

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 AND SECOND DISCOVERY REQUESTS

Pursuant to Fed. R. Civ. P. 33, 34, and 36, Plaintiffs the United States of America ("United States") and the State of New Mexico ("State") hereby submit responses to *Defendants' (First) Joint Discovery Requests to Plaintiffs United States of America and State of New Mexico ex rel. State Engineer* (February 24, 2016) and *Defendants' (Second) Joint Discovery Requests to Plaintiffs United States of America and State of New Mexico ex rel. State Engineer* (March 17, 2016).

INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33, Plaintiffs respond to the following interrogatories.

Interrogatory No. 1 – To the extent you have any information and with as much specificity as you have available, state the source (i.e., the individual, institution or agency providing information, and the documents containing such information) of all facts, data, and assumptions in the hydrographic survey report used to calculate the water use of livestock for well 10A-5-W06.

Plaintiffs' Response: The hydrographic survey report was an attempt to identify and quantify the historic beneficial use of water in the Zuni River Basin through December 4, 2008 (Doc. 1988). The hydrographic survey report was an estimate of possible historic water use and made no attempt to quantify actual, historic beneficial use of water. To the extent that facts, data, and

assumptions in the hydrographic survey report used to estimate possible water use of livestock for well 10A-5-W06 exist, the hydrographic survey itself states all such facts, data, and assumptions. To the extent that Plaintiffs have any other information concerning any facts, data, and assumptions associated with water use of livestock from well 10A-5-W06, such information was disclosed to Defendants in *Plaintiffs' Joint Initial Disclosures Fed. R. Civ. P. 26(a)(1)* (March 17, 2016) ("*Plaintiffs' Joint Disclosures*").

Counsel for Plaintiffs are the persons responsible for responding to this Interrogatory.

Interrogatory No. 2 – To the extent you have any information and with as much specificity as you have available, describe and provide the results of the review and validation process (i.e., the quality assurance procedures, and the resulting review and approval records) used to verify that all facts data and assumptions in the hydrographic survey report used to calculate the water use of livestock for well 10A-5-W06 were sufficient for the required purpose, the product of reliable principles and methods, and that the principles and methods were reliably applied.

Objection: This Interrogatory is vague and ambiguous as it attributes purpose and intent behind the hydrographic survey report that did not exist. Thus, Defendants fundamentally mischaracterize the hydrographic survey report. The hydrographic survey report was an attempt to identify and estimate the historic beneficial use of water in the Zuni River Basin through December 4, 2008 (Doc. 1988). Plaintiffs will attempt to answer this Interrogatory based upon this accurate description of the hydrographic survey report.

Plaintiffs' Response: The hydrographic survey report did not and made no attempt to quantify actual, historic beneficial use of water – Plaintiffs do not have information to make such a determination. The hydrographic survey report did not establish that any amount of water use was sufficient for any purpose therefore no review, quality assurance process, or validation process for the sufficiency of water use exists. To the extent that the historic beneficial use of water could not be established, historic use was estimated based on broad assumptions and estimates stated in the hydrographic survey report. The hydrographic survey report, inclusive of the publically available references cited within, has been provided or otherwise been made available to Defendants and speaks for itself. Plaintiffs did not collect, nor have the Defendants' provided, any metering data associated with this well that would require quality control review (e.g., well metering, etc.). Well characteristics were verified in person by NRCE engineers during field visits to the basin. Field data were collected during visits using Trimble Geo XT GNSS surveying equipment. Field notes and data have been provided to Defendants' as part of the *Plaintiffs' Joint Disclosures*.

Counsel for Plaintiffs and the United States expert witness, Scott Turnbull, are the persons responsible for responding to this Interrogatory.

Interrogatory No. 3 - To the extent you have any information and with as much specificity as you have available, source and state the definition of the term "animal unit" as it pertains to cattle (i.e., cite the reference and specify the cattle class, live weight and forage requirement) that

corresponds to the land carrying capacity described in the hydrographic survey report (i.e., 15 animal units per section) used to calculate the water use of livestock for well 10A-5-W06.

Objection: Plaintiffs incorporate the objection stated in response to Interrogatory No. 2, above.

Plaintiffs' Response: An animal unit ("AU") is a unit of measure by which the forage needs of various range animals may be measured. Assuming adequate water supply, forage availability is the limiting factor of how many grazing animals a parcel of land will support. For the purposes of the hydrographic survey report, to quantify forage demand for any purpose, Plaintiffs estimated that an animal unit (AU) over a period of time is equal to the forage demand of a mature 1,000 lb. beef cow over the same period of time - this is typical of carrying capacity guidelines such as those presented in Holcheck, Jerry L. 1988. *An Approach for Setting the Stocking Rate*. Rangelands 10-1. Society for Range Management (Holcheck 1988). With respect to well 10A-5-W06 and for the purposes of issuing the hydrographic survey report and attempting to enter into a Consent Order with Defendants, Plaintiffs applied a reasonable land burden of 15 AU per year per section to estimate one possible historic beneficial use of water for livestock purposes. Defendants have not agreed to the Consent Order proposed by Plaintiffs. The estimated land burden estimate factor previously used in the hydrographic survey report have no bearing on whether Defendants can establish their water right claim based on actual historic beneficial use.

