STATE OF NEW MEXICO
COUNTY OF CATRON
SEVENTH JUDICIAL DISTRICT COURT

AUGUSTIN PLAINS RANCH, LLC,

Applicant/Appellant,

v.

TOM BLAINE, P.E.,

New Mexico State Engineer/Appellee,

and

CATRON COUNTY BOARD OF COUNTY COMMISSIONERS, *et al.,*

Protestants/Appellees.

D-728-2018-00026
Judge Matthew G. Reynolds

Appeal from a decision of the New Mexico State Engineer in OSE Hearing #17-005

THE COMMUNITY PROTESTANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Introduction

The Protestants represented by the New Mexico Environmental Law Center (the "Community Protestants," who are listed on page 34) have filed a Motion for Summary Judgment asserting that the Seventh Judicial District Court should dismiss the Augustin Plains Ranch's ("APR's") current application to appropriate ground water from the San Agustin Basin (the "Current APR Application").[1] The Community Protestants' Motion for Summary Judgment ("Motion for Summary Judgment" or "Motion") is made on the following grounds.

[1] The Current APR Application is the most recent in a series of applications filed by APR. The Current APR Application is referred to by APR as "corrected" because it changed inaccurate descriptions of the locations of the wells to be used to extract ground water provided in an earlier version of the application, not because it addressed the issues raised by the Community Protestants in their Motion for Summary Judgment.

The first basis for the Community Protestants' Motion for Summary Judgment is that the Current APR Application should be dismissed because it is invalid on its face for the reason that it does not set forth the following information that is required for an application to appropriate ground water:

- the beneficial use or beneficial uses for the water that APR proposes to appropriate; and
- the place or places where the water to be appropriated would be used for a beneficial use or beneficial uses.

The Community Protestants' Memorandum in Support of Their Motion for Summary Judgment addresses these failures because they were the basis for the State Engineer's Order in the proceeding below dismissing the Current APR Application (the "2018 State Engineer's Decision"). *See* Lions Gate Water v. D'Antonio, 2009-NMSC-057, ¶26, 147 N.M. 523, 533.[2]

The second ground for this Motion for Summary Judgment is that there is no merit to the allegation made by APR in the proceeding before the State Engineer that it was entitled to an evidentiary hearing before the State Engineer but was inappropriately denied such a hearing. APR made this claim in the proceeding conducted by the State Engineer, but APR's allegations supporting this claim are not persuasive.

The third basis for the Motion for Summary Judgment is that the substance of the Current APR Application has already been determined by the Seventh Judicial District Court ("this Court") to be facially invalid, and the doctrine of collateral estoppel indicates that the Current APR Application should be dismissed. The determination that the substance of the Current APR Application is invalid was made in this Court's January 3, 2013 ruling in case number D-728-

[2] The Current APR Application also failed to set forth required information about the use of water to be appropriated for irrigation, but the Community Protestants are not presenting argument concerning that failure because it was not a basis for the State Engineer's ruling below.

CV-2012-00008. That case addressed the APR Application that was filed in 2007 and 2008 (the "Original APR Application"), which is materially identical to the Current APR Application. This Court's January 3, 2013 ruling affirmed the 2012 State Engineer's Order and dismissed the Original APR Application. This Court's January 3, 2013 Order was based on this Court's November 14, 2012 Memorandum Decision on Motion for Summary Judgment.

The Community Protestants' Memorandum is divided into six sections. Section I sets forth the history of APR's applications to extract ground water from the San Agustin Basin. Section II explains the standard of review by which this Motion should be evaluated. Section III lists the undisputed facts on which this Motion is based. Section IV explains that the Current APR Application is invalid on its face because it fails to specify a beneficial use or specific beneficial uses for the water that the APR seeks to appropriate and fails to specify the place or places where that beneficial use or those beneficial uses would occur. Section V explains that there is no merit to APR's allegation that it was entitled to but was denied an evidentiary hearing before the State Engineer below. Section VI explains that the doctrine of collateral estoppel indicates that this Court should dismiss the Current APR Application.

This Memorandum is supported by the following eight attached exhibits:

Exhibit 1 – the Current APR Application;

Exhibit 2 – the protest filed by the City of Socorro dated September 22, 2016;

Exhibit 3 – the State Engineer's Scheduling Order in the proceeding below addressing the Current APR Application (the "State Engineer Scheduling Order");

Exhibit 4 – the State Engineer's Report and Recommendation Granting Motions for Summary Judgment dated August 1, 2018 (the "2018 State Engineer Decision"), which denied the Current APR Application;

Exhibit 5 – APR's notice of its appeal from the 2018 State Engineer's Decision to this Court as it was published in the *Albuquerque Journal* on August 15, 2018;

Exhibit 6 – the State Engineer's March 30, 2012 Order Denying Application (the "2012 State Engineer's Order"), which denied the Original APR Application;

Exhibit 7 – this Court's 2012 Memorandum Decision on Motion for Summary Judgment (the "2012 District Court Memorandum"), which explained why the 2012 State Engineer's Order should be affirmed and the Original APR Application should be denied; and

Exhibit 8 – this Court's 2013 ruling, which was filed on January 3, 2013 (the "2013 District Court Order"), which affirmed the 2012 State Engineer's Order and denied the Original APR Application.

Argument

I. The Current APR Application is the latest in a series of APR applications seeking to appropriate ground water from the San Agustin Basin.

APR's efforts to appropriate ground water from the San Agustin Basin began with the filing of the Original APR Application. APR filed the Original APR Application in October of 2007 and filed an amended Original APR Application in May of 2008. 2012 District Court Memorandum (Exhibit 7), page 2. The State Engineer denied the Original APR Application because it did not set forth the beneficial use or uses for the water to be appropriated or the place or places where that beneficial use or those beneficial uses would occur. 2012 State Engineer Order (Exhibit 6), page 5.

APR appealed the State Engineer's ruling denying the Original APR Application to this Court. 2012 District Court Memorandum (Exhibit 7), page 1. This Court affirmed the State Engineer's Order denying the Original APR Application and dismissed the Original APR

Application. 2012 District Court Memorandum, page 32; 2013 District Court Order (Exhibit 8), pages 1-2. This Court based its ruling on the following points:

- the Original APR Application failed to specify the beneficial use or beneficial uses for the water to be appropriated;
- the Original APR Application failed to specify the place or places where that beneficial use or those beneficial uses would occur; and
- the Original APR Application contradicted beneficial use as the basis of a water right and the public ownership of water.

2012 District Court Memorandum, page 14.

This Court also pointed out that New Mexico law does not "countenance anyone acting 'the dog in the manger'" by appropriating water for which the appropriator has no use. 2012 District Court Memorandum, page 24. Finally, this Court rejected APR's allegation that it was entitled to but was inappropriately denied an evidentiary hearing before the State Engineer. 2012 District Court Memorandum, pages 11-12.

APR filed the Current APR Application on July 14, 2014. 2018 State Engineer Decision (Exhibit 4), page 2. APR then amended or revised its Current APR Application twice – once on December 23, 2014 and once on April 28, 2016. *Id.* Two motions for summary judgment were filed seeking dismissal of the Current APR Application. 2018 State Engineer Decision, page 1. One motion was filed by the Community Protestants, and the other motion was filed by the Catron County Board of County Commissioners. *Id.* The State Engineer conducted a hearing on those motions in Reserve, New Mexico on December 13, 2017, at which the State Engineer Hearing Officer heard argument by counsel for the Community Protestants, counsel for the

Catron County Board of County Commissioners, counsel for APR, and counsel for the Water Rights Division of the State Engineer's Office. 2018 State Engineer Decision, pages 1-2.

During that hearing, counsel for the Community Protestants and counsel for the Catron County Board of County Commissioners provided the following arguments based on the Current APR Application: 1) the Current APR Application is incomplete; 2) the Current APR Application should be denied on the basis of *res judicata*; 3) the Current APR Application is facially invalid; and 4) the Current APR Application is speculative and contrary to sound public policy and detrimental to public welfare. 2018 State Engineer's Decision, page 2. Also during the hearing, APR's counsel asserted that APR was entitled to a full evidentiary hearing on the Current APR Application. 2018 State Engineer's Decision, page 4, ¶11.

Following the December 13, 2017 hearing, the State Engineer denied the Current APR Application because it did not specify the beneficial use or beneficial uses for the water to be appropriated or the place or places where that beneficial use or those beneficial uses would occur. 2018 State Engineer Decision, pages 5, 8, 11-13, ¶¶16-23, 25, 49, 70-73, "Therefore" paragraph (on page 13), and State Engineer's Acceptance and Adoption of Report and Recommendation (on page 13).

APR published notice of its appeal to this Court from the 2018 State Engineer's Decision in the *Albuquerque Journal* on August 15, 2018. (Exhibit 5)

II. The Community Protestants' Motion for Summary Judgment should be evaluated pursuant to Rule 56 of the Rules of Civil Procedure.

Rule 1-056 of the New Mexico Rules of Civil Procedure (Rule 1-056 NMRA) provides that a party may obtain summary judgment if there is no dispute as to any material fact and the party is entitled to judgment as a matter of law. Rule 1-056.C NMRA. *See also* Tafoya v. Rael, 2008-NMSC-057, ¶11, 145 N.M. 4, 6-7. Summary judgment is appropriate in situations in

which the claim at issue is based on a document, such as a contract, that is unambiguous. *See* Bauer v. College of Santa Fe, 2003-NMCA-121, ¶¶11-12, 134 N.M. 439, 442.

Because this is an appeal of a decision by the State Engineer, the issues before this Court are the issues that were the basis of the State Engineer's ruling. Lions Gate Water v. D'Antonio, 2009-NMSC-057, ¶26, 147 N.M. 523, 533. For that reason, the issues before this Court are:

- the failure of the Current APR Application to specify the beneficial use or uses for the water to be appropriated and the failure of the Current APR Application to specify the place or places where that beneficial use or those beneficial uses would occur; and
- APR's claim that it was entitled to but was inappropriately denied a full evidentiary hearing on the Current APR Application.

The Community Protestants' first claim is that this Court should dismiss the Current APR Application because the Current APR Application does not specify the beneficial use or beneficial uses for the water to be appropriated or the place or places where that beneficial use or those beneficial uses would occur. That claim is based on the unambiguous text of the Current APR Application and the application of pertinent law to that text.

The Community Protestants' second claim is that there is no merit to APR's allegation below that it was entitled to but was inappropriately denied a full evidentiary hearing. That claim is based on the Current APR Application, the law governing the Application, the absence of any disputed material facts, and the conduct of the hearing in the proceeding below before the State Engineer Hearing Officer.

The Community Protestants' third claim is that the doctrine of collateral estoppel indicates that the Current APR Application should be dismissed. The reasons for this claim are that the Current APR Application is materially identical to the Original APR Application and the

issues presented by the Current APR Application were already decided by this Court when it affirmed the 2012 State Engineer's Order and dismissed the Original APR Application. That claim is based on the unambiguous text of the Current APR Application, the unambiguous text of the 2012 District Court Memorandum, and the law governing collateral estoppel.

III. The Community Protestants' Motion for Summary Judgment is based on undisputed facts.

The Community Protestants' Motion for Summary Judgment is based on the following 27 undisputed facts. Each undisputed fact is followed by a citation to its source or sources.

The Current APR Application is an application to appropriate ground water.

1. The Current APR Application was filed with the State Engineer on July 14, 2014, and was subsequently amended or revised on December 23, 2014 and April 28, 2016. Current APR Application (Exhibit 1) Cover Page; 2018 State Engineer Decision (Exhibit 4), page 2.

2. In the Current APR Application, APR proposes to appropriate 54,000 acre feet of ground water per year. Current APR Application, page 1.

3. In the Current APR Application, APR proposes to appropriate the ground water from 37 wells to be drilled on the Augustin Plains Ranch, near Datil in Catron County. Current APR Application, Attachment 2, page 1, ¶1.

The Current APR Application fails to specify the beneficial use or beneficial uses of the water to be appropriated.

4. In response to the ground water appropriation application form's request for information about the purpose of use and amount of water, the Current APR Application indicates that the water will be used for unspecified "Municipal and Commercial water sales." Current APR Application (Exhibit 1), page 1, ¶2.

5. The Current APR Application also indicates that "The water will be put to use by municipal, industrial and other users along the pipeline route shown on Exhibit D to the Attachment." Current APR Application, page 3, ¶5.g. The Current APR Application does not explain what these "municipal, industrial, and other users" would use the water for. *Id.*

6. The Current APR Application states as well that the water used for unspecified municipal purposes within the authorized service areas of the six municipal entities listed in Attachment 2 (Magdalena, Socorro, Belen, Los Lunas, Albuquerque/Bernalillo County Water Utility Authority, and Rio Rancho).[3] Current APR Application, page 3, ¶5.g; Current APR Application, Attachment 2, page 4, ¶5.A.

