

STATE OF NEW MEXICO
COUNTY OF CATRON
SEVENTH JUDICIAL DISTRICT

AUGUSTIN PLAINS RANCH, LLC,

Applicant/Appellant,

v.

No. D-728-CV-2012-0008

TOM BLAINE, P.E.,

New Mexico State Engineer,

and

KOKOPELLI RANCH, LLC, *et al.*,

Protestants/Appellees.

PROTESTANTS/APPELLEES' MOTION
FOR RELIEF FROM THIS COURT'S ORDER CLOSING THIS CASE

Introduction

Protestants/Appellees Abbe Springs Ranches Homeowners Association, *et al.*¹ (the "Protestants") hereby move this Court to grant them relief from the statement in this Court's Order dated February 8, 2016 that this matter is closed.

Because this Motion is filed pursuant to Rule 1-060.B NMRA, the Protestants have not contacted opposing counsel before filing the Motion. *See* Rule 1-007.1.C(5) NMRA.

- I. This Court should re-open this matter to address the Augustin Plains Ranch's amended application.

The Protestants are requesting that the Court grant their Motion for Relief and re-open this matter. The purpose of the Protestants' Motion is to enable the Protestants to request that

¹ The names of the Protestants filing this Motion are listed on page 16.

this Court enforce its November 14, 2012 Memorandum Decision on Motion for Summary Judgment (“Memorandum Decision”) against the New Mexico State Engineer with respect to the Augustin Plains Ranch’s amended application. The Ranch’s amended application has been filed with the New Mexico State Engineer (the “State Engineer”) and, even though the Ranch’s amended application has the same defects that caused both the State Engineer and this Court to reject the Ranch’s original application (the “Ranch’s Original Application”),² the State Engineer has authorized publication of notice of the Ranch’s amended application (the “Ranch’s Amended Application”).³ The Protestants seek to have this matter re-opened so that they can request that this Court enforce its Memorandum Decision and order the State Engineer to reject the Ranch’s Amended Application.

There are two reasons why this Court should grant the Protestants’ Motion for Relief and re-open this case to enable the Protestants to address the Ranch’s Amended Application. The first reason is that the Ranch’s Amended Application has the same defects that caused this Court to reject the Ranch’s Original Application in this Court’s Memorandum Decision. Those defects are the failure to specify who will use the water that the Ranch proposes to appropriate and the failure to specify the purpose and place of use of that water.

Specifically, this Court determined in its Memorandum Decision that those defects required the State Engineer to reject the Ranch’s Original Application. Memorandum Decision, pp. 14-32. This Court pointed out that New Mexico law does not allow “dog in the manger” tactics that involve a party holding a right to water even though the party has no use for it. *Id.*, p.

² The Ranch’s Original Application included two filings: the first one on October 12, 2007 and the second one on May 5, 2008.

³ The Ranch’s Amended Application includes three filings: the first on July 14, 2014, the second on December 23, 2014, and the third on April 28, 2016.

24. As is more fully explained on pages 5-9 below, the Ranch's Amended Application presents the same "dog in the manger" approach as the Ranch's Original Application.

The second reason why this Court should re-open this case so that the Protestants can address the Ranch's Amended Application is that the Ranch's Amended Application is essentially identical to the Ranch's Original Application and the State Engineer's proceeding concerning the Ranch's Amended Application is a continuation of the State Engineer's proceeding concerning the Ranch's Original Application. It therefore is appropriate for the Ranch's Amended Application to be addressed in this case.

Moreover, this Court has the authority to grant the Protestants' Motion for Relief and re-open this case pursuant to Rule 1-060.B NMRA of the Rules of Civil Procedure.

II. Rule 1-060.B NMRA provides for the relief requested by the Protestants.

This Motion for Relief is made pursuant to Rule 1-060.B NMRA of the Rules of Civil Procedure ("Rule 1-060.B"), which provides for the use of motions for relief from a judgment "for any ... reason justifying relief from the judgment". Rule 1-060.B(6). In this matter, the Protestants are only requesting relief from this Court's statement that this case is closed. The Protestants are not requesting relief from this Court's substantive ruling that the State Engineer was required to deny the Ranch's Original Application or from any of this Court's other rulings.

Argument

III. Background

A. Previous proceedings before the State Engineer and in this Court.

This case began in 2012 when the Augustin Plains Ranch (the "Ranch") appealed to this Court from a ruling by the State Engineer denying the Ranch's Original Application to appropriate ground water from the San Augustin Basin. The State Engineer had determined that

the Ranch's Original Application had to be denied because the Application failed to specify the purpose and place of use of the water that the Ranch proposed to appropriate, and failed to specify who would use that water. *See* State Engineer's March 30, 2012 Order Denying Original Application (the "State Engineer's Order Denying the Ranch's Original Application") (attached as Exhibit 1), ¶¶17-26.

In response to the Ranch's appeal to this Court, the Protestants filed a motion for summary judgment urging that the appeal be denied, and this Court granted that motion. This Court's order granting the motion was based on the failure of the Ranch's Original Application to specify the purpose and place of use of the water that the Ranch proposed to appropriate and the failure of the Ranch's Original Application to specify who would use that water. *See* Memorandum Decision, pp. 14-32, and this Court's January 3, 2013 Order. This Court stated:

Because Applicant [the Ranch] failed to specify beneficial uses and places of use in its application and chose to make general statements covering nearly all possible beneficial uses and large swaths of New Mexico for its possible places of use, the State Engineer had no choice but to reject the application. The application does not reveal a present intent to appropriate water, but merely to divert it and explore specific appropriations later.

Memorandum Decision, p. 20.

This Court then entered an Order on January 3, 2013 denying the Ranch's appeal to this Court from the State Engineer's Order Denying the Ranch's Original Application.

Following this Court's entry of the January 3, 2013 Order, the Ranch filed an appeal to the State Court of Appeals. The Ranch subsequently withdrew that appeal, and made a motion requesting that this Court dismiss this case and remand the matter to the State Engineer. This Court denied that motion in an Order dated February 8, 2016, in which this Court stated that:

There is nothing further for this Court to do in this matter, and the case is closed.

Order dated February 8, 2016, p. 3.

The statement that this case is closed is the only provision in any of this Court's Orders from which the Protestants are seeking relief. The Protestants are not requesting relief from any other provision of this Court's Order of February 8, 2016 or from any provision of this Court's January 3, 2013 Order. The Protestants' only request is that this Court grant their Motion for Relief from that statement in the February 8, 2016 Order and re-open this case.

- B. The current proceedings before the State Engineer are a continuation of the State Engineer's proceedings concerning the Ranch's Original Application.

After this case was closed, the Ranch filed its Amended Application with the State Engineer. As is explained in more detail below, the Ranch's Amended Application is virtually identical to the Ranch's Original Application in all material respects even though there are some differences in the language used in the two Applications. Neither Application specifies who would use the water to be appropriated by the Ranch or the purpose or place of use of that water. Both the virtually identical content of the two Applications and the manner in which the State Engineer is treating the Ranch's Amended Application indicate that the State Engineer's proceeding concerning the Ranch's Amended Application is a continuation of the State Engineer's earlier proceeding concerning the Ranch's Original Application.

1. The Ranch's Amended Application proposes to appropriate the same ground water that the Ranch's Original Application proposed to appropriate.

The first feature of the Ranch's Amended Application that indicates that it is a continuation of the Ranch's Original Application is that the Ranch's Amended Application proposes to appropriate the same ground water that the Ranch's Original Application proposed to appropriate. The notice of publication of the Ranch's Original Application states:

The applicant [the Ranch] proposes to drill 37 wells, all with 20-inch casing, and all approximately 2000 feet deep, to be located at coordinates described below in Catron County on land owned by the applicant. The applicant further proposes to divert and consumptively use 54,000 acre-feet of ground water per annum for domestic, livestock, irrigation, municipal, industrial, and commercial purposes of use

Notice of publication of the Ranch's Original Application (attached as Exhibit 2), p. 1.

The Notice of publication of the Ranch's Amended Application is essentially identical. It states:

The applicant [the Ranch] 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 the applicant located as follows ...

Notice of publication of the Ranch's Amended Application (attached as Exhibit 3), p. 1.

Moreover, the locations of the 37 wells from which the Ranch proposes to pump ground water are also the same in the Ranch's Original Application and the Ranch's Amended Application. The format and nomenclature of the descriptions of the wells differs between the Ranch's Original Application and the Ranch's Amended Application,⁴ but the locations of all of the 37 wells listed in the Ranch's Original Application and in the Ranch's Amended Application

⁴ As an example, the location of the third well listed in the Ranch's Original Application is described as:

Well RG-89943-POD3 (applicant's Well No. 3): 34 degrees, 12 minutes, 58.177 seconds North Latitude, 107 degrees, 43 minutes, 47.907 seconds West Longitude.

Notice of publication of the Ranch's Original Application (Exhibit 2), p. 1.

The Ranch's Amended Application describes the third well as being located at the same site:

Well RG-89943-POD3 (applicant's Well No. 3): 34 deg., 12 min., 58.177 sec. N latitude, 107 deg., 43 min., 47.907 sec. W longitude, within the NE ¼ SW ¼ SW ¼ of Section 13, Township 1 South, Range 9 West, NMPM.

