

¹ The application is referred to as "Corrected" because it addressed inaccuracies in the locations of the wells that APR proposes to drill, not because it addressed the substantive problems that are the basis of this Motion.

² Pursuant to section 19.25.2.1.A of the Office of the State Engineer Hearing Unit Procedures, the procedures in State Engineer proceedings are to be consistent with the Rules of Civil Procedure. Rule 8.E(2) of those Rules authorizes the use of alternative statements of a claim.

from the Corrected APR Application includes but is not limited to:

required before the State Engineer can approve the Application. The information that is lacking Corrected APR Application is invalid on its face because it does not provide information that is

1. The first alternative ground for this Motion for Summary Judgment is that the accompanying Protestants' Memorandum, this Motion for Summary Judgment is made on two alternative grounds.²

An order dismissing the Corrected APR Application. As is more fully explained in the subject of this proceeding. Specifically, the Community Protestants move the State Engineer for Corrected APR Application ("APR") filed by the Augustin Plains Ranch, LLC ("APR") that is the the New Mexico State Engineer for summary judgment addressing the application ("the matter, who are listed on page 4 *infra* (collectively "the Community Protestants") hereby move

The Protestants represented by the New Mexico Environmental Law Center in this

THE COMMUNITY PROTESTANTS' MOTION FOR SUMMARY JUDGMENT

)	IN THE MATTER OF THE APPLICATION BY
)	AUGUSTIN PLAINS RANCH, LLC FOR A
)	PERMIT TO APPROPRIATE GROUND WATER
OSE File No. RG-89943)	IN THE RIO GRANDE UNDERGROUND
)	WATER BASIN OF NEW MEXICO
Hearing No. 17-00509-096)	

STATE OF NEW MEXICO

BEFORE THE STATE ENGINEER

- a beneficial use for the very large amount of water that APR proposes to appropriate;
- where the water to be appropriated by APR would be used;
- information required to provide due process for individuals and entities that protest the proposed appropriation of water by APR; and
- information that is required for the State Engineer to determine whether APR's proposed appropriation might impair existing water rights, might be contrary to conservation of water, or might be detrimental to public welfare.

2. The second alternative ground for the Community Protestants' Motion for Summary Judgment is that the Corrected APR Application must be dismissed because the substance of the Corrected APR Application has already been determined to be facially invalid. The substance of the Corrected APR Application was determined to be invalid by two decisions, each of which denied an earlier version of the APR Application ("the Original APR Application"). The Original APR Application is identical in all material respects to the Corrected APR Application, and the two decisions denying the Original APR Application therefore require the State Engineer to dismiss the Corrected APR Application.

The two decisions are: 1) The Order of the New Mexico State Engineer dated March 30, 2012 dismissing the Original APR Application in proceeding number 09-096 (OSE File No. RG-89943); and 2) The Order by the Seventh Judicial District Court dated January 3, 2013 in case No. D-728-CV-2012-0008 that affirmed the State Engineer's denial of the Original APR Application.

These rulings by the State Engineer and the Seventh Judicial District Court District Court govern the issue of the facial validity of the Corrected APR Application for one of the following reasons.

- a. The decisions of the State Engineer and the District Court addressing the Original APR Application are the law of the case in this matter, and they require that the Corrected APR Application be denied.
- b. The decisions of the State Engineer and the District Court denying the Original APR Application have *res judicata* effect with respect to the facial invalidity of the Corrected APR Application, and those rulings indicate that the Corrected APR Application must be denied.
- c. The rulings of the State Engineer and the District Court denying the Original APR Application have collateral estoppel effect as to the facial invalidity of the Corrected APR Application, and those rulings indicate that the Corrected APR Application must be denied.

These alternative grounds for granting the Community Protestants summary judgment are explained in more detail in the Community Protestants' Memorandum that is filed with this Motion.

The Community Protestants therefore request that the State Engineer enter an order dismissing the Corrected APR Application.

Dated: September 26, 2017.

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Certificate of Service

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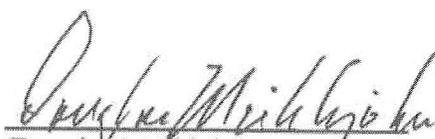
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