7. In Attachment 2, the Current APR Application indicates that the appropriated water would be used for municipal purposes and commercial sales for uses at locations along the length of the proposed pipeline. Current APR Application, Attachment 2, page 1, Section I. The Current APR Application does not explain what particular uses would be involved in these "municipal purposes and commercial sales." *Id.*

8. The Current APR Application indicates that the water used for bulk sales will be put to use by municipal and investor-owned utilities, commercial enterprises, and state and federal government agencies. Current APR Application, Attachment 2, page 5, Section III, ¶6.B. The Current APR Application does not specify what these utilities, enterprises, and agencies will use the water to be appropriated for. *Id.*

[3] Two of these entities – Magdalena and Socorro – protested the Current APR Application. Socorro's protest is attached as Exhibit 2; Magdalena's protest was dismissed for failure to pay the required $25.00 fee. State Engineer's Scheduling Order (Exhibit 3), Attachment A, page 4.

The Current APR Application fails to designate the place or places for beneficial use or beneficial uses of the water to be appropriated.

9. In response to the ground water appropriation application form's request for information about the "county where water right will be used," the Current APR Application indicates "Parts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe Counties." Current APR Application (Exhibit 1), page 2, ¶3. The Current APR Application does not indicate the particular locations in these counties where the water at issue would be used. *Id.*

10. The Current APR Application also states that the water used for unspecified municipal purposes will be put to use within the authorized service areas of the six municipal entities listed in Attachment 2 (Magdalena, Socorro, Belen, Los Lunas, Albuquerque/Bernalillo County Water Utility Authority, and Rio Rancho). Current APR Application, page 3, ¶5.g; Current APR Application, Attachment 2, page 4, ¶5.A.

11. In response to the ground water appropriation application form's request for information about the "county where water right will be used," the Current APR Application also states "Please see Attachment for additional detail." Attachment 2 to the Current APR Application indicates that the appropriated water would be used for municipal purposes and commercial sales and other uses at locations along the length of the proposed pipeline. Current APR Application, Attachment 2, page 1. The Current APR Application does not specify the particular locations along the length of the proposed pipeline at which the water to be appropriated would be used. *Id.*

The Current APR Application proposed pipeline would be approximately 140 miles long.

12. The Current APR Application proposes to convey the appropriated water through a pipeline from the Augustin Plains Ranch to the Albuquerque metropolitan area. *Id.*

13. According to the scale provided in Figure 6 on page 4 of Exhibit A to the Current APR Application's Attachment 2, the proposed pipeline would be approximately 140 miles long. Current APR Application (Exhibit 1), Attachment 2, Exhibit A, Page 4, Figure 6. The approximate 140 mile length of the proposed pipeline is also demonstrated by the elevation and GPS coordinates for the Alternative A route for the proposed pipeline set forth in Appendix A to Exhibit D to the Current APR Application Attachment 2. Current APR Application, Attachment 2, Exhibit D, Appendix A, pages 13-16.

The Current APR Application proposes a two stage procedure.

14. The Current APR Application proposes a two stage hearing procedure in which the first stage would consist of an evaluation of the hydrologic issues related to the Application, including the amount of water available for appropriation without impairing other water rights and the amount of enhanced recharge. Current APR Application (Exhibit 1), Attachment 2, page 2.

15. The Current APR Application proposes that "once the order on hydrologic issues is entered" APR requests that it "be given up to 12 months to adjust and finalize the individual purposes of use, places of use, and amounts for each use." Current APR Application, Attachment 2, page 3.

16. The Current APR Application proposes that "Stage 2 [of the Hearing Procedure] would begin when [APR] submits an Amended Application with additional detail regarding the types and places of use for the water based on the order on hydrologic issues," and that "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." *Id.*

17. The Current APR Application also indicates that the "individual detailed purposes and amounts of use will be finalized in Stage 2 of the application process." Current APR Application, Attachment 2, page 3, Section III.2.

The State Engineer's proceeding below included a hearing on motions for summary judgment.

18. The State Engineer conducted an administrative proceeding addressing the Current APR Application. 2018 State Engineer Decision (Exhibit 4), pages 1-3.

19. As part of the State Engineer's administrative proceeding, the State Engineer's Hearing Examiner conducted a hearing on December 13, 2017 in Reserve, New Mexico on motions for summary judgment filed by the Community Protestants and by the Catron County Board of County Commissioners. 2018 State Engineer Decision, pages 1-2.

20. During the December 13, 2017 hearing on motions for summary judgment, counsel for the Community Protestants and counsel for the Catron County Board of County Commissioners presented arguments based on the Current APR Application and the application of pertinent law to that Application. *Id.*

21. During the December 13, 2017 hearing on motions for summary judgment, counsel for APR presented arguments and their responses to the motions for summary judgment filed by the Community Protestants and the Catron County Board of County Commissioners. *Id.*

22. During the December 13, 2017 hearing on motions for summary judgment, counsel for APR alleged that APR was entitled to a "full evidentiary hearing." *Id.*

The Current APR Application is materially identical to the Original APR Application.

23. Like the Current APR Application (undisputed fact 2), the Original APR Application proposed to extract 54,000 acre feet of ground water per year from the San Agustin Basin. 2012 District Court Memorandum (Exhibit 7), page 3.

24. Like the Current APR Application (undisputed fact 3), the Original APR Application proposed to extract ground water using 37 wells on APR's ranch in Catron County, New Mexico. 2012 District Court Memorandum, page 3.

25. Like the Current APR Application (undisputed facts 4-8), the Original APR Application proposed to use the water to be appropriated for a wide variety of unspecified purposes. 2012 District Court Memorandum, pages 4, 15.

26. Like the Current Application (undisputed facts 9-13), the Original APR Application proposed to use the water to be appropriated in any of several large unspecified areas. 2012 District Court Memorandum, pages 3-4, 15.

APR has appealed the 2018 State Engineer's Decision to this Court.

27. APR published its Notice of Appeal in the *Albuquerque Journal* during August, 2018. (Exhibit 5)

IV. The Current APR Application should be dismissed because it fails to specify information that is required to be provided in an application to appropriate ground water.

A. New Mexico law requires that an application to appropriate ground water provide specific information.

1. The New Mexico Constitution provides that beneficial use is the measure of the right to appropriate water.

The New Mexico Constitution establishes that the right to use water is defined by the beneficial use of the water. The Constitution provides:

> beneficial use [is] the basis, the measure and the limit of the right to the use of water.

N.M. Constitution, Article XVI, §3; NMSA 1978, § 72-1-2 (1941).

In accordance with this provision of the Constitution, Court decisions have indicated that applications to appropriate water must specify the use to which the water will be put.

2. New Mexico Courts have held that an application to appropriate water must designate a beneficial use or beneficial uses for the water to be appropriated and a place or places where that use or those uses will occur.

In State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, the Supreme Court pointed out that:

> In New Mexico, beneficial use shall be the basis, the measure and the limit of the right to the use of water. We have said that this fundamental principle is applicable to all appropriations of public waters. As it is only by the application of the water to a beneficial use that the perfected right to the use is acquired, it is evident that an appropriator can only acquire a perfected right to so much water as he [or she] applies to a beneficial use.

2004-NMSC-009, ¶34, 135 N.M. 375, 386 (citations and quotation marks omitted).

Similarly, the Court of Appeals has ruled that:

> Water in New Mexico belongs to the state, subject to use by appropriation, the basis of which must be beneficial. Our constitution's framers clearly intended that no one has a right to use or divert water except for beneficial use.

Carangelo v. Albuquerque-Bernalillo County Water Utility Authority, 2014-NMCA-032, ¶35, 320 P.3d 492, 503 (citations and quotation marks omitted), *cert denied*, 322 P.3d 1062.

3. New Mexico statutes require that specific information be provided in an application to appropriate ground water.

Section 72-12-3.A NMSA 1978 provides:

> A. Any person, firm or corporation or any other entity desiring to appropriate for beneficial use any of the waters described in Chapter 72, Article 12 NMSA 1978 shall apply to the state engineer in a form prescribed by him. In the application, the applicant shall designate:
> **(1)** the particular underground stream, channel, artesian basin, reservoir or lake from which water will be appropriated;
> **(2)** *the beneficial use to which the water will be applied*;
> **(3)** the location of the proposed well;
> **(4)** the name of the owner of the land on which the well will be located;
> **(5)** the amount of water applied for;
> **(6)** *the place of the 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.

NMSA 1978 §72-12-3.A, emphasis added.

B. The Current APR Application fails to provide two elements required for an application to appropriate ground water.

1. The Current APR Application is an application for a permit to appropriate ground water.

The Current APR Application, filed on July 14, 2014 (Current APR Application [Exhibit 1], Cover Page [undisputed fact #1]), is an application to appropriate ground water. The Current APR Application proposes to extract 54,000 acre feet of ground water a year (Current APR Application, page 1 [undisputed fact #2]) using 37 wells to be drilled on the Augustin Plains Ranch, near Datil in Catron County. Current APR Application, Attachment 2, page 1, ¶1 [undisputed fact #3]. The Current APR Application therefore was required to provide the specific information designated by Section 72-12-3.A NMSA 1978. However, the Current APR Application fails to provide two items of this information.

2. The Current APR Application fails to specify the beneficial use or beneficial uses for the water to be appropriated.

The Current APR Application does not provide any specific information about the beneficial use or beneficial uses for the water to be appropriated. The Current APR Application contains only the following general lists of possible uses for the water to be appropriated:

- municipal and commercial water sales (Current APR Application [Exhibit 1], page 1, ¶2 [undisputed fact #4]);
- municipal, industrial and other users (Current APR Application, page 3, ¶5.g [undisputed fact #5]);

- municipal purposes within the authorized service areas of Magdalena, Socorro, Belen, Los Lunas, Albuquerque/Bernalillo Water Utility Authority (Current APR Application, Attachment 2, page 4, ¶5.A [undisputed fact #6]);
- municipal purposes and commercial sales for uses at locations along the length of the proposed pipeline (Current APR Application, Attachment 2, page 1, Section I [undisputed fact #7]); and
- bulk sales to be put to use by municipal and investor-owned utilities, commercial enterprises, and state and federal government agencies (Current APR Application, Attachment 2, page 5, Section III, ¶6.B [undisputed fact #8]).

None of these descriptions indicates the beneficial use or beneficial uses for the water APR seeks to appropriate. Instead, these descriptions merely list various possible uses for that water. The Current APR Application therefore fails to comply with Section 72-12-3.A(2) NMSA 1978.

3. The Current APR Application fails to specify the place or places where the water to be appropriated would be put to beneficial use or beneficial uses.

The Current APR Application also provides only general statements about the possible place or places where the water to be appropriated would be used. The Application states that the water to be appropriated could be used:

- in "[p]arts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe Counties" (Current APR Application [Exhibit 1], page 2, ¶3 [undisputed fact #9]);

- within the authorized service areas of Magdalena, Socorro, Belen, Los Lunas, Albuquerque/Bernalillo County Water Utility Authority, and Rio Rancho[4] (Current APR Application, page 3, ¶5.g; Current APR Application, Attachment 2, page 4, ¶5.A [undisputed fact #10]); and
- at locations along the length of the proposed pipeline (Current APR Application, Attachment 2, page 1 [undisputed fact #11]), which is projected to be approximately 140 miles long (Current APR Application, Attachment 2, page 4, Figure 6; Current APR Application, Attachment 2, Exhibit D, Appendix A, pages 13-16 [undisputed fact #13]).

The Current APR Application therefore fails to comply with Section 72-12-3.A(6) NMSA 1978 because the Current APR Application never states the place or places where the water to be appropriated would be put to beneficial use or beneficial uses.

4. The Current APR Application acknowledges that it fails to provide information about the beneficial use or beneficial uses for the water to be appropriated and the place or places where that beneficial use or those beneficial uses would occur.

Finally, the Current APR Application acknowledges that it fails to specify both the beneficial use or beneficial uses for the water that APR seeks to appropriate and the place or places where that beneficial use or those beneficial uses would occur.

The Current APR Application proposes a two stage hearing procedure in which the first stage consists of an evaluation of the hydrologic issues posed by the Application, including how much water can be appropriated without impairing other water rights and the effect of "enhanced recharge." Current APR Application (Exhibit 1), Attachment 2, page 2 [undisputed fact #14]

[4] As noted, both Magdalena and Socorro protested the Current APR Application. The City of Socorro's protest is attached as Exhibit 2. The Village of Magdalena's protest was dismissed for failure to pay the $25.00 fee. State Engineer's Scheduling Order (Exhibit 3), Attachment A, page 4.

