

**UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.  
Tom Cox on 05/18/2016**

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

-vs-

A & R PRODUCTIONS, et al.,

Subfile No. ZRB-2-0038

Defendants.

DEPOSITION OF TOM COX

May 18, 2016  
9:11 a.m. to 10:55 a.m.  
Holiday Inn Express  
2300 N. Main Street  
Roswell, NM

PURSUANT TO THE FEDERAL RULES OF CIVIL

PROCEDURE, this deposition was:

TAKEN BY: ANDREW "GUSS" GUARINO, ESQ.  
ATTORNEY FOR PLAINTIFF UNITED STATES  
OF AMERICA

REPORTED BY: ANNE C. HALLETT  
CCR No. 16  
Huseby, Inc.  
1230 West Morehead Street, #408  
Charlotte, NC 28208



**UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.**

**Tom Cox on 05/18/2016**

**Pages 18..21**

**Page 18**

1 Mexico, you had leases to graze on those lands, as  
 2 well?  
 3 A. We did, and BLM.  
 4 Q. And BLM, as well?  
 5 A. Yes.  
 6 Q. And all of this area in this northern  
 7 section of the ranch was ranched by you during the  
 8 '90s?  
 9 A. Correct.  
 10 Q. And in the '80s, when you were there, as  
 11 well?  
 12 A. Yes.  
 13 Q. Okay. Has this -- in your experience,  
 14 your personal experience with the ranch, has this  
 15 area ever not been in control of you or your  
 16 immediate family?  
 17 A. My granddad would have picked this country  
 18 up I'm thinking in the 1940s.  
 19 Q. 1940s? Okay.  
 20 So you referenced the size of your overall  
 21 operation as being both in the Zuni Basin and  
 22 outside of the Zuni Basin. And also, just for  
 23 reference's sake, that red line on Exhibit A, going  
 24 sort of roughly through the middle of the map, is  
 25 the basin boundary to the south. Okay?

**Page 19**

1 A. Okay.  
 2 Q. So that is a reference point.  
 3 A. I assume that goes with the mesa?  
 4 Q. Yes.  
 5 A. The Moreno mesa?  
 6 Q. We'll make that assumption for now.  
 7 A. Great. Okay. It looks --  
 8 Q. It's not otherwise marked.  
 9 A. Yeah. Why else have a zag -- a ziggy  
 10 line?  
 11 Q. Okay.  
 12 THE DEPONENT: Is that a word?  
 13 THE REPORTER: Yes.  
 14 Q. Now, with respect to your -- I want to  
 15 talk about your overall ranching operation; not just  
 16 the area around this Zuni Basin area, but your  
 17 entire ranching operation.  
 18 Can you tell me a little bit about that? How  
 19 big was it; and how extensive was it; how many cows  
 20 did you run, that sort of thing; and what kind?  
 21 A. In my time?  
 22 Q. Yes, in your time.  
 23 A. In my time, it was 140 sections. We ran  
 24 probably 500 cows and another 500 yearlings, in the  
 25 good years.

**Page 20**

1 Q. Can you remember what years were "the good  
 2 years"?  
 3 A. Okay.  
 4 Q. And just so I understand, that's tied to  
 5 rainfall, if I'm not mistaken.  
 6 A. That is correct, yes. 1995 was the end  
 7 of -- it was the beginning of the drought. 1991 was  
 8 dry, but just one year was dray. Otherwise, it was  
 9 what we called good; I mean, normal. It did what we  
 10 expected.  
 11 Q. What about the '80s?  
 12 A. The '80s were -- they were fine.  
 13 Q. Okay. So when you started working with  
 14 your dad in the middle '80s, your ranch was running  
 15 about 500 cows and 500 yearlings?  
 16 A. Correct.  
 17 Q. And that's for the entire ranch, over the  
 18 140 sections?  
 19 A. Correct.  
 20 Q. Can you tell me how the cow operation --  
 21 can you walk me through basically how a cow  
 22 operation works in a given year?  
 23 A. Well, we would calf March, April, May. We  
 24 would ship November, wean the calves and ship them.  
 25 Q. So all the calves that were born in March,

**Page 21**

1 April and May are shipped out in November?  
 2 A. Correct.  
 3 Q. Is that a pretty standard practice for  
 4 ranching in the Zuni Basin during the time you were  
 5 there?  
 6 A. Yes.  
 7 Q. So there aren't any -- and so by November  
 8 until March, when the cows start calving again, they  
 9 are just -- for the cow operation, there are just  
 10 cows there?  
 11 A. Yes. We would run our yearlings, what I'm  
 12 talking about. We would take them in in May and  
 13 ship them in October.  
 14 Q. Okay. So let's shift over. That's a  
 15 different type of operation; right?  
 16 A. Right.  
 17 Q. This is the yearling operation.  
 18 A. Right.  
 19 Q. Okay. So in the yearling operation, you  
 20 would bring them in from other places when?  
 21 A. May.  
 22 Q. In May? And you would let them forage for  
 23 the summer?  
 24 A. Five months, generally, yes.  
 25 Q. And then they ship out in November?



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 22..25

Page 22

1 A. October, November.  
 2 Q. They don't ship out when the calves ship  
 3 out, they ship out separately?  
 4 A. Same time.  
 5 Q. So October and November. Okay.  
 6 And so during the good years, running these, it  
 7 looks like, thousand -- these thousand cows, cow and  
 8 yearlings, plus calves that come out, who was  
 9 operating your ranch with you? There was you and  
 10 who else?  
 11 A. Well, there was me, my brother, after my  
 12 dad's passing.  
 13 Q. Just the two of you could handle all these  
 14 cows?  
 15 A. Well, we would hire a little help in the  
 16 fall, yes.  
 17 Q. For roundup?  
 18 A. Yes, yes. Maybe one or two guys.  
 19 Q. But otherwise the cows were open to roam,  
 20 and you would move the cows where --  
 21 A. We would -- the way the geography laid, we  
 22 would save the lower country for the wintertime. So  
 23 would he would use the upper country, the higher  
 24 elevation, in the summertime, generally go up there  
 25 July, and then gather off of that for our fall

Page 23

1 orders.  
 2 Q. So lower country in the winter, higher  
 3 country in the summer.  
 4 A. Right.  
 5 Q. Okay. And these thousand-plus animals  
 6 were spread out over approximately 140 sections,  
 7 your entire ranch; correct?  
 8 A. Yes.  
 9 Q. Do you recall the number -- for the  
 10 entirety of the ranch, do you recall the number of  
 11 wells that were located on that property, as  
 12 specifically as you can?  
 13 A. Yeah. Give me a minute. There would be  
 14 15 to 20.  
 15 Q. Fifteen to 20 throughout the entire 140  
 16 sections?  
 17 A. Correct.  
 18 Q. Were they all operating?  
 19 A. Yeah.  
 20 Q. All right. You were describing your  
 21 cattle operation. And just so the record is clear  
 22 about what a cow operation is, could you describe  
 23 what a cow operation is? For people who don't know  
 24 what a cow operation is.  
 25 A. We would run cows, and we would own them

