

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,

and

ZUNI INDIAN TRIBE, NAVAJO NATION

Plaintiffs-in-Intervention,

-vs-

A & R Productions, et al.,

Defendants.

No. 01cv00072-MV-WPL
Subfile No. ZRB-2-00098
JAY Land Ltd. Co., Yates
Ranch Property LLP

STATE OF NEW MEXICO)
) ss.
COUNTY OF EDDY)

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

DARRELL J. BROWN, being first sworn on his oath states:

1. He is the general ranch manager of Yates Ranch Property LLP and JAY Land Ltd. Co., which are the owners of Atarque Ranch, in Cibola County, New Mexico, the water rights of which are the subject matter of this adjudication.

2. This affidavit is submitted in support of the Motion for summary judgment of Yates Ranch Property LLP and JAY Land Ltd. Co..

3. His resume is attached hereto as an exhibit to this affidavit, and all matters stated in it are correct and true;

Exhibit 7
01cv00072-MV-WPL
Subfile ZRB-2-0098

4. The pan evaporation in the vicinity of Atarque Ranch is approximately 60 inches per year.

5. The stock watering facilities at Atarque Ranch consist of stock tanks, open storage tanks, stock ponds, watering troughs, and drinkers.

6. Each of the stock watering facilities at Atarque Ranch which has any surface open to the air, i.e., all stock tanks, open storage tanks, ponds, watering troughs, and drinkers, incurs evaporation at a rate of approximately 60 inches per year.

7. The surface area of each of the stock watering facilities at Atarque Ranch multiplied by the annual pan evaporation rate results in the volume of annual consumption of water in connection with that stock watering facility resulting from evaporation.

8. Water must be and has been kept in each of the stock tanks, open storage tanks, ponds, watering troughs, and drinkers, in order to provide water for the cattle drinking from it, irrespective of the number of cattle watered from each of them.

9. The source of the water in each of the stock watering features at Atarque Ranch is either surface water resulting from storm events, run-off from snow melt, or discharge from springs; or it is underground water pumped by one or more of the wells on the ranch.

10. When surface water is not available to fill and

maintain stock ponds, cattle must be watered from stock watering facilities which are supplied by wells.

11. Stock watering facilities which are supplied by wells cannot be and have never been capable of being filled only when needed, and as a practical matter they must be kept filled permanently.

12. There is no means available to turn on water to stock watering facilities only on demand by the cattle.

13. There is no means available to turn on water to stock watering facilities and to keep it there for consumption only on demand by the cattle.

14. The amount of evaporation from the stock watering facilities at Atarque Ranch is independent of the number of cattle watering from each of them.

15. The amount of evaporation from the stock watering facilities at Atarque Ranch is a factor of the surface area of each of them.

16. Evaporation from the surface of stock watering facilities is not avoidable.

17. In most years there is never a time in excess of several hours when there are no cattle in any pasture at Atarque Ranch.

18. The evaporation of water from the stock watering facilities at Atarque Ranch is a consumptive use in addition to

the amount of water from each such stock watering facility consumed by the cattle and wildlife drinking from it.

19. The evaporation of water from the stock watering facilities at Atarque Ranch is a consumptive use in addition to the amount of water from each such stock watering facility consumed by leakage and seepage from the watering facility.

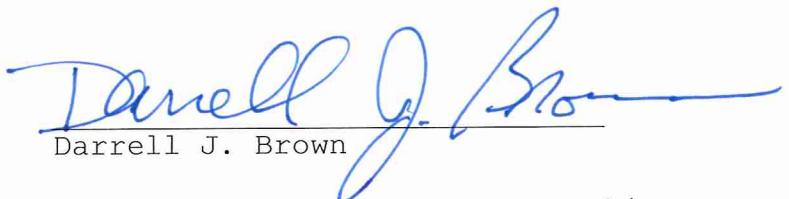
20. Evaporation of water from the stock watering facilities at Atarque Ranch, as in all open range cattle operations, is an unavoidable consequence of water use for the purposes of cattle ranching.

