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C: Brad
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Mr. Bradley S. Bridgewater, Esq.
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294

July 8, 2008

COPY FOR YOUR
INFORMATION

Status Report – Subfile No. ZRB-2-0038

Dear Mr. Bridgewater,

This letter is to convey information pertaining to the Zuni River Stream System water right's adjudication, Subfile No. ZRB-2-0038. We, the defendants Craig Fredrickson and Regina Fredrickson, are owners of the Rincon Hondo Well, Well No. 10A-5-W06, from which water has been and is diverted from the Zuni River Stream System.

On October 10, 2006 we received several documents from your office including a proposed *Consent Order* and a *Request for Consultation* form. We completed the *Request for Consultation* form on a timely basis in 2006 and provided specific information to you as to why the proposed *Consent Order* was inaccurate and incomplete. A copy of that information is enclosed as Attachment 1.

Subsequently, on July 17, 2007, we met with you, Edward Bagley and representatives of Natural Resources Consulting Engineers, Inc. to discuss our concerns with the proposed *Consent Order*. We provided additional supporting information at that time concerning historical beneficial use and domestic use of water diverted from the Rincon Hondo Well. A copy of that information is enclosed as Attachment 2. At that time we agreed that a status report concerning water use associated with the Rincon Hondo Well would be provided in June 2008. This letter serves to satisfy that commitment.

Since our meeting of July 17, 2007, we have personally spoken with Tim Cox of Quemado, New Mexico and to Tom Cox of Rogers, New Mexico regarding historical beneficial use of the Rincon Hondo Well. Tim and Tom Cox are grandsons of the Bert Cox who founded the Cox Ranch and had the subject stock well drilled. They have first-hand knowledge of the historical livestock grazing operations conducted in Rincon Hondo Canyon. They both independently stated that 300 head of cattle were grazed and watered within what they call "the Rincon," the 9 sections of land within Rincon Hondo Canyon where this well is located. Thus, the Rincon Hondo Well served 5760 acres, not 640 acres as described in the proposed *Consent Order*. They stated that not all 300 head of cattle were watered from this single source year-around. However, it is important to note that no other continuous source of water exists within the Rincon other than the Rincon Hondo Well. It follows that this well was the single most important source of water for all 300 head of cattle.

Other sources of stock water that do or did exist within the Rincon include: an intact surface impoundment on BLM section 30, township 5N, range 18W; an intact surface impoundment on BLM section 24, township 5N, range 19W; a breached surface impoundment on section

13, township 5N, range 19W; an intact surface impoundment on section 12, township 5N, range 19W; and an abandoned well, known as the Amado windmill, on section 12, township 5N, range 19W. The bottomland soil classification within the Rincon belongs to the Hickman-Catman complex and, according to the United States department of Agriculture, Natural Resources Conservation Service, is not suitable for long-term impoundment of water. Indeed, the only surface impoundment identified herein that holds water for more than a few days after a heavy rainfall event is the first one identified above; it is currently completely dry. The referenced Amado Windmill is in ruin and apparently was abandoned after the Rincon Hondo Well was installed in 1955.

At our meeting of July 17, 2007, we were informed that the proposed *Consent Order* basis for the 0.336 ac-ft per annum assigned to historical beneficial use of the Rincon Hondo Well was the assumption that 15 head of cattle grazed on 640 acres and consumed 10 gallons of water per head per day at an efficiency factor of 0.5. We strongly disagree with this method of assessment. Historical beneficial use is the statutory basis, measure and limit for assigning water use rights in New Mexico and historical knowledge should be used where such information is available. Since water was diverted from the Rincon Hondo Well for 300 head of cattle, that number of cattle should be the basis for assigning livestock water use rights for the Rincon Hondo Well.

In addition, we strongly disagree with assigning 10 gallons of water per head of cattle per day as a means of calculating water use. Water use by cattle is a function of many variables including air temperature, type of cattle (cows nursing calves, bulls, growing cattle, etc.), their individual weight, moisture content and protein content of feed, salt intake, relative humidity, availability of shade, and the breed of cattle. Through a review of the literature, an assumption of 15 gallons of water per day is a more reasonable average for larger herds not otherwise delineated by breed, type or time of year. An efficiency factor of 0.5 appears appropriate; fresh water is important and stagnant water must be replaced as it is toxic and can result in death to cattle.