Page 24

1 for -- they would have a productive life of about  
 2 ten years. They raise a calf most every year. We'd  
 3 have bulls. We would have to have bull pastures to  
 4 separate them so they didn't calf in the winter,  
 5 when it wouldn't work very well. We would save  
 6 heifer calves to replenish the cow herd as they got  
 7 old and unproductive. And like I say, we would  
 8 generally wean a calf at six or seven months of age  
 9 and sell it, or keep the heifers for replacements,  
 10 one or the other.  
 11 Q. Okay. What was your production rate on  
 12 your cow herd?  
 13 A. We averaged about a 90 percent calf crop.  
 14 Q. And when would you mix the bulls and the  
 15 cows? When would that occur, to keep --  
 16 A. Oh, gosh.  
 17 Q. So you are trying to time the births of  
 18 the cows --  
 19 A. Correct.  
 20 Q. -- is what you are trying to do. Okay.  
 21 A. The bulls would be out on the cows from  
 22 the first of June until we gathered in the fall.  
 23 Q. And what was your cow-to-bull ratio?  
 24 A. One to ten. One bull to ten cows.  
 25 Q. And then what would you do with the bulls

Page 25

1 once you got them -- once you got to the fall?  
 2 A. We would separate them and put them in a  
 3 pasture together, but apart from the cows.  
 4 Q. Where you penned up the bulls, did that  
 5 ever occur up in the Zuni Basin, or did you have  
 6 that in another area?  
 7 A. It did at the Rincon camp. There's a  
 8 section of pasture in the very corner of the place.  
 9 We put some bulls there. At the Rincon-Hondo well,  
 10 there's a small trap, and we might put a few bulls  
 11 in there. I think it was about 80 acres, not very  
 12 large.  
 13 Q. So that's where you would sort of keep  
 14 them. You could keep them year-round, but you would  
 15 keep them apart?  
 16 A. Correct.  
 17 Q. You can just put all the bulls in the same  
 18 pasture?  
 19 A. At times. But sometimes -- so say here,  
 20 as I said before, this country here (indicating) is  
 21 the Zuni Basin. It's isolated kind of from the rest  
 22 of the outfit. Rather than bring those -- we might  
 23 have those bulls there in that section pasture, and  
 24 then when it was time to put them out, we just had  
 25 to open the gate and let them in, get them out of



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 26..29

Page 26

1 that pasture rather than driving, or haul them, from  
2 somewhere else. But when it was dry, we did put  
3 them all in one pasture because we had to feed them  
4 hay.

5 Q. You had to supplement the -- supplement  
6 the forage from the range?

7 A. Yes.

8 Q. During drought conditions.

9 A. Uh-huh. We always supplemented protein.  
10 But on occasion, and only on the bulls, we had to  
11 feed them hay, because it was just too short.

12 Q. Did you have to supplement the range  
13 forage for the cow herd or the beef cow herd?

14 A. We fed a protein supplement through the  
15 winter beginning about Christmas and ending probably  
16 the first of April, in a typical year, yeah.

17 Q. And that was for the entire herd?

18 A. Yes.

19 Q. For the whole operation? All the cows got  
20 supplement during that time?

21 A. Correct.

22 Q. So, again, we're talking about the  
23 140-section ranch operation.

24 A. Yes.

25 Q. Okay. During the time that you were out

Page 27

1 there running the ranch, where did you all live, you  
2 and your dad and you and your brother, when this  
3 would occur?

4 A. At what we called the headquarters. And  
5 it will be on the south and east portion of the  
6 place.

7 Q. Which might not appear on this map.

8 A. That's right. It probably is here and  
9 I -- it's been a while.

10 Q. Sure. Sure. It wasn't in the Zuni Basin,  
11 though.

12 A. It wasn't. What do you call the next  
13 basin to the south?

14 THE DEPONENT: Do you know, sir?

15 MR. BAGLEY: Is it the Carrizozo Wash? Is  
16 the Rio Puerco the one to the north and Carrizozo  
17 the one to the south? I kind of think it is. I  
18 used to know that stuff pretty well but...

19 THE DEPONENT: I don't know the answer.

20 MR. BAGLEY: That would be my best  
21 recollection.

22 THE DEPONENT: Yeah. Okay. Immaterial, I  
23 guess.

24 Q. (By Mr. Guarino) Well, we're just trying  
25 to get your frame of reference, and I'm just trying

Page 28

1 to understand how it operated out there.

2 A. But to answer your question, from Fence  
3 Lake, which is a post office, it would have been  
4 south about maybe ten miles and probably east  
5 another two or three.

6 Q. All right. That is a good reference. And  
7 that's where you all lived?

8 A. That was the headquarters, yes.

9 Q. All right. And so you indicated that  
10 cattle sales would occur from what you produced over  
11 the year, in November or so, October or November?

12 A. Yes, uh-huh.

13 Q. And at that time, were all -- was the  
14 entire herd sort of moved off and sort of gathered  
15 up in one place?

16 A. Yes, to a place we called the shipping  
17 pens, and some shipping traps, which were located  
18 along State Highway thirty -- we used to call it 32,  
19 I don't know what they call it now, and south of  
20 Moreno Hill, or Moreno Mesa.

21 Q. And was that in the basin, or was that  
22 outside?

23 A. Outside.

24 Q. It was outside the basin.

25 A. Yeah.

Page 29

1 Q. So the entire herd, at least, was all off.  
2 You would take all of the animals off to this  
3 shipping-pen area, to sort them and separate them,  
4 and that sort of thing?

5 A. Yeah. To work the herd, yes.

6 Q. Work the herd? And they were all pushed  
7 over this area for, it sounds like, a month; is that  
8 correct?

9 A. About, correct.

10 Q. So it sounds like for November, at least,  
11 all of your animals were pushed off into this one  
12 area.

13 A. Give or take, yeah.

14 Q. Now, I want to start focusing in a little  
15 bit on the Rincon-Hondo area, that you called it,  
16 the northernmost section of your ranch --

17 A. Okay.

18 Q. -- and is an area that's a little isolated  
19 from the rest of your operation. Okay?

20 A. Okay.

21 Q. All right. So can you describe the  
22 ranching operation in the Rincon-Hondo area? First,  
23 let's do a little definition. I just say the  
24 Rincon-Hondo area. Could you describe -- do you  
25 understand what I'm talking about?



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 30..33

Page 30

1 A. I do. We called it --

2 Q. Can you tell me what that is?

3 A. Yeah, we called it the Rincon.

4 Q. The Rincon.

5 A. Just this part of the place that the Coxes

6 control, we called the Rincon. And it would

7 include -- in fact, there was a BLM permit

8 associated with it. My uncle operated it separately

9 for a while, and then I operated it separately for a

10 while, and there was a BLM permit associated only

11 with that portion of the deal. And it seemed like

12 it was 270 head or something, for the BLM permit.

13 But it would generally lay from the Rincon-Hondo

14 onto the north to the Rincon Camp, the north and the

15 west, and include this Perry Lake well, and Zuni

16 Spring, which is not a well but a spring, and what

17 we called the High Lonesome, and I don't see the

18 High Lonesome here, but it will be --

19 Q. Could you mark on the map where the High

20 Lonesome -- And what -- and you say "the High

21 Lonesome." Is that a well?

22 A. That is a water well. I'm thinking it's

23 in -- let me get where I can see better and find

24 the... I'm thinking it's probably in Section 15

25 here.

