

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO  
AUGUSTIN PLAINS RANCH, LLC,

Applicant-Appellant,

v.

No. 32,705

SCOTT A. VERHINES, P.E.,

New Mexico State Engineer-Appellee,

and

KOKOPELLI RANCH, LLC, et al.,

Protestants-Appellees.

COURT OF APPEALS OF NEW MEXICO  
FILED

AUG 14 2014

Wendy F. Jones

**CLARIFICATION OF APPELLANT'S POSITION  
ON SUPPLEMENTAL BRIEFING**

*APPEAL FROM THE DISTRICT COURT OF CATRON COUNTY*  
MATTHEW G. REYNOLDS, District Judge

John B. Draper  
DRAPER & DRAPER, LLC  
325 Paseo de Peralta  
Santa Fe, New Mexico 87501  
(505) 570-4590

Jeffrey J. Wechsler  
Lara Katz  
Andrew S. Montgomery  
MONTGOMERY & ANDREWS, P.A.  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 982-3873

*Attorneys for Applicant-Appellant*  
AUGUSTIN PLAINS RANCH, LLC

In light of the supplemental filings and the Court's Order of July 7, 2014, Appellant Augustin Plains Ranch, LLC ("Augustin") respectfully submits this supplemental brief to clarify its position with respect to the Office of the State Engineer ("OSE") application that is at issue in this appeal.

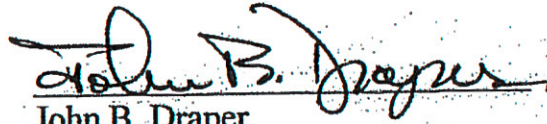
1. The new application filed by Augustin with the OSE on July 14, 2014 ("New Application") contains significant additional information about the engineering, feasibility, and other details of the project. It is Augustin's intent to proceed on the New Application with the OSE. More importantly for the purposes of this appeal, Augustin has no intention of pursuing the prior OSE application that is before this Court ("Prior Application"). Specifically, Augustin has no intention of pursuing an evidentiary hearing on the merits of the Prior Application, or seeking any other relief with respect to the Prior Application.

2. If the Court dismisses the appeal and remands the Prior Application to the OSE, Augustin concurs that it will be "replace[d] and supersede[d]" by the New Application. State Engineer's Supp. Br. at 2; *see also State ex rel. Peteet v. Frenger*, 1929-NMSC-030, ¶ 30, 34 N.M. 151 (an "amended pleading supersedes the original or renders it null"). If considered necessary by the OSE, Augustin will formally withdraw the Prior Application at that time. *See State Engineer's Supp. Br. at 4* (requesting that the Court "remand the original application to the State Engineer for withdrawal"); Supp. Br. of Protestant-Appellees at 1, n. 1 (arguing

that the “administrative status of the new and old applications is unclear,” in part because Augustin “has not withdrawn the old application”).

3. Augustin believes its New Application addresses the issues identified by the OSE and the district court with respect to the Prior Application, making a decision by this Court on the Prior Application unnecessary. *See Insure N.M., LLC v. McGonigle*, 2000-NMCA-018, ¶ 27, 128 N.M. 611 (Court of Appeals “will not issue an advisory opinion”). If the OSE does not accept the New Application, Augustin will have the option of declaring itself aggrieved pursuant to NMSA 1978, § 72-2-16, and following the procedure for a hearing before the OSE on that limited issue. *See Lion’s Gate Water v. D’Antonio*, 2009-NMSC-057, ¶ 32, 147 N.M. 523. Appeals on the New Application, if necessary, would be heard by the district court and this Court in due course.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John B. Draper", written over a horizontal line.

John B. Draper  
DRAPER & DRAPER, LLC  
325 Paseo de Peralta  
Santa Fe, New Mexico 87501  
(505) 570-4590

Jeffrey J. Wechsler  
Lara Katz  
Andrew S. Montgomery  
MONTGOMERY & ANDREWS, P.A.  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 982-3873

*Attorneys for Applicant-Appellant*  
AUGUSTIN PLAINS RANCH, LLC

## CERTIFICATE OF SERVICE

I certify that on August 14, 2014, I caused a true copy of this *Clarification of Appellant's Position on Supplemental Briefing* to be served by first-class United States mail, postage prepaid, on the following:

Mr. Gregory C. Ridgley  
Mr. L. Christopher Lindeen  
Ms. Tracy Hofmann  
Special Assistant Attorneys General  
Post Office Box 25102  
Santa Fe, NM 87504-5102

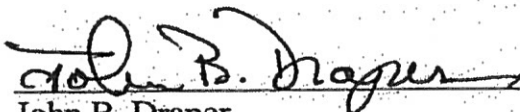
Mr. Peter Thomas White  
Sena Plaza, Suite 50  
125 East Palace Avenue  
Santa Fe, NM 87501

Mr. Ron Shortes  
Post Office Box 533  
Pie Town, NM 87827

Mr. R. Bruce Frederick  
Mr. Douglas Meiklejohn  
New Mexico Environmental Law Center  
1405 Luisa Street, Suite 5  
Santa Fe, NM 87505

Mr. James C. Brockmann  
Mr. Seth Fullerton  
Stein & Brockmann, P.A.  
Post Office Box 2067  
Santa Fe, NM 87504

Mr. George Chandler  
Chandler Law of Los Alamos  
1208 9<sup>th</sup> Street  
Los Alamos, NM 87544

  
John B. Draper