21. It is the general custom in the cattle ranching business to have open watering facilities for cattle which make water available to cattle at all times.

22. Leakage, seepage and evaporation from the stock watering facilities at Atarque Ranch are an unavoidable consequence of use of water in those stock watering facilities.

23. Atarque Lake, impounded behind the former Atarque Dam, still holds some water, notwithstanding that the dam is gone, which I estimate at a total of 10 surface acres.

FURTHER AFFIANT SAYETH NAUGHT.


Darrell J. Brown

25 SUBSCRIBED AND SWORN TO before me by Darrell J. Brown this day of June, 2015.

Valerie Moreno
Notary Public

My Commission Expires: 2-9-19



OFFICIAL SEAL
Valerie Moreno
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2-9-19

RESUME

Formal Education:

Graduated May, 1974 with High School Diploma – West Mesa High School, Albuquerque, NM

Graduated May, 1978 with Bachelor of Science in Animal Science – NMSU

Graduated February, 1984 with Masters of Science in Agricultural Economics and Business

Work Experience:

1960-1975 – Rafter J Open A Ranches – family owned ranches in New Mexico and Colorado.

Learned about cattle ranching from my granddad, dad and others on several ranching

Locations in southwestern Colorado, northwestern and west central New Mexico.

From May, 1973-October, 1975, I worked summer months and any free times from school on Mount Taylor ranch; most of the time unsupervised. Responsibilities included the monitoring, repair and pumping of storage tank and 5 miles of pipeline that supplied water to 4 drinking troughs, daily care of livestock grazing on ranch, fence repairs, etc.

1973-1974 – Bar 7 Ranch (Albert Black), Albuquerque, NM

Farm: all aspects of raising, harvesting and storing alfalfa hay.

Ranch: feed, water and health care of a herd 200 mother cows, 8-10 bulls, 20 yearlings.

1975-1981 – NMSU College Ranch, Las Cruces, NM

In addition to normal ranch duties (fence construction and repair, supplying necessary supplemental feed, water [including repairs to water lines, hauling water via truck, windmill and water well repairs and maintenance], health care of cattle,) I often assisted with collection of data and implementation of various experiments conducted by the Animal and Range Science professors and university staff.

1981-1984 – NMSU Agricultural Economics Department (Research Assistant)

Primarily worked on the Western Regional Beef Research Project W-145 which included research and Masters' Thesis. Assisted with compiling and analyzing data from other research projects, assisting with teaching classes, providing tutoring for undergraduates.

May – November, 1983 – Canon Blanco Ranch, Santa Fe, NM

Fence construction; occasional work on water line repairs and development of new and additional watering sources for cattle.

March, 1984-April, 1985 – Cherokee Ranch, Sedalia, CO

All facets of registered cattle business including normal feeding and care of cattle, grooming and showing cattle under show ring conditions, transporting show cattle to various show rings and sales throughout western United States, assisting in private treaty sales, keeping records,

May, 1985 – Present – Yates Family Ranches, Artesia, NM

Publications

Impacts of relative price changes of feeds and cattle on the marketing of U.S. beef, 1975-1981: Annotated bibliography of publications from the Western Regional Beef Research Project W-145

Consumer acceptance of beef from animals fed various levels of feed concentrate in feedlot diets

Impact of cooking methods and perceived degree of doneness on consumers' acceptance of beef

Offices and Honoraria

Board of Directors - New Mexico Cattle Growers Association 1992-1999.

Junior Cattle Growers' Sponsor -

Amigo Award – New Mexico Wool Growers' - 1994

Outstanding Contribution Award – NMCGA – 1994 & 1995

New Mexico Cowbells Man of the Year - 1996

Board of Directors – Eddy County Farm Bureau

District Supervisor – Central Valley Soil and Water Conservation District – 1997- Present

Outstanding Conservationist - 1996

NMACD Region VI Conservation Service Award - 1998

Outstanding Conservation Rancher – 2000

New Mexico Department of Agriculture Pace Setter Award - 2009

New Mexico Beef Council –

Vice Chairman -

Chairman – 2013 – Present