Page 31

1 Q. Could you put an X and circle it?

2 A. (Deponent complies.)

3 Q. All right. And so on Exhibit A, you put

4 an X and circled it where you believe and you recall

5 the High Lonesome well being, and that's in Section

6 15, it looks like?

7 A. Correct. I think it's on the edge of this

8 State section, Section 16.

9 Q. On the edge of it?

10 A. On the eastern edge of it. It's undeeded,

11 so it should be on Section 15.

12 Q. Okay. So that was part of your ranch.

13 A. Correct.

14 Q. And that was part of what we're calling

15 the Rincon-Hondo area.

16 A. Correct, yeah.

17 Q. Now, you indicated that the

18 Rincon-Hondo -- And on all these, you are

19 referencing map A, so I'm going to -- my question is

20 in context with map A -- Exhibit A.

21 You indicated that the Rincon-Hondo area

22 included the Rincon Camp well, the Amado well, the

23 Rincon-Hondo well, Zuni Springs, the Perry Lake

24 well, and this other well called the High Lonesome.

25 A. Yes.

Page 32

1 Q. Is that correct?

2 A. Yes.

3 Q. Did I just describe the Rincon-Hondo area

4 accurately?

5 A. Yes.

6 Q. Okay. So this area of the ranch was

7 supported by six or seven water sources; is that

8 correct?

9 A. Six. Yes.

10 Q. Six.

11 A. Six permanent, yes.

12 Q. Six permanent water sources. Okay.

13 So talk to me, please, and describe the

14 operation of the ranch in the Rincon-Hondo area, as

15 opposed to the rest of the ranch --

16 A. Okay.

17 Q. -- or the other sections.

18 A. We would run about 150 to 200 head of

19 cattle in here, depending on weather, grass. So

20 when we got through shipping in the fall, we would

21 bring 150 to 200 head of cows over into this lower

22 country, and we would kick them from Rincon-Hondo

23 down to Rincon Camp.

24 Q. Were you actively moving the herd in

25 different areas, once you put them in the area?

Page 33

1 A. When we got them there, no, we -- there

2 were two pastures there in that canyon, and we would

3 separate them, and we would take care of them there

4 until spring. Actually, there were three pastures,

5 weren't there? We would take care of them until

6 spring, we would gather and brand those calves. And

7 when it started raining, then we would gather and

8 come out to the upper country from that lower

9 country.

10 Q. When you say -- hold on for just a second.

11 Let me catch up a little.

12 A. Okay.

13 Q. So you described that after the sales in

14 November, you would bring about 150 to 200 cows into

15 this Rincon area, and you indicated -- I think you

16 indicated that included the area associated with

17 Rincon Camp well, the Amado well, and the

18 Rincon-Hondo windmill well; is that correct?

19 A. Yes.

20 Q. So you would get them in there in, say,

21 December?

22 A. Yeah.

23 Q. And let them roam wherever they roam in

24 there.

25 A. Well, we would sort them into those three



**UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.**

**Tom Cox on 05/18/2016**

**Pages 34..37**

**Page 34**

1 separate pastures.  
 2 Q. Oh, I see.  
 3 A. Once we sorted them into the -- or  
 4 separated them into those three separate pastures.  
 5 Q. Okay. Where were the pastures?  
 6 A. Very well.  
 7 Q. Can you specify on this map --  
 8 A. Yes.  
 9 Q. -- what sections -- I'm going to have --  
 10 A. You see Rincon Camp there, that well?  
 11 Q. I do.  
 12 A. Section 4 is the -- it's a trap of its  
 13 own, where we might keep bulls or horses. Actually,  
 14 it's a horse pasture. So from there back up to,  
 15 say, all of Section 9 is a pasture. There was a  
 16 fence going due south from Rincon Camp and tied into  
 17 a mesa there. Then at the Amado well, if you can  
 18 read that map, it's real narrow right there in the  
 19 canyon. There was a fence there, that fenced that  
 20 canyon, upper from lower. Then at Rincon-Hondo  
 21 windmill, Section 19, I believe, is fenced separate.  
 22 There's also a little trap at the Rincon-Hondo well,  
 23 and I think it's about 80 acres. So from  
 24 Rincon-Hondo windmill down to Amado is a pasture;  
 25 from Amado down to Rincon Camp is a pasture; and

**Page 35**

1 then there's a pasture from Rincon Camp to the south  
 2 and west.  
 3 Q. Great. Okay. I think I understand.  
 4 For each one of these pastures, these three  
 5 pastures that you just described, did each one of  
 6 these wells support the cows in each one of those  
 7 pastures?  
 8 A. They would share that duty, yes. The  
 9 Rincon-Hondo well and the Amado well, for example,  
 10 would water -- the cattle would water one place or  
 11 the other.  
 12 Q. One place or the other.  
 13 A. And the way they actually did it was they  
 14 would move. They would water here (indicating) for  
 15 two or three days, then move to the other well and  
 16 water for two or three days. From the Amado  
 17 windmill down to Rincon Camp, then they would --  
 18 And there's some dirt tanks that were sometimes  
 19 full, sometimes empty, that would service those  
 20 cattle's water needs, as well. But at Rincon Camp,  
 21 that was the only water for Section 4 and Section 9.  
 22 Q. Okay. And so you would break this 150 to  
 23 200 head of cows up into those three pastures.  
 24 A. Yes.  
 25 Q. Equally?

**Page 36**

1 A. Depending on --  
 2 Q. Conditions?  
 3 A. Depending on available forage. So  
 4 probably 40/40/20, 20 being in Section 9.  
 5 Q. Forty percent and 40 percent and 20  
 6 percent?  
 7 A. Yes.  
 8 Q. And the 20 percent being where?  
 9 A. Section 9.  
 10 Q. Twenty percent being in Section 9.  
 11 So then otherwise, generally speaking, this 150  
 12 to 200 herd cows would be split 40 percent/  
 13 40 percent between the two sets of pastures, and  
 14 supported between the two wells, the Amado well --  
 15 the Amado windmill and the Rincon-Hondo windmill.  
 16 A. Forty percent there and then 40 percent  
 17 down to Rincon Camp, yes.  
 18 Q. You say "Rincon Camp." Rincon Camp is up  
 19 in the north --  
 20 A. Northwest.  
 21 Q. In the northwest.  
 22 And tell me about the Rincon-Hondo well,  
 23 itself. What was supported, of that operation, down  
 24 by the Rincon-Hondo well? Just so we're clear,  
 25 there's the Rincon Camp well to the north and the

