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OFFICE OF THE
STATE ENGINEER
PLAINS UNIT
SANTA FE, NM

BEFORE THE NEW MEXICO STATE ENGINEER

**IN THE MATTER OF THE CORRECTED
APPLICATION FILED BY AUGUSTIN
PLAINS RANCH, LLC., FOR PERMIT TO
APPROPRIATE GROUNDWATER IN THE
RIO GRANDE UNDERGROUND WATER
BASIN IN THE STATE OF NEW MEXICO**

**Hearing No. 17-005
OSE File No. RG-89943 POD 1
through POD 37**

SCHEDULING ORDER

This matter, Hearing No. 17-005; OSE File No. RG-89943 POD 1 through POD 37, came before Uday V. Joshi, State Engineer's designated Hearing Examiner upon the need to establish a procedural schedule for the above-captioned matter¹. The Hearing Examiner proposes the following schedule of proceeding. If the Parties are unable to agree to the following Schedule, the Parties shall *jointly* propose a stipulated schedule of proceeding. Additionally, the Hearing Examiner encourages the Applicant to begin discussions with the Protestants and the Water Rights Division (WRD) in an effort to clarify the salient and substantive elements of the Application.

THEREFORE, this matter is to proceed in accordance with the following schedule of proceeding. The Parties shall jointly file a stipulated schedule for proceeding in the event that the Parties object to this Proposed Scheduling Order.

1 BACKGROUND

Applicant Augustin Plains Ranch, LLC., (APR) filed its Application on July 14, 2014, and subsequently on December 23, 2014, and on April 28, 2016, its Corrected Application No. RG-89943 with the State Engineer for Permit to Appropriate Groundwater in the Rio Grande Underground Water Basin of the State of New Mexico.

APR proposes to divert and consume 54,000 acre-feet per annum from 37 proposed wells, proposed to be drilled to depth of 2,000 feet, with 20-inch casing, on land owned by APR, located as follows:

¹ Please find "Instructions for Parties" located under State Engineer Administrative Hearings that may serve as a guideline: <http://www.ose.state.nm.us/HU/rulesRegs.php>

