21 about the -- the meter.

22 How -- who -- are you the individual
 23 responsible for recording the data on a monthly
 24 basis?

25 A. I do sometimes when I'm available, and

22

1 A. I do not know. All I do is -- is send it
 2 to Billie Joe Mace, our office manager, and I don't
 3 know where it goes from there.

4 Q. Okay. And during the course of your
 5 employment, you've never directly sent that data to
 6 the Office of State Engineering?

7 A. No.

8 Q. Okay. If we could just look at that --
 9 the other Recordall meter, the Model 55, for a
 10 second, Mr. Morlan, the 1 inch that you indicated at
 11 some point was probably associated with Well G-336.
 12 I just want to ask you the same question again based
 13 on the -- the face of this meter. It's measuring
 14 water in gallons, and the meter shown in the
 15 photograph shows 0945540.

16 I'll ask you the same question as I did
 17 earlier regarding the other meter. They look
 18 slightly different.

19 Are you able to tell me how many gallons
 20 that one represents? It's kind of a loaded
 21 question. I apologize.

22 A. No.

23 Q. Okay. So the same situation. You record
 24 the data and send it on to the main office.

25 A. That's -- that's all I do.

24

1 sometimes I -- I have one of my guys do it.
 2 Q. Okay. If it's not you -- let's talk about
 3 in the recent past over the course of the last
 4 couple -- two, three years. If you're not the
 5 individual recording that data, who would be? Are
 6 you able to say?

7 A. No. Because it could be -- it could be
 8 two or three different individuals.

9 Q. Okay. Okay. And when you say you record
 10 the data and then send it in, where are you sending
 11 it into?

12 A. We send it to the main office.

13 Q. The -- the main office in Grants?

14 A. Correct.

15 Q. Okay. And those -- those meter readings
 16 eventually go to the Office of State Engineer; is
 17 that right?

18 A. That's what I understand.

19 Q. Okay. And when you send it -- when --
 20 when you record those numbers, the meter readings,
 21 do you record those with pen and paper?

22 A. We do.

23 Q. Okay. And do you know who in the main
 24 office is responsible for ultimately sending that
 25 information to the Office of State Engineer?

23

1 Q. Okay. Great. Did you all up at the pit
 2 mine in the past, when you replaced meters, keep
 3 records, written records of those cases?

4 A. I never have. They should just show up in
 5 water logs, though.

6 Q. Okay. Do you ever have a reason -- again,
 7 during the course of your employment, have -- have
 8 you ever had a reason to not replace a meter but to
 9 reset a meter to zero?

10 A. I wouldn't even know how to reset one. I
 11 don't think you can --

12 Q. Okay.

13 A. -- so, no.

14 Q. During the entire term of your employment
 15 -- so from approximately 2010 or so to the present -
 16 - have -- have meter readings from 337 and 336, when
 17 it was operational, always been taken throughout
 18 that time?

19 A. Since I've been here, yes.

20 Q. And that's up through the present?

21 A. Correct.

22 Q. And those readings are normally taken on
 23 the first of each month; is that correct?

24 A. Yes.

25 Q. You mentioned earlier that Well 337 is --

25

1 is the source of the water in the ponds that are
 2 used -- the pond, I guess, that are used in the sand
 3 plant. That's right?

4 A. Correct.

5 Q. Okay. How do you keep those ponds filled?
 6 A. So we have a series of -- of tanks about
 7 500 feet up a hill. So 337 pumps into those tanks,
 8 and then we use the water from there to fill the
 9 pond and then also supplies the pressure.

10 Q. Okay. Are those ponds -- is the pond
 11 filled -- is it kind of a continuous fill, or is
 12 there some sort of a schedule that you all employ to
 13 fill those ponds?

14 A. No, it -- it's pretty continuous.

15 (Whereupon, Exhibit 3 was marked.)

