

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

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1 A. I ranched on this property that you are
 2 talking about today.
 3 Q. In the Zuni River Basin?
 4 A. Correct.
 5 Q. And how long did you ranch in the Zuni
 6 River Basin?
 7 A. Gosh. Well, my family started there in
 8 like 1920.
 9 Q. Okay.
 10 A. 1909, maybe.
 11 Q. You weren't there for that.
 12 A. I wasn't.
 13 Q. When did you start ranching?
 14 A. Gosh. I guess, really, when my dad passed
 15 away in 1992.
 16 Q. And so you were born in 1962?
 17 A. Uh-huh.
 18 Q. When did you go to U of A?
 19 A. I graduated there in 1986.
 20 Q. And what did you do between 1986 and 1992?
 21 A. I was there with my dad, helping him run
 22 the place.
 23 Q. So you were ranching even back in the
 24 '80s?
 25 A. I was, yes.

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1 Q. But your dad was basically in charge of
 2 the ranch at that time?
 3 A. Yes.
 4 Q. Who else did you ranch with while your dad
 5 was alive?
 6 A. Well, just with my dad there. We
 7 neighbored with all of our folks around, but...
 8 Q. But your operation was separate from your
 9 neighbors?
 10 A. It was, yes.
 11 Q. And your reference to the neighbors, as I
 12 understand ranching in the Zuni Basin, and other
 13 areas, neighbor ranchers typically help neighbor
 14 ranchers in their operations, generally speaking; is
 15 that correct?
 16 A. Correct. Yes, it is.
 17 Q. So did you do any ranching before 1986 or
 18 before 1982, when you started going to U of A?
 19 A. No, not really.
 20 Q. Where did you live growing up?
 21 A. Gosh. We were around Mesa, Arizona; Queen
 22 Creek, Arizona.
 23 Q. But your dad ran the ranch up in the Zuni
 24 River Basin?
 25 A. No. When his dad passed away, then he

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1 went there.
 2 Q. And when did that happen?
 3 A. His dad passed away in '83, I think.
 4 Q. So you grew up -- just so I understand,
 5 you grew up in the Mesa, Arizona, area and went to
 6 school out in Arizona?
 7 A. Yeah, and in west Texas; eastern
 8 New Mexico, as well.
 9 Q. And then your family has always had
 10 property or run -- has run a ranch in the Zuni
 11 Basin --
 12 A. Yep.
 13 Q. -- since the turn of the century -- 1920s,
 14 1910, something like that?
 15 A. Something like that, yes.
 16 Q. And it sounds like your grandfather used
 17 to run the ranch before your father ran the ranch.
 18 A. He built it. My grandfather built it.
 19 Q. And your dad went out there in 1982, 1983,
 20 when your grandfather passed away?
 21 A. That is correct, yeah.
 22 Q. And when your father went out there to
 23 ranch, you were out there, as well, helping him when
 24 you could?
 25 A. I was, yes.

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1 Q. And after you graduated, did you -- after
 2 you graduated from U of A, you went out there to
 3 live and ranch with your father?
 4 A. Correct.
 5 Q. Any brothers to help you?
 6 A. Yeah, my brother Tim --
 7 Q. Tim?
 8 A. -- was also involved, when he wasn't in
 9 college or off working.
 10 Q. Were you full-time out there at the ranch?
 11 A. Uh-huh.
 12 Q. And you lived --
 13 A. Yes.
 14 Q. Thank you.
 15 And you lived out at the ranch from the time
 16 you graduated until, it sounds like, 2000.
 17 A. That is correct, yes.
 18 Q. Is that a fair statement?
 19 A. Uh-huh. Yes.
 20 Q. And when your father passed away in, it
 21 looks like, the early '90s, you took over operations
 22 for your family ranch there?
 23 A. Yes.
 24 Q. Okay. And during that time, when you were
 25 in charge of the ranch, were you running it, as

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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.

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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.

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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?

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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

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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

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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?

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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

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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

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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

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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

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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

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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?

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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?

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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.

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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.

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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.