The Current APR Application further indicates that after an order is entered on these hydrologic issues, APR will request that it be given up to a year in which to "adjust and finalize the individual purposes of use, places of use, and amounts for each use" (Current APR Application, Attachment 2, page 3 [undisputed fact #15]), and that the second stage of the hearing would begin when APR "submits an Amended Application with additional detail regarding the types and places of use for the water." Current APR Application, Attachment 2, page 3 [undisputed fact #16]

In addition, the Current APR Application proposes that Stage 2 of its two Stage process would consist of determining 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." *Id.* The Current APR Application indicates as well that the "individual detailed purposes and amounts of use will be finalized in Stage 2 of the application process." Current APR Application, Attachment 2, page 3, Section III.2 [undisputed fact #17]

These proposals in the Current APR Application indicate that the beneficial use or beneficial uses for the water APR seeks to appropriate have not yet been determined as is required by Section 72-12-3.A(2) NMSA 1978. These proposals also confirm that no specific place or places for the beneficial use or beneficial uses of the water APR seeks to appropriate have been determined, as is required by Section 72-12-3.A(6) NMSA 1978.

C. The Current APR Application's failure to provide information about the beneficial use or beneficial uses and place or places of use for the water to be appropriated means that the Current APR Application should be dismissed.

New Mexico's Constitution and laws confirm that all "unappropriated water" in this State "belong[s] to the public and [is] subject to appropriation for beneficial use," not just by a

privileged few, but by everyone. N.M. Constitution, Article XVI, § 2. The requirement of beneficial use is based on "imperative necessity". State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, ¶34, 135 N.M. 375, 386, citing Kaiser Steel Corporation v. W.S. Ranch Company, 1970-NMSC-043, ¶15, 81 N.M. 414, 417.

This is the essence of prior appropriation, which is a system of law that "aims fundamentally at definiteness and certainty" and which "promotes the economical use of water." *Id.* No one is allowed to monopolize the resource, nor can anyone merely accumulate claims to future water use for purposes of speculation. Under New Mexico's prior appropriation system, beneficial use requires more than speculation. *See* Jicarilla Apache Tribe v. United States, 657 F.2d 1126, 1135 (10th Cir. 1981).

In State ex rel. Martinez *supra*, the New Mexico Supreme Court struck down the Pueblo Rights Doctrine, which purportedly granted the Town of Las Vegas a perpetual, unlimited right to take as much water from the Gallinas River as it needed. The Court held that this claim could not prevail, because it was wholly at odds with the law of prior appropriation. 2004-NMSC-009, ¶36, 135 N.M. 375, 387.

In so holding, the Court decisively reversed its former majority opinion on the issue, expressed in Cartwright v. Public Service Company, 1958-NMSC-134, 66 N.M. 64, and embraced Justice Federici's dissent in that case. The Court stated:

> We therefore agree with the dissent in Cartwright that the ever-expanding quality of the Pueblo water right "is as antithetical to the doctrine of prior appropriation as day is to night".

State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, ¶38, 135 N.M. 375.

In the dissent adopted by the Supreme Court in the Martinez case, Justice Federici explained the fundamental reasons that New Mexico and other arid states adopted the prior appropriation system:

> The reasons that the doctrine of prior appropriation was adopted in all of the western states except California were twofold. First, to utilize scarce water, and second to prohibit the monopoly inherent in the riparian doctrine.

Cartwright v. Public Service Company, 1958-NMSC-134, ¶129, 66 N.M. 64, 107 (on motion for rehearing; Frederici, J., dissenting).

Justice Federici continued:

> It was pointed out in *Albuquerque Land & Irrigation Company v. Gutierrez, 10 N.M. 177, 61 P. 357*, supra, there is no such thing as private ownership in the waters of public streams while so flowing. The appropriator acquires only the right to take from the stream a given quantity of water for a specified purpose, *Snow v. Abalos, 18 N.M. 681, 140 P. 1044*, supra. Many times this Court has held that the priority of right is based upon the intent to take a specified amount of water for a specified purpose and he can only acquire a perfected right to so much water as he applied to beneficial use. See, also, *Harkey v. Smith, 1926, 31 N.M. 521, 531, 247 P. 550, 553*, where this Court stated:
>
> > "no 'dog in the manger' policy can be allowed in this state, unless these waters can be and are beneficially used by plaintiffs, the defendants or others may use the same."

1958-NMSC-134, ¶139, 66 N.M. 64, 109-110 (on motion for rehearing; Federici, J., dissenting).

Under the law of prior appropriation, APR cannot use its vague and indefinite Current APR Application to play "dog in the manger" with respect to an enormous supply of water; nor can the State Engineer lawfully allow anyone to monopolize a vast public resource for speculative purposes.

This point also was made by the New Mexico Supreme Court in the early case of Millheiser v. Long, 1900-NMSC-012, 10 N.M. 99. There, defendants Long and Truxton "took possession of a large ditch" that was capable of diverting the entire surface flow of the Rio Hondo in order to gain control over an entire water supply, not for their own use, but in hopes of

selling water to third parties for profit. 1900-NMSC-012, ¶30, 10 N.M. at 116. They argued that their intent and ability to divert "all the water of the Rio Hondo" was sufficient under the law to create a right to own all of that water for the purpose of selling it to others. *Id.* Based on the principle of beneficial use, the Supreme Court disagreed:

> Under [the] construction of the law [advocated by Long and Truxton], the first person who diverts the water from the stream, may have a monopoly of all the water of any stream, by simply making this ditch large enough to conduct it from the usual channel. There need be but one appropriation, and all other settlers upon such stream must pay tribute to the person making the first diversion. This is not the law governing water rights in this Territory where the waters of natural streams are declared to be free to those who apply them to a beneficial use, until all are thus appropriated. Mr. McKinney in his work on irrigation has this to say on this subject:
>
> > 'Under the later decisions relative to the capacity of the ditch being the limit of the extent of the appropriator's rights in and to the waters of a stream, it is held to be against the general policy of the entire modern system of the doctrine of appropriation that the greatest good shall accrue to the greatest number. For if this was the law upon the subject a person might lay claim to the water of whole rivers for the ostensible purpose of irrigating immense tracts of land, which with the utmost diligence would take years to accomplish; and although others might intervene and attempt to appropriate the water of a stream, they could only lay claim to it for a temporary period of time, and until the works of the first appropriator were eventually completed, and they would then be deprived of their appropriation.'

1900-NMSC-012, ¶30, 10 N.M. at 116-117.

Based on this analysis, the Supreme Court held that speculators could not transform the mere ability and desire to divert an entire stream into *de facto* ownership of that stream, because:

> Thus would the way for speculation and monopoly be opened and the main object of the law [of prior appropriation] defeated.

1900-NMSC-012, ¶31, 10 N.M. at 117.

APR's endeavor is essentially the same as Long and Truxton's effort. APR seeks to monopolize an entire water supply through its alleged ability to extract 54,000 acre feet of water

per year via 37 deep, large-diameter wells, just as Long and Truxton sought to monopolize the water supply in the large capacity ditch at issue in Millheiser v. Long *supra*. Just as Long and Truxton sought to "have a monopoly of all the water in the stream" so that "all other settlers upon such stream must pay tribute to the person making the first diversion" (1900-NMSC-012, ¶30, 10 N.M. at 116), APR seeks to monopolize the ground water in the San Agustin Basin so that APR can sell that water to others.

However, the speculative intent to sell water to third parties, rather than applying it to one's own use, cannot establish a water right. 1900-NMSC-012, ¶¶30-31, 10 N.M. at 116-117. Just as Long and Truxton's effort was determined to violate the law of prior appropriation and was dismissed on that basis, the Current APR Application also violates the law of prior appropriation and should be dismissed.

V. There is no merit to APR's allegation that it was entitled to but was inappropriately denied an evidentiary hearing.

APR alleged in the proceeding below that the State Engineer was required to conduct an evidentiary hearing on the Current APR Application. 2018 State Engineer Decision (Exhibit 4), page 3, ¶6. There are three reasons why this allegation is unpersuasive.

The first reason is that the statute governing applications to appropriate ground water indicates that no hearing is required. The second reason is that APR has failed to demonstrate that there were any disputed facts to be considered in an evidentiary hearing. The third reason is that the State Engineer's Hearing Officer did conduct a hearing on the motions for summary judgment that were the basis for the State Engineer's dismissal of the Current APR Application.

A. APR was not entitled to an evidentiary hearing before the State Engineer.

The statutory procedure that governs the State Engineer's evaluation of applications to appropriate ground water does not require the State Engineer to conduct a hearing if the State

Engineer denies such an application. The Current APR Application (Exhibit 1) seeks to appropriate 54,000 acre feet of ground water per year from 37 wells to be drilled on the Augustin Plains Ranch, near Datil in Catron county. Current APR Application (Exhibit 1), page 1 (undisputed fact #2); Current APR Application, Attachment 2, page 1, ¶1 (undisputed fact #3).

Appropriation of ground water is subject to Chapter 72, Article 12 NMSA 1978, which applies to "water of underground streams, channels, artesian basins, reservoirs or lakes …." NMSA 1978, §72-12-1. The State Engineer's evaluation of applications to appropriate such waters is governed by Section 72-12-3 NMSA 1978. Section 72-12-3.A requires that any person or entity wishing to appropriate water subject to Chapter 72, Article 12, NMSA 1978 must apply to the State Engineer. Section 72-12-3 NMSA 1978 establishes the procedure to be followed by the State Engineer if he or she denies an application to appropriate ground water. It provides:

> **F.** 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 without a hearing or, before he acts on the application, may order that a hearing be held. He shall notify the applicant of his action by certified mail sent to the address shown in the application.

NMSA 1978, §72-12-3.F.

In this matter, protests were filed by the Community Protestants, the Catron County Board of County Commissioners, and other parties within the time prescribed in the notice of the Current APR Application. State Engineer's Scheduling Order (Exhibit 3), Attachment C. In addition, the State Engineer determined that the Current APR Application should be denied. 2018 State Engineer Decision (Exhibit 4), page 13. The State Engineer therefore was authorized to deny the Current APR Application without a hearing. NMSA 1978, §72-12-3.F. That authorization is particularly applicable in a situation such as this one in which the State

Engineer's decision to deny an application to appropriate ground water is based on motions for summary judgment that assert that the application is deficient as a matter of law.

In addition, as this Court recognized when it affirmed the 2012 State Engineer's Order and dismissed the Original APR Application, a determination that the State Engineer is required to conduct an evidentiary hearing would negate Section 72-12-3.F NMSA 1978. 2012 District Court Memorandum (Exhibit 7), page 12. As this Court also pointed out, negating that section would be contrary to the mandate that every part of a statute be given effect. *Id.*, citing Weiland v. Vigil, 1977-NMCA-003, 90 N.M. 148, *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977).

B. APR has neither alleged nor demonstrated that there are any disputed material facts to be considered in an evidentiary hearing before the State Engineer.

The second reason that APR is not entitled to an evidentiary hearing is that APR has neither demonstrated nor even alleged that there were any material factual issues to be resolved. The State Engineer dismissed the Current APR Application in response to summary judgment motions filed by the Community Protestants and the Catron County Board of County Commissioners. APR's responses to those motions failed to present any genuine issues of disputed material fact. 2018 State Engineer Decision (Exhibit 4), page 4, ¶12. Thus APR has not shown that there are any disputed material facts to be considered in an evidentiary hearing.

C. The State Engineer's Hearing Officer did conduct a hearing on the summary judgment motions based on the Current APR Application at which APR was represented by counsel.

The State Engineer was not required to conduct an evidentiary hearing either before or after making a decision to deny the Current APR Application. However, even assuming for the sake of argument that the State Engineer was required to conduct a hearing, APR's allegation that it was inappropriately denied a public hearing is unpersuasive. In fact, the State Engineer's

Hearing Officer did conduct a hearing on the motions for summary judgment that were the basis for the State Engineer's ruling denying the Current APR Application, and those summary judgment motions were based on the undisputed facts in the Current APR Application. Those motions for summary judgment and the hearing conducted by the State Engineer's Hearing Officer therefore addressed the merits of the Current APR Application.

The State Engineer's hearing on the motions for summary judgment that were the basis of the State Engineer's order denying the Current APR Application was held in Reserve, New Mexico on December 13, 2017, and argument was presented during that hearing by counsel for the Community Protestants, counsel for the Catron County Board of County Commissioners, counsel for APR, and counsel for the State Engineer's Office Water Rights Division. 2018 State Engineer Decision (Exhibit 4), page1, ¶¶2-7. Moreover, APR neither alleged nor demonstrated during that hearing that it was not permitted to present its position.

