

BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE CORRECTED)	
APPLICATION FILED BY AUGUSTIN)	
PLAINS RANCH, LLC, FOR PERMIT TO)	Hearing No. 17-005
APPROPRIATE GROUNDWATER IN THE)	OSE File No. RG-89943 POD 1
RIO GRANDE UNDERGROUND WATER)	through POD 37
BASIN IN THE STATE OF NEW MEXICO)	

**JOINDER BY THE PUEBLOS OF SAN FELIPE, SANTA ANA, SANDIA, AND ISLETA
IN THE COMMUNITY PROTESTANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT**

The Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of Sandia, and the Pueblo of Isleta (“Four Pueblos”), by and through their counsel of record, hereby join in *The Community Protestants’ Motion for Summary Judgment* filed on September 26, 2017.¹

The Four Pueblos are particularly concerned about the continuing vagueness of both the purpose and place of use in the most recent version of the application filed by the Augustin Plains Ranch, LLC (“APR”) that is the subject of this proceeding (“2016 APR Application”), and the failure in the 2016 APR Application to designate a specific beneficial use to which the water right, if permitted, would be applied.

“[M]unicipal purposes,” “commercial,” and “water used for wholesale or bulk sales” by municipalities, investor-owned utilities, commercial enterprises or government agencies, are among various potential uses listed in the 2016 APR Application that could occur within some

¹ The Four Pueblos, in so joining, wish to be clear that while they endorse the arguments provided in *The Community Protestants’ Motion for Summary Judgment*, they do not waive any right to contest the applicability of *State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, 135 N.M. 375, discussed in *The Community Protestants’ Memorandum in Support of Their Motion for Summary Judgment*, to the Four Pueblos’ water rights in other forums unrelated to this application. Specifically, the *City of Las Vegas* opinion focused on the “Pueblo Rights Doctrine” solely as that term applies to non-Indian municipalities that are successors-in-interest to Spanish or Mexican villages chartered in royal grant or decree. It did not address, and has no applicability to, the water rights of the Indian Pueblos of New Mexico.

unknown location or locations within the Rio Grande Basin in Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and/or Santa Fe counties. *See, e.g.*, 2016 APR Application at pgs. 2, 3; Attachment 2, Section III.3, page 3; Attachment 2, section III.5.A, page 4; and Attachment 2, Section III.5.B., page 5. Because of APR's failure to meet the requirements of the New Mexico Constitution and New Mexico statutes and regulations to provide sufficient information as to the location and proposed beneficial use to be permitted (as more fully described in the Community Protestants' motion), the Four Pueblos simply cannot reasonably assess potential impairment impacts. The Four Pueblos should not be asked to bear the financial burden of performing multiple technical analyses of such a large new appropriation of water simply due to the fact that APR has not met its initial burden to provide a complete application.

Because of the vague language in the 2016 APR Application, there are seemingly endless possibilities for use of the water, each of which requires a different hydrologic analysis. For instance, if a sustainable water supply for a new appropriation were proven by APR and if water from APR were piped directly to the City of Rio Rancho's existing water system as an imported source of supply to that system (thereby lessening pumping of the City's wells) or as return flows in some of the Four Pueblos' specific reaches of the Rio Grande,² that may not necessarily cause the same level of concern (and would, in any event, necessitate an entirely different hydrologic analysis for each of the Four Pueblos) than if such water from APR were piped and released into the Rio Grande in Socorro County as surface water offsets to allow the City of Rio Rancho to pump that additional amount from its wellfields (thereby, through increasing pumping, inducing

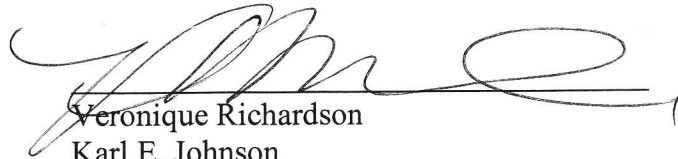
² Notably, despite APR listing the City of Rio Rancho as one of the potential recipients of APR water (*see, e.g.*, 2016 APR Application at Attachment 2, Section III.5.A., page 4), neither the City of Rio Rancho nor any other municipality specified in the 2016 APR Application joined APR as a co-applicant. This underscores the speculative nature of the 2016 APR Application.

greater losses locally).³ Likewise, because there is no actual end user specified in the 2016 APR Application, it is not beyond the realm of possibility inherent in the 2016 APR Application to assume APR could supply water to a future commercial development near the Budaghers area along the I-25 corridor between several pueblos. That scenario would demand yet another separate hydrologic analysis for each of the Four Pueblos.

The Four Pueblos provide these few examples simply to underscore how fundamentally unfair it is to ask protestants, including the Four Pueblos, to engage experts in multiple costly technical analyses of a plethora of potential scenarios due to APR's failure, in the first instance, to provide the required specificity in its 2016 APR Application. Protestants ought not be subjected to the ongoing financial and resource burden of participating in a proceeding that, by Applicant's own design, is completely unformed and intended to change. Because the 2016 APR Application is legally insufficient, and for the reasons set forth in *The Community Protestants' Motion for Summary Judgment*, the Four Pueblos respectfully join in the Community Protestants' request for summary judgment that the 2016 APR Application be dismissed.

Dated: October 13, 2017

Respectfully Submitted,



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³ The Four Pueblos note that all of the potential pipeline routes going to Bernalillo, Sandoval, and Santa Fe counties set forth in the 2016 APR Application appear to go through the Pueblo of Isleta. *See, e.g.*, 2016 APR Application at p. 3; Attachment 2, Section III.6.A, p. 5; Attachment 2, Exhibit A, p. 4; Attachment 2, Exhibit D. The Pueblo of Isleta has not consented to any such right-of-way (and, indeed, has not even been consulted). This also underscores the speculative nature of the 2016 APR Application.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2017, a copy of the foregoing Joinder By the Pueblos of San Felipe, Santa Ana, Sandia, and Isleta in the Community Protestants' Motion for Partial Summary Judgment was served by U.S. Mail to the following names below and the list of parties entitled to notice updated by the Office of the State Engineer Hearing Unit on October 10, 2017.

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