RG-89943	APR Well No.	Latitude North	Longitude West	Location ¼ Section	Section	Township	Range
POD1	1	34° 13' 29.779"	107 ° 43' 13.037"	SW NE NE	13	1 S	9 W
POD2	2	34° 12' 58.958"	107 ° 43' 12.778"	NW SE SE	13	1 S	9 W
POD3	3	34° 12' 58.177"	107 ° 43' 47.907"	NE SW SW	13	1 S	9 W
POD4	4	34° 12' 35.848"	107 ° 43' 13.644"	SW NE NE	24	1 S	9 W
POD5	5	34° 12' 36.275"	107 ° 43' 47.142"	SE NW NW	24	1 S	9 W
POD6	6	34° 12' 6.665"	107 ° 43' 48.654"	NE SW SW	24	1 S	9 W
POD7	7	34° 12' 5.993"	107 ° 43' 13.036"	NW SE SE	24	1 S	9 W
POD8	8	34° 10' 1.772"	107 ° 44' 16.442"	SW NE NE	2	2 S	9 W
POD9	9	34° 10' 0.982"	107 ° 44' 51.761"	SE NW NW	2	2 S	9 W
POD10	10	34° 9' 31.664"	107 ° 44' 48.998"	NE SW SW	2	2 S	9 W
POD11	11	34° 9' 32.342"	107 ° 44' 18.662"	SE NW SE	2	2 S	9 W
POD12	12	34° 9' 7.181"	107 ° 45' 18.499"	SW NE NE	10	2 S	9 W
POD13	13	34° 9' 7.200"	107 ° 45' 51.100"	SW NE NW	10	2 S	9 W
POD14	14	34° 8' 40.493"	107 ° 45' 50.229"	SW NE SW	10	2 S	9 W
POD15	15	34° 8' 40.850"	107 ° 45' 17.644"	SW NE SE	10	2 S	9 W
POD16	16	34° 8' 17.728"	107 ° 44' 15.850"	SW NE NE	14	2 S	9 W
POD17	17	34° 8' 17.186"	107 ° 44' 49.916"	SE NW NW	14	2 S	9 W
POD18	18	34° 7' 43.544"	107 ° 44' 51.204"	NE SW SW	14	2 S	9 W
POD19	19	34° 7' 43.653"	107 ° 44' 16.864"	NW SE SE	14	2 S	9 W
POD20	20	34° 8' 15.697"	107 ° 45' 17.752"	SW NE NE	15	2 S	9 W
POD21	21	34° 8' 15.832"	107 ° 45' 50.787"	SW NE NW	15	2 S	9 W
POD22	22	34° 7' 44.814"	107 ° 45' 52.419"	NE SW SW	15	2 S	9 W
POD23	23	34° 7' 44.043"	107 ° 45' 18.309"	NW SE SE	15	2 S	9 W
POD24	24	34° 7' 21.076"	107 ° 45' 18.892"	SW NE NE	22	2 S	9 W
POD25	25	34° 7' 20.532"	107 ° 45' 53.118"	NE SW NW	22	2 S	9 W
POD26	26	34° 7' 21.630"	107 ° 46' 19.041"	SW NE NE	21	2 S	9 W
POD27	27	34° 6' 52.325"	107 ° 45' 20.948"	NW SE SE	22	2 S	9 W
POD28	28	34° 7' 22.957"	107 ° 44' 15.086"	SW NE NE	23	2 S	9 W
POD29	29	34° 7' 21.062"	107 ° 44' 49.269"	NW SE NW	23	2 S	9 W
POD30	30	34° 6' 53.305"	107 ° 44' 47.283"	NE SW SW	23	2 S	9 W
POD31	31	34° 6' 53.777"	107 ° 44' 16.047"	NW SE SE	23	2 S	9 W
POD32	32	34° 6' 32.564"	107 ° 44' 14.548"	SW NE NE	26	2 S	9 W
POD33	33	34° 6' 32.477"	107 ° 44' 48.784"	SW NE NW	26	2 S	9 W
POD34	34	34° 7' 45.577"	107 ° 46' 20.103"	NW SE SE	16	2 S	9 W
POD35	35	34° 8' 14.721"	107 ° 46' 17.697"	SW NE NE	16	2 S	9 W
POD36	36	34° 10' 1.553"	107 ° 45' 15.118"	SW NE NE	3	2 S	9 W
POD37	37	34° 9' 30.586"	107 ° 45' 15.791"	NW SE SE	3	2 S	9 W

The two existing and thirty-five proposed wells are generally located north and south of U.S. Highway 60, and east of Datil, Catron County, New Mexico, for municipal purposes, including, but not limited to the following municipal entities and their service areas: the Village of Magdalena, the City of Socorro, the City of Belen, the Village of Los Lunas, the Albuquerque Bernalillo County Water Utility Authority and the City of Rio Rancho, and commercial bulk

water sales in parts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval and Santa Fe Counties, limited to those portions that lie within the geographic boundaries of the Rio Grande Basin, including various municipal and investor owned utilities, commercial enterprises, and state and federal government agencies, including the U.S. Bureau of Reclamation and the New Mexico Interstate Stream Commission whereby groundwater would be directly discharged to the Rio Grande. Distribution and access connections are via an underground transmission pipeline along three (3) primary right-of-way corridors beginning east of Datil, New Mexico, along U.S. Highway 60, approximately 56 miles east to Interstate 25, then north along Interstate 25, approximately 65 miles to State Road 45, the Coors Boulevard interchange, then north along Coors Boulevard, approximately 20 miles, and ending at State Road 528, Alameda Boulevard.

APR proposes that any impairment of existing rights in the Gila-San Francisco Basin and the Rio Grande Basin, or any other basin, that would be caused by the applied for pumping, will be offset or replaced. APR intends to construct enhanced recharge facilities which will collect runoff that would otherwise evaporate in the Plains of Augustin, recharge water that will augment the groundwater in the aquifer and offset the amount of water diverted from the APR wells. APR also requests credit for the enhanced recharge facilities, which is subject to approval by the State Engineer.

