

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

UNITED STATES OF AMERICA)	
and)	No. 01cv00072-MV-WPL
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	ZUNI RIVER BASIN
Plaintiffs,)	ADJUDICATION
v.)	
)	Subfile No. ZRB-4-0203
A & R PRODUCTIONS, et al.)	
Defendants.)	
_____)	

JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26(f), and the Court’s February 6, 2017 *Order Setting Pretrial Conference* (Doc. 3335), counsel for Plaintiff United States of America and Plaintiff State of New Mexico (“Plaintiffs”) have consulted with counsel for Defendant Lucy W. Kluckhohn Jones Trustee (“Defendant”). The Parties present to the Court this Joint Status Report and Proposed Discovery Plan and request that the Court issue a Case Management Order that is consistent with this Plan.

NATURE OF THE CASE

A determination of Defendant’s water rights for real property owned by Defendant in this general stream system water rights adjudication, specifically a tract of land in the NE ¼ of Section 8, Township 10N, Range 15W, which is within Subarea 3 but outside the Ramah Subarea.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

The Parties do not intend to file any additional pleadings or join additional parties to this subfile action.

STIPULATIONS

The Parties stipulate that venue is proper in this District and that the United States District Court for the District of New Mexico has jurisdiction of the Parties and the subject matter.

The Parties further stipulate to the following information provided by the Hydrographic Survey for two ponds and two wells found on Defendant's property:

POND

Map Label: 3C-5-SP002

Purpose of Use: LIVESTOCK

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 8.0

Surface Area (sq.ft): 79,219

Storage Impoundment Volume (ac-ft): 8.729

Pond Location: As shown on Hydrographic Survey Map 3C-5

S. 8 T. 10N R. 15W 1/4, 1/16, 1/64 NE NE SW

X(ft): 2,542,435 **Y(ft):** 1,498,247

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

The dam height of this pond does not exceed 9 feet.

POND

Map Label: 3C-5-SP004

Purpose of Use: LIVESTOCK

Source of Water: Well

Point of Diversion: Fills from well 3C-5-W006 (Location X(ft): 2,543,284; Y(ft): 1,497,268);

Amount of Water:

Depth (ft): 3.0

Surface Area (sq.ft): 2,277

Storage Impoundment Volume (ac-ft): 0.094

Pond Location: As shown on Hydrographic Survey Map 3C-5

S. 8 T. 10N R. 15W 1/4, 1/16, 1/64 NE SE NE

X(ft): 2,543,217 Y(ft): 1,497,277

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

The dam height of this pond does not exceed 9 feet.

WELL

Map Label: 3C-5-W005

OSE File No: G 01752

Well Location: As shown on Hydrographic Survey Map 3C-5

S. 8 T. 10N R. 15W 1/4, 1/16, 1/64 NE SW SW

X (ft): 2,541,200 Y (ft): 1,497,034

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

WELL

Map Label: 3C-5-W006

OSE File No: None

Well Location: As shown on Hydrographic Survey Map 3C-5

S. 8 T. 10N R. 15W 1/4, 1/16, 1/64 NE SE NE

X (ft): 2,543,284 Y (ft): 1,497,268

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

PLAINTIFFS' CONTENTIONS

The Plaintiffs contend that Defendant has the burden of proving the priority dates for Ponds 3C-5-SP002 and 3C-5-SP004. Plaintiffs contend that Defendant is entitled to no water right based on future needs. Plaintiffs further contend that no beneficial use has ever been established from Well 3C-5-W005, which should therefore be decreed to have NO RIGHT. Plaintiffs acknowledge that Well 3C-5-W006 is a source of water for Pond 3C-5-SP004, but contend that Defendant has the burden of proving the quantity of water beneficially used for that purpose or for any other purpose.