Notice of publication of the Ranch's Amended Application (Exhibit 3), p. 1.

are exactly the same. *Compare* Notice of publication of Ranch's Original Application (Exhibit 2) with Notice of Publication of Ranch's Amended Application (Exhibit 3).

2. The Ranch's Amended Application's vague descriptions of the purposes and places of use of the ground water at issue are essentially the same as the comparable vague descriptions in the Ranch's Original Application.
 - a. The Ranch's Original Application proposed to use the ground water in a large undefined area for a variety of purposes.

The Ranch's Original Application had two descriptions of the proposed place of use of the water that the Ranch proposed to extract from the San Augustin Basin. The first was:

Within the exterior boundaries of Augustin Plans Ranch ("Ranch"), which is located in Catron County, New Mexico.

Ranch's Original Application, May 5, 2008 filing, p. 5.

The second description of the proposed place of use was:

Any areas within Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe Counties that are situated within the geographic boundaries of the Rio Grande Basin in New Mexico.

Id., p. 6.

The Ranch's Original Application's description of the uses to which the water would be put was similarly open-ended. The Original Application indicated that the water would be used for domestic, livestock, irrigation, municipal, industrial, commercial, and other (including environmental, recreational, subdivision and related; replacement and augmentation). *Id.*, p. 1.

The Ranch's Original Application indicated as well that:

The purpose of this Amended Application is to provide water by pipeline to supplement or offset the effects of existing uses and for new uses in the areas designated in Attachment B, in order to reduce the current stress on the water supply of the Rio Grande Basin in New Mexico.

Id., p. 2.

These vague and open-ended descriptions of the purpose and place of use and user of the water at issue in the Ranch's Original Application are essentially identical to the descriptions of the purpose and place of use and user of the water at issue in the Ranch's Amended Application.

- b. The Ranch's Amended Application provides essentially the same information about place and purpose of use of the ground water as the Ranch's Original Application.

The Ranch's Amended Application's approach to the locations where the ground water would be used and the purposes for which it would be used is virtually the same as the approach in the Ranch's Original Application. The Ranch's Amended Application states:

The water will be put to use by municipal, industrial and other users along the pipeline route shown on Exhibit D to Attachment 2. The water used for municipal purposes will be put to use within the authorized service areas of the municipalities listed in Attachment 2. The water used for bulk sales will be put to use by limited municipal and investor-owned utilities, commercial enterprises, and government agencies in parts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval and Santa Fe Counties as shown on Attachment 1 of Exhibit G.

Ranch's Amended Application, p. 3.

Attachment 2 to the Ranch's Amended Application states that the water will be used in Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe counties. Ranch's Amended Application, Attachment 2, Section III.3, page 3. A second description in Attachment 2 also fails to indicate a specific location where the water would be used or who the user of the water would be. It states that:

Applicant [the Ranch] intends to provide water for municipal purposes in one or more of the following municipalities:

Municipal Entity	Service Area
Magdalena	Within the service area of the Village of Magdalena municipal water system
Socorro	Within the corporate limits of the City of Socorro

Belen	Within the service area of the City of Belen municipal water system in Valencia County, New Mexico
Los Lunas	Village of Los Lunas municipal water system service area
Albuquerque Bernalillo County Water Utility Authority	Service area of the Albuquerque Bernalillo County Water Utility Authority municipal water system
Rio Rancho	Town of Alameda Grant West of the Rio Grande and surrounding areas in Sandoval County

Ranch's Amended Application, Attachment 2, Section III.5.A, page 4 (footnotes omitted).

In addition, Section III.5.B of Attachment 2 indicates:

Applicant [the Ranch] plans to conduct commercial water sales in the parts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe counties that are situated within the geographic boundaries of the Rio Grande Basin

Ranch's Amended Application, Attachment 2, Section III.5.B, page 5.

There is therefore essentially no difference between the open-ended descriptions of who would use the water to be appropriated and the purposes and places of use of that water in the Ranch's Original Application and in the Ranch's Amended Application. Moreover, although the Ranch's Amended Application provides a blank example of a "long term water supply water agreement", the contract provides no information about who would use the water at issue or the purpose or place of use of that water. *See* sample contract attached as Exhibit 4.

3. The State Engineer is conducting the proceeding addressing the Ranch's Amended Application as a continuation of the proceeding addressing the Ranch's Original Application.

Finally, the State Engineer is treating the proceeding to consider the Ranch's Amended Application as a continuation of the State Engineer's proceeding addressing the Ranch's Original

Application in two ways. First, the State Engineer filed the Ranch's Amended Application under the same number (RG-89943) as the Ranch's Original Application. Second, the State Engineer determined that any protest filed in response to the Ranch's Original Application would also apply to the Ranch's Amended Application. The notice of publication of the Ranch's Amended Application states:

In the event that a party filed a timely written protest or objection to the original Application to Appropriate RG-89943, filed with the State Engineer on October 12, 2007 and May 5, 2008, it is not necessary to file an additional written protest. Those protests or objections are considered timely for this corrected application and notice of publication.

Notice of Ranch's Amended Application for publication (Exhibit 3), page 4.

- C. The State Engineer initiated the continuation of its earlier proceeding despite the flaws in the Ranch's Amended Application and despite the earlier rulings of the State Engineer and this Court.

The State Engineer informed the Ranch of the decision to authorize publication of the notice of the Ranch's Amended Application by means of a letter dated August 12, 2016 from Joey Fields of the State Engineer's Office to counsel for the Ranch (attached as Exhibit 5). The State Engineer issued that letter despite three compelling reasons against doing so. The first reason is the failure of the Ranch's Amended Application to specify who would use the water at issue as well as the purpose and place of use of that water. The second reason is the State Engineer's earlier rejection of the Ranch's Original Application because of its failure to include those specific items of information. *See* State Engineer's Order Denying the Ranch's Original Application") (Exhibit 1), ¶¶17-26. The third reason is the holding of this Court that:

the [Ranch's Original] application had to be denied by the State Engineer for the following reasons: (1) the application fail[ed] to specify the beneficial purpose and the place of use of water, contrary to NMSA 1978, §72-12-3(A)(2), (6) (2001); and (2) the application contradicts beneficial use as the basis of a water right and the public ownership of water, as declared in the New Mexico Constitution.

This Court's Memorandum Decision, page 14.

Given those three compelling reasons not to authorize publication of the notice of the Ranch's Amended Application, the State Engineer's decision to authorize publication can only be characterized as remarkable.

IV. The Protestants' interests in this matter.

The Protestants filing this Motion for Relief are parties who use water in the San Augustin Basin. They are concerned about the effect on their wells that would result from the extraction of ground water from the Basin that is proposed by the Ranch's Amended Application. The Protestants protested the Ranch's Original Application. Moreover, they filed the motion to dismiss that was the basis for the State Engineer's denial of the Ranch's Original Application and the motion for summary judgment that was the basis for this Court's ruling upholding the State Engineer's denial of the Ranch's Original Application.⁵ The Protestants are filing this Motion for Relief so that they will be able to address the Ranch's Amended Application in the context of this litigation rather than having to repeat their earlier litigation before the State Engineer and then in a new proceeding in this Court, particularly because the new litigation in this Court would be identical to the litigation already conducted in this case.

V. It is appropriate for this Court to re-open this matter pursuant to Rule 1-060.

Rule 1-060 provides this Court with authority to grant the Motion for Relief and re-open this matter, and this Court should exercise that authority for three reasons. First, this Court has discretion to re-open this matter because this situation presents an extraordinary circumstance due to the remarkable decision of the State Engineer to authorize publication of the Ranch's Amended Application. Second, the Protestants' Motion for Relief is filed within a reasonable

⁵ One of the original group of more than 100 Protestants is no longer involved because she has passed away. A few others are no longer involved because they no longer own affected property.

time following the State Engineer's decision. Finally, this Court should grant the Motion for Relief and re-open this case because that is necessary in order to achieve substantial justice.

A. This Court should exercise its discretion to re-open this matter because of the State Engineer's extraordinary decision on the Ranch's Amended Application.

1. This Court has discretion to re-open this matter pursuant to Rule 1-060.

Rule 1-060.B.6 provides that a court may relieve a party from a "final judgment, order, or proceeding" for "any other reason justifying relief from the operation of the judgment". Whether to grant the Protestants' Motion for Relief and re-open this case is within the discretion of this Court. As the State Supreme Court stated in Foreman v. Myers, 1968-NMSC-138, 79 N.M. 404:

With reference to the claimed abuse by the trial court in refusing to reopen the case, we would point out that we have consistently held that such a determination is within the sound discretion of the trial court and will not be lightly overturned.

1968-NMSC-138, ¶17, 79 N.M. 408.

This Court therefore has authority to grant the Motion for Relief and re-open this case.

2. This Court should grant the Protestants' Motion for Relief and re-open this case because this case presents an extraordinary circumstance.