APR also filed the following documents with the Corrected Application: Attachment 1- Point of Diversion Descriptions; Attachment 2 – Overview of Project, Proposed Hearing Procedure and Additional Information for Sections of the Application, Exhibit A – Project Description; Exhibit B- Investor Letters; Exhibit C – POD Map; Exhibit D – Routing Analysis; Exhibit E – Rio Rancho Letters; Exhibit F - Sample Agreements; and Exhibit G – Technical Memorandum: Summary of Updated Conceptual Design, which may be viewed between the hours of 8:00-12:00 a.m. and 1:00-5:00 p.m. Monday through Friday, at the District 1 Office of the State Engineer, 5550 San Antonio Drive NE, Albuquerque, NM 87114, or online at www.ose.state.nm.us/HU/AugPlains. The application was published multiple times, for 3 weeks during the years 2009 thru 2016, respectively. Approximately six-hundred (600) protests were timely filed.

The Water Rights Division filed a Request to Docket Hearing on **February 2, 2017**, and the Hearing Unit issued a Docketing Order on **May 3, 2017**. In response to the Docketing Order, the following occurred:

same time. As stated earlier, if the Parties object to the following proposed schedule, the parties shall *jointly* propose a stipulated schedule of proceeding for the Hearing Examiner's consideration.

2 PUBLIC MEETING

The Hearing Unit will host a public meeting on **September 28, 2017, at 6:00 p.m.** at New Mexico Tech, in the Macey Center, 801 Leroy Place, in Socorro, New Mexico to provide information on the Administrative Hearing Process, Alternative Dispute Resolution, and to provide APR an opportunity, if amenable, to a description and summary of its Application, and for Protestants to succinctly state their positions other than those stated in the respective Protest letters.

Counsel should be prepared at the public meeting to formally enter an appearance on behalf of any eligible parties for which an appearance has not already been entered.

3 JURISDICTION

The jurisdiction of the State Engineer is invoked pursuant to Articles 2, 5, and 12 of Chapter 72, NMSA 1978.

4 STATEMENT OF ISSUES

- A.** Availability of water to satisfy the application.
- B.** Whether granting the application would result in impairment or detriment to existing water rights.
- C.** Whether granting the application would be detrimental to the public welfare of the state.
- D.** Whether granting the application would be contrary to the conservation of water within the state.

5 DISCLOSURE OF WITNESSES

Applicant APR: On or before **October 27, 2017**, APR shall disclose to the other parties all expert and fact witnesses who may be called at the hearing of this matter. Disclosure shall be by witness lists that contain the name and address of each witness, an indication of whether the witness will be offered as an expert, and a summary of anticipated testimony.

WRD and Protestant Parties: On or before **December 22, 2017**, the WRD and Protestants shall disclose to the other parties all expert and fact witnesses who may be called at the hearing of this matter. Disclosure shall be by witness lists that contain the name and address of each witness, an

indication of whether the witness will be offered as an expert, and a summary of anticipated testimony.

Unless expressly objected to by the parties, the Hearing Examiner finds that properly disclosed expert witnesses, whose areas of expertise are similar, may converse freely with one another outside the presence of counsel or pro se party, it being understood that said conversations are considered informal and not admissible as evidence at hearing.

6 DISCLOSURE OF EXHIBITS

Applicant APR: On or before **March 28, 2018**, the Applicant shall disclose to the other parties any and all exhibits and reports to be offered into evidence at the hearing. The Applicant shall, at a minimum and in addition to any other exhibits proffered, include the following: a) a copy of the present application, b) a copy of the legal notice(s) as published and c) a location map or maps of reasonable size to allow easy recognition of the geographic situation of the application. The exchanged exhibits shall be indexed and labeled for identification. The Applicant shall file the exhibits index list (not the exhibits) with the Hearing Unit by **March 28, 2018**. The Applicant is expected to copy, disclose and exchange, as part of their proposed exhibits, those relevant documents from the files of the OSE that they intend to utilize at hearing and should not rely on the taking of administrative notice as a substitute for production of these items as exhibits. The Applicant shall provide the Hearing Examiner one set of their respective proposed exhibits - appropriately bound, indexed, numbered and tabbed- **at the hearing** and one electronic copy on a thumb-drive or CD.

WRD and Protestant Parties: On or before **July 25, 2018**, the WRD and each Protestant shall disclose and exchange to the Applicant and all other parties any and all exhibits and reports to be offered into evidence at the hearing. The exchanged exhibits shall be indexed and labeled for identification. The WRD and the Protestants shall also file the exhibits index only (not the exhibits) with the Hearing Unit by **July 25, 2018**. The WRD and the Protestants are expected to copy, disclose and exchange, as part of their proposed exhibits, those relevant documents from the files of the OSE that they intend to utilize at hearing and should not rely on the taking of administrative notice as a substitute for production of these items as exhibits. The WRD and the Protestants shall each provide the Hearing Examiner one set of their respective proposed exhibits - appropriately bound, indexed, numbered and tabbed **at the hearing** and one electronic copy on a thumb-drive or CD.