VI. The doctrine of collateral estoppel mandates that the Current APR Application be dismissed.

A. The doctrine of collateral estoppel bars re-litigation of issues that have been decided.

The New Mexico Court of Appeals explained the basis for the doctrine of collateral estoppel in Contreras v. Miller Bonded, Inc., 2014-NMCA-011, 316 P.3d 202:

> The doctrine of collateral estoppel fosters judicial economy by preventing the relitigation of ultimate facts or issues actually and necessarily decided in a prior suit.

2014-NMCA-011, ¶14, 316 P.3d 202, 206, quoting Shovelin v. Central N.M. Electric Cooperative, 1993-NMSC-015, ¶10, 115 N.M. 293.

In its opinion, the Court of Appeals also explained the four requirements that must be met for collateral estoppel to be applicable. The Court stated:

> [T]he moving party must demonstrate that (1) the party to be estopped was a party to the prior proceeding, (2) the cause of action in the case presently before the court is different from the cause of action in the prior adjudication, (3) the issue was actually litigated in the prior adjudication, and (4) the issue was necessarily determined in the prior litigation.

2014-NMCA-011, ¶15, 316 P.3d. 207.

B. The doctrine of collateral estoppel bars approval of the Current APR Application.

1. The party against whom collateral estoppel is invoked was a party in the earlier proceeding.

The first requirement for collateral estoppel to apply is that the party against whom the doctrine of collateral estoppel is sought to be invoked must be the same in the two proceedings. The party against whom collateral estoppel is asserted is APR. APR is the applicant in the current proceeding. Current APR Application (Exhibit 1), p. 1. APR also was the appellant in the litigation that resulted in this Court's ruling dismissing the Original APR Application. 2012 District Court Memorandum, page 1. Thus the first requirement of collateral estoppel is met.

2. This proceeding is a separate proceeding from the proceeding addressing the Original APR Application.

The cause of action in this proceeding is different from the cause of action in the earlier proceeding because the two proceedings address separate applications filed by APR. Therefore, the second requirement of collateral estoppel is met.

3. The issues raised by the Community Protestants in this proceeding were actually litigated in the proceeding addressing the Original APR Application.

The third requirement for collateral estoppel to apply is that the issue involved in the current proceeding must actually have been litigated in the earlier proceeding. There are two issues being litigated in this proceeding. They are:

1) whether the Current APR Application provides the information required for an application to appropriate ground water – specifically:

the beneficial use or beneficial uses for the water to be appropriated, and

the place or places at which the water to be appropriated will be used; and

2) whether APR was entitled to but was inappropriately denied an evidentiary hearing before the State Engineer.

Both of these issues were actually litigated in the proceeding addressing the Original APR Application, and they are therefore subject to collateral estoppel in this proceeding.

a. The inadequacy of the information provided in the Current APR Application was litigated in the previous proceeding.

i. The insufficiency of the Current APR Application's description of the beneficial use or uses of the water to be appropriated was litigated in the proceeding addressing the Original APR Application.

The earlier proceeding concerning the Original APR Application addressed the failure of that Application to specify the beneficial use or beneficial uses for the water to be appropriated. As this Court explained:

> The statutory provision outlining the requirements for an underground permit application is NMSA 1978, §72-12-3 (2001). Subsection (A)(2) requires an applicant to designate "the beneficial use to which the water will be applied." Applicant listed eleven uses in its amended application [the Original APR Application].

2012 District Court Memorandum (Exhibit 7), page 15.

The listing of 11 possible uses for the water at issue was the basis for this Court's determination that the Original APR Application was insufficient:

> New Mexico courts have long considered specificity to be a statutory requirement for an underground water permit. *Hanson v. Turney, supra* ("A water permit is … 'the necessary first step' in obtaining a water right … to one day apply the state's water in a **particular place** and to a **specific beneficial**

> **use**.") (citations omitted);*Mathers v. Texaco, Inc.*, 77 N.M. 239, 248, 421 P.2d 771 (S. Ct. 1977) ("Here the applicant, Texaco, has **expressly specified the particular use** for which the water **is** to be appropriated and the **precise lands** to which the same **is** to be applied to accomplish the purpose of such use.") (emphasis added); *Cartwright v. Public Serv. Co.*, 66 N.M. 64, 110, 343 P.2d 654 (1959) (Frederici, D.J., dissenting) ("The appropriator acquires only the right to take from the stream a given quantity of water for a **specified purpose**, Snow v. Abalos, 18 N.M. 681, 140 P. 1044, supra. Many times this Court has held that the priority of right is based upon the intent to take a **specified amount** of water for a **specified purpose** and he can only acquire a perfected right to so much water as he applied to beneficial use.") (emphasis added)
>
> Because Applicant [APR] failed to specify beneficial uses and places of use in its application [the Original APR 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 Original APR Application].

2012 District Court Memorandum, pages 19-20.

The Current APR Application's list of possible uses for the water to be appropriated is similar to the list presented in the Original APR Application. The Current APR Application (Exhibit 1) indicates that the water at issue could be used for the following unspecified uses:

- municipal and commercial water sales (Current APR Application, page 1, ¶2 [undisputed fact #4]);
- municipal, industrial and other users along the pipeline route (Current APR Application, page 3, ¶5 [undisputed fact #5]);
- municipal purposes within the service areas of Magdalena, Socorro,[5] Belen, Los Lunas, Albuquerque/Bernalillo County Water Utility Authority, and Rio Rancho (Cuirrent APR Application page 3, ¶5, Current APR Application, Attachment 2, page 4, ¶5.A [undisputed fact #6]);

[5] As noted in note 3 on page 9, Magdalena and Socorro protested the Current APR Application.

- municipal purposes and commercial sales for uses at locations along the length of the proposed pipeline (Currrent APR Application, Attachment 2, page 1, Section 1 [undisputed fact #7]); and
- bulk sales for use by municipal and investor-owned utilities, commercial enterprises, and state and federal government agencies (Current APR Application, Attachment 2, page 5, Section III, ¶6.B [undisputed fact #8]).

Although this list may not include 11 separate possible uses,[6] it is just as open-ended as the comparable description in the Original APR Application. Because the Current APR Application's list is as unspecific as the list in the Original APR Application, this Court's ruling that the Original APR Application's description was inadequate indicates that the description in the Current APR Application is also insufficient.

ii. The inadequacy of the Current APR Application's description of the place or places of use of water was litigated in the Original APR Application proceeding.

In its proceeding addressing the Original APR Application, this Court also addressed the failure of that Application to specify the place or places at which the beneficial use or beneficial uses for the water to be appropriated would occur. This Court stated:

> Subsection (A)(6) [of Section 72-12-3 NMSA 1978] requires an applicant to designate "the place of use for which the water is desired." For its proposed places of use, Applicant identified 37 quarter sections on its ranch and "[a]ny 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." Amended [Original APR] Application, Attachment B.

2012 District Court Memorandum (Exhibit 7), p. 15.

[6] The exact number of uses is difficult to determine because of the overlap between categories such as municipal uses, municipal and investor-owned utilities, uses along the pipeline, and uses by federal and state governments.

As was noted above, this Court concluded that:

> Because Applicant [APR] failed to specify beneficial uses and places of use in its application [the Original APR 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 Original APR Application].

2012 District Court Memorandum, page 20.

The listing of possible places of use for the water to be appropriated in the Current APR Application is similarly vague. It indicates that the water could be used:

- in "[p]arts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe Counties" (Current APR Application [Exhibit 1], page 2, ¶3 [undisputed fact #9]);
- within the authorized service areas of Magdalena, Socorro, Belen, Los Lunas, Albuquerque/Bernalillo County Water Utility Authority, and Rio Rancho (Current APR Application, page 3, ¶5.g; Current APR Application, Attachment 2, page 4, ¶5.A [undisputed fact #10]); and
- at locations along the length of the proposed pipeline (Current APR Application, Attachment 2, page 1 [undisputed fact #11]), which is projected to be approximately 140 miles long (Current APR Application, Attachment 2, page 4, Figure 6; Current APR Application Attachment 2, Exhibit D, Appendix A, pages 13-16 [undisputed fact #13]).

As the language from this Court's 2012 District Court Memorandum quoted above indicates, this listing of "large swaths of New Mexico" as possible places of use for the water to be appropriated is insufficient. The State Engineer therefore was required to reject the Current APR Application, and this Court should dismiss that Application as well.

b. The litigation addressing the Original APR Application determined that APR was not entitled to an evidentiary hearing before the State Engineer.

Finally, in the litigation concerning the Original APR Application, this Court also addressed APR's allegation that it was entitled to but was inappropriately denied an evidentiary hearing. This Court stated:

> The State Engineer has the authority to deny underground water permits without a hearing, NMSA 1978, §72-12-3.F (2001), a section in the groundwater permitting statutes which the State Engineer cites, albeit incorrectly in his Order Denying Application, ¶6. Applicant [APR] argues that once the OSE accepted the application and published notice, the State Engineer could not reject the application without a hearing. … The OSE staff did determine that the [application] form had been completed with all the information required, but it was within the State Engineer's authority, pursuant to Section 72-12-3(F) to deny the application without a hearing. ….
>
> If the acceptance by the OSE under Subsection C [of Section 72-12-3 NMSA 1978] requires the hearing examiner under Subsection F to hold an evidentiary hearing, the statutory language in Subsection F allowing him to deny an application without a hearing would be negated.

2012 District Court Memorandum (Exhibit 7), pages 11-12.

Citing Weiland v. Vigil, 1977-NMCA-003, 90 N.M. 148, *cert. denied*, 90 N.M. 255, 561 P.2d 1348, this Court pointed out as well that a statute must be construed to give effect to every part of the statute. 2012 District Court Memorandum, page 12.

This analysis is equally applicable to APR's assertion in this proceeding that it was entitled to but was inappropriately denied an evidentiary hearing. Section 72-12-3.F indicates that the State Engineer may deny an application to appropriate ground water without holding a hearing, and this Court has already ruled that Section 72-12-3.F applied to the State Engineer's denial of the Original APR Application. For that reason, the doctrine of collateral estoppel indicates that Section 72-12-3.F applies to the State Engineer's dismissal of the Current APR Application as well.

Conclusion

The Current APR Application fails to specify:

- the beneficial use or beneficial uses for the water to be appropriated; and
- the place or places where the beneficial use or beneficial uses of the water to be appropriated would occur.

Thus the Current APR Application is invalid on its face, and it should be dismissed.

In addition, APR's claim that it was inappropriately denied a public hearing is unpersuasive for three reasons:

- APR was not entitled to a public hearing;
- APR has neither alleged nor demonstrated that there are any disputed material facts to be considered in an evidentiary hearing; and
- Even if APR was entitled to a public hearing, it was not inappropriately denied such a hearing because the State Engineer's Hearing Officer conducted a public hearing on the motions for summary judgment filed below.

Finally, the doctrine of collateral estoppel indicates that this Court should dismiss the Current APR Application because:

- this Court has already determined in the proceeding addressing the Original APR Application that failure to specify the beneficial use or beneficial uses for the water to be appropriated and the place or places where that beneficial use or those beneficial uses would occur renders an application to appropriate ground water legally insufficient; and
- this Court has already ruled in the proceeding addressing the Original APR Application that APR was not entitled to an evidentiary hearing before the State Engineer.

For these reasons, this Court should dismiss the Current APR Application.

Dated: December 14, 2018.

