

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,)	No. 01cv00072-MV/WPL
)	
Plaintiffs,)	ZUNI RIVER BASIN
)	ADJUDICATION
-v-)	
)	
A & R PRODUCTIONS, et. al.,)	Subfile No. ZRB-2-0038
)	
Defendants.)	
)	

**PLAINTIFFS' RESPONSES TO DEFENDANTS' FIRST REQUESTS FOR
ADMISSIONS AND THIRD DISCOVERY REQUESTS**

Pursuant to Fed. R. Civ. P. 34, and 36, Plaintiffs the United States of America (“United States”) and the State of New Mexico (“State”) hereby submit responses to *Defendants' (Third) Joint Discovery Requests to Plaintiffs United States of America and State of New Mexico ex rel. State Engineer (May 27, 2016)* and *Defendants' (First) Joint Requests for Admissions to Plaintiffs United States of America and State of New Mexico ex rel. State Engineer (May 25, 2016)*.

REQUESTS FOR ADMISSION

Pursuant to Fed. R. Civ. P. 36, Plaintiffs respond to the following requests for admission (RFA). After each RFA, Plaintiffs provide their specific response.

Plaintiffs' General Objection to Defendants' RFAs: With their RFAs, Defendants Craig and Regina Fredrickson (“Defendants”) included the instruction to “identify the person(s) responsible for answering” after each RFA. Plaintiffs object to Defendants’ instruction as beyond the requirements of Fed. R. Civ. P. 36, as not necessary, and as serving no discernable basis; Plaintiffs’ responses to the RFA’s below speak for themselves. Nevertheless, Plaintiffs inform Defendants that undersigned counsel, on behalf of each respective Plaintiff, are responsible for answering each RFA. Fed R. Civ. P. 26(g)

RFA No. 1: The priority date for well 10A-5-W06 is 1955.

Plaintiffs' Response: Plaintiffs admit that to the extent a water right might be recognized by the Court for well 10A-5-W06 based on any evidence presented by Defendants, the priority date should be December 31, 1955 for both livestock and domestic uses. To the extent that, Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 2: The historic beneficial use of well 10A-5-W06 includes livestock watering.

Plaintiffs' Response: Plaintiffs admit that to the extent a water right might be recognized by the Court for well 10A-5-W06 based on any evidence presented by Defendants, the only two historic beneficial uses of water that might be recognized under New Mexico law to establish a water right are livestock use and domestic use. To the extent that, Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 3: The historic beneficial use of well 10A-5-W06 was to support a cow-calf operation that continued uninterrupted from 1955 until 2000.

Plaintiffs' Response: Plaintiffs deny the RFA.

RFA No. 4: The place of use of well 10A-5-W06 is the NE 1/4 of the NE 1/4 of the NW 1/4 of Section 19, Township 5N, Range 18W N.M.P.M.

Plaintiffs' Response: Plaintiffs admit the RFA.

RFA No. 5: Cattle utilized forage on rangeland that included pasture within grazable distance of well 10A-5-W06.

Objection: Defendants' RFA seeks information that is neither relevant nor calculated to lead to relevant information. Further, Defendants' RFA is vague and ambiguous using a combination of undefined terms (such as "cattle," "forage," "rangeland," "pasture," "grazable distance") to express some unknowable, specific meaning. As such, the RFA is unreasonable and it is unreasonable/impossible for Plaintiffs to specifically respond to this discovery request.

Plaintiffs' Response: Plaintiffs admit, generally speaking, that cattle when grazing in an unconfined area will, for innumerable reasons, graze some distance from any water source and will go to an available water source for drinking purposes. To the extent that Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 6: In addition to other factors, the quantity of forage on rangeland varies from year to year in relationship to annual precipitation.

Objection: Defendants' RFA seeks information that is neither relevant nor calculated to lead to relevant information. Further, Defendants' RFA is vague and ambiguous using a combination of undefined terms (such as "other factors," "quantity of forage") to express some unknowable,

specific meaning. As such, the RFA is unreasonable and it is unreasonable/impossible for Plaintiffs to specifically respond to this discovery request.

Plaintiffs' Response: Plaintiffs admit that, generally speaking, vegetation needs water to grow and that water is often provided to vegetation, in part, through precipitation. To the extent that Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 7: The Plaintiffs assume that the forage requirements of an animal unit correspond to the forage requirements of a 1,000 pound beef cow.

