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, v. A & R PRODUCTIONS, et al., Defendants.	)	No. 01-cv-0072-MV/WPL ZUNI RIVER BASIN ADJUDICATION **Subfile No. ZRB-4-0169**

MOTION FOR SUMMARY JUDGMENT

The United States of America and State of New Mexico respectfully move the Court for summary judgment in the above-referenced subfile proceeding. As grounds for relief in support of this Motion, Plaintiffs assert, as more fully set forth below, that the material facts regarding the water rights associated with the real property in the Zuni River Basin owned by Defendants Henry and Rebecca Grizzle are undisputed and Plaintiffs are entitled to judgment as a matter of law declaring that Mr. and Mrs. Grizzle are entitled to a water right in the amount of 2.043 acre-feet per annum for the lone well situated on their property.

Pursuant to the *Order Setting Discovery Deadlines and Adopting Joint Status Report* (Doc. 3205) (Feb. 17, 2016) ("Case Management Order"), the Court established a deadline of

July 18, 2016, by which the Grizzles were required to file "any motion for summary judgment." Mr. and Mrs. Grizzle did not file a motion. This Motion is timely filed under the deadline the Court established for "any response to Defendants' summary judgment motion and any cross-motion for summary judgment."

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

At the center of the parties' dispute is a single well that the Grizzles use to support their household and ranching operation. Since the outset of this subfile litigation, the Grizzles have insisted that they are entitled to a water right of 3.0 acre-feet per annum ("AFY") associated with the well. Consistent with this Court's *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 1, 2, and 3 (Excluding Ramah) of the Zuni River Stream System*, No. 01cv0072 BB/WDS-ACE, Doc. 838 (Sept. 28, 2006) ("Sub-Areas 1, 2, and 3 Order"), Plaintiffs prepared and presented the Grizzles with a proposed Consent Order. Based on information obtained during the hydrographic survey, Plaintiffs offered the Grizzles a water right of 2.424 AFY for the well for domestic and livestock purposes, with a priority date of December 31, 1950.

The Grizzles rejected the proposed stipulation and Plaintiffs filed a *Notice That The Consultation Period Has Ended*, Doc. 1523 (Feb. 27, 2008). The Grizzles then timely filed an Answer in which they asserted both legal and factual grounds in support of a water right of 3.0 AFY. *Subfile Answer*, Doc. 1653 (Mar. 18, 2008). As a legal matter, the Grizzles stated that their well permit entitled them to

a right of that quantity. *See id.* at 3 ("Three acre feet is provided by state statute."). As a matter of fact, they claimed "historical use" in that precise amount. *Id.* (setting out quantities of water used for household, livestock, garden, horses, and environmental uses). In 2011, the Grizzles amended their *Subfile Answer* to add another legal ground in support of their claimed right. Relying "on the railroad act signed into law by President Abraham Lincoln on July 1, 1862," the Grizzles argued that their right to develop and use water on their property, title to which is allegedly traceable to the railroad originally granted the land under the 1862 Act, is unrestrained by the doctrine of beneficial use. *Amendment to Subfile Answer*, Doc. 2709 at 1 (Sept. 16, 2011). From the railroad, the Grizzles claimed to inherit "the right to develop the water on [their] property according to [their] needs." *Id.*

The Court subsequently issued the Case Management Order to govern the litigation of this subfile action. Shortly thereafter, the Plaintiffs served the Grizzles with interrogatories and requests for production of documents seeking details of the historic beneficial uses of water asserted by the Grizzles in their *Subfile Answer* and title documents supporting their claim of title traceable to the railroad in the *Amendment*. *See Plaintiffs' First Joint Discovery Requests* (May 5, 2016) (attached hereto as **Exhibit A**). Based on the Grizzles' interrogatory answers, Plaintiffs have withdrawn the proposed Consent Order offering a water right of 2.424 AFY and seek a summary judgment that their historic beneficial use of water entitles the Grizzles to a water right of 2.043 AFY for the well.