16 BY MR. GOLLIS:

17 Q. Let me ask you, Mr. Morlan, to take a look
 18 at what's been marked Exhibit 3 for identification.
 19 And this is a set of meter readings for 336, I
 20 believe. If you can take a look at that -- if you
 21 can thumb through that, familiarize yourself with
 22 it, we'll talk about that for a little bit.

23 MS. SCOTT: Yeah. Sam, we have, again,
 24 the -- the exhibit from yesterday.

25 Is -- is that for the 1 inch line or --

26

1 like it was signed by Billie J. Mace. To your
 2 knowledge, is that the Billie Joe Mace that you
 3 mentioned earlier who's the office manager in the
 4 Grants' office of C & E?

5 A. That's her.

6 Q. Okay. Now as I mentioned, these are the
 7 meter readings for -- for Well G-336. To your
 8 knowledge, would -- would -- would this sheet -- and
 9 we're looking at the year 2001. I mean, the meter
 10 readings shown -- would those be the meter readings
 11 that were reported from the pit mine?

12 A. Yes.

13 Q. Okay. To your knowledge, would anyone in
 14 the main C & E office, Ms. -- Ms. Mace or otherwise,
 15 manipulate the recorded data in any way?

16 A. No.

17 Q. And I guess what I'm -- what I'm getting
 18 at is that series of numbers on the meter face that
 19 we talked about.

20 A. Uh-huh.

21 Q. When you send that information to the
 22 office, do you include a decimal point anywhere or
 23 just a series of numbers?

24 A. When I do it, I -- I try and put a
 25 decimal.

28

1 okay.

2 MR. GOLLIS: Yes. That is exactly it. I
 3 -- I just -- I -- I put page -- page numbers on
 4 it for today just to try to make things easier, but
 5 --

6 MS. SCOTT: Oh. Okay. I -- I just didn't
 7 want to print them again; so --

8 MR. GOLLIS: I don't blame you. I just --

9 MS. SCOTT: So it's going to be this

10 exhibit that he's referring to.

11 THE DEPONENT: Oh.

12 MS. SCOTT: Okay. Yeah.

13 THE DEPONENT: Oh. Okay.

14 BY MR. GOLLIS:

15 Q. You just let me know. Take your time, Mr.
 16 Morlan, and let me know when you're ready to
 17 proceed.

18 A. Okay. Let's give it a go.

19 Q. All right. We're actually going to start
 20 -- as you can see from that exhibit, it starts in
 21 2016 and works backwards in time; so I'm going to
 22 ask you to flip to the very last page, and we'll
 23 start from the back and work forward; and that way
 24 we'll start at the beginning in 2001.

25 This -- this meter reading summary looks

27

29

1 Q. Okay. And so if we're talking about --
 2 just to go back to the meter face again on that
 3 Recordall -- the 170, the 2 inch that's attached to
 4 337 -- you have that one?

5 A. Got it.

6 Q. Okay. Where -- where was the decimal?

7 Like, the number it's showing on the meter there,
 8 4883200 -- where would you place the decimal point?

9 A. Well, in -- in my mind, I would put it at
 10 the end of the white numbers.

11 Q. At the end of the white numbers?

12 A. Yeah.

13 Q. Okay. So, in other words, when you -- so
 14 -- so the -- the -- the number of gallons that would
 15 be shown in this -- in the example in the photograph
 16 would be 4,883 plus? And I'm not going to even
 17 endeavor to read the -- the decimals and the -- the
 18 red needle on the meter itself. Is that -- is that
 19 right?