The State Court of Appeals has indicated that a district court must be confronted with extraordinary circumstances in order to exercise its discretion to re-open a case. Jemez Properties, Inc. v. Lucero, 1979-NMCA-162, ¶8, 94 N.M. 181, 184. The facts in this case do present such an extraordinary circumstance.

The State Engineer and this Court both ruled that the Ranch's Original Application must be denied because it did not specify the place of use, purpose of use, or user of the water that the Ranch proposed to appropriate. See Memorandum Decision, pages 14-32, State Engineer's Order Denying Application (Exhibit 1), ¶¶17-26. Despite that, the State Engineer has authorized publication of the notice of the Ranch's Amended Application even though the Ranch's

Amended Application also fails to specify the place of use, purpose of use, and user of the water that the Ranch proposes to appropriate.

The comparison of the two Applications set forth on pages 5-9 above indicates that the reasoning in this Court's Memorandum Decision and the reasoning in the State Engineer's Order Denying Application require that the State Engineer deny the Ranch's Amended Application, and mandate that the State Engineer should not have authorized publication of the notice of the Ranch's Amended Application. Because the Ranch's Amended Application does not comply with the requirements of the Memorandum Decision and the Order Denying Application, it is remarkable that the State Engineer made the decision to authorize publication of the notice of the Ranch's Amended Application. That decision therefore constitutes an extraordinary circumstance that justifies this Court's re-opening of this matter pursuant to Rule 1-060.B.6.

B. This Motion for Relief is timely.

Rule 1-060 requires that a motion for relief from a judgment must be made within "a reasonable time." The Rule indicates that motions for relief filed for reasons that are not relevant here must be filed within a year after the date on which the relevant judgment or order was entered. Particularly in light of that mandatory time frame, the Protestants' Motion for Relief is made within a reasonable time after the State Engineer's decision to authorize publication of the notice of the Ranch's Amended Application and the publication of that notice.

The State Engineer notified the Ranch of the State Engineer's decision to authorize publication of the notice of the Ranch's Amended Application on August 12, 2016. As far as the Protestants are aware, the notice of the Ranch's Amended Application was first published in the *Santa Fe New Mexican* on September 7, 2016 and in the *Albuquerque Journal* on September 9,

2016.⁶ The Protestants' Motion is being filed on September 12, 2016, which is within five days after the initial publication of the notice and within one month after the State Engineer authorized publication of the notice.

The Protestants therefore are filing their Motion for Relief within a reasonable time after the State Engineer authorized publication of the notice of the Ranch's Amended Application and within a very short time after the initial publication of the notice.

C. Granting the Motion for Relief and re-opening of this case is necessary to achieve substantial justice.

The Court of Appeals pointed out in Wells Fargo Bank, N.A. v. City of Gallup, 2011-NMCA-106, 150 N.M. 706, that district courts should be liberal in determining whether to grant motions to re-open judgments and should focus on accomplishment of substantial justice. The Court stated:

[T]he district court should be liberal in determining what constitutes good cause to vacate a judgment so that the ultimate result will address the true merits and substantial justice will be done.

2011-NMCA-106, ¶12, 150 N.M. 710 (internal quotation marks omitted).

In this matter, the Protestants are faced with the prospect of having to repeat the litigation that they already endured concerning the incomplete Ranch's Original Application. Moreover, the Protestants are faced with having to conduct this litigation concerning the identically incomplete Ranch's Amended Application over again both before the State Engineer and in this Court. Finally, the Ranch has proposed in its Amended Application a two stage hearing process in which "hydrologic issues", including protests, would be addressed in the first stage. The

⁶ Counsel for the Protestants does not know whether the notice of the Ranch's Amended Application has been published in any of the other newspapers where it is required to appear.

Ranch's Amended Application further proposes that the Ranch would have 12 months after entry of the order on "hydrologic issues" to:

adjust and finalize the individual purposes of use, places of use and amounts for each use.

Ranch's Amended Application, Attachment 2.II (attached as Exhibit 6), pp. 2-3.

In other words, the Ranch is endeavoring to force the Protestants to litigate their protests, which will require extensive financial and other resources, before they can address critical threshold issues such as whether the Ranch's Amended Application should be denied because it fails to specify who will use the water at issue as well as the purpose and place of use of that water.

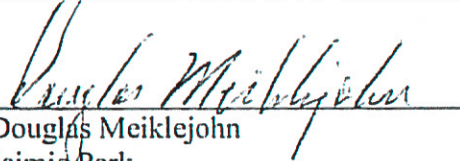
It would not be just to require the Protestants to repeat their litigation before the State Engineer, particularly if the State Engineer conducts his proceeding in the manner proposed by the Ranch, and then to repeat their litigation in this Court. For that reason, this Court should grant the Protestants' Motion for Relief and re-open this case so that the Protestants will be able to litigate the lack of merit of the Ranch's Amended Application in a continuation of the case concerning the Ranch's Original Application.

Conclusion

This Court should grant the Protestants' Motion for Relief and re-open this case. This Court has discretion to do so, and it is faced with the extraordinary circumstance presented by the State Engineer's decision to authorize publication of the notice of the Ranch's Amended Application. Moreover, the Protestants' Motion for Relief was filed in a timely manner, and re-opening this case is necessary to achieve substantial justice.

Dated: September 12, 2016.

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Certificate of Service

I certify that copies of this Motion for Relief were sent by electronic mail and first class mail on September 12, 2016 to:

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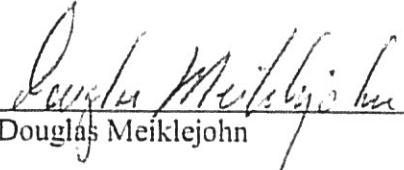
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BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE APPLICATION BY)
AUGUSTIN PLAINS RANCH, LLC FOR PERMIT)
TO APPROPRIATE GROUNDWATER IN THE)
RIO GRANDE UNDERGROUND WATER BASIN)
OF NEW MEXICO)

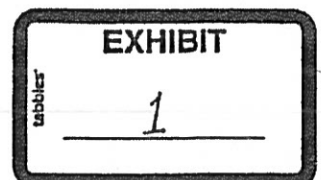
Hearing No. 09-096

OSE File No. RG-89943

OFFICE OF THE
STATE ENGINEER
HEARINGS UNIT
SANTA FE, NM

ORDER DENYING APPLICATION

This matter came on before Andrew B. Core, the State Engineer's designated Hearing Examiner, at a hearing held on February 7, 2012, in Courtroom 1 of the Socorro County Courthouse in Socorro, New Mexico to consider a Motion to Dismiss Application (Motion 1), filed by a group of approximately 80 Protestants represented by New Mexico Environmental Law Center (ELC Group) on February 11, 2011 and a Motion to Dismiss Application for Permit to Appropriate Underground Water (Motion 2), filed by Protestant Middle Rio Grande Conservancy District (MRGCD) on February 11, 2011. The parties appeared as follows: John B. Draper, Esq., and Jeffrey J. Wechsler, Esq., represented Applicant Augustin Plains Ranch, LLC (Ranch); R. Bruce Fredrick, Esq., represented Protestant ELC Group; Steven Hernandez, Esq., represented Protestant MRGCD; Jennifer M. Anderson, Esq., represented Protestant Kokopelli Ranch, LLC; Kate Hoover represented Protestant Navajo Nation; Seth Fullerton, Esq., represented Protestant Last Chance Water Co.; George Chandler, Esq., represented Protestant Monticello Community Ditch Association; Janis E. Hawk, Esq., represented Protestant Pueblo of Acoma; Christopher Shaw, Esq., represented Protestant NM Interstate Stream Commission; Samuel D. Hough, Esq., represented Protestant Pueblo of Santa Ana; Richard Mertz, Esq., represented Protestant University of New Mexico; Sherry J. Tippet, Esq., represented Protestants Luna Irrigation Ditch, Cuchillo Valley Acequia Association and Salomon J. Tafoya; Ron Shortes, Esq., represented Protestants Shortes XX Ranch, Board of County Commissioners for Catron County, Sandra Carol Coker, Ronald Goecks, Cynthia S. Lee, John Pemberton, Darnell & Montana Pettis, and the Walkabout Creek Ranch; and Stacey J. Goodwin, Esq., and Jonathan Sperber, Esq., represented the Water Rights Division of the Office of the State Engineer.



During the period from February 15, 2011 to May 17, 2011, several parties to the captioned matter each filed briefs questioning the adequacy of the Application, joinders to the motions to dismiss, responses to the motions to dismiss, and replies to the responses. Having examined all of the pleadings and considering the arguments presented at hearing, the Hearing Examiner finds the following and recommends to the State Engineer the following Order denying the subject Application.

