

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

UNITED STATES OF AMERICA, for Itself
and as Trustee for the Zuni Indian Tribe,
Navajo Nation and Ramah Band of Navajos
and
STATE OF NEW MEXICO, ex rel. STATE
ENGINEER,

Plaintiffs,

and

ZUNI INDIAN TRIBE,
NAVAJO NATION,

Plaintiffs in Intervention,

v.

STATE OF NEW MEXICO COMMISSIONER
OF PUBLIC LANDS,

and
A & R PRODUCTIONS, et al.,

Defendants.

No. 01cv00072-BB-ACE

**ZUNI RIVER BASIN
ADJUDICATION**

Sub-areas 1, 2, and 3 excluding
Ramah

Subfile No: ZRB-4-0039

CONSENT ORDER

The Court, having considered the agreement between the Plaintiffs, the United States of America ("United States") and the State of New Mexico ex rel. State Engineer ("State"), and:

LAURENCE R. BERGER & DIANA M. BERGER REV. TRUST

("Defendant") concerning the Defendant's right(s) to use the public waters of the Zuni River Stream System, Sub-areas 1, 2, and 3 excluding Ramah, as set forth below FINDS:

1. The Court has jurisdiction over the United States, the State, the Defendant and the subject matter of this suit.

2. As evidenced by the parties' signatures below, the United States, the State, and the Defendant are in agreement concerning all elements of the right(s) of the Defendant set forth in paragraph 4 of this Consent Order to divert and use the public waters of the Zuni River Stream System, Sub-areas 1, 2, and 3 excluding Ramah. This Consent Order and the parties' respective signatures below evidence the entire agreement between the United States, the State, and the Defendant regarding the elements of the water right(s) adjudicated by this Consent Order.

3. There is no just reason to delay entry of this Consent Order as a final judgment as between the United States, the State, and the Defendant regarding the elements of the claims of the Defendant adjudicated by this Consent Order.

4. The right(s) of the Defendant to divert and use the public waters of the Zuni River Stream System, Sub-areas 1, 2, and 3 excluding Ramah, is as set forth below:

POND

Map Label: 3A-1-SP010
Purpose of Use: LIVESTOCK
Priority Date: 1/1/1950
Source of Water: Surface Runoff
Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 3.0
Surface Area (sq.ft): 1,064
Storage Impoundment Volume (ac-ft): 0.044

Pond Location: As shown on Hydrographic Survey Map 3A-1

S. 9 T. 13N R. 16W 1/4, 1/16, 1/64: NW SE NW

X(ft): 2,511,814 Y(ft): 1,592,045

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

Dam height (if greater than 9 ft):

POND

Map Label: 3B-1-SP006

Purpose of Use: LIVESTOCK

Priority Date: 1/1/1950

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 5.0

Surface Area (sq.ft): 27,467

Storage Impoundment Volume (ac-ft): 1.892

Pond Location: As shown on Hydrographic Survey Map 3B-1

S. 24 T. 13N R. 16W 1/4, 1/16, 1/64: SW NE NE

X(ft): 2,528,116 Y(ft): 1,580,240

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

Dam height (if greater than 9 ft):

POND

Map Label: 3B-1-SP007

Purpose of Use: LIVESTOCK

Priority Date: 1/1/1950

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 6.0

Surface Area (sq.ft): 29,382

Storage Impoundment Volume (ac-ft): 2.428

Pond Location: As shown on Hydrographic Survey Map 3B-1

S. 24 T. 13N R. 16W 1/4, 1/16, 1/64: NW SE SW

X(ft): 2,527,466 Y(ft): 1,581,036

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

Dam height (if greater than 9 ft):

POND

Map Label: 3B-1-SP009

Purpose of Use: LIVESTOCK

Priority Date: 1/1/1997

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 4.0

Surface Area (sq.ft): 513

Storage Impoundment Volume (ac-ft): 0.028

Pond Location: As shown on Hydrographic Survey Map 3B-1

S. 24 T. 13N R. 16W 1/4, 1/16, 1/64: NW SE NE

X(ft): 2,528,539 Y(ft): 1,581,592

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

Dam height (if greater than 9 ft):