Based upon the above, a reasonable estimate of historical beneficial use of the Rincon Hondo Well for livestock watering is 10.081 ac-ft per year.

In addition, and as we discussed in our meeting of July 17, 2007, the Rincon Hondo Well is also permitted and used for domestic purposes (Domestic Permit application made and approved March 1, 2006, File No. G 02469). At our meeting we had projected that all 3.0 ac-ft per year allowed under the permit would be used each year, including for internal to the home domestic use and external to the home domestic use, the latter being primarily associated with watering of tree seedlings and irrigating a native grass-seed production field.

To date we have purchased, planted and are watering 73 Ponderosa seedlings but have yet to reach the 150 seedlings-under-irrigation level that we had hoped to achieve by this time. The delay is a result of having to fence all seedlings to protect them from Elk. This reforestation effort is important to rehabilitating the land and will continue despite the additional time and cost encountered with fencing. Nonetheless, our experience over the past year has been that

the seedlings currently in the ground require between one and five times the water originally projected depending upon soil conditions, i.e., 3 to 15 gallons every 5 to 10 days.

In addition, we have installed an irrigation control valve and associated piping to make agricultural use of water stored within a 15,000-gallon storage tank appurtenant to the Rincon Hondo Well. A ¼-acre field for grass-seed production and the growing of vegetables has been established and we have planted and fenced three apple trees. The field and trees are watered by irrigation water drawn from the Rincon Hondo Well. Such is permitted through the Domestic Permit and is accomplished by flood irrigation.

Our current, combined domestic usage rate as derived through experience is averaging approximately 12,000 gallons per week, equivalent to 1.915 ac-ft per year. We anticipate that this domestic use rate will increase as the apple trees mature and additional orchard trees and vegetable plots are added to meet family food requirements. As such, we continue to believe that the entire 3.0 ac-ft per year of domestic use should be reflected in the proposed *Consent Order*. The current version of the proposed Consent Order does not reflect the existence of the Domestic Use Permit at all.

Additional efforts related to water use include efforts to rehabilitate the land so that it may be eventually returned to grazing. In this regard we have implemented site-specific remediation measures recommended by the Natural Resources Conservation Service including brush removal and construction of erosion control features. Specifically, one acre of land highly infested by rabbit brush has been cleared, approximately 40 juniper trees encroaching on bottomlands have been removed and approximately 60 small to medium brush and rock dams have been constructed to control soil loss. Ultimately these continuing measures, in conjunction with reseeding and an end to the drought conditions, will allow this land to be returned to grazing with concomitant livestock watering.

In summary, we had previously provided your office with documentation that supports more than 29.048 ac-ft per year as the declared minimum capacity of the Rincon Hondo Well. Based upon the information contained herein, we believe that the proposed *Consent Order* should be amended to reflect a historical beneficial use of 13.081 ac-ft per year, 10.081 associated with livestock use and 3.0 ac-ft per year associated with domestic use. If you should have any questions concerning this status report, please feel free to contact me at 505-344-1048.