1. The State Engineer has jurisdiction of the parties and subject matter.
2. The jurisdiction of the State Engineer is invoked pursuant to Articles 2, 5 and 12 of Chapter 72 NMSA 1978.
3. The relief sought by Motion 1 and Motion 2 are, in effect, the same.
4. A separate hearing for each of the motions is unwarranted.
5. NMSA section 72-12-3(A) states (in relevant parts): "In the application, the applicant shall designate: ...(2) the beneficial use to which the water will be applied; and ...(6) the place of use for which the water is desired; and...(7) if the use is for irrigation, the description of the land to be irrigated and the name of the owner of the land." (emphasis added)
6. NMSA section 72-12-7(C) states (in relevant part): "If objections or protests have been filed within the time prescribed in the notice or if the state engineer is of the opinion that the permit should not be issued, the state engineer may deny the application...."
7. NMSA section 72-5-7 states (in relevant part): "[The state engineer] may also refuse to consider or approve any application or notice of intention to make application ... if, in his opinion, approval would be contrary to the conservation of water within the state or detrimental to the public welfare of the state."
8. The face of the subject amended Application requests almost all possible uses of water, both at the Ranch location and at various unnamed locations within "Any areas within Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval and Santa Fe Counties that are situated within the geographic boundaries of the Rio Grande Basin..." but does not identify a purpose of use at any one location with sufficient specificity to allow for reasonable evaluation of whether the proposed appropriation would impair existing rights or would not be contrary to the

conservation of water within the state or would not be detrimental to the public welfare of the state.

9. The Notice of Publication for the subject amended Application suggests that 4,440 acres of land on the Ranch property would be irrigated from the proposed 37 wells, but applying the requested 54,000 acre-feet per year of proposed diversion to that acreage would result in a crop irrigation requirement (CIR) of approximately 12.16 acre-feet of water per acre per year.
10. Within the Rio Grande Underground Water Basin, the usual administrative practice of the State Engineer is to recognize a CIR of 3 acre-feet of water per acre per year diversion.
11. Applying 12.16 acre-feet of water per acre per year to any land within the Rio Grande Underground Water Basin would be contrary to sound public policy.
12. Attachment B to the subject Application states (in relevant part): "there are extraordinary potential uses of the water that could support the State of New Mexico as a whole. These include providing water to the State of New Mexico to augment its capacity to meet compact deliveries to the State of Texas on the Rio Grande at Elephant Butte dam."
13. The New Mexico Interstate Stream Commission is the only entity authorized to administer "compact deliveries to the State of Texas on the Rio Grande at Elephant Butte dam."
14. The New Mexico Interstate Stream Commission is not a co-applicant to the subject Application.
15. Attachment B to the subject Application states (in relevant part): "Preliminary studies indicate the water resources could be utilized to support municipalities in the region, including Datil, New Mexico, Magdalena, New Mexico and Socorro, New Mexico."
16. Of the listed municipalities, none is a co-applicant to the subject Application.
17. An application is, by its nature, a request for final action.
18. It is reasonable to expect that, upon filing an application, the Applicant is ready, willing and able to proceed to put water to beneficial use.
19. The statements on the face of the subject Application make it reasonably

doubtful that the Applicant is ready, willing and able to proceed to put water to beneficial use.

20. The face of the subject Application does not make it clear whether irrigation is contemplated only on any lands within the Ranch, or at some other, unnamed, locations.
21. Consideration of an application that lacks specificity of purpose of the use of water or specificity as to the actual end-user of the water would be contrary to sound public policy.
22. Consideration of an application to pump groundwater from a declared underground water basin which will then be released into a natural stream or watercourse without specific identification of delivery points and methods of accounting for that water would be contrary to sound public policy.
23. To consider or approve an Application that, on its face, is so vague and overbroad that the effects of granting it cannot be reasonably evaluated is contrary to sound public policy.
24. In keeping with NMSA section 72-5-7, Application RG-89943, filed with the State Engineer on October 12, 2007 and on May 5, 2008, should not be considered by the State Engineer.
25. Application RG-89943, filed with the State Engineer on October 12, 2007 and on May 5, 2008, should be denied without prejudice to filing of subsequent applications.
26. Hearing 09-096 should be dismissed.

ORDER

Application RG-89943, filed with the State Engineer on October 12, 2007 and on May 5, 2008, is denied and Hearing No. 09-096 is dismissed.

Andrew B. Core

Andrew B. Core
Hearing Examiner

I ACCEPT AND ADOPT THE ORDER OF THE HEARING EXAMINER.
THIS 30th DAY OF March, 2012

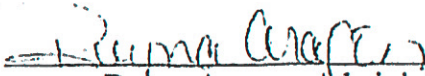
Scott A. Verhines

SCOTT A. VERHINES, P.E.
NEW MEXICO STATE ENGINEER



CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Order was mailed to all parties of record this 30th day of March 2012. A complete copy of the service list may be obtained at the OSE website, www.ose.state.nm.us. Click on the "Help Me Find" menu, scroll down to "Hearing Information" then click on "Augustin Plains Ranch, LLC Service List - HU No. 09-096. This service list will be updated as necessary.



Reyna Aragon, Administrator
(505) 827-1428

NOTICE is hereby given that on October 12, 2007, Augustin Plains Ranch, LLC, c/o Law & Resource Planning Associates, P.C., 201 Third Street NW, Suite 1750, Albuquerque, NM 87102, filed Application No. RG-89943 with the STATE ENGINEER for Permit to Appropriate Underground Water in the Rio Grande Underground Water Basin.

The applicant proposes to drill 37 wells, all with 20-inch casing, and all approximately 2000 feet deep, to be located at coordinates described below in Catron County on land owned by the applicant. The applicant further proposes to divert and consumptively use 54,000 acre-feet of ground water per annum for domestic, livestock, irrigation, municipal, industrial, and commercial purposes of use, to include "providing water to the State of New Mexico to augment its capacity to meet [Rio Grande Compact] deliveries to the State of Texas...at Elephant Butte dam," and "[offsetting] effects of ground water pumping on the Rio Grande in lieu of retirement of agriculture" via a pipeline to the Rio Grande.

The proposed well locations follow:

Well RG-89943-POD1 (applicant's Well No. 1): 34 degrees, 13 minutes, 29.779 seconds North Latitude, 107 degrees, 43 minutes, 13.037 seconds West Longitude;
Well RG-89943-POD2 (applicant's Well No. 2): 34 degrees, 12 minutes, 58.958 seconds North Latitude, 107 degrees, 43 minutes, 12.773 seconds West Longitude;
Well RG-89943-POD3 (applicant's Well No. 3): 34 degrees, 12 minutes, 58.177 seconds North Latitude, 107 degrees, 43 minutes, 47.907 seconds West Longitude;
Well RG-89943-POD4 (applicant's Well No. 4): 34 degrees, 12 minutes, 35.848 seconds North Latitude, 107 degrees, 43 minutes, 13.644 seconds West Longitude;
Well RG-89943-POD5 (applicant's Well No. 5): 34 degrees, 12 minutes, 36.275 seconds North Latitude, 107 degrees, 43 minutes, 47.142 seconds West Longitude;
Well RG-89943-POD6 (applicant's Well No. 6): 34 degrees, 12 minutes, 6.665 seconds North Latitude, 107 degrees, 43 minutes, 48.654 seconds West Longitude;
Well RG-89943-POD7 (applicant's Well No. 7): 34 degrees, 12 minutes, 5.993 seconds North Latitude, 107 degrees, 43 minutes, 13.036 seconds West Longitude;
Well RG-89943-POD8 (applicant's Well No. 8): 34 degrees, 10 minutes, 1.772 seconds North Latitude, 107 degrees, 44 minutes, 16.442 seconds West Longitude;
Well RG-89943-POD9 (applicant's Well No. 9): 34 degrees, 10 minutes, 0.982 seconds North Latitude, 107 degrees, 44 minutes, 51.761 seconds West Longitude;
Well RG-89943-POD10 (applicant's Well No. 10): 34 degrees, 9 minutes, 31.664 seconds North Latitude, 107 degrees, 44 minutes, 48.998 seconds West Longitude;
Well RG-89943-POD11 (applicant's Well No. 11): 34 degrees, 9 minutes, 32.342 seconds North Latitude, 107 degrees, 44 minutes, 18.662 seconds West Longitude;
Well RG-89943-POD12 (applicant's Well No. 12): 34 degrees, 9 minutes, 7.181 seconds North Latitude, 107 degrees, 45 minutes, 18.499 seconds West Longitude;
Well RG-89943-POD13 (applicant's Well No. 13): 34 degrees, 9 minutes, 7.200 seconds North Latitude, 107 degrees, 45 minutes, 51.100 seconds West Longitude;
Well RG-89943-POD14 (applicant's Well No. 14): 34 degrees, 8 minutes, 40.493 seconds North Latitude, 107 degrees, 45 minutes, 50.229 seconds West Longitude;