DEFENDANT'S CONTENTIONS

Defendant contends that the land and associated water rights have been in the Kluckhohn family for over 50 years with primarily agricultural use. The hydrographic survey produced by Plaintiffs describes a livestock stock pond (3C-5-SP002) with a storage impoundment volume of 8.729 acre feet; a livestock stock pond (3C-5-SP004) with a storage impoundment volume of 0.094 acre feet; a well (3C-5-W005) with water limited to 0.7 acre feet; and a well (3C-5-W006) with water limited to 0.067 acre feet. Defendant believes that this underestimates historic

beneficial use. Defendant also contends that the water rights associated with her land is largely independent and specific to her land and is not interconnected with other water rights in the artificially identified basin.

DISCOVERY PLAN

Discovery is necessary concerning the facts material to Defendant's rights to use water from Ponds 3C-5-SP002 and 3C-5-SP004 and Wells 3C-5-W005 and 3C-5-W006. Discovery should begin once the Court issues a Case Management Order adopting the provisions of this Joint Status Report and Proposed Discovery Plan. The Parties propose the discovery plan outlined in the paragraphs below.

1. Within 30 days after issuance of the Court's Case Management Order, the Parties shall exchange Initial Disclosure materials as described in Fed. R. Civ. P. 26(a)(1)(A)(i) and (ii).
2. Within 60 days after issuance of the Case Management Order, the Parties shall, pursuant to Fed. R. Civ. P. 26(a)(2), make disclosure of any expert testimony that may be offered at trial. Any rebuttal expert testimony shall be disclosed within 30 days after the other party's initial expert disclosure.
3. Discovery will be needed on the following subjects: the amount, dates, and purposes of historic beneficial use of water from Ponds 3C-5-SP002 and 3C-5-SP004 and Wells 3C-5-W005 and 3C-5-W006. The following procedures shall govern discovery associated with this subfile action.
 - a. Maximum of 15 interrogatories (including any subparts) (responses due 30 days after service).

- b. Maximum of 15 requests for production of documents (responses due 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. Requests for admission as permitted by Fed. R. Civ. P. 36.
- d. After initial disclosures, each Party is permitted to depose the identified witness(es) of any other Party. Each deposition shall be arranged through the consent of all Parties to the subfile proceeding. Each deposition is limited to a maximum of 8 hours unless extended by agreement of the Parties and shall occur at a location agreed to by all Parties. Costs associated with the deposition shall be borne by the Party taking the deposition except that costs associated with the deposed witnesses (fees, travel expenses, etc.) shall be borne by the party on whose behalf the witness is to be called.
- e. Supplementation under Fed. R. Civ. P. 26(e) is due 20 days after the new information has been acquired.
- f. All discovery commenced must be completed by 150 days after the issuance of the Court's Case Management Order. Any interrogatories, requests for admission, and requests for production must be submitted no later than 30 days before the discovery completion date described here. No deposition may be held beyond the 150-day discovery period without the consent of all Parties unless upon a finding of good cause by the Court.

DISPOSITIVE MOTIONS

The Parties anticipate that motions for summary judgment under Fed. R. Civ. P. 56 may be needed to resolve those issues that do not have a material issue of fact in dispute. The Parties shall, consistent with D.N.M.LR-Civ. 7, submit any such motions within 30 days of the close of discovery.

TRIAL

To the extent that issues of material fact remain after the Court rules on dispositive motions, 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

Plaintiffs and Defendant are willing to continue with settlement discussions and believe that a settlement conference with a judge may be useful.

Respectfully submitted,

/s/
Bradley S. Bridgewater
Andrew "Guss" Guarino
U.S. Department of Justice
Suite 370, South Terrace
999 18th Street
Denver, CO 80202
Phone: (303) 844-1359
COUNSEL FOR THE UNITED STATES

Approved 2/14/2017
Edward C. Bagley
Special Assistant Attorneys General
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150
COUNSEL FOR THE STATE OF NEW MEXICO

Approved 2/14/2017

William G. Stripp
P.O. Box 159
Ramah, NM 87321
(505) 783-4138

COUNSEL FOR LUCY W. KLUCKHOHN
JONES TRUSTEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 14, 2017, I filed the foregoing *Joint Status Report And Proposed 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.

_____/s/_____
Bradley S. Bridgewater