

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

<b>UNITED STATES OF AMERICA and</b>	)	
<b>STATE OF NEW MEXICO, ex rel. STATE</b>	)	
<b>ENGINEER,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>and</b>	)	
	)	<b>No. 01cv0072 MV/WPL</b>
<b>ZUNI INDIAN TRIBE and NAVAJO NATION,</b>	)	
<b>Plaintiffs-in-Intervention</b>	)	
	)	
	)	<b>ZUNI RIVER BASIN</b>
<b>v.</b>	)	<b>ADJUDICATION</b>
	)	
<b>A &amp; R PRODUCTIONS, et al.,</b>	)	<b>Subfile No. ZRB-1-0092</b>

**JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN**

Pursuant to the Court’s March 27, 2015 *Initial Scheduling Order* (No. 3035) and Fed.R.Civ.P. 26(f), meetings were held by telephone on April 9, 2015 and April 24, 2015, attended by:

Bradley S. Bridgewater, Esq., for Plaintiff United States of America;

Edward Bagley, Esq., for Plaintiff State of New Mexico;

Defendant Theodore B. Schnaidt.

During the April 24, 2015 meeting, Defendant Theodore B. Schnaidt indicated he would provide written comments on a previously-circulated draft of this Joint Status Report and Provisional Discovery Plan. However, no such written comments were received by the date when this document was due to be filed. Plaintiffs have attempted to incorporate the gist of Mr. Schnaidt’s verbal comments during the two telephonic meetings into this report, but have been unable to obtain his approval of the document as written.

**NATURE OF THE CASE**

A determination of Defendant's surface water rights associated with six ponds and ground water rights associated with three (3) domestic wells in this general stream system water rights adjudication.

**AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES**

Plaintiff does not intend to file any additional pleadings or join additional parties.

Defendant does not intend to file any additional pleadings or join additional parties.

**STIPULATIONS**

The State and the United States hereto 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 State and the United States further stipulate and agree that the law governing this case is: the law of the State of New Mexico.

**PLAINTIFF'S CONTENTIONS:**

1. Defendant's six (6) stock ponds, identified by map labels 4A-3-SP24, 4A-3-SP25, 4A-3-SP26, 4A-3-SP30, 4A-3-SP33, and 4A-3-SP36, are accurately described by the United States' Hydrographic Survey.
2. Defendant's livestock well, identified by map label 4A-3-W19, is accurately described by the United States' Hydrographic Survey.
3. Defendant's three domestic (3) wells, identified by map labels 4A-3-W02, 4A-3-W12 and 4A-3-W19, are accurately described by the United States' Hydrographic Survey except as to the amount of water, and in particular, Defendant should be adjudicated an amount of water not to exceed a diversion and consumption of 0.7 acre feet per year from each of his three domestic (3) wells unless a more restrictive diversion limit applies

pursuant to court order, covenant or ordinance.

### **DEFENDANTS' CONTENTIONS**

1. Defendant's six (6) stock ponds, identified by map labels 4A-3-SP24, 4A-3-SP25, 4A-3-SP26, 4A-3-SP30, 4A-3-SP33, and 4A-3-SP36, are not accurately described by the United States' Hydrographic Survey.
2. Defendant's livestock well, identified by map label 4A-3-W19, is not accurately described by the United States' Hydrographic Survey.
3. Defendant's three domestic (3) wells, identified by map labels 4A-3-W02, 4A-3-W12 and 4A-3-W19, are not accurately described by the United States' Hydrographic Survey, and in particular, the amount proposed by the Plaintiffs is insufficient for Defendant's uses. Three (3) wells at 0.7 acre feet per year per well amounts to 18 gallons per acre per year, based on a total of 2.1 acre feet for a property of 2,880 acres.

### **PROVISIONAL DISCOVERY PLAN**

The State and the United States jointly propose to the Court the following discovery plan: Plaintiffs may call witnesses yet to be named to testify as to the investigation of water rights associated with the property, the water rights identified by the hydrographic survey, and to identify or authenticate documents, if necessary.

Defendant may call witnesses yet to be named to identify or authenticate documents, if necessary.

Defendant may offer the following exhibits at the trial: State Engineer documents relating to the well.

The State and the United States contend that Discovery will be needed on the following subjects: Information regarding the use of water by Defendant and Defendant's predecessors-in-

interest.

Maximum of 20 interrogatories by each party to any other party. (Responses due 20 days after service).

Maximum of 10 requests for admission by each party to any other party. (Response due 20 days after service).

Maximum of 2 depositions by Plaintiffs and 2 by Defendant, which may take place only with the consent of all parties to the subfile proceeding.

Each deposition limited to maximum of 4 hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiffs by May 31, 2015.

from Defendant by May 31, 2015.

Rebuttal Reports from retained experts under Rule 26(a)(2) due:

from Plaintiffs by June 30, 2015

from Defendant by June 30, 2015.

Supplementation under Rule 26(e) due 10 Days after the new information has been acquired.

All discovery commenced in time to be complete by August 31, 2015.

### **PRETRIAL MOTIONS**

Plaintiffs intend to file: none at this time.

Defendant intends to file: none at this time.

### **ESTIMATED TRIAL TIME**

The parties estimate trial will require 1 day.

This is a non-jury case.

This is a jury case. (Defendants have demanded a jury on issues of fact.)

The State and the United States request a pretrial conference in September 2015.

**SETTLEMENT**

The possibility of settlement in this case is considered unlikely.

APPROVED

/s/ Edward C. Bagley

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Edward C. Bagley  
Special Assistant Attorney General  
*Attorney for State of New Mexico*  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Telephone: (505) 827-6150

/s/ Bradley S. Bridgewater

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Bradley S. Bridgewater  
U.S. Department of Justice  
South Terrace, Suite 370  
999 18<sup>th</sup> Street  
Denver, CO 80294  
(303) 844-1359  
COUNSEL FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 29, 2015, I filed the foregoing Joint Status Report and Provisional Discovery Plan electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means, and on the following by first class mail:

Mr. Theodore B. Schnaidt  
17500 E. Palmdale Blvd.  
Llano, CA 93544