

**Attachment C - United States' Statement of Undisputed Material Facts
in Support of Cross-Motion for Summary Judgment**

Pursuant to Rule 56(c)(1), Fed. R. Civ. P., and D.N.M.LR-Civ. 56.1(b), the United States asserts the following undisputed material facts in support of its Cross-Motion for Summary Judgment:

1. Atarque Ranch is made up of approximately 97,427 acres of land held in fee by Defendants in the Zuni River Basin ("Basin"). Attachment D – Verified Statement of Scott Turnbull ("Turnbull Affidavit") at ¶ 7.
2. The historic use of the land making up Atarque Ranch was principally to raise livestock, and more specifically cattle. Atarque Ranch appears to have no other particular historic use. Attachment D – Turnbull Affidavit at ¶ 6.
3. For each subfile associated with the Zuni River Basin adjudication, the United States and State of New Mexico (together, "Plaintiffs") made estimates of livestock water consumption or depletion. To ensure that stock water users of the Basin had a sufficient water right to ensure that consumptive stock needs were met, Plaintiffs included an "efficiency factor of 0.5" in its livestock consumption estimate. This efficiency factor effectively doubled the quantity of water expected to have been consumed per animal unit (from 10 to 20 gallons per day) to account for incidental losses such as water management practices, evaporation, system leaks, spillage, etc. Attachment D – Turnbull Affidavit at ¶ 10.
4. Based on the acreage and the total potential forage of 469,200 pounds per section that might be developed each year on Atarque Ranch, Plaintiffs determined that the Ranch could support up to 2,283 animal units of livestock each year. Based on annual daily water need estimates, Plaintiffs calculated that Atarque Ranch would need 51.146 acre-feet per year ("AFY") to support livestock needs. For this subfile, Plaintiffs identified 24 wells used exclusively for watering cattle and assigned calculated quantities to each well for the historic, beneficial use associated with raising livestock on Atarque Ranch. Attachment D – Turnbull Affidavit at ¶¶ 11-12.
5. Once the livestock carrying-capacity and annual water needs were determined for Atarque Ranch, Plaintiffs divided the water quantity equally by the number of wells found on the ranch property. During the course of this litigation, however, Defendants JAY Land Ltd. Co. and Yates Ranch Property LLP ("Defendants") produced well records for a single well designated in the hydrographic survey as well 10B-2-W04 and commonly referred to as the "Highway Well." These records established that water had been pumped from this well and piped broadly to 12 pasture areas spread throughout the ranch. As a result of the information disclosed by Defendants, Plaintiffs agreed to recognize 28.91 AFY, the maximum annual quantity of water pumped from the Highway Well, and further agreed to tie that quantity of water to a water right associated with that

well. However, because the livestock water right was an estimate fundamentally based on historic, beneficial use as calculated by the overall forage carrying capacity of the ranch and estimated reasonable losses, the water right associated with the livestock wells for the areas to which water was pumped from the Highway Well was proportionately reduced. Attachment D – Turnbull Affidavit at ¶ 13.

6. Defendants have historically grazed far fewer cattle than the grazing capacity of 2,283 animal units of livestock calculated in the Hydrographic Survey. According to the only livestock inventory provided by Defendants, a maximum number of cattle were grazed on Atarque Ranch in 1996 when approximately 1,380 cattle were grazed. Since then, substantially lower numbers of cattle have been grazed on Atarque Ranch. Attachment D – Turnbull Affidavit at ¶ 14.
7. For each of the 21 wells that remain in dispute between Plaintiffs and Defendants, nineteen appear to be operated by a windmill pump; these pumps typically operated whenever the wind blows with sufficient force. Each of the 21 contested well appears to have an uncovered circular drinking trough made of metal and/or concrete in close proximity to the well; the diameter of each of these troughs at approximately 35 feet. Seven of these 21 contested wells have an additional smaller drinking trough of approximately 15 feet diameter. The combined surface area of all 28 troughs is 21,441 ft². Using the “5 feet per year” pan evaporation asserted by Darrell J. Brown, the total annual volume of evaporated water from these 28 troughs is 2.461 AFY. Attachment D – Turnbull Affidavit at ¶ 21.
8. For the four springs identified on Atarque Ranch (10A-4-SPR01, 10A-4-SPR02, 10A-4-SPR03, and 9C-4-SPR02), no indication exists that the springs have been improved. Attachment D – Turnbull Affidavit at ¶ 16. Further, none of the 10 unnamed impoundments appearing in the Subfile Answer and claimed as a “Stock Tank” possesses any man-made features (e.g. berm, excavation, constructed works, etc.) and are simply natural, unimproved depressions in the landscape that collect runoff when available after precipitation events. Attachment D – Turnbull Affidavit at ¶ 17.