II. APPLICABLE LEGAL STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Rule 56(a), Fed. R. Civ. P. The moving party bears the initial burden of "showing … that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving party has met this burden, the nonmoving party must identify specific facts that show the existence of a genuine issue of material fact requiring trial on the merits. *Bacchus Indus., Inc. v. Arvin Indus., Inc.*, 939 F.2d 887, 891 (10th Cir. 1991). The nonmovant must identify these facts by reference to "affidavits, deposition transcripts, or specific exhibits incorporated therein." *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir. 1998) (citations omitted). A fact is "material" if, under the governing law, it could have an effect on the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute over a material fact is "genuine" if a rational jury could find in favor of the nonmoving party on the evidence presented. *Id.* Although the record and all reasonable inferences therefrom must be viewed in the light most favorable to the nonmovant, *see Muñoz v. St. Mary-Corwin Hosp.*, 221 F.3d 1160, 1164 (10th Cir. 2000), a mere "scintilla" of evidence is insufficient to successfully oppose a motion for summary judgment. *Anderson*, 477 U.S. at 252.

Even where, as here, the United States and State of New Mexico have moved for summary judgment, "to the extent that any water right is disputed," the user of the water "generally bear[s] the burden of proof in the first instance with respect to the disputed water right." *Order*, No. 01cv00072-MV-WPL, Subfile No. ZRB-2-0098, Doc. 2985 at 4 (D.N.M. Aug. 28, 2014). As a practical matter, then, the burden of persuasion at trial would be on Mr. and

Mrs. Grizzle. *See Proposed Findings and Recommended Disposition*, No. 01cv00072-MV-WPL, Subfile No. ZRB-2-0014, Doc. 3049 at 3 (May 27, 2015). Accordingly, Plaintiffs carry their summary judgment burden "by either (1) providing affirmative evidence negating an essential element of [the Grizzles'] claim or (2) showing the Court that [the Grizzles'] evidence is insufficient to demonstrate an essential element of [their] claim." *Id.* (citing *Celotex*, 477 U.S. at 331). In addition, once the United States and State of New Mexico have carried their burden, the Grizzles must come forward with sufficient facts to establish that a disputed material fact exists.

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment … against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Celotex, 477 U.S. at 322.

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The real property associated with Subfile No. ZRB-4-0169 is located in the SE¼SE¼ of Section 29, Township 12 North, Range 18 West, within Sub-areas 1, 2, and 3 (excluding Ramah) of the Zuni River Basin and contains, as its sole water feature, a single well. *Declaration of Scott Turnbull* ("Turnbull Decl.") (attached hereto as **Exhibit B**), ¶ 3 and Attachment A.

2. In the *Zuni River Adjudication Hydrographic Survey Report for Sub-areas 1, 2, and 3 (excluding Ramah)*, the well located on the real property associated with Subfile No. ZRB-4-0169 is identified by the hydrographic survey ID number 2A-1-W035 (New Mexico Office of the State Engineer file number G1538) ("Well 2A-1-W035"). Turnbull Decl., ¶ 4 and Attachment A.

3. Based on the drilling date stated in the New Mexico Office of State Engineer's ("NMOSE") Point of Diversion Summary, the priority date for Well 2A-1-W035 is December 31, 1950. Turnbull Decl., ¶ 4; *Grizzles' Response to Plaintiffs' First Joint Discovery Requests* ("Discovery Resp.") (attached hereto as **Exhibit C**) at 2 (answer to Interrogatory No. 1) (June 7, 2016).

4. The Grizzles claim a household beneficial water use of 90 gallons per day or 0.101 AFY. *Subfile Answer*, Doc. 1653 at 3; Discovery Resp. at 4 (answer to Interrogatory No. 7). This amount is consistent with "self-supplied domestic water use in New Mexico." Turnbull Decl. ¶ 7 and n.1.

5. Because two individuals occupy their residence, the Grizzles' actual beneficial use of water for household purposes is 90 gallons per capita per day or 180 gallons per day, which equals 0.202 AFY. Turnbull Decl. ¶¶ 7-8.

6. The maximum number of livestock animals the Grizzles have watered annually during their ownership of the real property associated with Subfile No. ZRB-4-0169 is twenty (20) sheep and goats for a full year, six (6) cattle for six months out of the year, and six (6) horses for a full year. Discovery Resp. at 3 (answer to Interrogatory No. 4); Turnbull Decl. ¶ 10.

