

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

| | | |
|------------------------------------|---|------------------------|
| UNITED STATES OF AMERICA |) | |
| and |) | No. 01cv00072-MV-JHR |
| STATE OF NEW MEXICO, ex rel. STATE |) | |
| ENGINEER, |) | ZUNI RIVER BASIN |
| Plaintiffs, |) | ADJUDICATION |
| v. |) | |
| |) | Subfile No. ZRB-4-0119 |
| 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 _____ *Order Setting Pretrial Conference* (ECF No. ____), counsel for Plaintiff United States of America and Plaintiff State of New Mexico (“Plaintiffs”) have consulted with counsel for Defendant Paul Davis Survivor’s Trust (“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 within Subareas 1, 2, and 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 water rights and the following information for ten stockponds found on Defendant's property and identified by the Hydrographic Survey:

POND

Map Label: 3B-5-SP012A

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1950

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 5.0

Surface Area (sq.ft): 13,659

Storage Impoundment Volume (ac-ft): 0.941

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

S. 1 T. 10N R. 16W 1/4, 1/16, 1/64: SW NE SE

X(ft): 2,530,153 **Y(ft):** 1,500,694

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

Dam height (if greater than 9 ft):

POND

Map Label: 3B-5-SP023

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1950

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 5.0

Surface Area (sq.ft): 4,029

Storage Impoundment Volume (ac-ft): 0.278

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

S. 1 T. 10N R. 16W 1/4, 1/16, 1/64: NW SE NE

X(ft): 2,529,604 **Y(ft):** 1,502,563

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

Dam height (if greater than 9 ft):

POND

Map Label: 3B-5-SP066

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1930

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 6.0

Surface Area (sq.ft): 12,656

Storage Impoundment Volume (ac-ft): 1.046

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

S. 1 T. 10N R. 16W 1/4, 1/16, 1/64: SW SE SE

X(ft): 2,529,554 **Y(ft):** 1,499,793

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-4-SP001

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1950

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 9.0

Surface Area (sq.ft): 29,044

Storage Impoundment Volume (ac-ft): 3.600

Pond Location: As shown on Hydrographic Survey Map 3C-4

S. 24 T. 11N R. 15W 1/4, 1/16, 1/64: SW SE NW

X(ft): 2,560,556 **Y(ft):** 1,516,159

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-4-SP002

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1950

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 2.0

Surface Area (sq.ft): 2,053

Storage Impoundment Volume (ac-ft): 0.057

Pond Location: As shown on Hydrographic Survey Map 3C-4

S. 24 T. 11N R. 15W 1/4, 1/16, 1/64: SW SW NE

X(ft): 2,560,520 **Y(ft):** 1,515,995

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP021B

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1961

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 3.0

Surface Area (sq.ft): 3,210

Storage Impoundment Volume (ac-ft): 0.133

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 23 T. 10N R. 15W 1/4, 1/16, 1/64: SW NW SW

X(ft): 2,553,904 **Y(ft):** 1,484,888

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP032

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1961

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 5.0

Surface Area (sq.ft): 6,291

Storage Impoundment Volume (ac-ft): 0.433

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 27 T. 10N R. 15W 1/4, 1/16, 1/64: NW SW NW

X(ft): 2,548,662 **Y(ft):** 1,481,264

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP039

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1961
Source of Water: Surface Runoff
Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 3.0
Surface Area (sq.ft): 5,745
Storage Impoundment Volume (ac-ft): 0.237

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 35 T. 10N R. 15W 1/4, 1/16, 1/64: SE SE NW
X(ft): 2,558,132 **Y(ft):** 1,473,735

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP040
Purpose of Use: LIVESTOCK
Priority Date: 12/31/1961
Source of Water: Surface Runoff
Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 2.5
Surface Area (sq.ft): 1,595
Storage Impoundment Volume (ac-ft): 0.055

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 35 T. 10N R. 15W 1/4, 1/16, 1/64: SE SE NW
X(ft): 2,558,152 **Y(ft):** 1,473,864

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

Dam height (if greater than 9 ft):

POND

Map Label: 3C-6-SP047

Purpose of Use: LIVESTOCK

Priority Date: 12/31/1961

Source of Water: Surface Runoff

Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 4.0

Surface Area (sq.ft): 12,941

Storage Impoundment Volume (ac-ft): 0.713

Pond Location: As shown on Hydrographic Survey Map 3C-6

S. 33 T. 10N R. 15W 1/4, 1/16, 1/64: SE NW NW

X(ft): 2,546,355 **Y(ft):** 1,475,128

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

Dam height (if greater than 9 ft):

DISPUTE AMONG THE PARTIES

The dispute among the Parties centers on Defendant's water right claims associated with the seven wells designated 3B-5-W005, 3B-5-W008, 3B-5-W009, 3B-5-W010, 3B-5-W011, 3B-5-W012, and 3B-5-W121 by the Hydrographic Survey. The litigation between the Parties will be focused exclusively on Defendant's claims associated with these wells.

PLAINTIFFS' CONTENTIONS

The Plaintiffs contend that Defendant has the burden of proving the water rights, inclusive of all elements, associated with the wells in dispute. Plaintiffs contend that Defendant is entitled to no water right based on future needs.

DEFENDANT'S CONTENTIONS

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DISCOVERY PLAN

Discovery is necessary concerning the facts material to Defendant's rights to use water from the wells in dispute. 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, Defendant shall make disclosures required by to Fed. R. Civ. P. 26(a)(2). Plaintiffs shall make their Fed. R. Civ. P. 26(a)(2) rebuttal disclosures within 30 days after Defendant's initial expert disclosures.
3. Discovery will be needed on the following subjects: the amounts, priorities, places, periods, and purposes of historic beneficial use of water from the wells in dispute. The following procedures shall govern discovery associated with this subfile action.
 - a. Maximum of 25 interrogatories (including any subparts) (responses due 30 days after service).
 - b. Maximum of 25 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 30 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/ Guss Guarino
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on _____, 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/ Guss Guarino
Guss Guarino