Counsel for Plaintiffs and the United States expert witness, Scott Turnbull, are the persons responsible for responding to this Interrogatory.

Interrogatory No. 4 - To the extent you have any information and with as much specificity as you have available, source and state the definition of the term "animal unit" as it pertains to cattle (i.e., cite the reference and specify the cattle class, live weight and forage requirement) that corresponds to the water consumption rate described in the hydrographic survey report (i.e., 10 gallons per day per animal unit) used to calculate the water use of livestock for well 10A-5-W06.

Objection: Plaintiffs incorporate the objection stated in response to Interrogatory No. 2, above.

Plaintiffs' Response: Plaintiffs incorporate their response to Interrogatory No. 3 herein. Further, for the purpose of developing a base-estimate for livestock water consumption in the Zuni River Basin, the hydrographic survey report applied a value for drinking water intake presented in publications from the New Mexico Office of the State Engineer - Wilson, B. C., and Lucero, A. A. 1997. *Water Use by Categories in New Mexico Counties and River Basins, and Irrigated Acreage in 1995*, Technical Report 49, New Mexico State Engineer Office (Wilson and Lucero 1997). In Wilson and Lucero 1997, the authors present an average annual daily water intake of 10 gallons per day per animal for beef cattle.

Counsel for Plaintiffs and the United States expert witness, Scott Turnbull, are the persons responsible for responding to this Interrogatory.

Interrogatory No. 5 - To the extent you have any information and with as much specificity as you have available, source and state the definition of the term "animal unit" as it pertains to cattle (i.e., cite the reference and specify the cattle class, live weight and forage requirement) that corresponds to the consumptive and other losses factor described in the hydrographic survey report (i.e., 0.5 efficiency factor for each animal unit) used to calculate the water use of livestock for well 10A-5-W06.

Objection: Plaintiffs incorporate the objection stated in response to Interrogatory No. 2, above. Further, this Interrogatory is vague and ambiguous as it attempts to incorporate a "consumptive loss" into Plaintiffs' definition of "animal units." Plaintiffs' use of the phrase "animal units" does not include a loss estimate. Plaintiffs will attempt to answer this interrogatory by addressing the efficiency factor applied in the hydrographic survey report.

Plaintiffs' Response: The hydrographic survey report was an attempt to identify and quantify the historic beneficial use of water in the Zuni River Basin through December 4, 2008 (Doc. 1988). The hydrographic survey report does not quantify actual, historic beneficial use of water. The report describes the use of an efficiency factor. This efficiency factor was simply selected by Plaintiffs and applied to wells such as 10A-5-W06 in estimating a possible historic beneficial use of water for stock watering from wells. For the purpose of attempting to reach subfile consent orders with individuals such as Defendants, Plaintiffs were willing to stipulate to a livestock water use quantity based upon the estimated AU-forage-based-livestock-consumption and based on use of the efficiency factor; however, Defendants have chosen not to enter into a Consent Order with Plaintiffs. The estimated AU-forage-based-livestock-consumption estimate and the efficiency factor previously used in the hydrographic survey report have no bearing on whether Defendants can establish their water right claim based on actual historic beneficial use.

Counsel for Plaintiffs and the United States expert witness, Scott Turnbull, are the persons responsible for responding to this Interrogatory.

Interrogatory No. 6 - To the extent you have any information and with as much specificity as you have available, state the date that well 10A-5-W06 was drilled/constructed, the date that well 10A-5-W06 became operational (i.e., first produced water), who owned the well when it was completed, and what grazing lands were served by the well.

For each/any year you have no information to respond to this Interrogatory at this time, you should indicate that you have no information to respond to this Interrogatory.

Plaintiffs' Response: To the extent Plaintiffs have any information with respect to the date that well 10A-5-W06 was drilled/constructed, the date that well 10A-5-W06 became operational (i.e., first produced water), who owned the well when it was completed, and what grazing lands were served by the well, Plaintiffs have already provided this information in the documents disclosed

RFP No. 1 – For each of the Interrogatories listed above, produce every document used, relied upon, or referenced to respond to the Interrogatory.

Plaintiffs’ Response: To the extent Plaintiffs have documents used, relied upon or referenced to respond to the Interrogatories, above, Plaintiffs have already provided this information in the documents disclosed with *Plaintiffs’ Joint Disclosures*.

RFP No. 2 - To the extent Plaintiffs have not previously disclosed the documents, data compilations and/or tangible things to Defendants in response to a discovery request or the discovery process, produce every document, data compilation and/or tangible thing identified in Plaintiffs’ Initial Disclosures.

Plaintiffs’ Response: Plaintiffs have already provided every document, data compilation, and/or tangible thing identified in *Plaintiffs’ Joint Disclosures*.

Respectfully submitted this 28th day of March, 2016.

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