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Well RG-89943-POD15 (applicant's Well No. 15): 34 degrees, 8 minutes, 40.850 seconds North Latitude, 107 degrees, 45 minutes, 17.644 seconds West Longitude;
Well RG-89943-POD16 (applicant's Well No. 16): 34 degrees, 8 minutes, 17.728 seconds North Latitude, 107 degrees, 44 minutes, 15.850 seconds West Longitude;
Well RG-89943-POD17 (applicant's Well No. 17): 34 degrees, 8 minutes, 17.186 seconds North Latitude, 107 degrees, 44 minutes, 49.916 seconds West Longitude;
Well RG-89943-POD18 (applicant's Well No. 18): 34 degrees, 7 minutes, 43.544 seconds North Latitude, 107 degrees, 44 minutes, 51.204 seconds West Longitude;
Well RG-89943-POD19 (applicant's Well No. 19): 34 degrees, 7 minutes, 43.653 seconds North Latitude, 107 degrees, 44 minutes, 16.864 seconds West Longitude;
Well RG-89943-POD20 (applicant's Well No. 20): 34 degrees, 8 minutes, 15.697 seconds North Latitude, 107 degrees, 45 minutes, 17.752 seconds West Longitude;
Well RG-89943-POD21 (applicant's Well No. 21): 34 degrees, 8 minutes, 15.832 seconds North Latitude, 107 degrees, 45 minutes, 50.787 seconds West Longitude;
Well RG-89943-POD22 (applicant's Well No. 22): 34 degrees, 7 minutes, 44.814 seconds North Latitude, 107 degrees, 45 minutes, 52.419 seconds West Longitude;
Well RG-89943-POD23 (applicant's Well No. 23): 34 degrees, 7 minutes, 44.043 seconds North Latitude, 107 degrees, 45 minutes, 18.309 seconds West Longitude;
Well RG-89943-POD24 (applicant's Well No. 24): 34 degrees, 7 minutes, 21.076 seconds North Latitude, 107 degrees, 45 minutes, 18.892 seconds West Longitude;
Well RG-89943-POD25 (applicant's Well No. 25): 34 degrees, 7 minutes, 20.532 seconds North Latitude, 107 degrees, 45 minutes, 53.118 seconds West Longitude;
Well RG-89943-POD26 (applicant's Well No. 26): 34 degrees, 7 minutes, 21.630 seconds North Latitude, 107 degrees, 46 minutes, 19.041 seconds West Longitude;
Well RG-89943-POD27 (applicant's Well No. 27): 34 degrees, 6 minutes, 52.325 seconds North Latitude, 107 degrees, 45 minutes, 20.948 seconds West Longitude;
Well RG-89943-POD28 (applicant's Well No. 28): 34 degrees, 7 minutes, 22.957 seconds North Latitude, 107 degrees, 44 minutes, 15.086 seconds West Longitude;
Well RG-89943-POD29 (applicant's Well No. 29): 34 degrees, 7 minutes, 21.062 seconds North Latitude, 107 degrees, 44 minutes, 49.269 seconds West Longitude;
Well RG-89943-POD30 (applicant's Well No. 30): 34 degrees, 6 minutes, 53.305 seconds North Latitude, 107 degrees, 44 minutes, 47.283 seconds West Longitude;
Well RG-89943-POD31 (applicant's Well No. 31): 34 degrees, 6 minutes, 53.777 seconds North Latitude, 107 degrees, 44 minutes, 16.047 seconds West Longitude;
Well RG-89943-POD32 (applicant's Well No. 32): 34 degrees, 6 minutes, 32.564 seconds North Latitude, 107 degrees, 44 minutes, 14.548 seconds West Longitude;
Well RG-89943-POD33 (applicant's Well No. 33): 34 degrees, 6 minutes, 32.477 seconds North Latitude, 107 degrees, 44 minutes, 48.784 seconds West Longitude;
Well RG-89943-POD34 (applicant's Well No. 34): 34 degrees, 7 minutes, 45.577 seconds North Latitude, 107 degrees, 46 minutes, 20.103 seconds West Longitude;
Well RG-89943-POD35 (applicant's Well No. 35): 34 degrees, 8 minutes, 14.721 seconds North Latitude, 107 degrees, 46 minutes, 17.697 seconds West Longitude;
Well RG-89943-POD36 (applicant's Well No. 36): 34 degrees, 10 minutes, 1.553 seconds North Latitude, 107 degrees, 45 minutes, 15.118 seconds West Longitude; and
Well RG-89943-POD37 (applicant's Well No. 37): 34 degrees, 9 minutes, 30.586 seconds North Latitude, 107 degrees, 45 minutes, 15.791 seconds West Longitude.

The proposed place of use "is within the exterior boundaries of Catron County, Socorro County, and Augustin Plains Ranch." The location of Augustin Plains Ranch is described as follows:

Township 1 South, Range 9 West, NMPM:

S1/2 Section 1; Section 12; Section 13; Section 14; Section 15; Section 16; W1/2, NE1/4, and SE1/4 Section 20; W1/2, SE1/4, and NE1/4 Section 21; Section 22; Section 23; Section 24; Section 27; Section 28; Section 29; Section 32; Section 33; and Section 34; all in Catron County.

Township 2 South, Range 9 West, NMPM:

NW1/4 SW1/4 Section 1; Lots 1, 2, 3, 4, S1/2 N1/2, and S1/2 Section 2; Section 3; Section 4; S1/2 SE1/4 Section 7; E1/2, S1/2 SW1/4 Section 8; Section 10; Section 14; Section 15; Section 16; Section 17; Lot 1, NE1/4 NW1/4, N1/2 NE1/4, SE1/4 NE1/4, S1/2 S1/2, and NE1/4 SE1/4 Section 18; NE1/4, N1/2 NW1/4 Section 21; N1/2, N1/2 SW1/4, N1/2 SE1/4, and SE1/4 SE1/4 Section 22; Section 23; and all that portion of Section 26 which lies north of U.S. Highway 60; all in Catron County.

The proposed wells are generally located north and south of U.S. Highway 60 between the Catron-Socorro County Line and Datil, New Mexico. The proposed place of use includes all of Catron and Socorro Counties.

Any person or other entity shall have standing to file an objection or protest if they object that the granting of the application will: (1) Be detrimental to the objector's water right; or (2) Be contrary to the conservation of water within the state or detrimental to the public welfare of the state, provided that the objector shows how they will be substantially and specifically affected by the granting of the application.

A valid objection or protest shall set forth the grounds for asserting standing and shall be legible, signed, and include the complete mailing address of the objector. An objection or protest must be filed with the state engineer not later than 10 calendar days after the date of the last publication of this notice. An objection or protest may be mailed to the Office of the State Engineer, 121 Tijeras NE, Suite 2000, Albuquerque, NM 87102-3465, or faxed to 505-764-3892 provided the original is hand-delivered or postmarked within 24 hours after transmission of the fax. The State Engineer will take the application up for consideration in the most appropriate and timely manner practical.

NOTE TO PUBLISHER. Immediately after last publication, publisher is requested to file affidavit of such publication with the Office of the State Engineer, Springer Square, 121 Tijeras NE, Suite 2000, Albuquerque, NM 87102.

NOTICE is hereby given that on July 14, 2014, December 23, 2014 and again on April 28, 2016, Augustin Plains Ranch LLC, c/o Draper & Draper LLC, and Montgomery & Andrews, P.A., 325 Paseo del Peralta, Santa Fe, NM 87501 filed 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.

The applicant 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 the applicant located as follows:

Well RG-89943-POD1 (applicant's Well No. 1): 34 deg., 13 min., 29.779 sec. N latitude, 107 deg., 43 min., 13.037 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, Township 1 South, Range 9 West, NMPM;

Well RG-89943-POD2 (applicant's Well No. 2): 34 deg., 12 min., 58.958 sec. N latitude, 107 deg., 43 min., 12.778 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 1 South, Range 9 West, NMPM;

Well RG-89943-POD3 (applicant's Well No. 3): 34 deg., 12 min., 58.177 sec. N latitude, 107 deg., 43 min., 47.907 sec. W longitude, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, Township 1 South, Range 9 West, NMPM;

Well RG-89943-POD4 (applicant's Well No. 4): 34 deg., 12 min., 35.848 sec. N latitude, 107 deg., 43 min., 13.644 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, Township 1 South, Range 9 West, NMPM;

Well RG-89943-POD5 (applicant's Well No. 5): 34 deg., 12 min., 36.275 sec. N latitude, 107 deg., 43 min., 47.142 sec. W longitude, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 1 South, Range 9 West, NMPM;

Well RG-89943-POD6 (applicant's Well No. 6): 34 deg., 12 min., 6.665 sec. N latitude, 107 deg., 43 min., 48.654 sec. W longitude, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 1 South, Range 9 West, NMPM;

Well RG-89943-POD7 (applicant's Well No. 7): 34 deg., 12 min., 5.993 sec. N latitude, 107 deg., 43 min., 13.036 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 1 South, Range 9 West, NMPM;

Well RG-89943-POD8 (applicant's Well No. 8): 34 deg., 10 min., 1.772 sec. N latitude, 107 deg., 44 min., 16.442 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD9 (applicant's Well No. 9): 34 deg., 10 min., 0.982 sec. N latitude, 107 deg., 44 min., 51.761 sec. W longitude, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD10 (applicant's Well No. 10): 34 deg., 9 min., 31.664 sec. N latitude, 107 deg., 44 min., 48.998 sec. W longitude, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD11 (applicant's Well No. 11): 34 deg., 9 min., 32.342 sec. N latitude, 107 deg., 44 min., 18.662 sec. W longitude, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD12 (applicant's Well No. 12): 34 deg., 9 min., 7.181 sec. N latitude, 107 deg., 45 min., 18.499 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 2 South, Range 9 West, NMPM;