20 A. That's how I -- that's how I would do it
 21 just -- just because the first numbers are the ones
 22 that roll.

23 Q. Okay. And when you say, "the first
 24 numbers," you mean the -- you're referring to the
 25 numbers that are showing against the white

1 meter reading for January 1, 2006, it shows the
 2 recorded number 50775 with three trailing zeros.
 3 A. I would assume the person that signed it,
 4 which was Billie Joe.
 5 Q. Okay. Would you also agree, though, that
 6 indicating that there's three zeros is consistent
 7 with that Model 170 Recordall meter? It shows three
 8 additional numbers in white against the black face
 9 on that meter.
 10 A. Yes.
 11 Q. If you flip forward, Mr. Morlan, to the
 12 page of Exhibit 4 showing the meter readings for
 13 2009 --
 14 A. Okay.
 15 Q. -- if you look down to the meter reading
 16 entry for November 1st, 2009 --
 17 A. Yes.
 18 Q. -- do you see that it shows a -- a meter
 19 reading of 453?
 20 A. Yes.
 21 Q. And you see for October 1st, 2009, the
 22 preceding month, it shows a meter reading of 99,443?
 23 A. Correct.
 24 Q. Okay. And in the margin next to the
 25 November 1st, 2009, entry is the comment "Turn

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1 to -- to five digits into the tens of thousands.
 2 Do you see that?
 3 A. Yes.
 4 Q. Okay. The -- the following meter reading
 5 for May 1st, 2016, is only to the hundreds. The
 6 meter reading for that month is 740.
 7 How do you interpret that change from five
 8 digits to three digits there?
 9 A. I would say that was a meter change.
 10 Q. A meter change rather than a turnover of
 11 the meter?
 12 A. Yeah. Because I mean, to go from 60 to --
 13 well, it would had to have turned over in one month.
 14 I -- I don't think it happened.
 15 Q. Okay. These records, which were produced
 16 to the United States and the State of New Mexico by
 17 C & E's legal counsel, only go, as you can see,
 18 through the end of calendar year 2016. Of course,
 19 this is during your term of employment.
 20 I'm just wondering have you continued
 21 subsequent to the end of 2016 through 2017, '18, '19
 22 to the end of last year -- calendar year 2020 -- to
 23 record the monthly meter readings for Well G-337?
 24 A. Yes, right up to today.
 25 Q. Okay. And -- and you've continued during

40

1 over."
 2 A. Uh-huh.
 3 Q. What do you think that refers to -- that
 4 comment?
 5 A. I would say the meter went as far as it
 6 could go and turned over.
 7 Q. Okay.
 8 A. It's automatic.
 9 Q. Okay. You believe it went from 99,999 and
 10 then back to 1?
 11 A. Then it flipped over, yes.
 12 Q. Okay. So in your estimation, that
 13 wouldn't indicate a meter replacement at that time,
 14 would it?
 15 A. I would -- it doesn't look to me like it.
 16 It looks like it turned over is what they're saying;
 17 so --
 18 Q. Okay. And we'll just -- a couple more
 19 questions about this exhibit. If you turn to the
 20 very first page, which shows the meter readings for
 21 the calendar year 2016 --
 22 A. Okay.
 23 Q. If you look at the meter readings for the
 24 first four months of the year, January through April
 25 2016, the meter readings are going to read all out

39

41

1 that time to, as you did previously, to report those
 2 numbers to the -- the Grants' office?
 3 A. Correct.
 4 (Whereupon, Exhibit 5 was marked.)
 5 BY MR. GOLLIS:
 6 Q. Okay. Let me direct your attention, if I
 7 could, Mr. Morlan, to the next exhibit. It's marked
 8 Exhibit 5 for identification. And I apologize. It
 9 may be tough to read. It certainly is for me if I
 10 don't have my magnifying glass. This is just --
 11 this -- this is just a summary.
 12 Oh, look. It -- Counsel took care of that
 13 for you and enlarged it. This is a summary of the
 14 meter readings from -- from Well G-336. And I'm
 15 just opening mine up on my computer, and then I'll
 16 ask you a couple of questions about that after you
 17 take a look at it.
 18 A. Go ahead.
 19 Q. Did you by any chance prepare the summary?
 20 A. No.
 21 Q. Okay. Do you -- do you know who prepared
 22 this summary?
 23 A. I do not.
 24 Q. Okay. If you look at calendar year 2012
 25 on this summary for Well G-336 --

1 A. Okay.
 2 Q. -- it appears to me, based on this
 3 summary, consistent with the other meter reading in
 4 Exhibit 4 that we just took a look at, that 336
 5 stops producing around September of 2012 and hasn't
 6 produced since based on these summaries through
 7 2016.