**Page 37**

1 west, there's the Amado windmill in the middle, and  
 2 then there's the Rincon-Hondo well in the southeast.  
 3 A. Okay.  
 4 Q. Okay.  
 5 A. Yeah, about 40 percent of that total  
 6 number that you've got there would have watered at  
 7 Rincon-Hondo in the winter.  
 8 Q. In the winter.  
 9 A. Then when we branded --  
 10 Q. Define winter for me.  
 11 A. Oh, okay. We put them in in December,  
 12 until it began to rain, summer rains, which would  
 13 generally start about the first of July.  
 14 Q. First of July?  
 15 A. Yes. At that point we would brand the  
 16 calves and move the cattle up to the upper, higher  
 17 elevations.  
 18 Q. All of them?  
 19 A. Yes. We would take all the cattle out of  
 20 that and let it grow grass for the summer.  
 21 All right. So at the Rincon-Hondo well, then  
 22 it would -- also summer cattle, the way it's fenced,  
 23 they would water from there to Zuni Spring over to  
 24 this High Lonesome well and Perry Lake well.  
 25 Q. Okay. So you -- is the Rincon-Hondo area



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 38..41

Page 38

1 and well part of the summer range?  
 2 A. Yes. The edge of it, yes.  
 3 Q. The edge of the summer range?  
 4 A. Yes.  
 5 Q. But that well is also -- that herd is also  
 6 moving between the Rincon-Hondo, Zuni Springs and  
 7 the Perry Lake?  
 8 A. And High Lonesome.  
 9 Q. And the High Lonesome.  
 10 A. Yes.  
 11 Q. So were you using the Perry Lake well in  
 12 the summer?  
 13 A. In the summer, yes.  
 14 Q. So that would be one, two, three, four,  
 15 five, six. Okay, six. So you got the winter in the  
 16 canyon, itself, it sounds like.  
 17 A. Yes.  
 18 Q. And then about June 1st you are moving  
 19 everything up to the summer range, the higher range,  
 20 supported by the Rincon, the Zuni Spring, the Perry  
 21 Lake, and the High Lonesome.  
 22 A. Yes.  
 23 Q. Okay. And when you -- were they pastured  
 24 off like they were down low?  
 25 A. No. There was some -- that Section 16 was

Page 39

1 a pasture to itself, and we saved it for when we  
 2 gathered in the fall. Otherwise, they pretty well  
 3 had the ability to roam over all that territory.  
 4 Q. Okay. We're going to stop with Exhibit A  
 5 and go to Exhibit B, which is a little bit more  
 6 close in.  
 7 A. Do I need Sharpie still?  
 8 Q. Yeah. Sharpies are great.  
 9 A. Crayons.  
 10 Q. I go through lawyer jokes.  
 11 A. (Laughter.)  
 12 (Exhibit B marked.)  
 13 Q. Handing you what's been marked as  
 14 Exhibit B.  
 15 MR. GUARINO: (Handing document to  
 16 Mr. Bagley and Mr. Fredrickson.)  
 17 Q. (By Mr. Guarino) Okay. So I've handed you  
 18 what's been marked as Exhibit B, Mr. Cox. Can you  
 19 tell me what you are looking at here?  
 20 A. Okay. The same territory, just -- that we  
 21 were discussing here in Exhibit A, in the Zuni  
 22 Basin, and this portion of the ranch that we've been  
 23 talking about from Rincon-Hondo down to Rincon Camp  
 24 and over to the Perry Lake well.  
 25 Q. You marked on Exhibit A where the High

Page 40

1 Lonesome well is. Could you mark on Exhibit B where  
 2 the High Lonesome well is, to the best of your  
 3 recollection?  
 4 A. Yeah. Let's see.  
 5 Q. That map doesn't have sections identified  
 6 on it.  
 7 A. I realize that. I'm... It may be this  
 8 Perry Lake well, is maybe what we called High  
 9 Lonesome, perhaps. It may be Perry Lake well.  
 10 There is another well, if that's the case, in Perry  
 11 Canyon, which will be on to the south and west, but  
 12 I don't know where it's at.  
 13 Q. Can you look at Exhibit A and try to... I  
 14 see the Hinkson High Lonesome well.  
 15 A. Okay, but we did not own it. Some people  
 16 name Hinkson did. Okay, I'm corrected. I'm  
 17 thinking now this Perry Lake well is what I'm  
 18 calling High Lonesome, the way it looks on this map.  
 19 There is another well on to the south and west of  
 20 there, and I don't see it marked on here, but it  
 21 will be in --  
 22 Q. Perry Canyon?  
 23 A. -- in Perry -- what we call Perry Canyon.  
 24 I don't see a Perry Canyon on this. They may have a  
 25 different name for it. But it looks to me like this

Page 41

1 Perry Lake well is what I call High Lonesome, yes.  
 2 Q. But there's still a sixth well in Perry  
 3 Canyon that you relied on?  
 4 A. In what we called Perry Canyon. And it is  
 5 shared with the neighbor, and at that time they were  
 6 named Estradas.  
 7 Q. So you believed that the well labeled  
 8 Perry Lake well is actually what you used to call  
 9 the High Lonesome well?  
 10 A. Yes.  
 11 Q. And you believe that what you called the  
 12 Perry Lake well, or the Perry Canyon well, is in  
 13 Perry Canyon, itself?  
 14 A. Yes.  
 15 Q. Or is it up high, above Perry Canyon?  
 16 A. It's down low.  
 17 Q. It's down low in Perry Canyon?  
 18 A. Yes.  
 19 Q. And we don't know exactly where that is,  
 20 and it's not marked on the map.  
 21 A. Correct.  
 22 Q. But was this -- but were -- is it still  
 23 true that these three wells were part of your  
 24 Rincon-Hondo section of the ranch and relied upon in  
 25 the summer to support your herd?



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 42..45

Page 42

1 A. Yes.

2 Q. Okay. And we were talking about pastures,

3 and you described, in the winter, it sounds like the

4 herd was more controlled between pastures, but in

5 the summer, it was more open range, and they would

6 range this entire area?

7 A. Yeah.

8 Q. And they would water at -- in the summer,

9 they would water at the Rincon-Hondo well, at the

10 Zuni Spring well, at the Perry -- at the High

11 Lonesome well, labeled Perry Lake, and at the Perry

12 Canyon, so four wells.

13 A. Yes.

14 Q. And were there -- did you have to move

15 around, or they would just go wherever the forage

16 was?

17 A. We didn't move them, until we gathered for

18 the fall.

19 Q. It was just open range out there?

20 A. Yeah.

21 Q. Okay. At each one of these facilities --

22 the Rincon-Hondo, the Zuni Springs, the Perry

23 Lake and the -- I'm sorry, the Perry Canyon and the

24 High Lonesome, was there -- were there watering

25 facilities for the cows to take advantage of?

Page 43

1 A. Yes. We had storage tanks and drinking

2 tubs at Rincon-Hondo, at the Perry Lake well. The

3 Perry Canyon well just had drinking tubs because the

4 water -- we couldn't store it, it would sour; we had

5 to keep it fresh. And the Zuni Spring, there were

6 improvements a long time ago but nothing -- we

7 didn't have any drinkers there at the time.

8 Q. But the water would pool up so that the --

9 A. Yes. It wasn't very strong, but it just

10 pooled in the low places, yes.

11 Q. Okay. During the summer, during the

12 summer forage time, were the fences or gates closed,

13 to keep them from going up into the Amado -- up the

14 canyon, towards the Amado windmill and the Rincon

15 Camp windmill?

16 A. They were.

17 Q. So the cows were, in essence, forced into

18 other forage areas.