Objection: Defendants' RFA seeks information that is neither relevant nor calculated to lead to relevant information. Further, Defendants' RFA is vague and ambiguous. As such, the RFA is unreasonable and it is unreasonable/impossible for Plaintiffs to specifically respond to this discovery request.

Plaintiffs' Response: Plaintiffs admit that previously they prepared a hydrographic survey for the Zuni River Basin Adjudication and that in the process of preparing the hydrographic survey, Plaintiffs made assumptions and estimates in an attempt to arrive at hypothetical water uses based on hypothetical water users that had some basis in fact, but were based in large part, on the observable water features examined in the basin (wells, stockpounds, fields, etc.). Plaintiffs' work to arrive at hypothetical water use quantities was not based on knowledge of actual historic activity or actual historic water use. Plaintiffs admit that in the process of preparing the hydrographic survey, Plaintiffs examined the forage requirements of livestock and developed a hypothetical livestock carrying capacity for undeveloped land in the Zuni River Basin. To the extent that, Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 8: The period of use of well 10A-5-W06 for livestock watering was up to 12 months per year.

Plaintiffs' Response: Plaintiffs admit that to the extent a water right might be recognized by the Court for well 10A-5-W06 based on any evidence presented by Defendants, the period of use for the historic livestock beneficial use should be throughout the year (12 months). To the extent that, Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 9: Declaration of Ownership of Underground Water Right 33-8 states the claim of a pre-basin water right and is *prima facie* evidence of the truth and the contents therein.

Objection: The RFA states a legal conclusion. Defendants' RFA is unreasonable and burdensome. The document to which Defendants refer speaks for itself and it is unnecessary for Plaintiffs to admit to the contents of a document.

Plaintiffs' Response: Plaintiffs admit that a Declaration of Ownership of Underground Water Right designated 33-8 was submitted to the Office of the State Engineer. To the extent that Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 10: The hydrographic survey makes broad assumptions for the purpose of estimating the quantity of water associated with livestock watering from stock wells.

Objection: Defendants' RFA seeks information that is neither relevant nor calculated to lead to relevant information. Further, the document to which Defendants refer speaks for itself and it is unnecessary for Plaintiffs to admit to the contents of a document. As such, it is unreasonable to require Plaintiffs to respond to this discovery request.

Plaintiffs' Response: Plaintiffs admit that previously they prepared a hydrographic survey for the Zuni River Basin Adjudication and that in the process of preparing the hydrographic survey, Plaintiffs made assumptions and estimates in an attempt to arrive at hypothetical water uses based on hypothetical water users that had some basis in fact, but were based in large part, on the observable water features examined in the basin (wells, stockponds, fields, etc.). Plaintiffs' work to arrive at hypothetical water use quantities was not based on knowledge of actual historic activity or actual historic water use. In the course of making assumptions and estimates, Plaintiffs considered the quantity of water associated with livestock watering from stock wells. To the extent that, Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 11: The hydrographic survey assumes that the water consumption of an animal unit is an average of 10 gallons/day based on the Water Use by Categories in New Mexico Counties and River Basins, and Irrigated Acreage in 1995, Technical Report 49, New Mexico State Engineers Office (Wilson and Lucero, 1997).

Objection: Defendants' RFA seeks information that is neither relevant nor calculated to lead to relevant information. Further, the document to which Defendants refer speaks for itself and it is unnecessary for Plaintiffs to admit to the contents of a document. As such, Plaintiffs are not required to respond to this discovery request.

Plaintiffs' Response: Plaintiffs admit that previously they prepared a hydrographic survey for the Zuni River Basin Adjudication and that in the process of preparing the hydrographic survey, Plaintiffs made assumptions and estimates in an attempt to arrive at hypothetical water uses based on hypothetical water users that had some basis in fact, but were based in large part, on the observable water features examined in the basin (wells, stockponds, fields, etc.). Plaintiffs' work to arrive at hypothetical water use quantities was not based on knowledge of actual historic activity or actual historic water use. In the course of making assumptions and estimates, Plaintiffs considered and relied upon data from Wilson and Lucero, 1997 that indicated an average daily annual water consumption quantity of 10 gallons of water/day for a hypothetical cow/steer. To the extent that, Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 12 -The 10 gallons/day estimate from Wilson and Lucero, 1997 is based on the water requirements of an 800-pound animal confined to a feedlot and not of a 1,000-pound beef cow on rangeland.

Objection: Plaintiffs incorporate by reference the objection for RFA No. 11.