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Well RG-89943-POD13 (applicant's Well No. 13): 34 deg., 9 min., 7.200 sec. N latitude, 107 deg., 45 min., 51.100 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD14 (applicant's Well No. 14): 34 deg., 8 min., 40.493 sec. N latitude, 107 deg., 45 min., 50.229 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD15 (applicant's Well No. 15): 34 deg., 8 min., 40.850 sec. N latitude, 107 deg., 45 min., 17.644 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD16 (applicant's Well No. 16): 34 deg., 8 min., 17.728 sec. N latitude, 107 deg., 44 min., 15.850 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD17 (applicant's Well No. 17): 34 deg., 8 min., 17.186 sec. N latitude, 107 deg., 44 min., 49.916 sec. W longitude, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD18 (applicant's Well No. 18): 34 deg., 7 min., 43.544 sec. N latitude, 107 deg., 44 min., 51.204 sec. W longitude, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD19 (applicant's Well No. 19): 34 deg., 7 min., 43.653 sec. N latitude, 107 deg., 44 min., 16.864 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD20 (applicant's Well No. 20): 34 deg., 8 min., 15.697 sec. N latitude, 107 deg., 45 min., 17.752 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD21 (applicant's Well No. 21): 34 deg., 8 min., 15.832 sec. N latitude, 107 deg., 45 min., 50.787 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD22 (applicant's Well No. 22): 34 deg., 7 min., 44.814 sec. N latitude, 107 deg., 45 min., 52.419 sec. W longitude, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD23 (applicant's Well No. 23): 34 deg., 7 min., 44.043 sec. N latitude, 107 deg., 45 min., 18.309 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD24 (applicant's Well No. 24): 34 deg., 7 min., 21.076 sec. N latitude, 107 deg., 45 min., 18.892 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD25 (applicant's Well No. 25): 34 deg., 7 min., 20.532 sec. N latitude, 107 deg., 45 min., 53.118 sec. W longitude, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD26 (applicant's Well No. 26): 34 deg., 7 min., 21.630 sec. N latitude, 107 deg., 46 min., 19.041 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD27 (applicant's Well No. 27): 34 deg., 6 min., 52.325 sec. N Latitude, 107 deg., 45 min., 20.948 sec. W Longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD28 (applicant's Well No. 28): 34 deg., 7 min., 22.957 sec. N latitude, 107 deg., 44 min., 15.086 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD29 (applicant's Well No. 29): 34 deg., 7 min., 21.062 sec. N latitude, 107 deg., 44 min., 49.269 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD30 (applicant's Well No. 30): 34 deg., 6 min., 53.305 sec. N latitude, 107 deg., 44 min., 47.283 sec. W longitude, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD31 (applicant's Well No. 31): 34 deg., 6 min., 53.777 sec. N latitude, 107 deg., 44 min., 16.047 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD32 (applicant's Well No. 32): 34 deg., 6 min., 32.564 sec. N latitude, 107 deg., 44 min., 14.548 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD33 (applicant's Well No. 33): 34 deg., 6 min., 32.477 sec. N latitude, 107 deg., 44 min., 48.784 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD34 (applicant's Well No. 34): 34 deg., 7 min., 45.577 sec. N latitude, 107 deg., 46 min., 20.103 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD35 (applicant's Well No. 35): 34 deg., 8 min., 14.721 sec. N latitude, 107 deg., 46 min., 17.697 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 2 South, Range 9 West, NMPM;

Well RG-89943-POD36 (applicant's Well No. 36): 34 deg., 10 min., 1.553 sec. N latitude, 107 deg., 45 min., 15.118 sec. W longitude, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, Township 2 South, Range 9 West, NMPM; and

Well RG-89943-POD37 (applicant's Well No. 37): 34 deg., 9 min., 30.586 sec. N latitude, 107 deg., 45 min., 15.791 sec. W longitude, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 2 South, Range 9 West, NMPM. Said 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 owed 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.

Applicant 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. Applicant also 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 Applicant's wells. The Applicant also requests credit for the enhanced recharge facilities, which is subject to approval by the State Engineer.

The applicant also filed with the Corrected Application the following documents: 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 and 1:00-5:00 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/ALU/index.

Any person, firm or corporation or other entity having standing to file objections or protests shall do so in writing (objection must be legible, signed, and include the writer's complete name, phone number and mailing address). The objection to the approval of the application must be based on: (1) Impairment: if impairment, you must specifically identify your water rights; and or (2) Public Welfare/Conservation of Water; if public welfare or conservation of water within the state of New Mexico, you must show how you will be substantially and specifically affected. The written protest must be filed, in triplicate, with the State Engineer, 5550 San Antonio Drive NE, Albuquerque, NM 87109-4127, within ten (10) days after the date of the last publication of this Notice. Facsimiles (faxes) will be accepted as a valid protest as long as the hard copy is hand-delivered or mailed and postmarked within 24-hours of the facsimile. Mailing postmark will be used to validate the 24-hour period. Protests can be faxed to the Office of the State Engineer, (505) 383-4030. If no valid protest or objection is filed, the State Engineer will evaluate the application in accordance with the provisions of Chapter 72 NMSA 1978.

In the event that a party filed a timely written protest or objection to the original Application to Appropriate RG-89943, filed with the State Engineer on October 12, 2007 and May 5, 2008, it is not necessary to file an additional written protest. Those protests or objections are considered timely for this corrected application and notice of publication.

NOTE TO PUBLISHER: Immediately after last publication, publisher is requested to file affidavit of such publication with the Office of the State Engineer, 5550 San Antonio Dr. NE, Albuquerque, NM 87109-4127

SAMPLE LONG TERM WATER SUPPLY AGREEMENT

THIS LONG TERM WATER SUPPLY AGREEMENT ("Agreement") is entered into this ____ day of _____, 201__ (the "Effective Date"), by and among AUGUSTIN PLAINS RANCH LLC ("APR") and _____ who may be hereinafter referred to individually as a "Party," and collectively as the "Parties."

RECITALS:

A. APR owns a 17,780 acre ranch in Catron County, New Mexico. Large quantities of unappropriated groundwater underlie the ranch. APR desires to develop all or portions of the groundwater on behalf of municipal entities and other defined water users and deliver the water by pipeline to municipal entities. In furtherance of this intent, APR filed an application with the OSE file number _____ ("Application") that seeks approval from the State Engineer for 37 well permits to appropriate 54,000 acre-feet per year (AFY) ("Water Rights").

B. _____ is a municipal corporation of the State of New Mexico that *inter alia* provides water and wastewater services to the inhabitants of the City of _____ (the "City") and others. _____ has or will complete a 40 Year Water Plan. The City currently does not possess water supplies that exceed its 40 Year water demands and seeks to acquire a portion of the raw water supplies and infrastructure developed by APR in order to meet all or part of its 40 Year water demands.

C. APR owns or controls, and is actively acquiring further ownership or control, of groundwater rights and delivery infrastructure which can be utilized to provide a legal and physical water supply to _____.

D. APR and _____ desire to enter into an agreement whereby _____ shall supply water to _____ from and after the Water Delivery Date (as defined below).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows.

AGREEMENT

1. Term of Agreement. Subject to the terms and conditions of this Agreement, APR shall supply water to _____ to be used for municipal purposes from _____ (the "Water Delivery Date") to and until December 31, 20__.

2. Amount of Water to be Supplied. Beginning on the Water Delivery Date, APR shall deliver to _____ at the Delivery Location, as defined in Paragraph 5 below, _____ acre feet of fully consumable water each Contract Year in accordance with the Delivery Schedule, as defined in Paragraph 6 below. "Contract Year" shall mean, with respect to the first Contract Year the period between the Water Delivery Date and December 31, 20__; and, with respect to all other

Contract Years, the twelve-month period beginning on January 1st of each year during the term of this Agreement.

3. Initial Fee. _____ shall pay to APR, in addition to the Annual Water Payment Amount or any other sums due hereunder, the sum of _____ (the "Initial Fee"). The Initial Fee is non-refundable and shall not be applicable to the Annual Water Payment Amount payable under this Agreement. _____ shall pay the Initial Fee in ten annual payments of _____ each, on or before January 1, 2016 through January 1, 2025.

4. Yearly Payment.

(a) Consideration. From and after the Water Delivery Date, _____ shall pay APR for the water scheduled to be delivered during each Contract Year (the "Annual Water Payment Amount"). The Annual Water Payment Amount for the first Contract Year shall be [_____]. The Annual Water Payment Amount thereafter shall initially be the sum of _____. The Annual Water Payment Amount shall be increased or decreased on each five-year anniversary of the Water Delivery Date based upon any change over the preceding five-year period in the Core Consumer Price Index (CPI-All Urban Consumers All Items Less Food and Energy), published by the United States Department of Labor, Bureau of Labor Statistic ("Core CPI"), or successor index should publication of the Core CPI cease.