WELL

Map Label: 3A-1-W003

OSE File No: G 1904

Priority Date: 1/1/1950

Purpose of Use: LIVESTOCK

Well Location: As shown on Hydrographic Survey Map 3A-1

S. 9 T. 13N R. 16W 1/4, 1/16, 1/64: NW SE SW

X (ft): 2,511,790 Y (ft): 1,592,024

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

Amount of Water (ac-ft per annum): 0.022

WELL

Map Label: 3B-1-W003

OSE File No: G 1906

Priority Date: 1/1/1960

Purpose of Use: LIVESTOCK

Well Location: As shown on Hydrographic Survey Map 3B-1

S. 24 T. 13N R. 16W 1/4, 1/16, 1/64: SW NE SE

X (ft): 2,528,479 Y (ft): 1,579,883

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

Amount of Water (ac-ft per annum): 0.022

WELL

Map Label: 3B-1-W004

OSE File No: G 1908

Priority Date: 1/1/1960

Purpose of Use: LIVESTOCK

Well Location: As shown on Hydrographic Survey Map 3B-1

S. 24 T. 13N R. 16W 1/4, 1/16, 1/64: SW NE SE

X (ft): 2,528,440 **Y (ft):** 1,579,933

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

Amount of Water (ac-ft per annum): 0.135

WELL

Map Label: 3B-1-W005

OSE File No: G 1905

Priority Date: 1/1/1950

Purpose of Use: LIVESTOCK

Well Location: As shown on Hydrographic Survey Map 3B-1

S. 24 T. 13N R. 16W 1/4, 1/16, 1/64: NW SE SW

X (ft): 2,527,913 **Y (ft):** 1,581,368

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

Amount of Water (ac-ft per annum): 0.022

WELL

Map Label: 3B-1-W006

OSE File No: G 1907

Priority Date: 1/1/1945

Purpose of Use: LIVESTOCK

Well Location: As shown on Hydrographic Survey Map 3B-1

S. 24 T. 13N R. 16W 1/4, 1/16, 1/64: SW NE NW

X (ft): 2,527,553 **Y (ft):** 1,580,529

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

Amount of Water (ac-ft per annum): 0.022

5. Defendant has no right to divert and use the public waters of the Zuni River Stream System, Sub-areas 1, 2, and 3 excluding Ramah, except as set forth in this Consent Order and other orders entered by this Court in this cause.

6. The Defendant, and Defendant's successors, representatives, heirs and assigns, should be enjoined from any diversion or use of the public waters of the Zuni River Stream System, Sub-areas 1, 2, and 3 excluding Ramah, except in strict accordance with this Consent Order and other orders of the Court in this cause.

7. The water right(s) described herein, if any, are adjudicated as between the United States, the State, and the Defendant, subject to the right of any other water right claimant with standing to object prior to the entry of a final decree.

IT IS THEREFORE ORDERED that the right(s) of the Defendant to divert and use the public waters of the Zuni River Stream System, Sub-areas 1, 2, and 3 excluding Ramah, are adjudicated as set forth herein, as between the United States, the State, and the Defendant. The Defendant, and Defendant's successors, representatives, heirs and assigns, are hereby enjoined from any diversion or use of the public waters of the Zuni River Stream System, Sub-areas 1, 2, and 3 excluding Ramah, except in strict accordance with this Consent Order and other orders of this Court in this cause. The Court enters this Consent Order as a partial final judgment, binding on the United States, the State, and the Defendant as to the elements of Defendant's water right(s) set forth herein, subject to the right of any other water right claimant with standing to object prior to the entry of a final decree, and subject to the terms of the final decree in this proceeding.

Bruce D. Black

BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

Recommended for approval:

Vickie L. Gabin

VICKIE L. GABIN
SPECIAL MASTER

ACCEPTED: *Laurence R. Berger & Diana M. Berger 12/11/06*
LAURENCE R. BERGER & DIANA M. BERGER REV. TRUST DATE

ADDRESS: *406 Baker St.*
Gallup, N.M. 87301

COUNSEL FOR THE DEFENDANT (IF REPRESENTED):


DATE

COUNSEL FOR THE UNITED STATES:

Bradley S. Bridgewater
BRADLEY S. BRIDGEWATER
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294

