

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 POD1
through POD 37

CATRON COUNTY BOARD OF COUNTY COMMISSIONERS'
RESPONSE TO APPLICANT'S EXPEDITED REQUEST FOR
POST-DECISION EVIDENTIARY HEARING

COMES NOW the Catron County Board of County Commissioners (the Board), by and through undersigned counsel of record, and hereby submits its *Response to Applicant's Expedited Request for Post-Decision Evidentiary Hearing*. The Board joins in and adopts Protestant Hand's Response, filed August 27, 2018, as though set forth fully herein.

The issue of whether §72-2-16 NMSA requires, or somehow guarantees the Applicant, an "evidentiary hearing" was briefed prior to the hearing that was held on the summary judgment motions. The Board hereby incorporates pages 3 to 5 of *Catron County Board of Commissioners' Reply in Support of Motion for Summary Judgment*, filed on November 22, 2017.

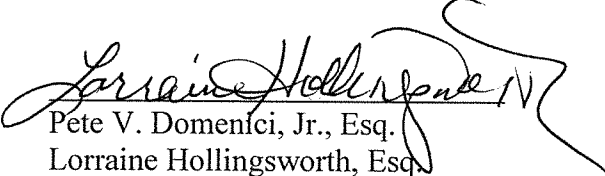
The question was also addressed in the August 1, 2018 *Report and Recommendation Granting Motions for Summary Judgment*, which states that "[t]he granting of a Motion for Summary Judgment and denial or dismissal of an application, after briefing and oral argument in a hearing before the State Engineer's hearing examiner, satisfies the requirement of a hearing held before the State Engineer before an appeal may be taken to the district court under NMSA 1978, Section 72-2-16. The Court's decision in *Derringer v. Turney*, 2001-NMCA-075, is not to the contrary." (Report and Recommendation at ¶¶6-12 (emphasis added)).

Finally, the District Court, in *Augustin Plains Ranch, LLC v. Verhines, P.E, et al.*, D-728-CV-2012-008, directly addressed the question of “whether the State Engineer was justified in denying Applicant’s application for an underground water permit, without holding an evidentiary hearing.” (*Memorandum Decision on Motion for Summary Judgment*, filed November 14, 2012, at 11-13(emphasis added)). In that case, which was the first application by APR, the “OSE hearing examiner considered motions to dismiss and held a hearing on those motions.” After the hearing, the OSE dismissed the application and the Applicants’ appealed the decision to the New Mexico District Court. (*Id.*at 9). The Court rejected the Applicants’ argument, which is the same one they are now making, that they are entitled to an evidentiary hearing once the application is filed and accepted by the OSE staff. (*Id.* at 11-13).

There is no basis, either legal or factual, to grant the *Applicant’s Expedited Request for Post-Decision Evidentiary Hearing*, and the Board requests that the Hearing Examiner deny the request.

Respectfully submitted,

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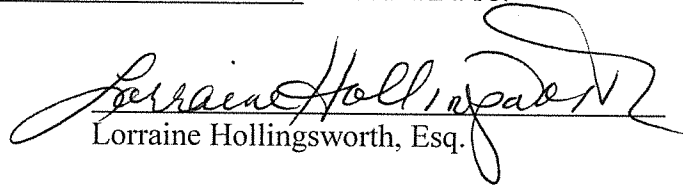
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2018, the foregoing pleading was emailed to those parties listed on the attached Parties Entitled to Notice, revised 4/24/18.


Lorraine Hollingsworth, Esq.

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PARTIES ENTITLED TO NOTICE

Hearing No. 17-005

A complete list of parties entitled to notice (service list) is located on the Office of the State Engineer's website, <http://www.ose.state.nm.us/HU/AugustinPlains.php>. The service list will be updated as necessary. Revised 4/24/18

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