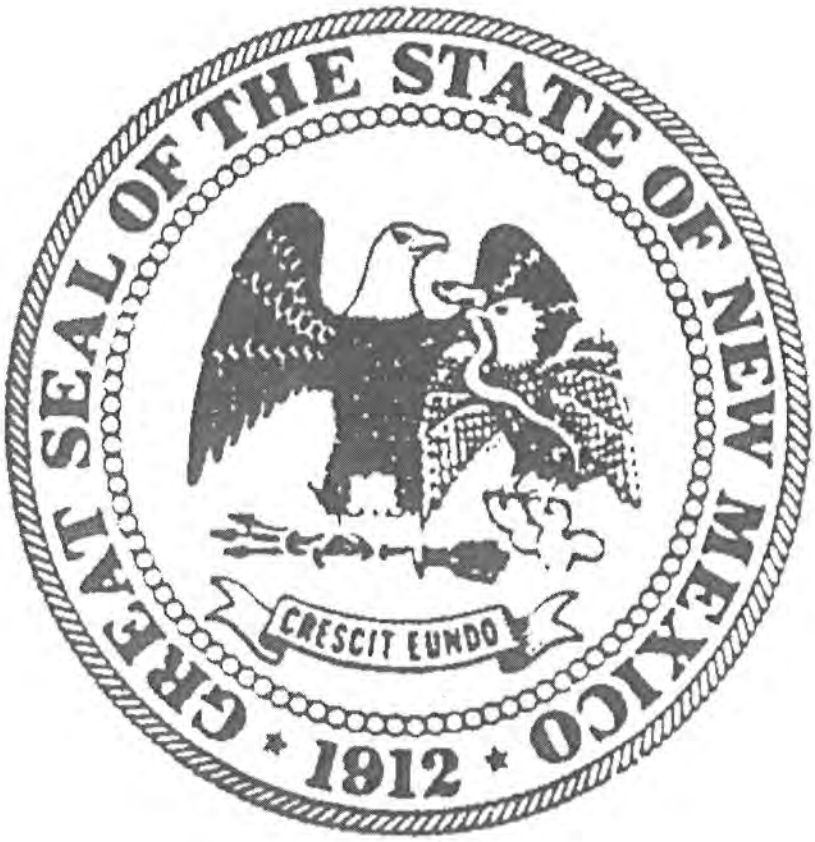
NEW MEXICO
ENVIRONMENTAL LAW CENTER

Douglas Meiklejohn
Jaimie Park
Jonathan Block
Charles de Saillan
Eric Jantz
1405 Luisa Street, Suite #5
Santa Fe, NM 87505
Telephone: (505) 989-9022
Facsimile: (505) 989-3769
Electronic mail: dmeiklejohn@nmelc.org,
jpark@nmelc.org

Attorneys for the Community Protestants
listed on the following page.

Attorneys for the following Protestants:

Gladys Baca; Robert and Mona Bassett; Patti BearPaw; Sue Berry-Fox; Ann Boulden; Donald and Joan Brooks; Jack Bruton and Bruton Ranch, LLC; Lisa Burroughs and Thomas Betras, Jr.; Charles and Lucy Cloyes; Michael D. Codini, Jr.; Randy Coil; James and Janet Coleman; Terri Cook; Thomas A. Cook; Wildwood Highlands Landowners Association and its members; Randy Cox; Nancy Crowley; Tom Csurilla and Elk Ridge Pass Development Company, LLC and Top of the World Land Company, LLC; Roger and Jeanne Daigger; Michael and Ann Danielson; Bryan and Beverley Dees; John and Eileen Dodds; Louise and Leonard Donahe; Patricia Eberhardt; Roy Farr; Paul and Rose Geasland; Gila Conservation Coalition, Center for Biological Diversity and Gila Watershed Alliance; Mary Rakestraw Greiert; Michael Hasson; Don and Cheryl Hastings; Gary and Carol Hegg; Patricia Henry; Catherine Hill; Eric Hofstetter; Sandy How; M. Ian and Margreet Jenness; Amos Lafon; Marie Lee; Cleda Lenhardt; Rick and Patricia Lindsey; Victoria Linehan; Owen Lorentzen; Mike Loya; Sonia Macdonald; Robert and Susan MacKenzie; Douglas Marable; Thea Marshall; Sam and Kristin McCain; Jeff McGuire; Michael Mideke; Kenneth Mroczek and Janice Przylbyl Mroczek; Peter Naumnik; John Naumnik; Regina Naumnik; Robert Nelson; Veronika Nelson; Walter and Diane Olmstead; Karl Padgett; Max Padget; Leo Padgett; Patricia Padgett; Wanda Parker; Ray and Carol Pittman; John Preston and Patricia Murray Preston; Daniel Rael; Stephanie Randolph; Mary Katherine Ray; Kenneth Rowe; Kevin and Priscilla Ryan; Ray and Kathy Sansom; Christopher Scott Sansom; John and Betty Schaefer; Susan Schudardt; Janice Simmons; Jim Sonnenberg; Anne Sullivan; Margaret and Roger Thompson; Gloria Weinrich; James Wetzig and Maureen M. MacArt; Donald and Margaret Wiltshire; and the following two associations and their members: Homestead Landowners Association and its members, including but not limited to the following: Joseph and Janet Siomiak, Patricia Germain, Bette Dugie, Jonathan Benedict, Michael Murray, John Pohl, Parker Fillion, Barbara Owens; and Abbe Springs Homeowners Association and its members, including but not limited to the following: Raven Reitstetter, Nancy Crowley, Chris and Helen Dossett, Kristin Ekvall, Kenneth and Diana Fry, Albert Goodman, William Gysin, Jeff McGuire, Rozalyn Murphy, Janice Simmons, Ronald Wilson, Paul G. Kotula, Karl and Jane Mears, Thomas and Linda Pampinella, David P. Smith, Carmela L. Warner, Lisa Burroughs, and Tom Betras.



APPLICATION FOR AUGUSTIN PLAINS RANCH, LLC

FILED:
DECEMBER 23, 2014 & APRIL 28, 2016

ALBUQUERQUE, DISTRICT 1

EXHIBIT
1

OFFICE OF THE STATE ENGINEER
SANTA FE, NEW MEXICO

2014 DEC 23 PM 4:55

File No.

NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO APPROPRIATE

(CORRECTED)

For fees, see State Engineer website: http://www.ose.state.nm.us/

___ Application to Appropriate Surface Water (72-5-1)
X Application to Appropriate Groundwater (72-12-3)
__Temporary Request – Requested Start Date: Requested End Date:

1. APPLICANT(S)

Name: Augustin Plains Ranch LLC	
Contact or Agent: Michel Jichlinski c/o Draper & Draper LLC	-or- Michel Jichlinski c/o Montgomery & Andrews, P.A.
Mailing Address: 325 Paseo de Peralta	**Mailing Address:** 325 Paseo de Peralta
City: Santa Fe	**City:** Santa Fe
tate: NM **Zip Code:** 87501	**State:** NM **Zip Code:** 87501
Phone: (505) 570-4590 (Draper & Draper) __Home ___Cell **Phone (Work):**	**Phone:** (505) 986-2637 (M&A) ___Home ___Cell **Phone (Work):**
E-mail (optional): john.draper@draperllc.com	**E-mail (optional):** jwechsler@montand.com

2. PURPOSE OF USE AND AMOUNT OF WATER

__Domestic __Livestock __Irrigation X Municipal __Industrial __Commercial X Other Use (specify): Commercial water sales Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc):_____	**Amount of Water (acre-feet per annum):** If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section. **Diversion:** 54,000 **Consumptive Use:** 54,000 **Other (include units):** Please see Attachment 2 for additional details

FOR OSE INTERNAL USE Application for Permit, Form wr-05, Rev 4/12/12

File Number:	Trn Number:
Trans Description (optional):	
Sub-Basin:	
PCW/LOG Due Date:	PBU Due Date:

3. COUNTY WHERE WATER RIGHT WILL BE USED

. arts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe Counties. Please see Attachment 2 for additional detail.

4. POINT(S) OF DIVERSION (POD)

___Surface POD OR __X_Ground Water POD (Well)			
Name of ditch, acequia, or spring:			
Stream or water course:		Tributary of:	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. ___Check here if Attachment 2 is included in this application packet.			
POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long – WGS84). District II (Roswell) and District VII (Cimarron) customers, provide a PLSS location in addition to above. ___ NM State Plane (NAD83) (FEET) ___NM West Zone ___NM East Zone ___NM Central Zone ___ UTM (NAD83) (METERS) ___Zone 12N ___Zone 13N ___ Lat/Long (WGS84)(to the nearest 1/10th of second)			
POD Number:	X or Easting or Longitude:	Y or Northing or Latitude:	Provide if known: -Public Land Survey System (PLSS) *(Quarters or Halves, Section, Township, Range)* OR -Hydrographic Survey Map & Tract; OR -Lot, Block & Subdivision; OR -Land Grant Name
1	107 43 13.037	34 13 29.779	T1S R9W S13 SW NE NE
2	107 43 12.778	34 12 58.958	T1S R9W S13 NW SE SE
3	107 43 47.907	34 12 58.177	T1S R9W S13 NE SW SW
4	107 43 13.644	34 12 35.848	T1S R9W S24 SW NE NE
5	107 43 47.142	34 12 36.275	T1S R9W S24 SE NW NW
NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions) Additional POD descriptions are attached: _X_ Yes ___ No If yes, how many __32__ ?			
Point of Diversion is on Land Owned by: Applicant			
Other description relating point of diversion to common landmarks, streets, or other: The wells will be located on Augustin Plains Ranch, north and south of U.S. Highway 60, East of Datil, New Mexico. Please see Exhibit C to Attachment 2 for a map illustrating the locations of the wells.			
Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.			

Approximate depth of well (feet): 2000	Outside diameter of well casing (inches): 20
Driller Name: Licensed New Mexico Drilling Contractor	**Driller License Number:** N/A

5. **PLACE(S) OF USE:** Please see Attachment

List each individually **(not applicable ___)**

a. _____Acres of Irrigated Land Described as Follows (if applicable):

b. **Legally Described By:** ___Public Land Survey System (PLSS) ___Hydrographic Survey Report or Map ___Irrigation or Conservation District Map ___Subdivision PLSS Quarters or Halves, **and/or** Name of Hydrographic Survey or District, **and/or** Name and County of Subdivision	c. PLSS Section **and/or** Map No. **and/or** Lot No.	d. PLSS Township **and/or** Tract No. (Please list each tract individually) **and/or** Block No.	e. PLSS Range	f. Acres
Please see Attachment 2				

g. Other description relating place of use to common landmarks, streets, or other: Please see Attachment 2 for additional details. 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.

h. Place of use is on land owned by (required): Please see Attachment 2

i. Are there other sources of water for these lands? No__ Yes__ describe by OSE file number Please see Attachment 2

Note: If on Federal or State Land, please provide copy of lease.

2014 DEC 23 PM 4:55

OFFICE OF THE STATE ENGINEER
SANTA FE, NEW MEXICO

FOR OSE INTERNAL USE Application for Permit, Form wr-05

File Number:	Trn Number:

6. ADDITIONAL STATEMENTS OR EXPLANATIONS

This Application has been corrected and is being re-submitted in response to the guidance provided in the letter from the Office of the State Engineer to Augustin Plains Ranch dated November 25, 2014. The original Application was first filed on July 14, 2014. This Corrected Application is being filed to obtain a permit to appropriate 54,000 acre-feet per year from 37 wells. The water will be transported by pipeline from the points of diversion to users along the pipeline route shown on Exhibit D to Attachment 2. Applicant also intends to construct enhanced recharge facilities which will collect runoff that would otherwise evaporate in the Plains of Augustin. This water will augment the groundwater in the aquifer and offset the amount that is pumped from Applicant's wells. Applicant requests that offset be recognized for these enhanced recharge projects in an amount to be determined at the hearing. As part of this Application, Applicant Augustin Plains Ranch is requesting a two stage hearing process. That process is described in more detail in Attachment 2. Any impairment of existing rights, in the Gila-San Francisco Basin, the Rio Grande Basin, or any other basin, that would be caused by the applied-for pumping, will be offset or replaced. Please see Attachment 2 for additional statements and explanations.

ACKNOWLEDGEMENT

Rich Radice

Print Name(s)

Affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

Applicant Signature

President
Augustin Plains Ranch, LLC

Applicant Signature

ACTION OF THE STATE ENGINEER

This application is:

____approved _____partially approved ____denied

provided it is not exercised to the detriment of any others having existing rights, and is not contrary to the conservation of water in New Mexico nor detrimental to the public welfare and further subject to the attached conditions of approval.