7. The NMOSE technical report listing water use rates for various types of livestock animals in New Mexico provides that the per capita water requirement for non-dairy cattle is 10 gallons per capita per day; for horses is 13 gallons per capita per day; and for sheep is 2.2 gallons per capita per day. Turnbull Decl. ¶ 10 and Table 2.

8. The Zuni River Basin hydrographic survey applies a 50% efficiency factor to the per capita water requirement for livestock animals to account for any losses associated with the

delivery of drinking water. Turnbull Decl. ¶ 11.

9. Losses associated with the delivery of drinking water to livestock animals include losses for evaporation and consumption of water by wildlife. Turnbull Decl. ¶ 16 and n.2.

10. Based on the maximum number of livestock animals the Grizzles have watered annually during their ownership of the real property associated with Subfile No. ZRB-4-0169, the applicable NMOSE water use rates for livestock animals, and the Zuni River Basin hydrographic survey efficiency factor, the Grizzles' beneficial use of water for livestock purposes is 0.341 AFY. Turnbull Decl. ¶ 11 and Table 2.

11. At some time during their ownership of the real property associated with Subfile No. ZRB-4-0169, the Grizzles have maintained a garden, cornfield, and fruit trees. *Subfile Answer*, Doc. 1653 at 3, 6 (photographs); Turnbull Decl. ¶ 12.

12. Recent aerial imagery of the Grizzles' property shows an area of garden use approximately 0.5 acres in size that includes certain features depicted in the photographs submitted by the Grizzles in their *Subfile Answer*. Turnbull Decl. ¶ 13 and Attachment B.

13. The hydrographic survey has generally applied an irrigation duty of 3 acre-feet per acre for garden use in the Zuni River Basin to account for a typical irrigation requirement and an estimated application efficiency. Turnbull Decl. ¶ 14.

14. Based on the size of the Grizzles' garden and the general irrigation duty applied in the Zuni River Basin, the Grizzles' beneficial use of water for garden purposes is 1.5 AFY. Turnbull Decl. ¶ 14.

15. The Grizzles claim an "environmental" use of water for fire protection, wildlife, and disease control in the amount of 238 gallons per day or 0.317 AFY. *Subfile Answer*, Doc.

1653 at 3; Discovery Resp. at 4 (answer to Interrogatory No. 7); Turnbull Decl. ¶ 15.

16. While the Grizzles maintain exterior faucets to make water available for fire prevention, they have only put water to use for this purpose once, in an unspecified amount, during the period of their ownership of the real property associated with Subfile No. ZRB-4-0169. Discovery Resp. at 2 (answer to Interrogatory No. 2) and 3 (answer to Interrogatory No. 6); Turnbull Decl. ¶ 15.

17. The Grizzles do not describe any beneficial uses of water associated with disease control. Turnbull Decl. ¶ 15.

IV. ARGUMENT

POINT 1: THE GRIZZLES' OWN EVIDENCE OF BENEFICIAL USE COMPELS A WATER RIGHT OF 2.043 AFY FOR WELL 2A-1-W035

As this Court has declared repeatedly over the course of this adjudication: "New Mexico state law provides the substantive standards for this adjudication." *Proposed Findings and Recommended Disposition*, No. 01-cv-0072 MV/WPL, Subfile ZRB-5-0014, Doc. 3277 at 3 (June 1, 2016). "The unappropriated water … is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state." N.M. Const. Art. XVI, § 2. "Beneficial use shall be the basis, the measure and the limit of the right to the use of water." *Id.* § 3. A "beneficial use is determined … to be the use of such water as may be necessary for some useful and beneficial purpose in connection with the land from which it is taken." *State ex rel. Erickson v. McLean*, 62 N.M. 264, 273, 308 P.2d 983, 988 (1957) (citation omitted). *See also* 19.26.2.7(D) NMAC (defining beneficial use as "[t]he direct use or storage and use of water by man for a beneficial purpose including, but not limited to, agricultural, municipal, commercial, industrial, domestic, livestock, fish and wildlife, and recreational uses.").