8 Does that sound about right to you?
 9 Again, is that consistent with your recollection?

10 A. Yes.

11 (Whereupon, Exhibit 6 was marked.)

12 BY MR. GOLLIS:

13 Q. Okay. Let's take a look now at the next
 14 exhibit, which is marked for identification as
 15 Exhibit 6.

16 A. Okay.

17 Q. And I need to pull this up on my computer.
 18 And this exhibit shows again a summary of those
 19 meter readings, this time for Well G-337.

20 A. Okay.

21 Q. And, again, did you prepare this exhibit -
 22 - this summary?

23 A. No, no.

24 Q. Okay. And do you know who may have
 25 prepared it?

42

1 labeled "Reported to OSE," which is Office of State
 2 Engineer; and you see the number 740000.

3 Do you see that?

4 A. Yes.

5 Q. Okay. And if you refer back now to
 6 Exhibit 4, which is the series of meter readings,
 7 the data for Well G-337, also for the month of May -
 8 - May 1st, 2016 -- you'll see that that shows the
 9 meter reading is 740.

10 A. All right.

11 MS. SCOTT: I think he's talking about
 12 this right here for 2016; so it's going to be on the
 13 very top, and that's on the front. Can you --

14 BY MR. GOLLIS:

15 Q. Yeah. It would be right on the front,
 16 sir.

17 A. Oh. Okay. Okay.

18 Q. Okay. Would -- would you say that those
 19 two numbers are consistent, that is to say the 740
 20 in Exhibit 4 for the meter reading for May 1st 2016,
 21 and then the number on the summer reading, Exhibit
 22 6, reported to OSE for May shows 740, no decimal
 23 point but three additional zeros?

24 A. Uh-huh.

25 Q. Does that seem consistent to you?

44

1 A. No.
 2 Q. If I could direct your attention on that
 3 one-page summary to the calendar year 20- -- 2016.
 4 A. 2016?
 5 Q. Yes.
 6 A. Okay.

7 Q. You'll see there that the number shown as
 8 reported to OSE, which is the Office of State
 9 Engineer, for the month of May 2016 is 740000 shown
 10 in red.

11 Do you -- do you see that?

12 MS. SCOTT: We just have a black and white
 13 copy here.

14 MR. GOLLIS: Oh, you just have a black and
 15 white copy. Okay.

16 BY MR. GOLLIS:

17 A. Yeah. You might have to run that by me
 18 one more time.

19 Q. Okay. Take a look for me, for calendar
 20 year 2016 on that summary in Exhibit 6, the month of
 21 May.

22 A. Okay.

23 Q. May 2016.

24 A. Oh. Okay.

25 Q. In the first column, it says -- which is

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45

1 A. Yes. That would make more sense now.
 2 Q. Okay. When you in 2016 reported that
 3 number -- when you read the meter and reported that
 4 number to the C & E main office, how would you have
 5 recorded it?

6 A. Well, I record what I see on the meter,
 7 and then -- and then the decimal and then the
 8 numbers after.

9 Q. Okay. So -- so if we were to take a look
 10 back at Exhibit 2 and we look at that photograph
 11 again of the -- the Model 170 Recordall -- if you'd
 12 take a look at that for me please --

13 A. Yes.

14 Q. -- you would -- instead of against the
 15 white background -- instead of photograph depicting
 16 04883, it depicted 00740.

17 How -- how would you report that? How
 18 would you have reported that?

19 A. I would put a decimal and then the three
 20 numbers after.

21 Q. Okay. And that's what you would send to
 22 the office.

23 A. That's what I would send.

24 Q. Okay. Great. We are getting close to
 25 being done. We're going to look at water truck log