19 A. Yes.

20 Q. And they would roam wherever they would

21 roam.

22 A. Yes.

23 Q. Across, it looks like, more than one, two,

24 three, four, five, six, seven -- yeah, more than 15

25 sections of land.

Page 44

1 A. Yes.

2 Q. Is that -- I want to be accurate. Is

3 that correct?

4 A. Yes.

5 Q. Let's talk more specifically about the

6 Rincon-Hondo well. All right?

7 A. All right.

8 Q. I'm going to show you a couple of

9 pictures. We'll mark this Exhibit C.

10 MR. GUARINO: (Handing document to

11 Mr. Bagley and Mr. Fredrickson.)

12 (Exhibit C marked.)

13 Q. I hand you what's been identified as

14 Exhibit C. Do you recognize that?

15 A. I do.

16 Q. Can you tell me what that is?

17 A. That is the Rincon-Hondo well and windmill

18 tower.

19 Q. And -- Go ahead. Do you see anything

20 else in it?

21 A. That pump jack there is a Jenson 100.

22 Q. Did you put that pump jack in?

23 A. I did, yes.

24 Q. Is that how you recognize it?

25 A. I know it, yeah.

Page 45

1 Q. Okay. I'm going to hand you what will be

2 marked as Exhibit D.

3 (Exhibit D marked.)

4 MR. GUARINO: (Handing document to

5 Mr. Bagley and Mr. Fredrickson.)

6 Q. (By Mr. Guarino) Do you recognize that

7 photograph?

8 A. Yes, I do.

9 Q. Can you tell me what that is?

10 A. That's an aerial view of the Rincon-Hondo

11 well and corrals, fence.

12 Q. Let's go back to C for a second, the

13 picture. Is that well in the condition -- You can

14 have a seat. Is that well in the condition that you

15 recall it, or has it changed much from its operation

16 days, when you were running a ranch?

17 A. No, that's the way I remember it, is the

18 storage tank, and this is a float box here.

19 Q. What's a float box?

20 A. It takes -- it's got a float valve in it.

21 It is between the drinking tub, which is where the

22 cattle drink the water, and the storage tank where

23 we stored water, and it would -- was leveled with

24 the drinking tub, itself, so that it didn't freeze

25 in the winter.



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 46..49

Page 46

1 Q. Talk to me about that. So I can see the  
2 storage tank; I can see the float tank.

3 A. Float box. Inside that -- and it's just a  
4 steel ring about two feet or three feet in diameter.  
5 Inside is a float valve and a float pan. And what  
6 its purpose is so that it doesn't freeze in the  
7 winter, the float doesn't freeze in the winter. But  
8 it's leveled with the drinking tub, so it brings  
9 water out of the storage tank. Cattle drink out of  
10 the tub and the lower the level of the tub. The  
11 float box then, its level is lowered because the  
12 water has been harvested. And the float opens and  
13 brings water in from the storage tank. And whenever  
14 everything is level and full again, the float shuts  
15 off, the float valve shuts off.

16 Q. In the winter, does that -- does the float  
17 box freeze?

18 A. It does not. It's designed so that it's  
19 underground.

20 Q. It's underground.

21 A. The water level. The float valve's water  
22 level is underground.

23 Q. And the top may freeze, but the bottom is  
24 still free of ice?

25 A. The top may freeze, yes.

Page 47

1 Q. The top may freeze but the bottom is free  
2 of ice.

3 A. That is correct. And it will have a lid  
4 on it. When it's right, it will have a lid so the  
5 cattle can't break something.

6 Q. Did you have a lid on it when you were  
7 operating your ranch there?

8 A. Yes.

9 Q. So cattle didn't drink out of that tank?

10 A. They did not.

11 Q. They drank out of a trough.

12 A. That's correct.

13 Q. And so you had -- does that have a  
14 continuous -- did that -- so let me ask you this:  
15 Was there any sort of continuous flow going through  
16 the system to keep the ice free, or did the float  
17 box take care of that?

18 A. The float box took care of that. It was  
19 on demand.

20 Q. It was on demand?

21 A. Yes.

22 Q. Okay. Did each one of the wells that you  
23 indicated on Exhibit B have a similar operation or  
24 similar system of watering?

25 A. The Perry Lake well did. The Rincon Camp

Page 48

1 well did. The Amado camp, it just had a drinker.

2 Q. What is that?

3 A. It's just a trough.

4 Q. Just a trough. And you shut it down in  
5 the winter so it wouldn't freeze?

6 A. No. It flowed over. When the well  
7 pumped, it pumped directly into the drinking tub.  
8 There was no storage, so that it cleared its own ice  
9 just through movement of water.

10 Q. There was no float, there was no float box  
11 or anything like that?

12 A. That is correct.

13 Q. So it was just continuous flow; is that  
14 correct?

15 A. Yes.

16 Q. But that's different from the Rincon-Hondo  
17 well; right?

18 A. The Rincon-Hondo stored water, and then  
19 this float box and such protected it from -- not  
20 only from the ice but from the cattle breaking the  
21 float so that you lost your storage.

22 Q. So you would -- And it was also covered.  
23 The box was also covered to keep the cows from  
24 drinking in it?

25 A. That is correct.

Page 49

1 Q. Did the storage tank ever freeze up, or  
2 how is that not frozen?

3 A. We had to keep it at least a third full  
4 or, yes, it would freeze. And, in fact, it did  
5 freeze. I had to repair it. The ice would push the  
6 steel sides away, and away from the cement. So if  
7 we didn't keep it pretty full -- if we kept it at  
8 least a third full, then the ice stayed on the top,  
9 and it could move up and down. If we let it get  
10 6 inches from -- just 6 inches of water, it would  
11 push the steel and break the floor.

12 Q. It would freeze solid and bust out.

13 A. Correct.

14 Q. So you would keep a lot of water in that  
15 storage tank, to allow the freezing to go on on top  
16 but keep the ice free on the bottom.

17 A. Exactly.

18 Q. And you would pull water into your float  
19 box from the bottom of your storage tank.

20 A. Yes. Everything was underground, yes.

21 Q. Great.

22 So can you explain to me just -- I think the  
23 last piece of the puzzle I'd like for you to explain  
24 is, so the water is pumped from underground by the  
25 windmill, and that's set to pump whenever the wind



## UNITED STATES OF AMERICA, ET AL. -vs- A &amp; R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 50..53

Page 50

1 blows.

2 A. Yes.

3 Q. But there would come a point when even

4 that pumping would be stopped, once the storage tank

5 got a certain level; is that right?

6 A. Yes.

7 Q. How would that work?

8 A. Well, if you look over here on the edge of

9 the storage tank, on the left-hand side of this

10 picture, there's a pipe sticking out. That's an

11 overflow. Rather than just have the well pump and

12 pump and pump when the demand -- say in the winter,

13 the demand is down for consumption, we would shut

14 the windmill off, and we would come along, check the

15 waters every other day, every third day, especially

16 when we were breaking ice. If the water was down a

17 couple of feet, then would we would turn the

18 windmill on and catch it back up. In the

19 summertime, though, we usually left the windmill on

20 because the demands were up, and so rather than run

21 out of water with the cattle, we would leave the

22 windmill on. In the month of June -- You see that

23 pump jack there. In the month of June, the wind

24 barely ever blew; therefore, it barely ever pumped

25 water. But demand was high, so we had a pump jack

Page 51

1 and a pump motor that we would operate to bring

2 water.