Plaintiffs' Response: Plaintiffs incorporate by reference the response for RFA No. 11.

RFA No. 13: Wilson and Lucero, 1997 makes no mention of the term "animal unit."

Objection: Plaintiffs incorporate by reference the objection for RFA No. 11.

Plaintiffs' Response: Plaintiffs incorporate by reference the response for RFA No. 11.

RFA No. 14: The hydrographic survey assumes a 0.5 efficiency factor applied to the water consumption of an animal unit to estimate the consumptive and other losses associated with livestock watering.

Objection: Defendants' RFA seeks information that is neither relevant nor calculated to lead to relevant information. Further, Defendants' RFA is vague and ambiguous using a combination of undefined terms (such as "the consumptive and other losses") to express some unknowable, specific meaning. Finally, the document to which Defendants refer speaks for itself and it is unnecessary for Plaintiffs to admit to the contents of a document. As such, Plaintiffs are not required to, and cannot, specifically respond to this discovery request.

Plaintiffs' Response: Plaintiffs admit that previously they prepared a hydrographic survey for the Zuni River Basin Adjudication and that in the process of preparing the hydrographic survey, Plaintiffs made assumptions and estimates in an attempt to arrive at hypothetical water uses based on hypothetical water users that had some basis in fact, but were based in large part, on the observable water features examined in the basin (wells, stockponds, fields, etc.). Plaintiffs' work to arrive at hypothetical water use quantities was not based on knowledge of actual historic activity or actual historic water use. In the course of making assumptions and estimates, Plaintiffs simply doubled any quantity assigned for livestock water consumption. This increase in water quantity (referred to in this RFA as the "0.5 efficiency factor") was not arrived at based on any specific calculation, analysis, or study. Instead, the purpose of doubling the livestock water estimate was to account for the innumerable, unknowable factors that might possibly affect livestock water consumption, e.g., inherent inaccuracies of the hypothetical developed, unknown losses, etc. To the extent that, Defendants seek any other admission from Plaintiffs, Plaintiffs deny the RFA.

RFA No. 15: Applying a 0.5 efficiency factor to the water consumption of an animal unit is a reasonable means of estimating the consumptive and other losses associated with livestock watering.

Objection: Plaintiffs incorporate by reference the objection for RFA No. 14.

Plaintiffs' Response: Plaintiffs deny the RFA.

RFA No. 16: The herd of cattle served by well 10A-5-W06 and as many as five other regional water sources measured between 150 and 200 cow-calf pairs during the years 1983 through 2000.

Objection: Defendants' RFA seeks to have Plaintiffs admit to statements made by Mr. Tom Cox at his recent deposition. Mr. Cox's deposition, on which Defendants' RFA relies, speaks for itself and it is unnecessary for Plaintiffs to admit to the contents of a document. Otherwise, Defendants broadly and imprecisely generalize statements made by Mr. Cox. Therefore, Defendants' RFA is ambiguous, overbroad, unreasonable, and unduly burdensome.

Plaintiffs' Response: Plaintiffs admit that the deposition of Tom Cox was taken on May 18, 2016 and that during the course of the deposition, Mr. Cox generally described ranching operations between approximately 1983 through 2000 near and around well 10A-5-W06. Mr. Cox's deposition testimony speaks for itself and Plaintiffs have no additional knowledge, information, or insight concerning the ranching operations between approximately 1983 through 2000 near and around well 10A-5-W06. Otherwise, the RFA is an inaccurate general characterization of Mr. Cox's testimony and therefore Plaintiffs deny the RFA.

RFA No. 17: The calving season for the herd was March through May during the years 1983 through 2000.

Objection: Plaintiffs incorporate by reference the objection for RFA No. 16.

Plaintiffs' Response: Plaintiffs incorporate by reference the response for RFA No. 16.

RFA No. 18: The gestation period for cows is 283 days based on the Natural Resource Conservation Service's 1997 *National Range and Pasture Handbook*.

Objection: Defendants' RFA seeks information that is neither relevant nor calculated to lead to relevant information. Further, Defendants' RFA is vague and ambiguous as it refers to a specific gestation period for a non-specific "cow." Finally, the document to which Defendants refer speaks for itself and it is unnecessary for Plaintiffs to have to admit to the contents of a document. As such, Plaintiffs are not required to, and cannot specifically, respond to this discovery request.

Plaintiffs' Response: Plaintiffs admit that the cited reference at Table 6-11 states that cattle have gestation period of 283 days.