Witness my hand and seal this _____ day of _____20_____, for the State Engineer,

_____, State Engineer

By: _____ _____
Signature Print

...le: _____
Print

OFFICE OF STATE ENGINEER
SANTA FE, NEW MEXICO
2014 DEC 23 PM 4:55

FOR OSE INTERNAL USE Application for Permit, Form wr-05

File Number:	Trn Number:

RR

NEW MEXICO OFFICE OF THE STATE ENGINEER

ATTACHMENT 1
POINT OF DIVERSION DESCRIPTIONS

This Attachment is to be completed if more than one (1) point of diversion is described on an Application or Declaration.

a. Is this a: ☐ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	b. Information on Attachment(s): Number of points of diversion involved in the application: 37 Total number of pages attached to the application: ____

☐ Surface Point of Diversion OR ☐ Well	
Name of ditch, acequia, or spring:	
Stream or water course:	
Tributary of:	

c. Location (Required):
Required: Move to POD location coordinate must be either New Mexico State Plane (NAD 83), UTM (NAD 83), or Lat/Long (WGS84)

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: **6**	X or Longitude **107 43 48.654** Y or Latitude **34 12 6.665**		Other Location Description: **T1S R9W S24 NE SW SW**
POD Number: **7**	X or Longitude **107 43 13.036** Y or Latitude **34 12 5.993**		Other Location Description: **T1S R9W S24 NW SE SE**
POD Number: **8**	X or Longitude **107 44 16.442** Y or Latitude **34 10 1.772**		Other Location Description: **T2S R9W S2 SW NE NE**
POD Number: **9**	X or Longitude **107 44 51.761** Y or Latitude **34 10 0.982**		Other Location Description: **T2S R9W S2 SE NW NW**
POD Number: **10**	X or Longitude **107 44 48.998** Y or Latitude **34 9 31.664**		Other Location Description: **T2S R9W S2 NE SW SW**
POD Number: **11**	X or Longitude **107 44 18.662** Y or Latitude **34 9 32.342**		Other Location Description: **T2S R9W S2 SE NW SE**
POD Number: **12**	X or Longitude **107 45 18.499** Y or Latitude **34 9 7.181**		Other Location Description: **T2S R9W S10 SW NE NE**

RECEIVED
APR 28 2016
STATE ENGINEER OFFICE

Replacement (04/28/16)

POD Number: 13	X or Longitude **107 45 51.100** Y or Latitude **34 9 7.200**	Other Location Description: T2S R9W S10 SW NE NW
POD Number: 14	X or Longitude **107 45 50.229** Y or Latitude **34 8 40.493**	Other Location Description: T2S R9W S10 SW NE SW

NEW MEXICO OFFICE OF THE STATE ENGINEER

ATTACHMENT 1
POINT OF DIVERSION DESCRIPTIONS

This Attachment is to be completed if more than one (1) point of diversion is described on an Application or Declaration.

a. Is this a: ☐ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	**b. Information on Attachment(s):** Number of points of diversion involved in the application: 37 Total number of pages attached to the application: ____

☐ **Surface Point of Diversion** OR ☐ **Well**	
Name of ditch, acequia, or spring:	
Stream or water course:	
Tributary of:	

c. Location (Required):
Required: Move to POD location coordinate must be either New Mexico State Plane (NAD 83), UTM (NAD 83), or Lat/Long (WGS84)

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: **15**	X or Longitude **107 45 17.644** Y or Latitude **34 8 40.850**		Other Location Description: **T2S R9W S10 SW NE SE**
POD Number: **16**	X or Longitude **107 44 15.850** Y or Latitude **34 8 17.728**		Other Location Description: **T2S R9W S14 SW NE NE**
POD Number: **17**	X or Longitude **107 44 49.916** Y or Latitude **34 8 17.186**		Other Location Description: **T2S R9W S14 SE NW NW**
POD Number: **18**	X or Longitude **107 44 51.204** Y or Latitude **34 7 43.544**		Other Location Description: **T2S R9W S14 NE SW SW**
POD Number: **19**	X or Longitude **107 44 16.864** Y or Latitude **34 7 43.653**		Other Location Description: **T2S R9W S14 NW SE SE**
POD Number: **20**	X or Longitude **107 45 17.752** Y or Latitude **34 8 15.697**		Other Location Description: **T2S R9W S15 SW NE NE**
POD Number: **21**	X or Longitude **107 45 50.787** Y or Latitude**34 8 15.832**		Other Location Description: **T2S R9W S15 SW NE NW**

RECEIVED
APR 28 2016
STATE ENGINEER OFFICE
STATE ENGINEER OFFICE

POD Number: 22	X or Longitude **107 45 52.419** Y or Latitude**34 7 44.814**	Other Location Description: T2S R9W S15 NE SW SW
POD Number: 23	X or Longitude **107 45 18.309** Y or Latitude**34 7 44.043**	Other Location Description: T2S R9W S15 NW SE SE

NEW MEXICO OFFICE OF THE STATE ENGINEER

ATTACHMENT 1
POINT OF DIVERSION DESCRIPTIONS

This Attachment is to be completed if more than one (1) point of diversion is described on an Application or Declaration.

a. Is this a: ☐ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	b. Information on Attachment(s): Number of points of diversion involved in the application: 37 Total number of pages attached to the application: ____

☐ Surface Point of Diversion OR ☐ Well	
Name of ditch, acequia, or spring:	
Stream or water course:	
Tributary of:	

c. Location (Required):
Required: Move to POD location coordinate must be either New Mexico State Plane (NAD 83), UTM (NAD 83), or Lat/Long (WGS84)

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long– (WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: **24**	X or Longitude **107 45 18.892** Y or Latitude **34 7 21.076**		Other Location Description: **T2S R9W S22 SW NE NE**
POD Number: **25**	X or Longitude **107 45 53.118** Y or Latitude **34 7 20.532**		Other Location Description: **T2S R9W S22 NE SW NW**
POD Number: **26**	X or Longitude **107 46 19.041** Y or Latitude **34 7 21.630**		Other Location Description: **T2S R9W S21 SW NE NE**
POD Number: **27**	X or Longitude **107 45 20.948** Y or Latitude **34 6 52.325**		Other Location Description: **T2S R9W S22 NW SE SE**
POD Number: **28**	X or Longitude **107 44 15.086** Y or Latitude **34 7 22.957**		Other Location Description: **T2S R9W S23 SW NE NE**
POD Number: **29**	X or Longitude **107 44 49.269** Y or Latitude **34 7 21.062**		Other Location Description: **T2S R9W S23 NW SE NW**
POD Number: **30**	X or Longitude **107 44 47.283** Y or Latitude **34 6 53.305**		Other Location Description: **T2S R9W S23 NE SW SW**

RECEIVED
APR 28 2016
STATE ENGINEER OFFICE

POD Number: 31	X or Longitude **107 44 16.047** Y or Latitude**34 6 53.777**	Other Location Description: T2S R9W S23 NW SE SE
POD Number: 32	X or Longitude **107 44 14.548** Y or Latitude **34 6 32.564**	Other Location Description: T2S R9W S26 SW NE NE

NEW MEXICO OFFICE OF THE STATE ENGINEER

ATTACHMENT 1
POINT OF DIVERSION DESCRIPTIONS

This Attachment is to be completed if more than one (1) point of diversion is described on an Application or Declaration.

a. Is this a: ☐ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	b. Information on Attachment(s): Number of points of diversion involved in the application: 37 Total number of pages attached to the application: ____

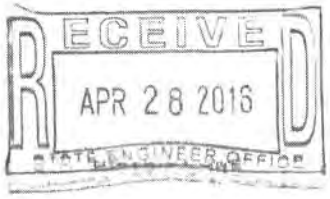
☐ Surface Point of Diversion OR	☐ Well
Name of ditch, acequia, or spring:	
Stream or water course:	
Tributary of:	

c. Location (Required):
Required: Move to POD location coordinate must be either New Mexico State Plane (NAD 83), UTM (NAD 83), or Lat/Long (WGS84)

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long– (WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for formal) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: 33	X or Longitude **107 44 48.784** Y or Latitude**34 6 32.477**		Other Location Description: **T2S R9W S26 SW NE NW**
POD Number: 34	X or Longitude **107 46 20.103** Y or Latitude **34 7 45.577**		Other Location Description: **T2S R9W S16 NW SE SE**
POD Number: 35	X or Longitude **107 46 17.697** Y or Latitude **34 8 14.721**		Other Location Description: **T2S R9W S16 SW NE NE**
POD Number: 36	X or Longitude **107 45 15.118** Y or Latitude **34 10 1.553**		Other Location Description: **T2S R9W S3 SW NE NE**
POD Number: 37	X or Longitude **107 45 15.791** Y or Latitude **34 9 30.586**		Other Location Description: **T2S R9W S3 NW SE SE**
POD Number:	X or Longitude	Y or Latitude	Other Location Description:
POD Number:	X or Longitude	Y or Latitude	Other Location Description:
POD Number:	X or Longitude	Y or Latitude	Other Location Description:

RECEIVED
APR 28 2016
STATE ENGINEER OFFICE

POD Number:	X or Longitude Y or Latitude	Other Location Description:



ATTACHMENT 2

TO AUGUSTIN PLAINS RANCH LLC CORRECTED APPLICATION FOR PERMIT TO APPROPRIATE GROUNDWATER

I. OVERVIEW OF THE PROJECT

Augustin Plains Ranch LLC ("APR" or "Applicant") is a New Mexico company which owns a ranch located in the San Augustin Plains near Datil, NM ("Ranch"). The overall purpose of this Corrected Application is to obtain approvals from the State Engineer for a permit to appropriate 54,000 acre-feet per year (AFY) from 37 wells to be drilled on the Ranch. Applicant proposes to convey the water through a pipeline from the Ranch near Datil in Catron County to the Albuquerque metropolitan area. The water will be used for municipal purposes and commercial sales for uses at locations along the length of the pipeline. The project will provide a new water resource in the State's most populated area, supplying economic and environmental benefits to the population. In addition, Applicant intends to construct enhanced water recharge facilities which will collect runoff that would otherwise evaporate in the Plains of Augustin. This water will augment the groundwater in the aquifer and partially offset the effects of pumping from Applicant's wells. Applicant requests credit for the enhanced recharge facilities in an amount to be determined at the hearing.

A description of the project is contained in Exhibit A to this Attachment ("Project Description").

Applicant has already invested over $3 million in the development of the project. Activities have included investment and investigation in the following areas:

Hydrologic:

- Acquired land necessary for the project layout
- Drilled two test wells to a maximum depth of 1,500 ft and conducted pump tests in each well
- Tested water quality from two test wells
- Drilled one borehole to a depth of 3,000 ft
- Contracted with nationally recognized hydrologists who conducted an initial analysis of the aquifer and developed a preliminary groundwater model

Engineering:

- Contracted with nationally recognized engineering firms as well as a pipe manufacturer to develop and evaluate the project's preliminary engineering and cost estimates
- Contracted with a nationally recognized environmental firm to evaluate the project's impacts and benefits, identify permitting requirements, and propose an optimal routing for the pipeline

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.

4. Points of Diversion ("PODs")

The groundwater points of diversion are 37 wells located on Augustin Plains Ranch, as more particularly shown on Exhibit C to this Attachment.

5. Places of Use

The water will be provided to users who will connect to the pipeline and use water along the route presented in Exhibit D. Exhibit E contains a letter of support from one such municipal entity. The preliminary engineering of the pipeline is discussed in the Project Description. The places 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. The terms of delivery and use of the water for the end-users will be provided as part of Stage 2. Water will be accounted for in a manner acceptable to the State Engineer.

A. Place of Use for Water for Municipal Purposes

Applicant 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[1]
Belen	Within the service area of the City of Belen municipal water system in Valencia County, New Mexico[2]
Los Lunas	Village of Los Lunas municipal water system service area[3]
Albuquerque Bernalillo County Water Utility Authority	Service area of the Albuquerque Bernalillo County Water Utility Authority municipal water system[4]
Rio Rancho	Town of Alameda Grant West of the Rio Grande and surrounding areas in Sandoval County[5]

The terms of delivery and use for municipal entities that elect to participate in the Project will be included in Stage 2 of the application process. A sample grant of authority to appropriate describing the type of agreement Applicant intends to enter into with willing municipal entities is

[1] Source: OSE File No. RG-3501
[2] Source: OSE File No. RG-537
[3] Source: OSE File No. RG-17065
[4] Source: OSE File No. RG-960 (modified)
[5] Source: OSE File No. RG-6745

provided in Exhibit F. Provisional delivery points to municipal systems are illustrated in Exhibit G, subject to final municipal specification.

B. Legal Description of Areas of Commercial Water Sales

Applicant 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, as more fully set forth in Section III.3 of this Attachment 2. All water sales will be wholesale or bulk sales. Bulk customers will connect to the pipeline and use water along the route presented in Exhibit D. The place of use for bulk sales is illustrated on Attachment 1 to Exhibit G.

6. Additional Statements or Explanations

A. Description of the Distribution System, Delivery Points, and Methods of Delivery to End Users

A detailed route of the pipeline is provided in Exhibit D (Appendix B to Exhibit D). In addition, Exhibit G provides a conceptual design and description of the distribution system, delivery points, and methods of delivery to end users. As summarized in Exhibit G, the conceptual design includes 37 wells on the Ranch, two project water tanks, approximately 140 miles of pipeline, and a hydroelectric facility. End users will connect to the pipeline through several lateral connections (see Attachments), and water will be delivered directly or into tanks. In addition, water will be delivered into the Rio Grande near Socorro (Attachment 4 to Exhibit G) and Albuquerque (Attachment 9 to Exhibit G) for bulk sales.

