

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

UNITED STATE OF AMERICA,)	
)	
and)	
)	
STATE OF NEW MEXICO ex rel. STATE)	
ENGINEER,)	No. 01cv00072-MV/WPL
)	
Plaintiffs,)	ZUNI RIVER BASIN
)	ADJUDICATION
-v-)	
)	
A & R PRODUCTIONS, <i>et. al.</i> ,)	Subfile No. ZRB-4-0064 and
)	ZRB-5-0009
Defendants.)	

PLAINTIFFS’ JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN

Pursuant to the Court’s March 27, 2015 *Order Setting Pretrial Conference* (Doc. 3101) and Fed. R. Civ. P. 26(f), counsel for Plaintiff United States of America and Plaintiff State of New Mexico (“Plaintiffs”) were able to consult with Defendants Joseph Dean and Billie Ethna Bond (“Defendants”) by phone. However, Plaintiffs received from Defendants no substantive comments to or agreement on the Joint Status Report and Proposed Discovery Plan that Plaintiffs proposed; nor have Defendants presented any alternative Joint Status Report and Proposed Discovery Plan for Plaintiffs’ consideration. Therefore, Plaintiffs present to the Court the Joint Status Report and Proposed Discovery Plan that they have prepared. Defendants have expressed neither support for nor opposition to Plaintiffs’ Joint Status Report and Proposed Discovery 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.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiffs do not intend to file any additional pleadings or join additional parties.

STIPULATIONS

Plaintiffs 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.

Plaintiffs further stipulate to the following facts: 1) the Plaintiffs recognize that Defendants own the real property on which the water features listed in Attachment A are found; 2) the corresponding water rights attributes for the historic water uses (the priority, amount, beneficial use, periods of use, and place of use) are agreed upon to the extent that Plaintiffs recognize a water right (titled "US/NM Recognized Water Right" in Attachment A); 3) Defendants are not required to prove the basis for and extent of the water rights described in Attachment A that the Plaintiffs are willing to recognize¹; and 4) the law governing this case is the law of the State of New Mexico.

PLAINTIFFS' CONTENTIONS

The Plaintiffs contend that the Defendants are entitled to water rights for lands owned in the Zuni River Basin of New Mexico only to the extent that they are recognized by Plaintiffs in

¹ However, if Defendants assert water rights in addition to or different from those listed in Attachment A, such claims will affect, change, and/or reduce the rights to which Plaintiffs might of otherwise stipulate.

Attachment A (titled “US/NM Recognized Water Right”). The subfile answers (Doc. 3072 and 3073) reflects that Defendants do not agree with any aspect of the water rights described in Attachment A or that Defendants claim water rights in addition to those described in Attachment A. As such, Defendants are required to establish all elements of each disputed water right, namely priority, amount, beneficial use, periods of use, and place of use.

DEFENDANTS’ CONTENTIONS

Based upon conversations had with Defendants and examination of the subfile answers (Doc. 3072 and 3073), Defendants appear to assert that they are entitled to water rights greater in quantity than that offered by Plaintiffs.

DISCOVERY PLAN

Limited discovery may be necessary and should be centered on that material which is relevant to establish or dispel Defendants’ apparent contentions. Discovery should begin once the Court issues a scheduling order adopting the provisions of this joint status report and proposed discovery plan. Plaintiffs propose the discovery plan outlined in the paragraphs below.

1. The Defendants have the burden to establish all elements of any water rights that are different from or in addition to those described in Attachment A (the priority, amount, beneficial use, periods of use, and place of use). As such, in any proceeding or trial before the Court, Defendants will first call as witness(es) to support their claims for water rights asserted by Defendants in their subfile answers (Doc. 3072 and 3073).
2. Defendants have identified no witnesses that would support any contention made in their subfile answers (Doc. 3072 and 3073). Defendants shall disclose to Plaintiffs within 30 days from the issuance of the Court’s scheduling order the names,

- addresses, and telephone numbers of every witness that they intend to call and shall disclose whether the person identified will be a lay or expert witness.
3. After the Defendants have presented their testimony and evidence, Plaintiffs may call the following person as a rebuttal witness:
 - i. Scott Turnbull, P.E., Associate Engineer, Natural Resources Consulting Engineers, Inc., 131 Lincoln Ave., Ste. 300, Fort Collins, Colorado 80524 (970) 224-1851, and
 - ii. Rebuttal witness(es) to any additional expert(s) identified by Defendants (identity to be provided no later than December 1, 2015).
 4. The parties may also call witnesses yet to be named to identify or authenticate documents, if necessary.
 5. Within 30 days from the issuance of the Court's scheduling order, the parties shall exchange Initial Disclosure material as described in Fed. R. Civ. P. 26(a)(1). Included in Initial Disclosures, Defendants will provide Plaintiffs copies of all documentary evidence in their possession that they intend to present to the Court to support their claimed water right. Although Plaintiffs have no initial burden of proof, Plaintiffs shall have an ongoing obligation to disclose during discovery any documentary evidence that they intend to introduce to rebut Defendants' evidence and such evidence shall be disclosed 30 days before the close of discovery.
 6. Discovery will be needed on the following subjects: the water right attributes (the priority, amount, beneficial use, periods of use, and place of use) of water rights