Respectfully,



Craig Fredrickson
2742 Veranda Rd NW
Albuquerque, NM 87107

Subfile No. ZRB-2-0038

1. The proposed Consent Order does not accurately reflect the current purpose of use and grossly understates the amount of historic, beneficial use of water diverted on Defendants' property.
2. The proposed Consent Order makes no mention of nor does it recognize, acknowledge or reflect the Defendant's water right interest in the subject property as declared on March 14, 1990 and accepted for filing by the State of New Mexico, State Engineer Office (see attached Declaration of Ownership of Underground Water Right No. 33-8, one of eleven declarations accepted for filing by R.Q. Rodgers, Supervisor, District 3 of the State Engineer Office on March 27, 1990). The Declaration documents the point of diversion, place of use, purpose of use, owner (then Tom Cox), and quantity of the water right. Defendant's water right was conveyed to the Defendants through purchase of the subject property (Warranty Deed dated February 21, 2006). The water right claimed by Defendants is in the amount of 29.048 acre-feet per year based upon the declared minimum capacity of the well on the subject property of 18 gallons-per-minute (see referenced Declaration of Water Right).
3. The water right appurtenant to the property is vested based upon historic, beneficial use dating from the 1800s. The earliest usage can be inferred from the existence of a settlement on the south property line adjoining BLM land (intersection of Township 05N, Range 18W, Sections 19 and 30). The settlement consists of the remains of a house, barn, corral, surface impoundment, and hand-dug well. The well is on Section 19, the Defendant's property, and the remaining structures are on Section 30, the BLM land. The hand-dug well is located near the bottom of an arroyo and has been largely filled in with debris. The priority date can be inferred from the contents of a trash pile on the BLM land to range from the late 1800s to approximately 1925. Beneficial usage can be inferred to include domestic, livestock, and agricultural requirements. The settlement owner has not been identified nor has the quantity of usage during this time period. The publication, "Fence Lake, New Mexico Area Families & History," identifies the Monday-Garcia families as dominating the Atarque-Fence Lake area beginning about 1880 (see attached excerpts from this publication). Dave Garcia himself ran 12,000 sheep and 1000 head of cattle on these lands.

Starting in approximately 1925 the Cox Ranch was formed (by "Bert" and Anna Cox) to include livestock grazing on the subject property and other adjoining land (personal conversation with Tim Cox, grandson). The earliest history of water usage on the Cox Ranch is not currently known to the Defendants but the referenced Declaration of Water Right states that in 1955 water was applied to beneficial use from a 505-foot well with a 6-inch casing (outside diameter) and with a capacity to yield more than 18 gallons-per-minute (29.048 acre-feet per year). The well is located near the northern boundary of the subject property as specified in the Declaration and is identified in the proposed Consent Order as Well No. 10A-5-W06. The well was and remains equipped with a 14-foot diameter Aermotor windmill mounted on a 35-foot tower. The well also was and remains

equipped with an auxiliary pump jack. Beneficial usage was specified as for livestock watering in the Declaration of Water Right.

Several hundred head of cattle were grazed on the Defendants property and adjoining land located within the valley known as Rincon Hondo (personal conversation with Tim Cox; also see attached excerpts from referenced publication including photograph of cattle branding at Defendant's well location). Rincon Hondo is enclosed on three sides by steep cliffs that form an impassable barrier to livestock. While runoff impoundments do exist within the valley, the subject well was and is the only continuous source of water for livestock within miles. Under the current extreme drought conditions the land cannot immediately be returned to the level of grazing seen in the recent past. Defendants are actively taking measures to rehabilitate the land and mitigate erosion, and have had consultation with the National Resource Conservation Service on this topic. Defendant's hope to reintroduce livestock to the land once the drought lessens and forage crops recover.

4. The proposed Consent Order makes no mention of the existing 15,000 gallon water storage tank that is fed by the well.
5. The proposed Consent Order makes no mention of nor does it recognize, acknowledge or reflect the Defendant's permit to use a portion of the water from the subject well for domestic purposes. The State Engineer has approved a permit application for the use of up to 3.0 acre-feet per year for domestic use from the subject well to support Defendant's existing residence on the subject property (see attached Application for Permit, File Number G02469 of the State Engineer dated March 1, 2006). As such, the subject well is now serving multiple uses including both domestic and livestock.
6. Defendants claim their interest in the real property as represented by the entire 29.048 acre-feet per year water right referenced above. Moreover, Defendants reserve their right to seek to sever from the land (through a future application to the State Engineer) any inchoate portion of the water right. Defendants believe that it is unfair and unjust for the Court to seize any of the water right appurtenant to the property without either compensation or the opportunity for the Defendants to sell this water right. In addition to the land itself, Defendants have a significant investment, estimated at greater than \$50,000, in the 505-foot, 6-inch well, the windmill and tower, three pump jacks and motor, a 15,000-gallon storage tank adjacent to the well, and associated stock watering system consisting of piping, valves, stock tanks and fencing (see attached photograph).