(b) Payment. _____ shall pay to APR the Annual Payment Amount on or before the first day of each Contract Year during the term of this Agreement. Starting with the second Contract Year, APR shall send an invoice to _____ on or before the date which is 15 days before commencement of such Contract Year which invoice shall state the applicable Annual Payment Amount for the upcoming Contract Year and shall, to the extent applicable, include (i) any amounts owed by APR as a refund pursuant to Paragraph 15, and (ii) an adjustment of the Annual Payment Amount reflecting the Core CPI, if applicable. If _____ fails to pay the required Annual Payment Amount on or before the commencement of the Contract Year, APR may give _____ a notice of default. If _____ does not cure by making full payment of all amounts then due within 30 days of receipt of any notice of default, then APR, in addition to pursuing any other remedies available to it, may declare this Agreement terminated and APR will be free to make other uses of the water that is the subject hereof. APR's failure to provide an invoice for any given Contract Year in the time provided for above shall NOT excuse _____'s obligation to pay any and all amounts due and payable under this Agreement.

5. Location for delivery. APR shall deliver the water to be supplied under this Agreement to (i) the municipal water plant ("Plant") as generally shown on Exhibit 1, (ii) any other location requested by _____ that is within the scope of the APR permitted or licensed water rights or (iii) at APR's discretion as provided for below, any other location mutually agreed to in writing by the Parties (the "Delivery Location"). The water shall initially be delivered to the location described in Subparagraph (i) above. _____ may request a change in the Delivery Location in writing at least 180 days prior to the beginning of the first month for which the change is sought; provided that APR may, in its sole discretion, grant or deny its consent to any request for a change in the Delivery Location to a location other than as provided for in Subparagraph 5(i) above.

6. Delivery Schedule. APR will make deliveries of the water at the Delivery Location according to the schedule set forth in Exhibit 2 attached hereto and incorporated herein by this reference (the "Delivery Schedule"). In no event shall the total amount of water delivered during any Contract Year exceed the maximum amount of _____ acre feet as set forth in Paragraph 2 above. As long as APR delivers the water to the Delivery Location according to the Delivery Schedule, _____ will be obligated to pay the Annual Water Payment Amount as set forth in Paragraph 4 above, regardless of whether _____ requests or uses the water, subject to any reduction in the Annual Water Payment Amount for subsequent Contract Years as provided for under Paragraphs 4 and 12 and any amounts owed by APR as a refund pursuant to Paragraph 15. _____ may request modification of the Delivery Schedule concerning the rates of delivery pursuant to the terms of Paragraph 13 but not the total annual amount of water to be delivered. _____ in its sole discretion may grant or deny any requested modification.

7. Sources. APR may supply water to _____ under this Agreement from any of the water rights APR owns, controls, or has a right to use pursuant to approvals of the State Engineer, State Engineer, which may legally be used to full extinction for municipal purposes at _____'s Plant. APR may supply water to _____ from any water right APR does not currently own, control or have the right to use, but that APR may acquire rights to in the future (the "Future Sources"); provided, however, that APR is solely responsible for obtaining any approvals of the State Engineer that may be necessary for use of Future Sources to provide water to be used to full extinction for municipal purposes at _____'s Plant.

8. Water Quality. APR does not make any representation as to the quality of the water to be delivered to _____ at the Delivery Location. APR does not represent that the water delivered to _____ will be acceptable for _____'s use without treatment. APR assumes the risk that the water delivered at the Delivery Location by APR will not be of sufficient quality to satisfy, without treatment, the water quality provisions of any applicable statute or permit governing _____'s use of the water.

9. No Opposition to APR Water Applications. From and after the Effective Date until the end of the term of this Agreement, _____ shall not oppose any application to the State Engineer filed by APR for any purpose.

10. Prohibition Against Acquiring Other Water Supplies. _____ shall not lease, buy or otherwise acquire the use of water for the same supply contemplated by this Agreement from any person or entity other than APR for municipal purposes from and after the Effective Date, except to the extent that APR is unable to perform under this agreement pursuant to Paragraph 15 below, in which case _____ may pursue all other sources of water supply for municipal use at _____'s Plant.

11. Accounting Responsibilities. APR is solely responsible for any and all reporting and accounting of water after delivery at the Delivery Location that may be required by the State Engineer or any other lawful authority.

12. APR's Right to Request Unused Yield. The Parties acknowledge that due to hydrologic and other conditions that occur in a given year, _____ may not need all or a portion of the water available to it under this Agreement ("Unused Yield"). From time to time, APR may contact

_____ to determine if any of the water required to be provided to _____ herein will not be needed by _____. If _____ confirms in writing that any portion of the water to be provided by APR will not be needed by _____, APR, at its option, may use the Unused Yield for any purpose. If APR uses any such Unused Yield water, it will determine the amount thereof, and it will notify _____ in writing and credit _____ on the next invoice issued to _____.

13. Variation of Delivery Rate. _____ may request a change in the weekly water delivery rate in order to accommodate _____ needs but not the total annual amount of water to be delivered. APR may grant or deny the request in its sole discretion.

(a) _____ must request any change in a monthly water delivery schedule in writing at least 10 days prior to the beginning of the relevant week.

(b) _____ may request daily changes by telephone with a written confirmation mailed within 5 business days of the request.

(c) APR shall document all water delivery rate changes in writing in a reasonable time after the request is granted and _____ shall be provided with a copy in the manner provided in Paragraph 17(1).

14. Assignment.

(a) General. APR may not assign its rights or delegate its duties hereunder without the prior written consent of _____ which consent shall not be unreasonably withheld, conditioned or delayed. _____ may not assign or sub lease its rights or delegate its duties hereunder without the prior written consent of _____, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that, (i) _____ shall deliver prior notice of any such assignment to APR, and, (ii) any assignee, subtenant or other transferee shall expressly assume _____'s obligations hereunder, unless otherwise agreed to by APR, and no assignment, sublease or delegation, whether or not consented to, shall relieve _____ of its obligations hereunder in the event the assignee fails to perform, unless APR agrees in writing in advance to waive _____'s continuing obligations under this Agreement.

15. Force Majeure.

(a) General. Subject to the terms and conditions in this paragraph, no party to this Agreement shall be liable for any delay or failure to perform under this Agreement due solely to conditions or events of Force Majeure, as that term is specifically defined with regard to each party below: provided that: (i) the non performing party gives the other party prompt written notice describing the particular of the occurrence of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event or condition; and (iii) the non-performing party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other party describing the actions taken to remedy the consequences of the Force Majeure event or condition. In the event of a change in municipal (or other local governmental entity), state or federal law or practice that prohibits or delays performance, the obligation to seek a remedy shall extend to making all reasonable efforts to reform the Agreement in a manner consistent with the

change that provides the parties substantially the same benefits as this Agreement, provided, however, that no such reformation shall increase the obligations of either party.

(b) Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event any delay or failure of performance on the part of the party claiming Force Majeure continues for an uninterrupted period of more than 365 days from its occurrence or inception as noticed pursuant to Paragraph 17(1) of this Agreement, the party not claiming Force Majeure may, at any time following the end of such one year period, terminate this Agreement upon written notice to the party claiming Force Majeure, without further obligation except as to costs and balances incurred prior to the effective date of such termination.

16. Condition Precedent. This Agreement shall be binding between APR and _____ upon the occurrence of the following conditions precedent listed below (the "Conditions Precedent") which Conditions Precedent shall be deemed satisfied as evidenced in writing: (a) completion of the infrastructure necessary to deliver water to the Delivery Location; and (b) issuance of one or more of the well permits applied for by APR in amounts sufficient to allow well diversions necessary to deliver water subject of this Agreement.

17. Miscellaneous.

(a) Amendment. This Agreement may be modified, amended, changed or terminated in whole or in any part only by an agreement in writing duly authorized and executed by the Parties with the same formality as this Agreement.

(b) Authority of the City Manager. The City Manager of the City, without further Council action, has the authority to: (i) enter into such amendments or other modifications of this Agreement as City Manager may deem necessary for the purpose of extending deadlines provided for in this Agreement or making administrative modifications to this Agreement; and (ii) execute such other documents as are necessary to effectuate the terms of this Agreement; provided, however, that City Manager may not make any such amendment or modification which is reasonably expected to increase the sums payable by _____ to APR hereunder.

(c) Waiver. The waiver of any breach of any provision of this Agreement by any Party hereto shall not constitute a continuing waiver of any subsequent breach of said Party, for either breach of the same or any other provision of this Agreement.

(d) Entire Agreement. This Agreement represents the entire agreement of the Parties, and neither Party has relied upon any fact or representation not expressly set forth herein. This Agreement supersedes all other prior agreements and understandings of any type, both written and oral, among the Parties with respect to the subject matter hereof; provided, however, that nothing in this Agreement amends or modifies any aspect of the Existing Lease, which remains in full force and effect.

(e) Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

(f) Binding Effect. This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, if any, subject to Paragraph 14 above.

(g) Governing Law and Venue. This Agreement and its application shall be construed in accordance with the laws of the State of New Mexico. The Parties agree that venue for any litigated disputes regarding this Agreement shall be the _____ County District Court.

(h) Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement.

(i) No Fees and Expenses and Apportionment. Except as otherwise expressly set forth in this Agreement, each Party will bear its own expenses in connection with the transactions and activities contemplated by this Agreement.