B. Types of Entities to Which Applicant Intends to Sell Water

Applicant intends to sell bulk or wholesale water to the following types of entities: municipal and investor-owned utilities, commercial enterprises, and state and federal government agencies.[6]

C. Description of the Type of Business Arrangements by Which Applicant Intends to Deliver Water

Applicant currently intends to deliver water to end users pursuant to Short Term Sales Agreements, Long Term Sales Agreements, and Infrastructure Participation Agreements. Sample forms of those types of agreements are included in Exhibit F to this Attachment 2. However, to the extent possible, Applicant intends to accommodate the needs of its commercial water customers. Accordingly, as final terms of agreements are negotiated, they may differ substantially from the examples contained in Exhibit F. More detailed terms of commercial sales may be included in Stage 2 of the application process. In general, the Applicant will be responsible for building the infrastructure and delivering bulk water. Sample terms of water delivery pricing are provided in Exhibit F.

[6] Applicant intends to provide wholesale water for resale to a limited set of commercial customers. Applicant has no intention of making its water generally available to the public, and has no intention of becoming a public utility as that term is defined in the Public Utility Act.

LIST OF EXHIBITS

Exhibit A: Project Description

Exhibit B: Investors Letters

Exhibit C: POD Map

Exhibit D: Routing Analysis

Exhibit E: Rio Rancho Letters

Exhibit F: Sample Agreements

Exhibit G: Technical Memorandum: Summary of Updated Conceptual Design

Exhibit A to Groundwater Application Attachment 2

Augustin Plains
RANCH, LLC

The Augustin Plains Ranch
Water Production and Distribution Project

Project Description

July 2014

Exhibit A to Groundwater Application Attachment 2

EXHIBIT A TO ATTACHMENT 2

Augustin Plains
RANCH, LLC

TABLE OF CONTENTS

TABLE OF FIGURES

Augustin Plains RANCH LLC

1. EXECUTIVE SUMMARY

The demand for water in the Middle Rio Grande ("MRG") already surpasses its availability, and the the inadequacy of present supplies continues to increase every year. The Augustin Plains Ranch ("APR") project will develop a new source of water for the Middle Rio Grande Valley. This will be accomplished by supportable use of the aquifer located under the San Augustin Plains in western New Mexico. The project will provide water to New Mexicans where it is needed most, while improving river habitat and water quality in the Rio Grande, using renewable energy such as hydropower and solar energy.

The supply of APR water

APR owns land on the Augustin Plains in Western New Mexico with access to an aquifer that initial studies indicate can produce 54,000 acre-ft. of water per year without impairment of prior water rights, subject to appropriate conditions of approval.

The project, as developed in hydrological and engineering studies, will supply new water to the state in an environmentally sustainable way. It will include:

- a well field
- hydroelectric and solar power generation facilities
- a pipeline over 140 miles in length, along existing highway rights-of-way
- a system of structures to enhance the recharge of the aquifer

Figure 1: Project Sketch

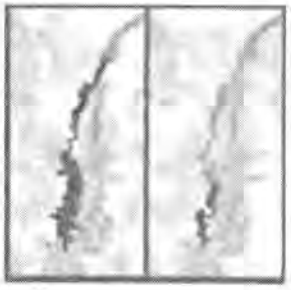


Figure 2: Elephant Butte Reservoir 1991 and 2011

The need for APR water

New Mexico is suffering from a lack of water. The future requirements of local, state, and federal parties are well documented while the sources for the water have generally not been identified. The importance of developing new water resources and precipitation capture and aquifer storage was recently endorsed by the overwhelming majority of participants in a recent New Mexico First Town Hall Meeting[1]. APR plans to meet this need by conveying water via pipeline for use in the Middle Rio Grande.

[1] New Mexico First, "A Town Hall on Water Planning Development and Use", Recommendation #10, April 15-16 2014

Augustin Plains
RANCH, LLC

The Property

Augustin Plains Ranch owns over 17,000 acres in the Plains of San Augustin. A large aquifer is accessible from the property which is suitable for development as a new water resource.

The project's location in the Augustin Plains has several advantages for a water project. The aquifer is large, and of good water quality. The area has relatively high rainfall for New Mexico, from which clean rainwater can be harvested to enhance the natural recharge of the basin.

Available Water

According to the Southwest New Mexico Regional Water Plan, the Augustin Plains Subbasin (APSB) has a total volume of approximately 50 Million acre-feet (AF) of groundwater in storage. The same report estimates the annual natural recharge of the basin at approximately 18,000 acre-feet per year (AFY). Water bearing units within the APR area are composed of Quaternary age alluvial sediments (approx. 2 million yrs. old) and range in thickness from several hundred feet in the western portion to over 4,500 ft. in the eastern portion of the Plains of San Agustin.

Average annual precipitation in the tributary drainage area west of APR is approximately 15 in. /yr. Historic total precipitation in the entire Augustin Plains basin has been of 1.6 Million AFY. The Ranch abuts the Datil mountain range and is strategically located as it intercepts the principal canyon exiting the range and neighboring drainages. The project will include the construction of artificial recharge structures to increase recharge in the basin.

Figure 3: Watersheds of Augustin Plains Ranch

Augustin Plains
RANCH, LLC

Preliminary Hydrologic Testing

APR has drilled two wells to depths of 840 ft. and 1500 ft. on the Ranch, and conducted pump tests on each. A stratigraphic borehole was also drilled to a depth of 3500 ft. The Well Records for all three are on file with the Office of the State Engineer (OSE). Preliminary analysis indicates that the quantity of water applied for is available.

Water produced from two test wells has been analyzed by an independent laboratory and has proved to be of excellent quality.

Energy Resources

The project will be powered by renewable, clean energy.

Hydropower: The project property is at an elevation of 7,125 ft., while the Albuquerque metropolitan area lies at 5200 ft. The elevation drop is sufficient to allow for gravity flow of the water to Albuquerque and the production of hydropower. This will account for most of the project's energy needs.

Solar power: New Mexico generally enjoys good conditions for the production of solar power and the project property is situated in one of the State's best locations. The remainder of the project's energy needs will be produced by solar energy.

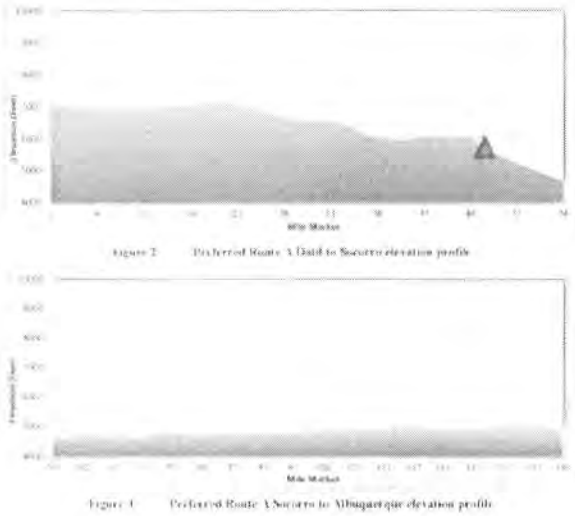


Figure 4: Pipeline Route Profile

Figure 5: Area Solar Potential

Augustin Plains
RANCH, LLC

Pipeline

APR will deliver water at various points along a pipeline which will extend from the Ranch to Rio Rancho, first eastward along Route 60, and then northward along Interstate 25. The route is shown below. The water will be delivered to users the pipeline route. .

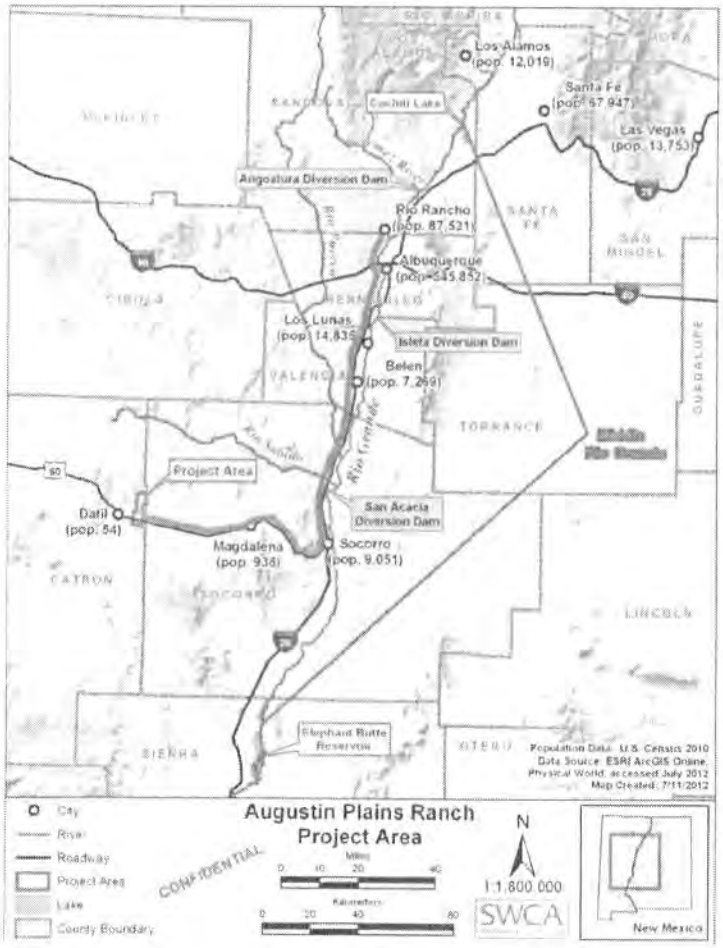


Figure 6: Pipeline Route

2. WATER USES

Project Benefits

This project has broad potential benefits for the State of New Mexico, for its citizens and for several of its institutions. The construction and operation of the project will directly create jobs and economic activity, participating users will benefit from increased, more consistent and cheaper water supply, and the augmentation of the Rio Grande, either through return flows or direct supply, will benefit the population throughout the valley and the State as a whole.

Project	Effects	Benefits
Augustin Plains Ranch	Construction, Operation and Maintenance	Jobs
		Development of new technologies
		Regional Development
	New Water Supply to Users	Facilitate compliance with OSE permit conditions
		Lower operating costs
		Lower prices for water rights in the MRG
		Lower water rates
		Lower Water Hook-up Fees
	Water Augmentation in the Rio Grande	Water for ESA compliance
		Value for recreation
		Value for tourism
		Value to farmers
		Value to municipalities
		Value to tribes
		Economic development
		Higher property values

Figure 7: Project Benefits

Water Availability in the Middle Rio Grande

It is widely recognized that New Mexico's water supplies are over-utilized and, in the case of groundwater, dwindling. A regional drought has plagued the Southwest for the past decade, exacerbating water shortages, impacting the local and regional economies, and stressing the rivers and riparian habitats.

Stakeholders have litigated on the management of the limited water. Even after the current drought ends, New Mexico's water supply will continue to present a serious challenge to the state.

More than half of New Mexico's population lives in the MRG, mostly concentrated in the greater Albuquerque metropolitan area. In this region, state and federal agencies must manage supplies for endangered species, other wildlife, and human consumptive needs.

According to the Middle Rio Grande Regional Water Plan, the region overspent its water budget by unsustainably mining its aquifers by an average of 55,000 AFY during a period (before 2000) when average rainfall exceeded the long term average by 15 to 18%. Projections to 2050 in the Water Plan indicate that water withdrawals will increase by nearly 120,000 AFY in spite of a 65,000 AFY projected decrease in the use of water by irrigated agriculture.

Endangered Species in the Middle Rio Grande

Two endangered species in the middle Rio Grande have a large impact on water operations: the Rio Grande silvery minnow and the southwestern willow flycatcher.

The silvery minnow was listed as an endangered species by the Fish and Wildlife Service in 1994. By then, the fish, which was once abundant and widespread in the Rio Grande and its tributaries from Brownsville Texas to near Espanola New Mexico, was only found between Cochiti Dam and the Elephant Butte Reservoir delta. Likewise, the Fish & Wildlife Service listed the willow flycatcher as an endangered species under the ESA in 1995. As established in litigation and recognized in biological opinions issued by USFWS, these endangered species require water.

Availability of Water Rights

Transferring water rights in the Middle Rio Grande has become increasingly difficult.

The stock of water rights available for transfer in the Rio Grande Basin is very limited. In a 2007 Memorandum the OSE estimates that there were less than 100,000 AFY of pre-1907 consumptive use surface rights in the entire Middle Rio Grande basin in 1919. The OSE further estimates that roundly 21,000 AFY of these rights have been transferred out of irrigation already and that another 38,000 AFY of rights will have to be transferred in coming years as a result of groundwater pumping under permits that have already been issued by the OSE. The sum of these two categories of pre-1907 rights—already transferred and projected to be transferred—comprises approximately sixty per cent of the total stock of valid irrigation rights estimated above. Moreover there is no guarantee that the 38,000 AFY of irrigation rights needed to satisfy existing permit conditions is available for efficient and economically viable transfer.