Based on the undisputed evidence of beneficial use in this subfile proceeding, most of which the Grizzles themselves have provided, the Grizzles are entitled to a water right for Well 2A-1-W035 in the amount of 2.043 AFY for domestic (household and garden) and livestock use, with a priority date of December 31, 1950. We address the undisputed evidence supporting each component part of this water right in turn.

A. Household Use

The Grizzles assert a right in the amount of 90 gallons per day, or 0.101 AFY, for household water use, an amount that is consistent with "self-supplied domestic water use in New Mexico." Undisputed Fact 4. In their calculation, however, the Grizzles fail to account for the fact that two individuals occupy their residence. When their claimed right is properly doubled to account for the number of individuals occupying the residence, the water right to which the Grizzles are entitled for household use is 180 gallons per day, or 0.202 AFY. Undisputed Fact 5.

B. Livestock Use

The Grizzles have provided evidence that, during the course of their ownership of the subject property, the maximum number of livestock animals they have watered annually consists of twenty (20) sheep and goats for a full year, six (6) cattle for six months out of the year, and six (6) horses for a full year. Undisputed Fact 6. On the basis of this undisputed evidence, the Grizzles are entitled to a water right for livestock use calculated based upon (1) application of the NMOSE per capita water requirements for the particular types of livestock animals the Grizzles raise, (2) doubled to account for the 50% efficiency factor the Zuni River Basin hydrographic survey applies to the per capita water requirement for livestock animals to account for any losses associated with the delivery of drinking water. Undisputed Facts 7 and 8. Applying the per capita

water requirements and efficiency factor to their maximum livestock herd, the Grizzles are entitled to a water right for livestock use in the amount of 0.341 AFY. Undisputed Fact 10.

C. Garden Use

The Grizzles have provided photographic evidence that, at some point during their ownership of the subject property, they have raised a garden, including a cornfield and fruit trees. Undisputed Fact 11. However, the Grizzles have not provided any documentation regarding the size of their garden plot. Recent aerial imagery of the Grizzles' property reviewed by the Plaintiffs depicts a garden area of approximately 0.5 acres in size. Undisputed Fact 12. Plaintiffs have corroborated the aerial imagery with the Grizzles' photographs by identifying certain features depicted in both images. *Id.* On the basis of this evidence, the Grizzles are entitled to a water right for garden use calculated by multiplying the area of the garden by the applicable irrigation duty of 3 acre-feet per acre. Undisputed Fact 13. Here, that calculation yields a water right of 1.5 AFY. Undisputed Fact 14.

D. Environmental Use

The undisputed evidence material to the determination of the Grizzles' entitlement to a water right for environmental uses establishes that no quantifiable amount of water from the well has been beneficially used. Regarding the "fire protection" component of this use, *see Subfile Answer*, Doc. 1653 at 3, the Grizzles explain that, while water is "available," it has only been used once, in an unquantified amount, to put out a "small" fire that was "quickly contained." Undisputed Fact 16. *See also* Discovery Resp. at 2 (answer to Interrogatory No. 2) and 3 (answer to Interrogatory No. 6). Regarding the "wildlife" component of this use, *see Subfile Answer*, Doc. 1653 at 3, the Grizzles again do not assert the use of any quantified amount of water. *See*

Discovery Resp. at 2 (answer to Interrogatory No. 2) and 3 (answer to Interrogatory No. 6) (explaining that "[w]ildlife including birds, deer and squirrels are frequently observed drinking from our stock tanks," but noting that "[n]o records are kept on this activity"). Even if the Grizzles could quantify the amount, any such quantity would be subsumed within their livestock use, as explained in Section B above. *See* Undisputed Facts 8 and 9. Finally, regarding their use of water for "disease control," *see Subfile Answer*, Doc. 1653 at 3, the Grizzles nowhere explain the alleged purpose for which water from their well is put to such use, much less quantify an amount beneficially used. Undisputed Fact 17. Thus, the evidence the Grizzles have provided in support of this alleged beneficial use is plainly insufficient to demonstrate the essential elements of the claim, and the Grizzles are not entitled to a water right for these so-called environmental uses.