3 Q. To fill up the water?

4 A. Yes.

5 Q. Great.

6 Just to be clear, you never kept any sort of

7 metering records on how much water you actually

8 pumped in and pumped out?

9 A. No.

10 Q. I haven't run into a rancher who has.

11 A. (Laughter.)

12 Q. Okay. You were talking a little bit about

13 maintenance on that well and when -- and how when,

14 say, the storage tank or the float box was damaged,

15 you would have to repair it; is that correct?

16 A. Yes.

17 Q. Did you ever conduct any sort of cleaning

18 exercises at the trough or at the storage tank or at

19 the float box?

20 A. The storage tank, I let the water get low

21 one time, and it ruined the floor, and so I did

22 clean it out and pour a new floor in.

23 Q. A new concrete floor?

24 A. A new cement floor, correct.

25 Q. What about the trough? Did you ever --

Page 52

1 A. The trough? No.

2 Q. Never scrubbed that down?

3 A. I never recall having any trouble with it.

4 Q. Did you ever have to clean it to keep

5 algae or anything like that from building up in it,

6 or was there enough cattle drinking and flow going

7 on there?

8 A. I never cleaned it.

9 Q. Okay. Did you engage in any sort of

10 cleaning practices with respect to any of the other

11 wells -- the Perry well, the Perry Canyon well, the

12 High Lonesome well?

13 A. No. What we called the Perry well, the

14 water was real "gypee."

15 Q. What does that mean? Gypsum?

16 A. Nearly salty, yeah.

17 Q. Okay. Mineralized?

18 A. Mineralized. We could not store the

19 water. Someone, years ago, had built a storage tank

20 and destroyed it. And I asked my dad why, and he

21 said because if the water was pumped up and stored,

22 it would get stale and the cattle would not drink

23 it. So we just put it in a drinking tub, and the

24 Amado well may have been the same reason. Put it

25 straight in the drinking tub and therefore it was

Page 53

1 always fresh. Both of those were very shallow wells

2 and so they pumped. We didn't have a pump jack;

3 they pumped real easy.

4 Q. But you didn't engage in any sort of

5 cleaning and dumping and recycling of water

6 yourself, it was just the trough would fill up and

7 the cows would drink?

8 A. That's correct.

9 Q. I want to show you what I'm going to mark

10 as Exhibit...

11 MR. GUARINO: What are we? E?

12 THE REPORTER: Yes.

13 (Exhibit E marked.)

14 Q. (By Mr. Guarino) Okay. That's it. Take a

15 look at that, and I'll pass out copies to my

16 colleagues.

17 Do you recognize this document that I've marked

18 as Exhibit E?

19 A. I do.

20 Q. Can you tell me what it is?

21 A. This is a declaration of -- at the time,

22 this was an undeclared water basin, so this was the

23 form that the state engineer offered us to declare

24 our water use, as sort of an affidavit. And the

25 name of the declarant, Tommy Cox, that would be my



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.  
Tom Cox on 05/18/2016

Page 54

1 father. That's his address there at the bottom.  
 2 It's my signature.  
 3 Q. Oh, your father's name was Tommy, as well?  
 4 A. Yes.  
 5 Q. This is going to be confusing. Let me  
 6 just clarify. We've been talking for a little while  
 7 now. At any time that we've talked about Tommy,  
 8 I've been referring to you. I think we've referred  
 9 to your father as your father. I don't think we've  
 10 named him otherwise yet. I just don't want there to  
 11 be any confusion on the record. Is that clear?  
 12 A. Yes.  
 13 Q. Is that accurate to what we've described?  
 14 A. Uh-huh.  
 15 Q. So in this well declaration, Exhibit E,  
 16 Tommy is your father, at the top is the owner.  
 17 Well, it says Tommy. It says, "Name of declarant:  
 18 Tommy Cox."  
 19 A. Uh-huh.  
 20 Q. That's referring to your father, though?  
 21 A. As I recall, yes.  
 22 Q. But this is your signature at the bottom?  
 23 A. That's correct.  
 24 Q. But you signed it as a declarant to the  
 25 state engineer.

Page 55

1 A. Well, it must have been me declaring it.  
 2 Q. That's what I was trying to figure out.  
 3 Let's put that aside for just a second.  
 4 This has to do with the Rincon-Hondo well;  
 5 right?  
 6 A. Yes.  
 7 Q. How do we know that?  
 8 A. Hmm. Well, you gave it to me.  
 9 (Laughter.)  
 10 Q. Could you look at paragraph 3?  
 11 A. Paragraph 3. Oh, the legal description  
 12 here?  
 13 Q. It says, "Describe well location under one  
 14 of the following subheadings." And then you wrote  
 15 in?  
 16 A. Section 19, 5 North, 18 West.  
 17 Q. Is that where the Rincon-Hondo well is?  
 18 A. Yes.  
 19 Q. And you also wrote in there, it looks  
 20 like, "Rincon Hondo," right, above Section 19?  
 21 A. I did.  
 22 Q. And why would you write something like  
 23 that in?  
 24 A. Oh, I do, I see it there. For one thing,  
 25 that's what we called it, for our purposes, we could

Page 56

1 keep track of it, and I don't know, just as an  
 2 identifier.  
 3 Q. In writing down there "Rincon Hondo," were  
 4 you trying to reference the range area of the cattle  
 5 grazing that went on, that was supported by the well  
 6 or anything like that?  
 7 A. That's what we called the well.  
 8 Q. That's just what you called the well?  
 9 A. Yes.  
 10 Q. Okay. At the time, it was used for  
 11 livestock watering, as indicated by paragraph 5.  
 12 There was no domestic component or house component  
 13 to that well? You weren't supporting a house with  
 14 that?  
 15 A. It was strictly livestock, yes.  
 16 Q. Okay. At paragraph 8, it reads, "This  
 17 well is equipped with a windmill and auxillary pump  
 18 jack and not does pump the full capacity the  
 19 year-round."  
 20 Can you tell me what that means, "does not pump  
 21 the full capacity the year-round"?  
 22 A. The water production was -- well, first  
 23 off, we probably didn't have a big-enough pump in it  
 24 to pull full capacity. I don't know that we ever  
 25 knew exactly how much it pumped. But we didn't pump

Page 57

1 it 24 hours a day, either. But like I say, we would  
 2 turn it off whenever the storage tank got full  
 3 rather than waste the water. We would turn it off,  
 4 and so it might produce water three days out of the  
 5 week or -- you know, I don't know.  
 6 Q. Okay. But what I'm understanding now is,  
 7 you manually turned that windmill on and off when  
 8 you needed it.  
 9 A. That's true.  
 10 Q. And was there a time of the year generally  
 11 when that well -- we're talking about the  
 12 Rincon-Hondo -- when that well would just be sort of  
 13 kind of off the grid, off the ranch grid as not in  
 14 use, so that you wouldn't have to go out there and  
 15 check it, or were you checking your wells fairly  
 16 regularly?  
 17 A. We checked them regularly. However, when  
 18 we would gather to ship in the fall, when the  
 19 storage tank got full, we would shut it off.  
 20 Q. And you described earlier that that  
 21 gathering for the fall was basically November, it  
 22 sounds like; is that right?  
 23 A. Yeah, yeah.  
 24 Q. Now I'll have you take a look at --  
 25 (Exhibit F marked.)



