

**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, <i>et al.</i> ,)	Subfile No. ZRB-2-0077
)	
Defendants.)	
_____)	

UPDATED JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN

Pursuant to the Court’s February 24, 2016 *Order Resetting Pretrial Conference* (Doc. 3214) and Fed. R. Civ. P. 26(f), counsel for the United States of America and State of New Mexico attempted unsuccessfully to confer with Subfile Defendant Dennis M. Norton. Therefore, to the extent that Mr. Norton continues to dispute the water rights at issue in this subfile proceeding, Plaintiffs present to the Court the Joint Status Report and Provisional Discovery Plan they have prepared.

NATURE OF THE CASE

A determination in this general stream system water rights adjudication of Mr. Norton’s water rights associated with the real property he owns in the Zuni River Basin.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiffs do not intend to file any additional pleadings or join additional parties.

Mr. Norton has made no representation concerning any intent to file any additional pleadings or join additional parties.

STIPULATIONS

Plaintiffs stipulate and agree that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter and that venue is properly laid in this District.

Plaintiffs further stipulate to the following facts: (1) the Plaintiffs recognize that Mr. Norton owns the real property on which the water features listed in Attachment A are found; (2) the corresponding water rights attributes for the historic water uses (the priority, amount, beneficial use, periods of use, and place of use) are agreed upon to the extent that Plaintiffs recognize a water right (denominated "US/NM Recognized Water Right" in Attachment A); (3) Mr. Norton is not required to prove the basis for and extent of the water rights described in Attachment A that the Plaintiffs are willing to recognize; provided, however, that to the extent Mr. Norton asserts water rights in addition to or different from those listed in Attachment A, those claims will affect, change, and/or reduce the rights to which Plaintiffs might otherwise stipulate; and (4) the law governing this case is the law of the State of New Mexico.

PLAINTIFFS' CONTENTIONS

The Plaintiffs contend that Mr. Norton is entitled to water rights for lands owned in the Zuni River Basin of New Mexico only to the extent of the US/NM Recognized Water Right (Attachment A). The Subfile Answer (Doc. 1354) appears to indicate that Mr. Norton does not agree with certain aspects of the water rights described in Attachment A and that he claims water rights in excess of those described in Attachment A. To the extent that Mr. Norton claims water rights in excess of those Plaintiffs are willing to recognize, Mr. Norton is required to establish all elements of each disputed water right, namely the priority, amount, beneficial use, periods of use, and place of use.

SUBFILE DEFENDANT'S CONTENTIONS

Mr. Norton has made no contentions other than those reflected in the Subfile Answer (Doc. 1354).

DISCOVERY PLAN

Limited discovery may be necessary and should be centered on that material which is relevant to establish or dispel Mr. Norton's contentions. Discovery should begin once the Court issues a scheduling order adopting the provisions of this Joint Status Report and Provisional Discovery Plan. The Plaintiffs propose the discovery plan outlined in the paragraphs below.

1. Mr. Norton has the burden to establish all elements of any water right that are different from or in addition to those described in Attachment A (the priority, amount, beneficial use, periods of use, and place of use). In any proceeding or trial before the Court, Mr. Norton will first call witnesses to support his claims for the water rights asserted in the Subfile Answer (Doc. 1354).

2. To date, Mr. Norton has not identified any witnesses to support the contentions made in the Subfile Answer. Mr. Norton shall disclose to Plaintiffs within thirty (30) days from the issuance of the Court's scheduling order the names, addresses, and telephone numbers of every witness that he intends to call and shall disclose whether the person identified will be a lay or expert witness.

3. After Mr. Norton has presented testimony and evidence, Plaintiffs may call the following person as a rebuttal witness:

i. Scott Turnbull, P.E., Associate Engineer, Natural Resources Consulting Engineers, Inc., 131 Lincoln Ave., Ste. 300, Fort Collins, Colorado 80524, (970) 224-1851; and

ii. Rebuttal witnesses to any additional experts identified by Mr. Norton.

4. Either party may also call witnesses yet to be named to identify or authenticate documents, if necessary.

5. Within thirty (30) days from the issuance of the Court's scheduling order, the parties shall exchange Initial Disclosure material as described in Fed. R. Civ. P. 26(a)(1). Included in Initial Disclosures, Mr. Norton shall provide Plaintiffs copies of all documentary evidence in his possession that he intends to present to the Court to support his claimed water rights. Although Plaintiffs have no initial burden of proof, Plaintiffs shall have an ongoing obligation to disclose during discovery any documentary evidence that they intend to introduce to rebut Mr. Norton's evidence and such evidence shall be disclosed 30 days before the close of discovery.