Viewing the undisputed evidence against the applicable legal backdrop, it thus is clear that the Grizzles are entitled to a water right for Well 2A-1-W035 in the amount of 2.043 AFY, consisting of a household use of 0.202 AFY, a livestock use of 0.341 AFY, and a garden use of 1.5 AFY.

POINT 2: A WELL PERMIT DOES NOT PER SE ENTITLE THE GRIZZLES TO A WATER RIGHT IN THE AMOUNT OF THREE ACRE-FEET PER YEAR FOR THEIR WELL

The Grizzles alternatively argue that New Mexico law entitles them to a water right of 3.0 AFY for Well 2A-1-W035 on the basis of the well permit they hold. *Subfile Answer*, Doc. 1653 at 3. As have many claimants in the Zuni River Basin Adjudication, the Grizzles misapprehend the legal effect of a well permit in New Mexico. Defendants' well permit does not establish a legal right to any amount of water from the well, but merely authorizes them to

develop a water right up to three acre-feet. Put another way, the Grizzles' "argument that a permit alone creates water rights contradicts New Mexico law." *New Mexico v. Trujillo*, 813 F.3d 1308, 1321 (10th Cir. 2016) (citing N.M. Const. art. XVI, § 3 and *Hanson v. Turney*, 136 N.M. 1, 94 P.3d 1, 4-5 (N.M. Ct. App. 2004)).

In New Mexico, to the contrary, only "beneficial use defines the extent of a water right." *Memorandum Opinion and Order*, No. 01cv00072-BB-ACE, Doc. 733 at 4 (June 15, 2006). The Grizzles thus must establish, based exclusively on historic beneficial use, that they are entitled to a water right for the well greater than the right offered by Plaintiffs. *See Order*, No. 01-cv-0072 MV/WPL, Subfile ZRB-2-0098, Doc. 2985 at 4 (Aug. 28, 2014) ("to the extent that any water right is disputed, Subfile Defendants generally bear the burden of proof in the first instance with respect to the disputed water right"); *Proposed Findings and Recommended Disposition*, No. 01-cv-0072 MV/WPL, Subfile ZRB-2-0014, Doc. 3049 at 5 (May 27, 2015) ("The burden is on the [Subfile Defendants] to justify a water right above that which was offered by the Plaintiffs." (citing Doc. 2985 at 2-3)). As discussed in Point 1, the Grizzles' own undisputed evidence of historic beneficial use does not meet that burden.

POINT 3: THE PACIFIC RAILROAD ACT OF 1862 NEITHER EXEMPTS THE GRIZZLES FROM THE REQUIREMENTS OF NEW MEXICO WATER LAW NOR GRANTS THEM AN UNLIMITED RIGHT TO USE WATER

The Grizzles alternatively argue that federal law—specifically, the Pacific Railroad Act of 1862, 12 Stat. 489 (July 1, 1862)—should govern the determination of their water rights, rather than New Mexico law. They explain:

> This claim is based on the railroad act signed into law by President Abraham Lincoln on July 1, 1862 which states in part, "the railroads shall have the right to develop the resources according to their needs."

> Our property is a portion of section 29 Twp 12 [N] Range 18 W which was awarded to the railroad, and later sold. A search of all the deeds from Aug 26, 1919 when the railroad sold the property through September 29, 1989 when we bought the property reveals no exceptions or reservations of resources, other than exceptions and reservations for rights of way for roads and utilities, and one reservation by the railroad for a right to purchase back a 200 foot right of way. (Which they have not done.)
>
> Thus we claim that we have the right to develop the water on our property according to our needs.

Amendment to Subfile Answer, Doc. 2709 at 1. Assuming the title to their property is traceable to the original grant to the railroad under the 1862 Act, the Grizzles in essence argue that their water use is unburdened by the requirement of New Mexico law that they demonstrate beneficial use. For at least a couple of reasons, the Grizzles' argument is less than convincing.

First, the language upon which the Grizzles purport to rely cannot be found in the Pacific Railroad Act of 1862. Neither the 1862 Act, nor any of the four subsequent statutes amending the 1862 Act, state, either in whole or in part, that "the railroads shall have the right to develop the resources according to their needs." *See* 12 Stat. 489; Pacific Railroad Act of 1863, 12 Stat. 807; Pacific Railroad Act of 1864, 13 Stat. 356; Pacific Railroad Act of 1865, 13 Stat. 504; Pacific Railroad Act of 1866, 14 Stat. 66. In fact, nothing in the language or historical context of the acts even remotely suggests that Congress intended to exempt individuals like the Grizzles from the requirements of state water law.