## UNITED STATES OF AMERICA, ET AL. -vs- A &amp; R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 62..65

Page 62	Page 64
<p>1 follow-ups if Mr. Fredrickson has some. I don't</p> <p>2 think Mr. Bagley has any additional questions.</p> <p>3 MR. BAGLEY: Mr. Cox, I found it very</p> <p>4 interesting, and I think Mr. Guarino has it well</p> <p>5 covered. There's no questions from the State.</p> <p>6 MR. GUARINO: So Mr. Fredrickson might</p> <p>7 have some questions for you, so I'll turn it over to</p> <p>8 him.</p> <p>9 MR. FREDRICKSON: Thank you.</p> <p>10 EXAMINATION</p> <p>11 BY MR. FREDRICKSON:</p> <p>12 Q. Mr. Cox, just for some clarification, you</p> <p>13 said that there were three pasture areas in what you</p> <p>14 called the Rincon.</p> <p>15 A. Uh-huh.</p> <p>16 Q. One kind of centered around the Rincon</p> <p>17 Camp, or Donnie's Camp. We know it as Donnie's</p> <p>18 Camp.</p> <p>19 A. Uh-huh.</p> <p>20 Q. And one in the Amado windmill area and</p> <p>21 then one around the Rincon-Hondo windmill; is that</p> <p>22 correct?</p> <p>23 A. Amado would split a pasture. It would</p> <p>24 be -- there was a fence that split the north pasture</p> <p>25 from the south pasture, so to speak. So the</p>	<p>1 looking at. It's this one here (indicating) I'm</p> <p>2 referring to.</p> <p>3 A. Yeah, I see it there. It's in it that</p> <p>4 little trap, what I call the little trap.</p> <p>5 Q. So was that plumbed to the system, part of</p> <p>6 the drinker system?</p> <p>7 A. The float box, yeah, serviced both --</p> <p>8 everything was leveled. All three of those devices</p> <p>9 were level. So the two drinking tubs -- I forgot</p> <p>10 about the one outside the fence. But the two</p> <p>11 drinking tubs and float box are level.</p> <p>12 Q. Right. And that also has a concrete</p> <p>13 bottom in it?</p> <p>14 A. Yeah.</p> <p>15 Q. And you described the -- that the</p> <p>16 regulator tank -- I call it the regulator tank --</p> <p>17 the float box --</p> <p>18 A. Yeah, what I call the float box, yeah.</p> <p>19 Q. -- and that it really didn't ice up full</p> <p>20 in the wintertime because part of it was below</p> <p>21 ground.</p> <p>22 A. Yes.</p> <p>23 Q. What about the ice developing in the other</p> <p>24 two drinkers, the one inside and the one outside the</p> <p>25 corral?</p>
Page 63	Page 65
<p>1 southern pasture being the Rincon-Hondo country, the</p> <p>2 northern part would be the Rincon or Donnie's camp,</p> <p>3 what you called Donnie's Camp. We called it Rincon.</p> <p>4 Q. And you also differentiated between what</p> <p>5 you called the high country and the low country?</p> <p>6 A. Yeah.</p> <p>7 Q. So the high country being on top of the</p> <p>8 mesas?</p> <p>9 A. Yeah.</p> <p>10 Q. And the low country being the canyon?</p> <p>11 A. Yes.</p> <p>12 Q. Is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. On Exhibit D -- that's this one</p> <p>15 here (indicating) --</p> <p>16 A. Okay.</p> <p>17 Q. -- you can see the main storage tank and</p> <p>18 the regulator tank just outside it, and then kind of</p> <p>19 in the center of the right-hand side of the corral</p> <p>20 you see that main drinker?</p> <p>21 A. Yeah.</p> <p>22 Q. There's another drinker outside the corral</p> <p>23 to the right, that's --</p> <p>24 A. Or to my left?</p> <p>25 Q. Well, depends on which orientation you are</p>	<p>1 A. Well, they would freeze full over, and we</p> <p>2 would have to break the ice and throw it out.</p> <p>3 Q. So tell me a little more about that. Is</p> <p>4 that something that occurred as early as -- what? --</p> <p>5 November and then through early April?</p> <p>6 A. Generally, the middle of December through</p> <p>7 to about the first of March, actually. We would</p> <p>8 come by every other day. We would break the ice and</p> <p>9 throw it all out of the tub; and then the next day,</p> <p>10 the ice wouldn't be so thick and the cattle could</p> <p>11 get a drink. Not first thing in the morning, but by</p> <p>12 10 or 11, the sun would melt enough ice that they</p> <p>13 could get a drink.</p> <p>14 Q. And so was the regulator -- did the float</p> <p>15 box allow water to overflow? How -- Let me ask it</p> <p>16 this way: How high was -- did you maintain the</p> <p>17 water level in the drinkers, themselves, by setting</p> <p>18 the float in the float box? Was it right to the</p> <p>19 top?</p> <p>20 A. The float -- the drinking tubs would be</p> <p>21 within 3 inches of the top of the rim. And the</p> <p>22 float box, it would be -- it was kind of deep, as I</p> <p>23 recall, so it had to be far enough down in the ring</p> <p>24 that the lid didn't interfere with the float pan. I</p> <p>25 don't remember, but it seemed like it's down about</p>



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 66..69

Page 66

1 a foot or so from the top, when it was adjusted  
 2 right.  
 3 Q. So then the water would freeze in the  
 4 drinkers, themselves, both inside and outside, and  
 5 during the winter you would have to go in and break  
 6 that up with a sledgehammer or a hatchet or  
 7 something?  
 8 A. Axe.  
 9 Q. With an axe?  
 10 A. Yeah.  
 11 Q. And then you threw that ice out?  
 12 A. Yes, we did.  
 13 Q. Every other day you would check that, to  
 14 make sure it was free so the cattle could get to the  
 15 water?  
 16 A. Yes.  
 17 Q. Okay. And so I'm a little unclear on how  
 18 many cattle we had around this well and when. I  
 19 heard you tell us that about 40 percent of the herd  
 20 was in the Rincon-Hondo area -- or the Rincon-Hondo  
 21 well area in the winter starting around December  
 22 through July?  
 23 A. Yes.  
 24 Q. And that's separate from the animals that  
 25 were watered down by the Amado windmill?