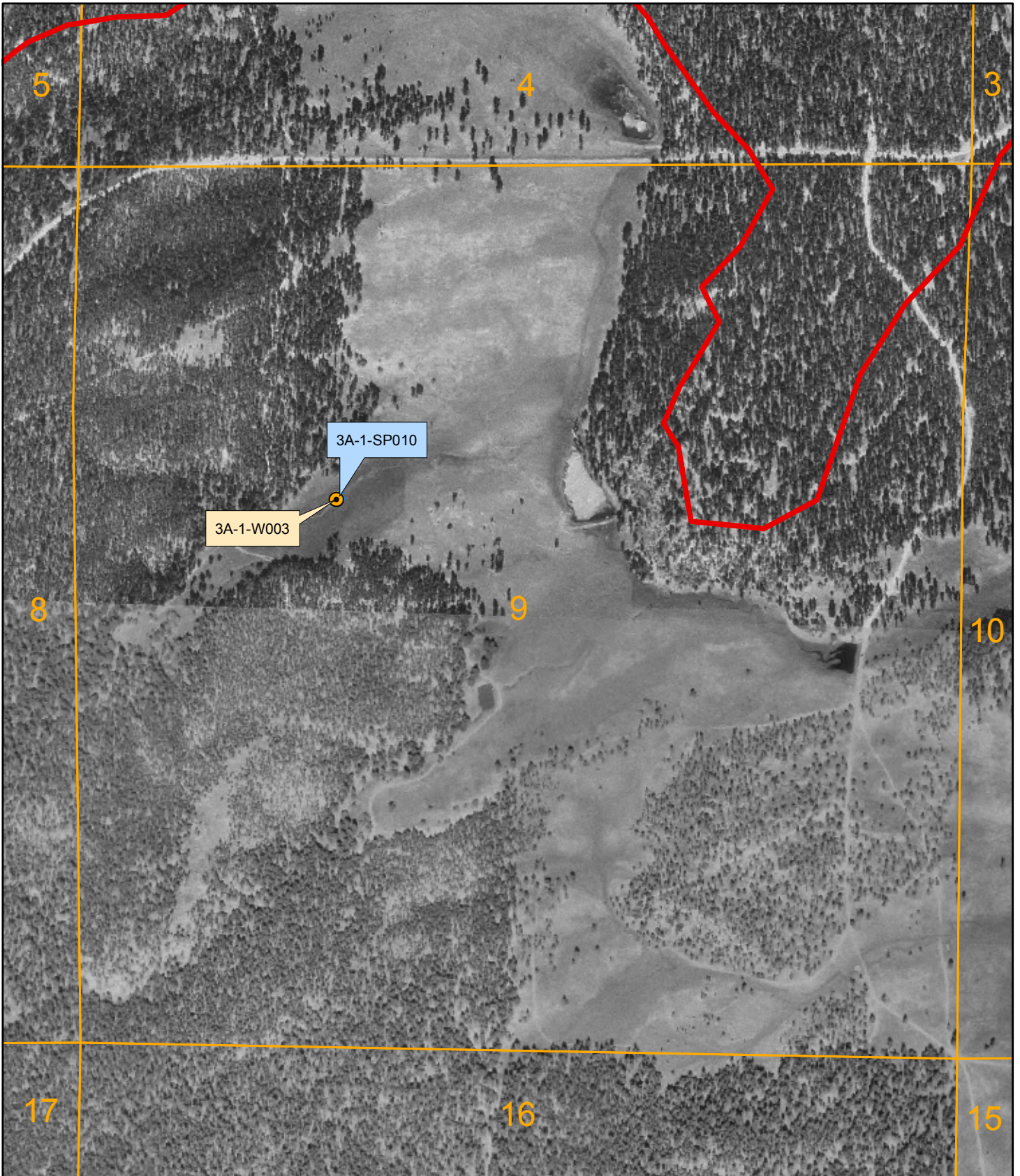
10/17/06
DATE

COUNSEL FOR THE STATE OF NEW MEXICO EX REL. STATE ENGINEER:







EDWARD C. BAGLEY
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504
(505) 827-6150

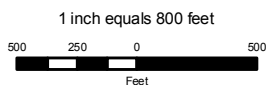
10/17/06
DATE



October 2006

LEGEND

-  Well
-  Town
-  Stock Pond
-  Basin Boundary
-  Sub-Area Boundary
-  Section Boundary