(j) Joint Draft. The Parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content.

(k) No Third-Party Beneficiaries. This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto, nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either Party or any other governmental entity not a Party hereto.

(l) Notices. Any notice required or permitted to be given hereunder shall be in writing or by e-mail addressed as follows, or as the Parties may subsequently designate by written notice to the other. All notices shall be delivered by facsimile, recognized overnight delivery service, or hand-delivery and shall be deemed effective upon: (i) the successful transmission of a facsimile; (ii) deposit with a recognized overnight delivery service; or (iii) upon receipt by hand delivery. All notices sent by e-mail shall be deemed delivered upon successful receipt of the e-mail message.

If to APR:

with a copy to:

If to _____:

with a copy to:

(m) Brokerage. The Parties warrant and represent to each other that no real estate agent or other broker or finder is involved in this transaction.

(n) Non-Severability and Effect of Invalidity. Each paragraph in this Agreement is intertwined with the others and are not severable unless by mutual consent of APR and _____

or as provided for below. If any provision or portion of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable for any reason by a Court of competent jurisdiction, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

(o) Recitals and Exhibits. The recitals to this Agreement and the exhibits attached to this Agreement are incorporated herein by this reference.

(p) Non-business Days. If the date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in N.M.R.A. 6, then the relevant date shall be extended automatically until the next day that is not a Saturday, Sunday or a "holiday."

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Signature Blocks

Exhibit 1

Initial Delivery Location

Exhibit 2

Delivery Schedule

Exhibit 3

DEC 23 1961

Form of Consent Agreement



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

DISTRICT I

TOM BLAINE, P.E.
STATE ENGINEER

5550 San Antonio NE
Albuquerque, NM 87109
(505) 383-4000

August 12, 2016

FILE (S): RG-89934

Draper & Draper LLC, c/o John Draper
Montgomery & Andrews, P.A., c/o Jeffrey J. Wechsler
325 Paseo del Peralta,
Santa Fe, NM 87501

Greetings:

The enclosed Notice for Publication on the following pages shall be published at applicant's expense once a week for three (3) consecutive weeks in the following newspapers: *The Santa Fe New Mexican* (Santa Fe County); *The Albuquerque Journal* (Bernalillo County and Sandoval County); the *Valencia County News-Bulletin* (Valencia County); the *El Defensor Chieftain* (Socorro County); the *Mountain Mail* (Catron County); the *Silver City Daily Press* (Grant County); and *The Herald* (Sierra County).

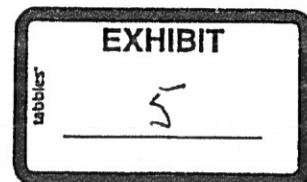
First publication should be made as soon as possible after receipt of this notice. Publisher's affidavit of such publication must be filed with the State Engineer within sixty (60) days from the date hereon. If the application is for a new appropriation, failure to file proof of publication within the time allowed shall cause postponement of the priority date of the application to the date of receipt of such proof in proper form. In the case of any other type of application, failure to file proof within the time allowed will cause the application to be cancelled.

The accuracy as to the content of the Notice is the responsibility of the applicant and the State Engineer is not obligated for any additional expense incurred by the necessity of readvertisement.

Neither issuance of the Notice, nor lack of protest thereto, in any way indicates favorable action by the State Engineer or approval of the application as requested.

Best Regards,


Joey Fields
Water Resource Specialist Senior



Stakeholder Involvement:

- Held discussions with all major water users in the Middle Rio Grande
- Identified end-users of project water
- Public presentations on the project, including town hall meetings designed to inform local residents of the project's objectives and preliminary design, to the New Mexico Association of Counties, the Interstate Stream Commission, the New Mexico Legislature Water and Natural Resources Committee, the Association of Commerce and Industry, and other stakeholders

Financial:

- Contracted with senior economic and financial analysts with knowledge of the Middle Rio Grande water resources and infrastructure finance requirements to evaluate the project's economic and financial feasibility and develop a financial model
- Worked with several infrastructure investors, including publicly traded investment banks and private equity, to assess the financial model and evaluate the project's feasibility

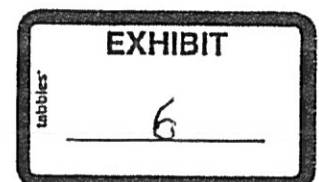
Applicant recognizes that additional investigation and analysis is necessary, which Applicant is ready, willing and able to undertake as part of the hearing. In addition, Applicant is in position to obtain all financing necessary to put the water to beneficial use within a reasonable time. For example, Exhibit B presents a letter from current investors attesting to their willingness to support the financing of the project through all phases of development, a letter from a leading investment bank attesting to the bankability of the project, and a certificate attesting to the inclusion of the project in the list of the 100 top global infrastructure projects at the 6th Annual Global Infrastructure Leadership Forum.

II. PROPOSED HEARING PROCEDURE

Pursuant to the statutory and regulatory authority of the State Engineer, and consistent with prior practice, the Applicant requests a two-stage process for consideration of this Corrected Application by the State Engineer:

Stage 1:

The first stage ("Stage 1") consist of an evaluation of the hydrological issues related to the Corrected Application, including the amount of water available for appropriation without impairing other water rights, and the amount of enhanced recharge. It would include advertisement of the Corrected Application and the opportunity for protests. The hearing during Stage 1 will allow for the presentation of exhibits and expert testimony on the hydrologic issues. Conservation of water and public welfare will also be addressed in Stage 1 to the extent they relate to the hydrologic issues. Stage 1 would result in an initial order on the hydrologic issues.



Stage 2:

Once the order on the hydrologic issues is entered, Applicant requests that it be given up to twelve (12) months to adjust and finalize the individual purposes of use, places of use and amounts for each use. Stage 2 would begin when Applicant submits an Amended Application with additional detail regarding the types and places of use for the water based on the order on the hydrologic issues. The information contained in the Amended Application will be included in a second advertisement to the public and a second opportunity to protest. Stage 2 consists of consideration of whether the detailed purposes and places of use can be approved without impairment of other rights, detriment to the public welfare, or being contrary to conservation of water within the State.

Applicant intends to put the full amount of applied-for water to beneficial use within a reasonable amount of time pursuant to the prior appropriation doctrine and applicable statutes and regulations. Bifurcating the hearing on the Corrected Application into two stages will allow the State Engineer to make a determination on hydrologic issues, and enable Applicant to use the initial order to finalize plans for the ultimate disposition of the water. The revised information on the places of and purposes of use will be included in the Amended Application and will be re-advertised to ensure that all interested parties in both the move-from and move-to locations have a full opportunity to evaluate the Corrected Application and participate if they choose. Applicant recognizes that it will not be entitled to apply water to beneficial use until the successful conclusion of both Stage 1 and Stage 2, and final action on this Application is not requested from the State Engineer until the conclusion of Stage 2.

III. ADDITIONAL INFORMATION FOR SECTIONS OF THE APPLICATION

2. Purpose of Use and Amount of Water

The purposes of use for the water identified in the Corrected Application are municipal and commercial sale. The individual detailed purposes and amounts of use will be finalized in Stage 2 of the application process, in conjunction with the amended and additional information to be included in the Amended Application. Amounts pumped and the amounts recharged will be metered and reported in a manner acceptable to the State Engineer.

3. County Where Water Right Will Be Used

The counties in which the applied for water will be used are Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe. Extant statutes define each of the seven counties, with a description of each county by legal subdivision. See NMSA 1978, §§ 4-1-1 to -2 & Compiler's notes (Bernalillo County), § 4-23-1 (Sandoval County), § 4-26-1 (Santa Fe County), § 4-2-1 (Catron County), § 4-27-1 (Sierra County), § 4-28-1 (Socorro County), § 4-32-1 (Valencia County). The place of use of the water within these counties is limited to those portions of these counties that are situated within the geographic boundaries of the Rio Grande Basin. See 19.27.49 NMAC.

STATE OF NEW MEXICO
COUNTY OF CATRON
SEVENTH JUDICIAL DISTRICT

AUGUSTIN PLAINS RANCH, LLC,

Applicant/Appellant,

v.

No. D-728-CV-2012-0008

TOM BLAINE, P.E.,

New Mexico State Engineer,

and

KOKOPELLI RANCH, LLC, *et al.*,

Protestants/Appellees.

PROTESTANTS/APPELLEES'
FIRST AMENDED CERTIFICATE OF SERVICE

It has come to the attention of counsel for the Protestants/Appellees that two of the attorneys identified in the original certificate of service filed with the Protestants/Appellees' Motion for Relief from this Court's Order Closing this Case are no longer involved in this matter. Counsel for the Protestants/Appellees is therefore filing this First Amended Certificate of Service to reflect the transmission of the Protestants/Appellees' Motion for Relief from this Court's Order Closing this Case to the appropriate attorneys.

I certify that copies of the Protestants/Appellees' Motion for Relief from this Court's Order Closing this Case and copies of this First Amended Certificate of Service were sent by electronic mail and first class mail on September 12, 2016 to:

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*Attorney for the New Mexico
State Engineer*


Douglas Meiklejohn