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

and as Trustee for the Zuni Indian Tribe,)
Navajo Nation and Ramah Band of Navahos)
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-2-0098
Defendants.)))

JOINT STATUS REPORT AND PROPOSED PRETRIAL SCHEDULE

Pursuant to the *Order Setting Pretrial Conference* (ECF No. 3333), the parties submit the following joint status report and pretrial schedule to resolve the remaining issues of material fact unresolved from the parties' previous motions for summary judgment. *See Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition* (ECF No. 3325). Remaining for resolution are the (approximately) 12 water features (claimed stock ponds and springs) for which Defendants claim a water right. *See Proposed Findings and Recommendation* (ECF No. 3223) at 33 - 35.

The parties have identified that the Court should schedule 1) a date by which to file motions in limine and 2) a date on which trial should commence. The parties believe that within 45 days from this Court's final pretrial conference (or April 15, 2017), the parties should be

required to file written motions in limine. Once briefing is complete on motions in limine (expected May 15, 2017), the Court should schedule trial (anticipated one day in duration) as soon thereafter as practical for the calendars of the Court and counsel.

SUMMARY OF DISPUTES REMAINING BETWEEN THE PARTIES

Plaintiffs' remaining contentions:

The parties and the Court have identified two disputes for trial. First, Defendants continue to claim a water right for two springs (Canyon Springs and Jaralosa Springs) designated 9C-4-SPR02 and 10A-4-SPR01. Plaintiffs believe these to be unimproved natural features and do not believe Defendants' evidence is sufficient to establish a water right associated with these water features. Second, Defendants continue to claim a water right for 10 unnamed stock ponds located on Atarque Ranch and identified in their Subfile Answer (ECF No. 2925). Plaintiffs believe these features to be natural depressions and do not believe Defendants' evidence is sufficient to establish a water right associated with these water features.

Defendants' remaining contentions:

Defendants believe there is sufficient evidence of improvements with regard to Jaralosa and Canyon Springs such that a water right should be recognized. Defendants believe that only 5 of the 10 depressions remain in dispute and that there is sufficient evidence of improvements which will demonstrate that there is a water right associated with those depressions.

Respectfully submitted this 22nd day of February 2017.

/s/ Andrew "Guss" Guarino

Andrew "Guss" Guarino

Bradley S. Bridgewater Samuel Gollis U.S. Department of Justice South Terrace, Suite 370 999 18th St. Denver, CO 80202

(303) 844-1343; x1359; and 1351, respectively

COUNSEL FOR THE UNITED STATES OF AMERICA

AND

/s/ Edward C. Bagley _____

Edward C. Bagley
Special Assistant Attorneys General
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150
COUNSEL FOR THE STATE OF NEW MEXICO

AND

/s/ Peter Shoenfeld

Peter Shoenfeld

Peter Shoenfeld, P.A. P.O. Box 2421 Santa Fe, New Mexico 87504-2421 505-982-3566

Fax: 505-982-5520

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 22, 2017, I filed the foregoing 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.

/s/ Andrew "Guss" Guarino