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OFFICE OF THE
STATE ENGINEER
HEARINGS UNIT
SANTA FE, NM

BEFORE THE STATE ENGINEER

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION BY)	Hearing No. 17-00509-096
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)	

**THE COMMUNITY PROTESTANTS' RESPONSE IN OPPOSITION
TO THE AUGUSTIN PLAINS RANCH'S EXPEDITED MOTION
TO EXTEND BRIEFING DEADLINES ON THE
ELC PROTESTANTS' MOTION FOR SUMMARY JUDGMENT**

Introduction

The Protestants represented by the New Mexico Environmental Law Center in this matter, who are listed on page 5 *infra* (collectively "the Community Protestants") hereby respond in opposition to the Augustin Plains Ranch, LLC's Expedited Motion to Extend Briefing Deadlines on the ELC Protestants' Motion for Summary Judgment ("the APR Expedited Motion").

The basis for the Community Protestants' opposition to the APR Expedited Motion is that the briefing schedule proposed by the APR Expedited Motion is both inequitable and inconsistent with the State Engineer Office Hearings Unit Procedures ("the Hearing Unit Procedures") because it would provide the Augustin Plains Ranch ("APR") with almost twice as much time to file a response to the Motion for Summary Judgment as the Community Protestants would have to file a reply to the APR response.

Argument

The APR Expedited Motion addresses the schedule for briefing on the Motion for Summary Judgment filed by the Community Protestants (“the Community Protestants’ Motion for Summary Judgment”). The Hearing Unit Procedures provide that a response to the Motion for Summary Judgment must be filed within 15 days after service of the Motion, and that a reply to a response must be filed within 15 days after service of the response. Section 19.25.2.16.C NMAC. In addition, because the Hearing Unit Procedures provide that prehearing matters before the Hearing Unit shall be generally consistent with the New Mexico Rules of Civil Procedure, three days are added to each of these time periods to account for service. Section 19.25.2.16.A NMAC; NMRA 1-006.C.

Therefore, pursuant to the Hearing Unit Procedures and the Rules of Civil Procedure, a party filing a response to the Community Protestants’ Motion for Summary Judgment and a party filing a reply to that response will each have 18 days in which to file. The important point is that the Hearing Unit Procedures and the Rules of Civil Procedure provide the two parties with the same amount of time in which to file their pleadings addressing the Community Protestants’ Motion for Summary Judgment.

However, the briefing schedule proposed by the Augustin Plains Ranch (“APR”) in its Expedited Motion would provide APR with almost twice as much time to file its response to the Motion for Summary Judgment as the Community Protestants would have to file their reply to the APR response. The Motion for Summary Judgment was filed on September 26, 2017. The schedule proposed by the APR Expedited Motion would allow APR to file a response to the Motion by October 30, 2017 – that is, within 34 days after the filing of the Motion for Summary

Judgment. Pursuant to the Expedited Motion's proposed schedule, however, the Community Protestants would have only 18 days in which to reply to the APR response.

This result would be both inequitable and inconsistent with the requirements of the Hearing Unit Procedures and the Rules of Civil Procedure. Based on the Expedited Motion's request that APR have 34 days in which to respond to the Community Protestants' Motion for Summary Judgment, the Community Protestants therefore should have 34 days – that is, until December 4, 2017 – in which to file their reply to APR's response.¹

Conclusion

The Community Protestants therefore request that the Hearing Officer deny APR's Expedited Motion and establish the following schedule for briefing addressing the Community Protestants' Motion for Summary Judgment:

October 16, 2017	Deadline for joinder in support of the Community Protestants' Motion for Summary Judgment
October 30, 2017	Deadline for the Water Rights Division to respond to the Community Protestants' Motion for Summary Judgment ²
October 30, 2017	Deadline for responses in opposition to the Community Protestants' Motion for Summary Judgment
December 4, 2017	Deadline for the Community Protestants to reply to any responses to their Motion for Summary Judgment.

¹ The 34th day after October 30, 2017 is Sunday, December 3, 2017. Pursuant to 19.25.2.12.H NMAC, the time period for filing would be extended to the next business day, which is Monday, December 4, 2017.

² The Community Protestants and the Water Rights Division have already agreed to this deadline for the Water Rights Division's response to the Motion for Summary Judgment.

Dated: October 5, 2017.

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Response were sent by first class mail to the following on October 5, 2017:

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In addition, counsel for the Community Protestants understands that the State Engineer Office Hearings Unit is in the process of updating its list of parties entitled to notice in this matter, and that the updated list probably will be available on October 5, 2017 or October 6, 2017. Counsel for the Community Protestants therefore will mail copies of this Response to the *pro se* parties in this matter when counsel receives the updated list from the Hearings Unit.


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