7 DISCLOSURE OF REBUTTAL WITNESSES AND EXHIBITS, SURREBUTTAL

Applicant APR: On or before **November 14, 2018**, the Applicant shall disclose to the other parties all rebuttal witnesses who may be called at the hearing of this matter and all rebuttal exhibits, in the same manner as set forth in section 4, above. The Applicant's rebuttal witness lists and exhibits index are to be filed with the Hearing Unit by **November 14, 2018**. The Applicant shall provide the Hearing Examiner three sets of their respective proposed rebuttal exhibits - appropriately bound, indexed, numbered and tabbed — at the hearing.

WRD and Protestant Parties: Following any disclosure of rebuttal witnesses and exhibits by the Applicants, the WRD and the Protestants may, only for good cause (i.e. citing a need to rebut new issues not previously raised by Applicant), move for leave to file surrebuttal witnesses and exhibits by **December 21, 2018**. Any motion for leave to file surrebuttal should be accompanied by a proposed surrebuttal witness list and exhibit index. The movant must also certify that a copy of the list, index and any proposed surrebuttal exhibit was provided to the Applicant and all other parties. If a motion for leave to file surrebuttal is granted, the movant shall provide the Hearing Examiner one sets of their respective proposed surrebuttal exhibits - appropriately bound, indexed, numbered and tabbed and one electronic copy on a thumb drive or CD **at the hearing**.

8 CLOSE OF DISCOVERY

The deadline for conclusion of discovery is **February 13, 2019**.

9 MOTIONS AND OBJECTIONS

The deadline for filing substantive motions that are opposed and written objections to a proposed witness or exhibit is **March 29, 2019**. Any exhibit not objected to in writing by **March 29, 2019**, shall be deemed admitted into evidence upon presentation at the hearing. Rule 1-006 and Rule 1-007.1 A through E of the Rules of Civil Procedure for the District Courts of New Mexico shall apply with respect to the filing of, and responding to, motions.

10 FILING AND SERVICE

Filing of pleadings and documents are to be made by submitting one original hard copy to the Hearing Unit, Office of the State Engineer, P.O. Box 25102, Santa Fe, New Mexico 87504-5102. The physical location of the Hearing Unit office is at 495 Old Santa Fe Trail, Santa Fe, NM 87504 (2nd floor of the Lew Wallace building). The filing party must certify that it has served a copy of any pleading, or other document submitted for filing, upon the other parties. Upon request, a file stamped copy of the submission will be returned to the submitting party if an

extra hard-copy and a stamped, self-addressed envelope is provided with the submission. Service may be made upon the parties in accordance with the certificate of service (Parties Entitled to Notice) (<http://www.ose.state.nm.us/HU/AugustinPlains.php>) unless otherwise notified per entry of appearance or other writing filed in this matter.

11 PRE-HEARING CONFERENCE

If the Hearing Examiner deems it necessary to address objections, outstanding motions or other matters prior to hearing, a Pre-Hearing Conference will be scheduled on **May 22-23, 2019**, in Santa Fe, NM; it is anticipated that only one day will be required but two (2) days shall be reserved. The parties will receive advance written notice of the scheduling and absent receipt of notice may assume that the Hearing Examiner determined that a pre-hearing conference was not necessary.

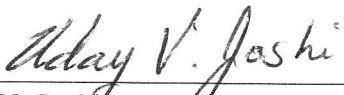
12 EVIDENTIARY HEARING

The hearing of this matter is proposed to commence on **June 17, 2019**, in Albuquerque or Socorro at a time and location to be later designated in written notice to the parties for ten (10) consecutive business days (**June 17-28, 2019**).

13 MODIFICATION

This Scheduling Order shall control these proceedings except that it may be modified upon the consent of the parties and the Hearing Examiner, at the discretion of the Hearing Examiner for good cause shown, or by the Hearing Examiner to prevent manifest injustice.

DONE this 10th day of August, 2017.



Uday V. Joshi
Hearing Unit, Managing Attorney
Hearing Examiner