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<p style="text-align: right;">Page 50</p> <p>1 blows.</p> <p>2 A. Yes.</p> <p>3 Q. But there would come a point when even</p> <p>4 that pumping would be stopped, once the storage tank</p> <p>5 got a certain level; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. How would that work?</p> <p>8 A. Well, if you look over here on the edge of</p> <p>9 the storage tank, on the left-hand side of this</p> <p>10 picture, there's a pipe sticking out. That's an</p> <p>11 overflow. Rather than just have the well pump and</p> <p>12 pump and pump when the demand -- say in the winter,</p> <p>13 the demand is down for consumption, we would shut</p> <p>14 the windmill off, and we would come along, check the</p> <p>15 waters every other day, every third day, especially</p> <p>16 when we were breaking ice. If the water was down a</p> <p>17 couple of feet, then would we would turn the</p> <p>18 windmill on and catch it back up. In the</p> <p>19 summertime, though, we usually left the windmill on</p> <p>20 because the demands were up, and so rather than run</p> <p>21 out of water with the cattle, we would leave the</p> <p>22 windmill on. In the month of June -- You see that</p> <p>23 pump jack there. In the month of June, the wind</p> <p>24 barely ever blew; therefore, it barely ever pumped</p> <p>25 water. But demand was high, so we had a pump jack</p>	<p style="text-align: right;">Page 52</p> <p>1 A. The trough? No.</p> <p>2 Q. Never scrubbed that down?</p> <p>3 A. I never recall having any trouble with it.</p> <p>4 Q. Did you ever have to clean it to keep</p> <p>5 algae or anything like that from building up in it,</p> <p>6 or was there enough cattle drinking and flow going</p> <p>7 on there?</p> <p>8 A. I never cleaned it.</p> <p>9 Q. Okay. Did you engage in any sort of</p> <p>10 cleaning practices with respect to any of the other</p> <p>11 wells -- the Perry well, the Perry Canyon well, the</p> <p>12 High Lonesome well?</p> <p>13 A. No. What we called the Perry well, the</p> <p>14 water was real "gypee."</p> <p>15 Q. What does that mean? Gypsum?</p> <p>16 A. Nearly salty, yeah.</p> <p>17 Q. Okay. Mineralized?</p> <p>18 A. Mineralized. We could not store the</p> <p>19 water. Someone, years ago, had built a storage tank</p> <p>20 and destroyed it. And I asked my dad why, and he</p> <p>21 said because if the water was pumped up and stored,</p> <p>22 it would get stale and the cattle would not drink</p> <p>23 it. So we just put it in a drinking tub, and the</p> <p>24 Amado well may have been the same reason. Put it</p> <p>25 straight in the drinking tub and therefore it was</p>
<p style="text-align: right;">Page 51</p> <p>1 and a pump motor that we would operate to bring</p> <p>2 water.</p> <p>3 Q. To fill up the water?</p> <p>4 A. Yes.</p> <p>5 Q. Great.</p> <p>6 Just to be clear, you never kept any sort of</p> <p>7 metering records on how much water you actually</p> <p>8 pumped in and pumped out?</p> <p>9 A. No.</p> <p>10 Q. I haven't run into a rancher who has.</p> <p>11 A. (Laughter.)</p> <p>12 Q. Okay. You were talking a little bit about</p> <p>13 maintenance on that well and when -- and how when,</p> <p>14 say, the storage tank or the float box was damaged,</p> <p>15 you would have to repair it; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever conduct any sort of cleaning</p> <p>18 exercises at the trough or at the storage tank or at</p> <p>19 the float box?</p> <p>20 A. The storage tank, I let the water get low</p> <p>21 one time, and it ruined the floor, and so I did</p> <p>22 clean it out and pour a new floor in.</p> <p>23 Q. A new concrete floor?</p> <p>24 A. A new cement floor, correct.</p> <p>25 Q. What about the trough? Did you ever --</p>	<p style="text-align: right;">Page 53</p> <p>1 always fresh. Both of those were very shallow wells</p> <p>2 and so they pumped. We didn't have a pump jack;</p> <p>3 they pumped real easy.</p> <p>4 Q. But you didn't engage in any sort of</p> <p>5 cleaning and dumping and recycling of water</p> <p>6 yourself, it was just the trough would fill up and</p> <p>7 the cows would drink?</p> <p>8 A. That's correct.</p> <p>9 Q. I want to show you what I'm going to mark</p> <p>10 as Exhibit...</p> <p>11 MR. GUARINO: What are we? E?</p> <p>12 THE REPORTER: Yes.</p> <p>13 (Exhibit E marked.)</p> <p>14 Q. (By Mr. Guarino) Okay. That's it. Take a</p> <p>15 look at that, and I'll pass out copies to my</p> <p>16 colleagues.</p> <p>17 Do you recognize this document that I've marked</p> <p>18 as Exhibit E?</p> <p>19 A. I do.</p> <p>20 Q. Can you tell me what it is?</p> <p>21 A. This is a declaration of -- at the time,</p> <p>22 this was an undeclared water basin, so this was the</p> <p>23 form that the state engineer offered us to declare</p> <p>24 our water use, as sort of an affidavit. And the</p> <p>25 name of the declarant, Tommy Cox, that would be my</p>

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

Tom Cox on 05/18/2016

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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.

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.

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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.

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

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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.)

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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.