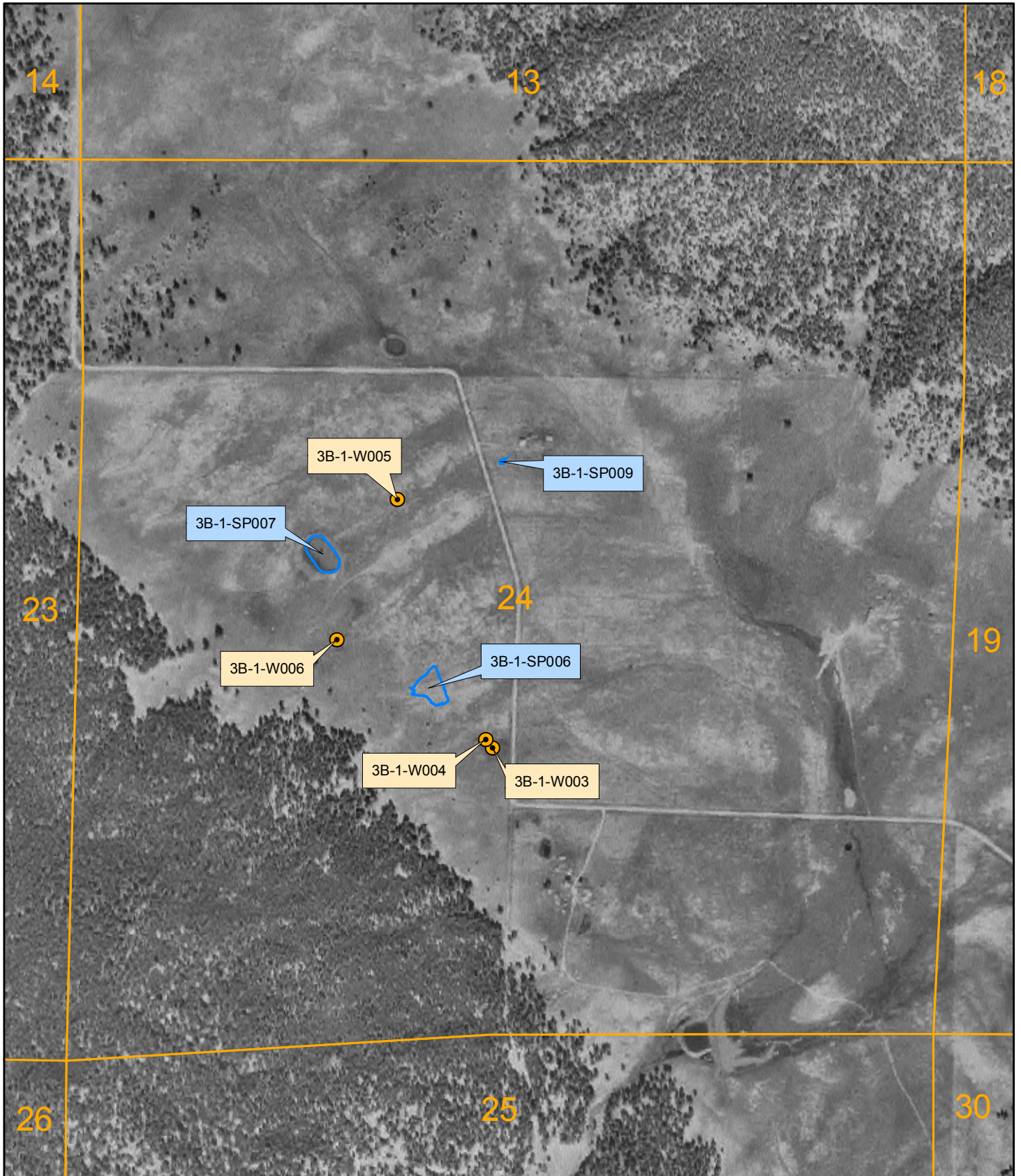
Zuni River Basin
Hydrographic Survey



Sub-Area 3
Subfile Number: ZRB-4-0039
PLSS: S09, T13N, R16W
Sheet 1 of 2






Natural Resources Consulting Engineers, Inc.

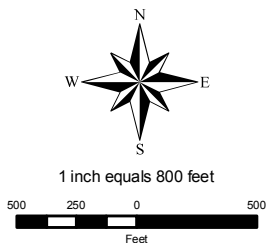
Fort Collins, CO Oakland, CA Asmara, ERITREA
Project Manager: L. Niel Allen, P.E., Ph.D.



October 2006

LEGEND

-  Well
-  Town
-  Stock Pond
-  Basin Boundary
-  Sub-Area Boundary
-  Section Boundary



Zuni River Basin
Hydrographic Survey

Sub-Area 3
Subfile Number: ZRB-4-0039
PLSS: S24, T13N, R16W
Sheet 2 of 2



Natural Resources Consulting Engineers, Inc.

Fort Collins, CO Oakland, CA Asmara, ERITREA

Project Manager: L. Niel Allen, P.E., Ph.D.