

2012 MAR 30 AM 11:41

**BEFORE THE NEW MEXICO STATE ENGINEER**

OFFICE OF THE  
STATE ENGINEER  
HEARINGS UNIT  
SANTA FE, NM

<b>IN THE MATTER OF THE APPLICATION BY</b>	)	
<b>AUGUSTIN PLAINS RANCH, LLC FOR PERMIT</b>	)	<b>Hearing No. 09-096</b>
<b>TO APPROPRIATE GROUNDWATER IN THE</b>	)	
<b>RIO GRANDE UNDERGROUND WATER BASIN</b>	)	<b>OSE File No. RG-89943</b>
<b>OF NEW MEXICO</b>	)	

**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 20<sup>th</sup> 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 30<sup>th</sup> day of March 2012. A complete copy of the service list may be obtained at the OSE website, [www.ose.state.nm.us](http://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