Page 67

1 A. Yes.  
 2 Q. And then in the rest of the summer, the  
 3 cattle could range throughout the entire region --  
 4 A. The rest --  
 5 Q. -- the entire herd?  
 6 A. The rest of that property from  
 7 Rincon-Hondo back to the south and west, they would.  
 8 Q. So they were free to go wherever the  
 9 pasture grass was good and where water was available  
 10 to them.  
 11 A. Yes.  
 12 Q. Okay. Did you do anything with salt licks  
 13 or anything of that nature, to entice them to use  
 14 one part of the range versus another?  
 15 A. No. If we had -- if we had a water  
 16 source, we had salt at that source full-time, free  
 17 choice.  
 18 Q. I see. And the water, of course, was  
 19 free-choice water, as well.  
 20 A. Yes.  
 21 Q. They would drink whatever they needed.  
 22 A. Yeah.  
 23 Q. And what is your experience with them in  
 24 terms of drinking water? Did they drink more in the  
 25 summertime, in the heat?

Page 68

1 A. Yes, they do. You know, a cow and a calf  
 2 will probably drink -- in the summertime, we expect  
 3 her to have a calf at her side. I expect her to  
 4 drink 30 gallons or so apiece, the pair. We have  
 5 to -- in the summertime, evaporation increases as  
 6 well, which makes it appear to be a higher  
 7 consumption. But anyway, yes, they do. They drink  
 8 more water in the summer than they do in the winter.  
 9 Consumption is probably three times. So if you are  
 10 producing water, I guess the production would have  
 11 to be about three times in the summers as opposed to  
 12 the winter.  
 13 Q. And during the winter, or at least  
 14 December through early July, when you said about  
 15 40 percent was in that -- was drinking off this  
 16 well, when you went out to check to make sure that  
 17 the drinkers weren't iced over, you would also check  
 18 the level of water in the storage tank, to make sure  
 19 it was sufficient?  
 20 A. Yes.  
 21 Q. And so would you -- if the wind was  
 22 blowing, I assume that you opened up the tail and  
 23 allowed the windmill to pump, or you would simply  
 24 run that mode of operating out there that the pump  
 25 jack -- that ran the pump jack, and you would fill

Page 69

1 up that tank at that point?  
 2 A. Yes.  
 3 Q. Okay. So it wasn't just -- you just  
 4 didn't turn off the windmill and walk away for the  
 5 whole winter; you made sure that there was always  
 6 water to supply those drinkers.  
 7 A. That's correct, yes.  
 8 Q. Okay. And you described the pasture that  
 9 was being -- that associated the Rincon-Hondo  
 10 windmill as being to the -- up that canyon to the  
 11 south; in other words, up the Rincon-Hondo Canyon?  
 12 A. Uh-huh.  
 13 Q. Okay. And were there any declarations on  
 14 the Amado windmill or the Rincon Camp?  
 15 A. Not to my knowledge. At the time of this  
 16 declaration that is here in your exhibits, my uncle,  
 17 who --  
 18 Q. Donnie?  
 19 A. Donnie, and what you called Donnie's Camp,  
 20 that's my Uncle Donnie. He was operating separate.  
 21 And to my knowledge, he did not make any  
 22 declarations on those wells that were under his  
 23 control at that time.  
 24 Q. So your father Tommy and your Uncle Donnie  
 25 had adjoining grazing allotments?



UNITED STATES OF AMERICA, ET AL. -vs- A & R PRODUCTIONS, ET AL.

Tom Cox on 05/18/2016

Pages 74..77

Page 74

1 Q. Are you familiar -- Forget it. I'm good.  
 2 MR. GUARINO: That's all my questions.  
 3 MR. BAGLEY: I just have one quick  
 4 follow-up, if that's okay.  
 5 EXAMINATION  
 6 BY MR. BAGLEY:  
 7 Q. Mr. Cox, I think you made this clear, but  
 8 I just wanted to make sure I got this straight in my  
 9 own head.  
 10 You said a cow and calf in the summer would  
 11 drink 30 gallons. That was for the pair; right?  
 12 A. Yes. That's an estimate, yes.  
 13 Q. And that's approximately three times what  
 14 they were drink in the wintertime?  
 15 A. Yeah, I'm guessing.  
 16 Q. Okay. I just wanted to clarify that and  
 17 make sure I understood it correctly.  
 18 And that's your estimate; correct?  
 19 A. That is. And there are -- there are -- I  
 20 can't think of the word. Give me a second here.  
 21 There are charts you can go to for that information.  
 22 There's somebody that's done the study and said, you  
 23 know, a cow and a calf drink X-many gallons.  
 24 Q. Oh, I understand. And that's helpful.  
 25 These aren't based on your own measurements.

Page 75

1 A. No, no, that's -- I'm guessing. They  
 2 might drink 50. I don't know.  
 3 MR. FREDRICKSON: One more follow-up, if I  
 4 could.  
 5 FURTHER EXAMINATION  
 6 BY MR. FREDRICKSON:  
 7 Q. The drinker outside, maybe you recall the  
 8 construction of these two drinkers, the large  
 9 drinker in the center of the corral --  
 10 A. Yes.  
 11 Q. -- and a slightly smaller drinker outside  
 12 the corral.  
 13 A. Uh-huh.  
 14 Q. Were they constructed the same, or do you  
 15 recall how they were constructed? And do you recall  
 16 if they ever developed any leaks?  
 17 A. As I recall, they were both steel ring  
 18 drinkers with a cement floor. They may have been  
 19 different sizes. And I don't remember any leaks,  
 20 no. I don't.  
 21 Q. And you did say that you had to repair the  
 22 concrete bottom of the main storage tank at one  
 23 point?  
 24 A. I did. I did, yes.  
 25 MR. FREDRICKSON: I think that's all I

Page 76

1 have.  
 2 MR. GUARINO: Okay. I'm done. Thank you  
 3 for your time, Mr. Cox.  
 4 THE DEPONENT: You are welcome.  
 5 (The proceedings concluded at 10:55 a.m.)  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 77

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF NEW MEXICO  
 3  
 4 UNITED STATES OF AMERICA,  
 5 and  
 6 STATE OF NEW MEXICO ex rel.  
 7 STATE ENGINEER, No. 01cv00072-MV/WPL  
 8 Plaintiffs, ZUNI RIVER BASIN  
 9 -vs- ADJUDICATION  
 10 A & R PRODUCTIONS, et al., Subfile No. ZRB-2-0038  
 11 Defendants.  
 12 REPORTER'S CERTIFICATE  
 13 I, ANNE C. HALLETT, CCR No. 16, DO HEREBY  
 14 CERTIFY that on May 18, 2016, the deposition of TOM  
 15 COX was taken before me at the request of, and  
 16 sealed original thereof retained by:  
 17 U.S. DEPARTMENT OF JUSTICE  
 18 ENVIRONMENT AND NATURAL RESOURCES DIVISION  
 19 999 18th Street  
 20 South Terrace, Suite 370  
 21 Denver, CO 80202  
 22 303-844-1343  
 23 BY: ANDREW "GUSS" GUARINO, ESQ.  
 24 guss.guarino@usdoj.gov  
 25 I FURTHER CERTIFY that copies of this  
 Certificate have been mailed or delivered to all  
 Counsel, and parties to the proceedings not  
 represented by counsel, appearing at the taking of  
 the deposition.