claimed by Defendants and described in their subfile answer (Doc. 3072 and 3073). The following procedures shall govern discovery associated with this subfile action. Discovery is limited to those factual matters associated with establishing the elements for Defendants' claimed, contested water rights based on prior beneficial use.

- 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. Maximum of 25 requests for admission (responses due 30 days after service).
- d. Once discovery begins, each party is permitted to depose the other parties (or party representatives) and the identified witness(es) of another party. Each deposition shall be arranged through the consent of all parties to the subfile proceeding. Each deposition is limited to a maximum of 4 hours unless extended by agreement of the parties and shall occur at the location of the witness' principle place of work unless otherwise 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. As contemplated under Fed. R. Civ. P. 26(a)(2), if Defendants intend to call an expert witness of any kind, that expert will be identified no later than 30

days from the issuance of the Court's scheduling order. Every expert witness must prepare and produce a complete, final written expert report to Plaintiffs no later than 60 days from the issuance of the Court's scheduling order. The expert report of any expert witness of Defendants shall include every expert opinion (and the complete basis thereof) held by the expert to which he/she may give testimony.

- f. As contemplated under Fed. R. Civ. P. 26(a)(2), Plaintiffs will prepare and produce a written report from Mr. Turnbull (or another appropriate expert identified by Plaintiffs) to rebut the opinion of any expert witness retained by Defendants. If Defendants do not produce a written expert report, Plaintiffs will nevertheless prepare a written expert report from Mr. Trumbull that established the factual basis for the water rights described in the proposed Consent Decree. Plaintiffs shall have 45 days from the day Defendants provide their expert report(s) to produce Plaintiffs' expert report(s).
- g. Supplementation under Fed. R. Civ. P. 26(e) is due 20 days after the new information has been acquired.
- h. All discovery commenced must be completed by 120 days after the issuance of the Court's scheduling order. Therefore, 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 120-day discovery period without the consent of either the opposing parties or the Court.

DISPOSITIVE MOTIONS

Plaintiffs anticipate that the parties may file motions for summary judgment under Fed. R. Civ. P. 56 in an attempt to resolve those issues that do not have a material issue of fact in dispute. The parties should submit motions for summary judgment under the following schedule:

1. Within 30 days after the close of discovery, Defendants shall submit any motion for summary judgment they think appropriate to establish some or all of the water rights in excess of those rights recognized by Plaintiffs.
2. Within 60 days from the close of discovery, Plaintiffs shall submit a combined brief that contains A) any response they might have to Defendants' motion for summary judgment and B) any cross-motion for summary judgment on those water rights attributes claimed in addition to those that Plaintiffs are willing to recognize.

Plaintiffs shall be permitted to submit a single combined brief not to exceed fifty-four (54) double spaced pages (not inclusive of necessary appendices or attachments).

3. Within 75 days from the close of discovery, Defendants shall submit a combined brief that contains 1) any reply they might have to Plaintiffs' response to Defendants' motion for summary judgment and 2) any response on Plaintiffs' cross-motion for summary judgment. Defendants shall be permitted to submit a single combined brief not to exceed forty-eight (48) double spaced pages (not inclusive of necessary appendices or attachments).
4. Plaintiffs shall file a final reply on Defendants' response to the Plaintiffs' cross-motion for summary judgment within 90 days from the close of discovery. Plaintiffs

shall be permitted to submit a single combined brief not to exceed twenty (20) double spaced pages (not inclusive of necessary appendices or attachments).

5. No oral argument will be permitted on any motion for summary judgment without a party requesting permission for oral argument from the Court and establishing good cause for the need for such oral argument.

TRIAL

To the extent that an issue of material fact remains after dispositive motions that requires the Court to conduct an evidentiary trial, Plaintiffs estimate that any trial would require 1 day. This is a non-jury case and should be scheduled only after dispositive motions have been addressed and resolved. 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

The possibility of settlement in this case is not considered likely. Plaintiffs do not request a settlement conference.

Respectfully submitted this 9th day of November 2015.

Electronically Filed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 9th day of November 2015, 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.

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Participants in the manner indicated:

Via U.S. Mail, Postage Pre-paid:

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/s/ Andrew "Guss" Guarino