

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

UNITED STATES OF AMERICA, and)	
STATE OF NEW MEXICO, ex rel. STATE)	No. CV 01-0072 MV/JHR
ENGINEER,)	
)	ZUNI RIVER BASIN
Plaintiffs,)	ADJUDICATION
)	
and)	
)	Subfile No. ZRB-1-0148
ZUNI INDIAN TRIBE, NAVAJO NATION,)	
)	
Plaintiffs in Intervention,)	
)	
v.)	
)	
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 March 24, 2020 *Order* (Doc. 3452), counsel for Plaintiff United States of America and Plaintiff State of New Mexico (“Plaintiffs”) have consulted with counsel for Defendants Walter V. Meech, Jr. and Norma M. Meech (“Defendants”) (collectively, the “Parties”). 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 Defendants’ water rights for real property owned by Defendants in this general stream system water rights adjudication, specifically a tract of land in Section 4,

Township 9 North, Range 13 West, New Mexico Principal Meridian, which is within Subareas 4 and 8.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

None of the Parties intends to file any additional pleadings or join additional parties to this subfile action.

STIPULATIONS

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

The Parties further stipulate to the following information provided by the Hydrographic Survey for three ponds and two wells situated on Defendants' property:

POND

Map Label: 8B-1-SP34
Purpose of Use: LIVESTOCK
Priority Date: 12/31/1952
Source of Water: Surface Runoff
Point of Diversion: Not Applicable
Amount of Water:

Depth (ft): 3.0

Surface Area (sq.ft): 4,034

Storage Impoundment Volume (ac-ft): 0.167

Pond Location: As shown on Hydrographic Survey Map 8B-1

S. 4 T. 09N R. 13W 1/4, 1/16, 1/64 NW SE NE

X(ft): 2,608,845 **Y(ft):** 1,470,572

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

Dam height (if greater than 9 ft):

POND

Map Label: 8B-1-SP66
Purpose of Use: LIVESTOCK
Priority Date: 12/31/1985
Source of Water: Surface Runoff
Point of Diversion: Not Applicable

Amount of Water:

Depth (ft): 10.0

Surface Area (sq.ft): 14,033

Storage Impoundment Volume (ac-ft): 1.933

Pond Location: As shown on Hydrographic Survey Map 8B-1

S. 4 T. 09N R. 13W 1/4, 1/16, 1/64 NW NW SW

X (ft): 2,606,739 **Y (ft):** 1,471,479

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

Dam height (if greater than 9 ft):

POND

Map Label: 8B-1-SP69B
Purpose of Use: INDUSTRIAL
Priority Date: 7/7/2005
Source of Water: Well
Point of Diversion: Fills from well 8B-1-W10 (Location X (ft): 2,607,519; Y (ft): 1,471,622)

Amount of Water:

Depth (ft): 6.0

Surface Area (sq.ft): 6,539

Storage Impoundment Volume (ac-ft): 0.540

Pond Location: As shown on Hydrographic Survey Map 8B-1

S. 4 T. 09N R. 13W 1/4, 1/16, 1/64 NW NE NE

X (ft): 2,608,788 **Y (ft):** 1,472,432

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

Dam height (if greater than 9 ft):

WELL

Map Label: 8B-1-W10

OSE File No: G 00336

Priority Date: 10/31/1988

Purpose of Use: INDUSTRIAL

Well Location: As shown on Hydrographic Survey Map 8B-1

S. 4 T. 09N R. 13W 1/4, 1/16, 1/64 NW NW SE

X (ft): 2,607,519 **Y (ft):** 1,471,622

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

WELL

Map Label: 8B-1-W11

OSE File No: G 00337

Priority Date: 10/31/1990

Purpose of Use: INDUSTRIAL

Well Location: As shown on Hydrographic Survey Map 8B-1

S. 4 T. 09N R. 13W 1/4, 1/16, 1/64 NW NW SE

X (ft): 2,607,491 **Y (ft):** 1,471,524

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

PLAINTIFFS' CONTENTIONS

The Plaintiffs contend that Defendants have the burden of proving the quantity of water beneficially used from Wells 8B-1-W10 and 8B-1-W11 for an industrial or any other purpose. Plaintiffs contend that Defendant is entitled to no water right based on future needs or under *State ex rel. Reynolds v. Mendenhall*, 1961-NMSC-083, 68 N.M. 467, 362 P.2d 998.

