

counsel of record for the United States and State of New Mexico, in a *Request for Appellate Review* (Doc. 3318).

The Grizzles' *Request for Appellate Review* constitutes their written objections to the Magistrate Judge's *Proposed Findings and Recommended Disposition* (Doc. 3313) ("PFRD") pursuant to 28 U.S.C. § 636(b)(1). The Plaintiffs assert that the Court should adopt the PFRD over the Grizzles' objections, as Mr. and Mrs. Grizzle offer no compelling substantive basis to disturb that decision. For the reasons stated at Point 3 in Plaintiffs' *Motion for Summary Judgment*, Doc. 3306 at 12-15, the Grizzles' claim that "[their] water rights are governed by the Railroad act of 1862," *Request for Appellate Review* at 1, rather than New Mexico law, is meritless. And the Grizzles offer no other grounds in the *Request for Appellate Review* challenging the Magistrate Judge's decision.

The Grizzles previously argued that they are entitled as a matter of New Mexico law to a water right of 3.0 acre-feet per annum ("AFY") for the single well at issue in this subfile action on the basis of the well permit they hold. *Subfile Answer*, Doc. 1653 at 3. For the reasons stated in Point 2 of Plaintiffs' *Motion*, Doc. 3306 at 11-12, this claim is equally unavailing.

In recommending that the Court grant Plaintiffs' *Motion*, the Magistrate Judge accepted in the PFRD the Plaintiffs' argument that, based on facts largely provided by the Grizzles during discovery, the Grizzles are entitled to a water right of 2.043 AFY for their well. Nowhere in the *Request for Appellate Review* or their untimely *Notice of Response* do the Grizzles challenge either the quantity of the right itself or the undisputed facts on which that quantity is based.

For all of these reasons, the Court should adopt the PFRD.

Dated: September 21, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2016, I filed the foregoing PLAINTIFFS' RESPONSE TO *REQUEST FOR APPELLATE REVIEW OF THE PROPOSED FINDINGS AND MOTION FOR SUMMARY JUDGMENT* (DOC. 3318) 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 Participant via U.S. first class mail, postage prepaid:

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/s/ Samuel D. Gollis