Section 2 of the 1862 Act granted the railroads the "right, power, and authority … to take … earth, stone, timber, and other materials" from "the public lands adjacent to the" railroad line "for the construction" of the railroad. 12 Stat. at 491. Other railroad acts include similar language. *See* Act of July 2, 1864, 13 Stat. 356, 364; Act of July 27, 1866, 14 Stat. 292, 294; Act

of March 3, 1875, 18 Stat. 482. This right was not unlimited. "[S]tatutes granting privileges or relinquishing rights are to be strictly construed" in favor of the government, such that "nothing passes but what is conveyed in clear and explicit language." *Caldwell v. United States*, 250 U.S. 14, 20 (1919). *See also United States v. Oregon & California R.R. Co.*, 164 U.S. 526, 539 (1896) ("all grants of this description must be construed favorably to the government, and … nothing passes but what is conveyed in clear and explicit language") (citations omitted). According to this established principle of construction, Section 2 should be interpreted to have granted the railroad companies only the limited right to use materials "for the construction" of the railroad line, and not for commercial purposes, or, in this instance, for the purposes claimed by the Grizzles. *See Caldwell*, 250 U.S. at 21 (holding that substantially identical language in the General Railroad Right-of-Way Act of 1875, 18 Stat. 482, granted the right to "timber for purposes of railroad construction," not for commercial purposes).

Second, the Grizzles' interpretation of the 1862 Act is inconsistent with the broader federal policy of the era, which showed "purposeful and continued deference to state water law," to the extent that state water law embraced prior appropriation. *California v. United States*, 438 U.S. 645, 653 (1978). The 1862 Act, the other railroad acts, and this federal policy of deference must be understood in the broader context of the federal land laws of the era, which granted public lands to promote the development of agricultural and mineral resources in the west. *Id.* *See also California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 157 (1935) ("it had become evident to Congress, as it had to the inhabitants, that the future growth and well-being of the entire [western] region depended upon a complete adherence to the rule of appropriation for a beneficial use as the exclusive criterion of the right to the use of water"). The

Grizzles would construe the 1862 Act to grant them a flexible right based on their future needs, unmoored from their actual beneficial use of water from Well 2A-1-W035. This reading would effectively result in "two overlapping systems for acquisition of private water rights" in New Mexico that would cause serious practical consequences. *Andrus v. Charlestone Stone Prods. Co., Inc.*, 436 U.S. 604, 615 (1978). Indeed, the Grizzles' alleged "railroad rights" would irretrievably reverse more than one hundred years of New Mexico water law derived from the State Constitution, which, not coincidentally, was drafted and ratified against the historical setting we summarize here. Given these circumstances, it is unlikely that Congress intended the reading that the Grizzles seek to apply to the 1862 Act.

V. CONCLUSION

WHEREFORE, based upon the foregoing undisputed material facts, argument, and authority, the United States and State of New Mexico respectfully request that the Court enter an order granting summary judgment in their favor and against the Grizzles, declaring the water rights associated with the subject property, in the following form:

WELL

Map Label: 2A-1-W035

OSE File No: G 01538

Priority Date: 12/31/1950

Purpose of Use: NON 72-12-1 DOMESTIC & LIVESTOCK

Well Location: As shown on Hydrographic Survey Map 2A-1

S. 29 **T.** 12N **R.** 18W **1/4, 1/16, 1/64** SE SE SE

X (ft): 2,448,373 **Y (ft):** 1,542,465

New Mexico State Plane Coordinate System, West Zone, NAD 1983

Amount of Water: 2.043 ac-ft per annum

Dated: August 15, 2016

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2016, I filed the foregoing MOTION FOR SUMMARY JUDGMENT 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. I further certify that on this date I served the foregoing on the following non-CM/ECF Participant via U.S. first class mail, postage prepaid:

Henry Ray Grizzle
Rebecca Grizzle
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/s/ Samuel D. Gollis