6. The parties anticipate that discovery will be focused on the water right attributes (the priority, amount, beneficial use, periods of use, and place of use) of the water rights claimed by Mr. Norton and described in the Subfile Answer (Doc. 1354). The following procedures shall govern discovery associated with this subfile action. Discovery shall be limited to those factual matters associated with establishing the elements for Mr. Norton's claimed, contested water rights based on the doctrine of prior beneficial use.

a. Maximum of twenty-five (25) interrogatories (including any subparts) (responses due thirty (30) days after service).

b. Maximum of twenty-five (25) requests for production of documents (responses due thirty (30) days after service). Copies of documents may be produced in either paper or electronic PDF format at the discretion of the disclosing party.

c. Maximum of twenty-five (25) requests for admission (responses due thirty (30) days after service).

d. Once discovery begins, each party shall be permitted to depose the other parties (or party representatives) and the identified witnesses of the other party. Each deposition shall be arranged through the consent of all parties to this proceeding. Each deposition is limited to a maximum of four (4) hours unless extended by agreement of the parties and shall occur at the location of the witness's principle place of work unless otherwise agreed to by all parties. Costs associated with the deposition shall be borne by the party taking the deposition except that costs associated with witness's appearance (fees, travel expenses, etc.) shall be borne by the party on whose behalf the witness is to be called.

e. As contemplated under Fed. R. Civ. P. 26(a)(2), if Mr. Norton intends to call an expert witness of any kind, that expert shall be identified no later than thirty (30) days from the issuance of the Court's scheduling order. Every expert witness must prepare and produce a complete, final written expert report to Plaintiffs no later than sixty (60) days from the issuance of the Court's scheduling order. The expert report of any expert witness identified by Mr. Norton shall include every expert opinion (and the complete basis thereof) held by the expert to which he/she may give testimony.

f. As contemplated under Fed. R. Civ. P. 26(a)(2), Plaintiffs will prepare and produce a written report from Mr. Turnbull (or another appropriate expert identified by Plaintiffs) to rebut the opinion of any expert witness retained by Mr. Norton. If Mr. Norton does not produce a written expert report, Plaintiffs will nevertheless prepare a written expert report from Mr. Turnbull to establish the factual basis for the water rights described in the US/NM Recognized Water Right (Attachment A). Plaintiffs shall have

forty-five (45) days from the day Mr. Norton provides his expert reports to produce Plaintiffs' expert reports.

g. Supplementation under Fed. R. Civ. P. 26(e) shall be due twenty (20) days after either party has acquired new information.

h. All discovery commenced in this proceeding shall be completed within one hundred twenty (120) days after the issuance of the Court's scheduling order. Therefore, any interrogatories, requests for admission, and requests for production must be submitted no later than thirty (30) days before the discovery completion date described here. No deposition may be held beyond the 120-day discovery period without the consent of either the opposing parties or the Court.

DISPOSITIVE MOTIONS

Plaintiffs anticipate that the parties may file motions for summary judgment under Fed. R. Civ. P. 56 in an attempt to resolve any legal issues that do not involve a factual dispute. The parties should submit motions for summary judgment under the following schedule:

1. Within thirty (30) days after the close of discovery, Mr. Norton shall submit any motion for summary judgment he deems appropriate to establish some or all of the water rights he claims in excess of those rights recognized by Plaintiffs in Attachment A.

2. Within sixty (60) days from the close of discovery, Plaintiffs shall submit a combined brief that contains (1) any response they might have to Mr. Norton's motion for summary judgment and (2) any cross-motion for summary judgment on those water rights attributes Mr. Norton claims in excess of those Plaintiffs are willing to recognize. Plaintiffs shall be permitted to submit a single combined brief not to exceed fifty-four (54) double-spaced pages (not inclusive of necessary appendices or attachments).

3. Within seventy-five (75) days from the close of discovery, Mr. Norton shall submit a combined brief that contains (1) any reply he might have to Plaintiffs' response to his motion for summary judgment and (2) any response to Plaintiffs' cross-motion for summary judgment. Mr. Norton shall be permitted to submit a single combined brief not to exceed forty-eight (48) double-spaced pages (not inclusive of necessary appendices or attachments).

4. Plaintiffs shall file a final reply to Mr. Norton's response to the Plaintiffs' cross-motion for summary judgment within ninety (90) days from the close of discovery. Plaintiffs shall be permitted to submit a single combined brief not to exceed twenty (20) double-spaced pages (not inclusive of necessary appendices or attachments).

5. No oral argument will be permitted on any motion for summary judgment without a party requesting permission for oral argument from the Court and establishing good cause for the need for such oral argument.

TRIAL

To the extent that an issue of material fact remains that requires the Court to conduct an evidentiary trial after dispositive motions have been resolved, Plaintiffs estimate that any trial would require one (1) day. This is a non-jury case and should be scheduled only after dispositive motions have been addressed and resolved. The Court shall schedule a final pretrial conference as contemplated by Fed. R. Civ. P. 16(e) and shall subsequently issue a final trial plan for the parties to follow.

SETTLEMENT

Settlement of this subfile action is considered possible. Mr. Norton is currently reviewing the US/NM Recognized Water Right contained in Attachment A to determine whether it is acceptable to him. Plaintiffs do not request a settlement conference.

Dated: May 20, 2016

Respectfully submitted,

/s/
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ATTORNEY FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2016, I filed the foregoing UPDATED JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN 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 Participants via U.S. first class mail, postage prepaid, and electronic mail:

Dennis M. Norton
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mydbarl@gmail.com

_____/s/
Samuel D. Gollis