DEFENDANT'S CONTENTIONS

Defendant Norma M. Meech ("Defendant"), on her own behalf and as the surviving spouse of Defendant Walter V Meech, makes the following contentions in this adjudication:

Defendant is a principal in C&E Concrete Inc. ("C&E"), a business that has existed since the mid-1970s, when Defendant and her husband were minority shareholders, and which has been solely owned and operated by Defendant's family since 1980. C&E produces concrete, asphalt, sand, gravel, and crushed rock, as well as engages in limestone mining operations from a mineral deposit located southwest of Grants, New Mexico. C&E's product lines require significant quantities of water for concrete and asphalt production, sand and gravel washing, and dust abatement. C&E has historically produced the majority of the water needed for its operations and material production from two industrial wells 8B-1-W10 and 8B-1-W11 (also known by State Engineer File Nos. G-336 and G-337 respectively).

In addition to its production of building materials, C&E also engages in limestone mining from its large open pit mine known as the Tinaja Rock Quarry. Mining at this location began

about the mid-1970s. The mineral deposit is so significant that Defendant anticipates mining operations will continue for several hundred years before it is depleted. The open pit continually increases in size as additional mineral is removed. Because the pit changes in size, more and longer roads are constructed into the pit to convey the mined limestone to the crusher location. Clean air regulations, as administered by the United States Environmental Protection Agency (“EPA”), requires dust abatement on the roadways through the application of water. As the pit increases in size and more roads are constructed into the pit, more and more water will be necessary to comply with EPA regulations for dust abatement and the provisions of C&E’s Clean Air Permit.

The two industrial wells were legally drilled by Defendant or her late husband prior to the declaration of the Gallup basin. Defendant and/or her husband proceeded diligently to develop water from the wells pursuant to their plan use water in the production of building materials and limestone mining. Defendant and/or her husband have applied water to beneficial use from the wells after acquiring sole ownership of the business, continuing the prior practice of placing water to beneficial use for the production of building materials and mining and related purposes. *See State ex rel. Reynolds v. Rio Rancho Estates, Inc.*, 1981-NMSC-017, ¶ 13, 95 N.M. 560, 563, 624 P.2d 502, 505, applying the rule announced in *State v. Mendenhall*, 68 N.M. 467, 362 P.2d 998 (1961) (“Mendenhall” or “Relation-back” doctrine). Having fulfilled the requirements set forth in both *Mendenhall* and *Rio Rancho Estates*, Defendant is entitled to continue the development of water rights from the industrial wells up to the capacity of the wells.

Thus, Defendant has beneficially used large quantities of water for the production of building and road materials and for dust abatement in the limestone mining operations.

Beneficial use will continue to expand as the open pit is enlarged and more and more water for dust abatement at the limestone mine is needed.

Defendant does not dispute the amount of water listed in the “Stipulations” section above as the amount impounded by the ponds on Defendant’s property for livestock and industrial purposes. However, the impounded amount does not account for evaporative losses from the ponds, which is also a beneficial use of water and for which Defendant is entitled recognition as a valid part of her water rights.

Defendant does dispute the amounts of water computed by Plaintiffs in their previously served “Consent Orders” as having been historically placed to beneficial use. Defendant further asserts her entitlement to continue to develop her pre-basin water rights from the industrial wells pursuant to the long-held plan to continue limestone mining activities.

DISCOVERY PLAN

Discovery is necessary concerning the facts material to Defendants’ right to use water from Wells 8B-1-10 and 8B-1-11. 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 45 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 90 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 Wells 8B-1-10 and 8B-1-11. 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 (preparation fees, travel expenses, etc.) shall be borne by the Party on whose behalf the witness is to be called. Any other fees associated with responding to discovery pursuant to Fed. R. Civ. P. 26(b)(4)(E) shall be borne by the Party taking the deposition.
 - 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 180 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 180-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. Consistent with D.N.M.LR-Civ. 7, the Parties shall 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

The Plaintiffs do not consider settlement likely at this time and do not request a settlement conference. The Defendant considers that settlement may be possible after the completion of discovery and request a settlement conference after that date. Plaintiffs have no objection to Defendant's request.

DATED: April 7, 2020

Respectfully submitted,

/s/ Samuel D. Gollis

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 7, 2020, 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/ Samuel D. Gollis

Samuel D. Gollis