There are also additional legal impediments which will further restrict the water rights market in New Mexico. For example, until recently, county subdivisions in New Mexico could be based on water

obtained from domestic wells. In practice, some developers were selling the water rights associated with their lands, and relying on smaller domestic wells for county approval of their subdivisions. The New Mexico Legislature recently eliminated this practice. Subdivisions are now required to obtain a new State Engineer permit or a commitment from an existing water utility with sufficient water rights. By eliminating the ability of subdivision developers to rely on domestic wells, the new legislation puts further pressure on the water rights market.

APR's plan to build a pipeline to the Albuquerque metropolitan area contributes to solving this problem by bringing new water to the place where it is needed.

Water Users in the MRG

Overview

APR has analyzed the demand for water in the MRG. Even under conservative growth assumptions, future requirements for new water sources in Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval and Santa Fe counties largely exceed 54,000 AFY and could be several times this amount under drought conditions.

The following paragraphs present a summary of public information on the demand for water in selected areas.

Rio Rancho

Rio Rancho's 2013 capital plan summarizes the city's water situation as follows:[2]

> The city's acquisition liability is approximately 16,000 acre feet within the next 50 years under two OSE permits authorizing diversion (pumping) of up to 24,000 acre feet per year. The 2003 OSE permit requires acquisition of 728 acre feet of water rights every five years period through 2063....The 1979 permit requires an estimated rights acquisition of 56.7 acre feet per year.

In other words, the city is authorized to pump now, even though the volumes that it pumps are not presently offset by water rights which it owns. As discussed above, such water rights are not readily available in the Middle Rio Grande and the San Augustin Plains project would provide significant relief to the community. In addition to these legal requirements, Rio Rancho will likely need to purchase water rights in order to grow. The table below presents conservative growth numbers, although city officials have presented a requirement of up to 50,000 AFY for a population of 300,000[3].

[2] Rio Rancho, "2013-2018 Infrastructure and Capital Improvement Plan", July 25, 2012, p. 137. Accessed from http://ci.rio-rancho.nm.us/documents/24/313/Tab%208%20Water%20FY13%20ICIP.PDF

[3] Presentation by Larry Webb, 57th Annual New Mexico Water Conference, Las Cruces September 2012

Year	Population	Yearly acre-feet use
2012	90,000	15,000
2025	144,000	24,000
2035	210,000	35,000

Figure 8: Actual and Projected Rio Rancho Water Use

In short:

- In 2012, Rio Rancho's population was close to 90,000, and the city pumped 15,000 AF.
- By 2025, the city may count 144,000 people and may need to pump all the 24,000 AF that it currently has legal rights to pump. This uses the growth projections from the 2010 Comprehensive Plan,[4] and the current 15,000 AFY usage.[5]
- By 2035, under the same assumptions, the city may hit 210,000 people, and the extra people will require pumping an additional 11,000 AFY.

Albuquerque

The Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) provides water and sewer services to the City of Albuquerque, and several surrounding areas. As the successor to the Water Department of the City of Albuquerque, ABCWUA has rights to 48,000 AFY of water from the San Juan-Chama Project. However, this resource is subject to the availability of water in the Upper Colorado Basin.

The San Juan-Chama Project can be imperiled by drought either in the Upper Colorado Basin or in New Mexico. If there is drought in the Upper Colorado Basin, which supplies the San Juan-Chama project with water, then less water may flow through that project. The Bureau of Reclamation has warned that this is a real possibility.[6] Also native Rio Grande water is necessary to enable full use of the imported Project water.

The graphic below, from ABCWUA's asset management plan,[7] shows that ABCWUA will need to increase its groundwater supplies. According to the same plan, Albuquerque proposes to increase recharge of the aquifer by 22,000 AFY.

[4] Rio Rancho, "Comprehensive Plan", November 2010, p. PH-1. Accessed from http://ci.rio-rancho.nm.us/documents/20/39/232/6-Pop-Housing%20Element-(schbl).PDF

[5] City of Rio Rancho, Official Statement for Water and Wastewater System Refunding Revenue Bonds, Series 2013, April 24, 2013, p. 28. Accessed from http://emma.msrb.org/ER663539-ER515225-ER917834.pdf

[6] John Fleck, "Drought May Cut Chama Water Deliveries", Albuquerque Journal, December 5, 2012. Accessed from http://www.abqjournal.com/main/2012/12/05/news/drought-may-cut-chama-water-deliveries.html

[7] Albuquerque Bernalillo County Water Utility Authority, "Asset Management Plan", 2011, p. 52. Accessed from http://www.abcwua.org/pdfs/amp2011.pdf

Augustin Plains
RANCH, LLC

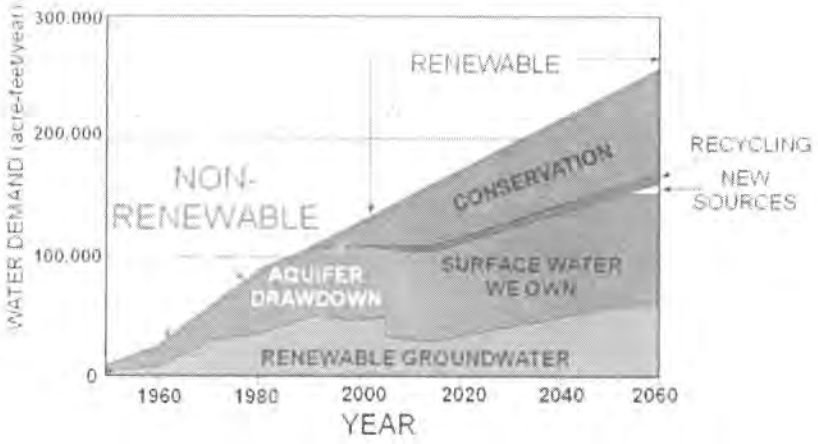


Figure 9: ABCWUA Water Budget

Other Municipalities

Municipalities along the pipeline

Other municipalities along the pipeline route have additional water needs. For example, last year, the well in Magdalena ran dry.[8] As this emergency situation demonstrates, these communities could greatly benefit from a safe and plentiful source of water.

Santa Fe

Santa Fe is active in the water rights market because of its growth and real estate policies. Because Santa Fe ordinances require developers to bring water rights to the City in order to obtain building permits, the developers themselves purchase the water rights in the market and transfer them to the City. The combination of relative affluence and City requirements has led developers in Santa Fe to pay premium prices for water rights to ensure prompt fulfillment of their needs.

The city's website states:[9]

[8] Susan Montoya Brian, "Magdalena runs out of water due to drought", Las Cruces Sun-News from the Associated Press, June 5, 2013. Accessed from http://www.lcsun-news.com/las_cruces-news/ci_23395674/magdalena-runs-out-water-due-drought

[9] Santa Fe, "Water Right Purchasing Program". Accessed from http://www.santafenm.gov/index.aspx?NID=2311.

"The City of Santa Fe is interested in purchasing Middle Rio Grande Valley pre-1907 priority date surface water rights. If you have water rights to sell, please contact Dale Lyons at 955-4204. The City's current offer is $12,000 per acre foot (consumptive use)."

In its 2008 Long Range Water Supply Plan, Santa Fe forecasts a 5,500 AFY "water gap" by the year 2045[10].

Agriculture and Livestock

Farmers and ranchers are affected by drought. Their water allotment is decreased or entirely eliminated at times, and they have had to switch to expensive groundwater pumping, switch crops or stop producing entirely. The combination of decreased municipal diversions and return flows would benefit agricultural users. In addition, water management and distribution entities such as the Middle Rio Grande Conservancy District could elect to use some of the project water for the benefit of its users.

Instream Uses

The Bureau of Reclamation and other federal agencies are currently spending tens of millions of dollars purchasing water, pumping water into the Rio Grande, augmenting flows through other activities, managing endangered species, and participating in various lawsuits.

The Bureau supplements and conserves water in the Rio Grande from two principal sources: the San Juan-Chama Project (SJCP) and the Low-Flow Conveyance Channel (LFCC).

In the case of the SJCP, the Bureau of Reclamation leases water from SJCP participants who may be receiving more than they need in that year. For instance, in May of 2013, the Bureau of Reclamation leased 40,000 acre-ft. of SJCP water.[11] However, water like this is only available in years when the SJCP has supplementary water, or when SJCP participants have stored that water from previous years, and the USBR has warned that there may be less than the allocated amounts of water in the SJCP in some years.

[10] City of Santa Fe, "Long-Range Water Supply Plan", September 2008, p. 3-4. Accessed from http://www.santafenm.gov/DocumentView.asp?DID=3056

[11] Dennis Domrzalski, "ABCWUA will lease water to feds to keep Rio Grande flowing", Albuquerque Business First, May 31, 2013. Accessed from http://www.bizjournals.com/albuquerque/news/2013/05/31/abcwua-will-lease-water-to-feds.html. Also Albuquerque Bernalillo County Water Authority, File C-13-12, passed 5/22/2013. Accessed from http://abcwua.legistar.com/LegislationDetail.aspx?ID=1429016&GUID=79686C7A-814E-41B9-BC35-DB2005F3DAE4

Exhibit B to Groundwater Application Attachment 2

ADVANCE INVESTMENTS LIMITED

(Registered Number: 53821)

Administration Address:
PO Box 119
Martello Court
Admiral Park
St Peter Port
Guernsey GY1 3HB
Channel Islands

Tel: (01481) 211000
Fax: (01481) 211001

Michel Jichlinski
Augustin Plains Ranch, LLC
8070 Georgia Avenue Suite 113
Silver Spring
MD 20910
USA

20 June 2014

Dear Michel,

Augustin Plains Ranch

Advance Investments Limited ("Advance"), has been an investor in the Augustin Plains Ranch project since 2011 and considers it a core investment in its private equity portfolio.

We have analysed the plans by Augustin Plains Ranch LLC for a project to develop a water resource in the property owned by the company in the Augustin Plains, for the benefit of the people of New Mexico, and believe that the project will be economically viable.

In the event that the application by Augustin Plains Ranch LLC to the Office of the State Engineer proceeds to the hearing phase, Advance will continue participating in the financing of the development costs of the project under mutually acceptable terms.

Advance is part of a private investment group with interests in clean tech, environmental technologies, property and consumer businesses. The group is an experienced investor with a track record of over twenty years of providing long term financial backing to a range of corporations.

If the relevant authorities in New Mexico would like to discuss this further please contact Julian Levy on +44 7768 877 787.

Yours sincerely
For Advance Investments Limited

Director

EXHIBIT B TO ATTACHMENT 2

EWING BEMISS & CO.
INVESTMENT BANKERS

June 20, 2014

To Whom It May Concern:

This firm is experienced in arranging financings for a wide range of energy and natural resources related projects. We are, in particular, one of the leading financial advisory firms in the U.S. renewable energy, "cleantech" and sustainable environment sector and are in regular contact with most of the institutional investors in that sector. For more background on our firm, and its transactional experience, please see www.ewingbemiss.com.

We have been in close communication with the owners of Augustin Plains Ranch ("APR") for over a year, in anticipation of a formal engagement to advise on the financing of APR's project (the "Project") to tap an aquifer on its property near Datil, NM and to transport the water to the Albuquerque metropolitan area. In that connection, we have familiarized ourselves with the Project and have initiated preliminary conversations between APR and institutional investors with experience of investing in similar water resource projects. These conversations have substantiated preliminary investment interest in the Project from some of the most experienced and highly qualified equity investors in large scale water infrastructure projects in the U.S. On that basis, and on the basis of our firm's experience in such matters, we believe that, once the necessary permits have been secured, the Project is capable of attracting the necessary equity investments. Such investments will, in turn, enable the Project to arrange the requisite project finance (debt).

Sincerely,

Richard W. Petree, Jr.
Managing Director

420 LEXINGTON AVENUE • SUITE 1718 • NEW YORK • NY 10170
PHONE: (212) 588-0501 • WEBSITE: www.EwingBemiss.com • E-MAIL: info@EwingBemiss.com

2013 STRATEGIC 100
TOP GLOBAL INFRASTRUCTURE PROJECTS

This certifies that

AUGUSTIN PLAINS RANCH PROJECTS

Was Nominated for Inclusion in the 2013 Strategic 100, and Participated in the

6TH ANNUAL GLOBAL INFRASTRUCTURE LEADERSHIP FORUM

At the Alexander Hamilton U.S. Custom House, New York, NY on February 27 - March 1, 2013

February 28, 2013

DATE

NORMAN F. ANDERSON

CG/LA INFRASTRUCTURE INC.

Exhibit C to Groundwater Application Attachment 2

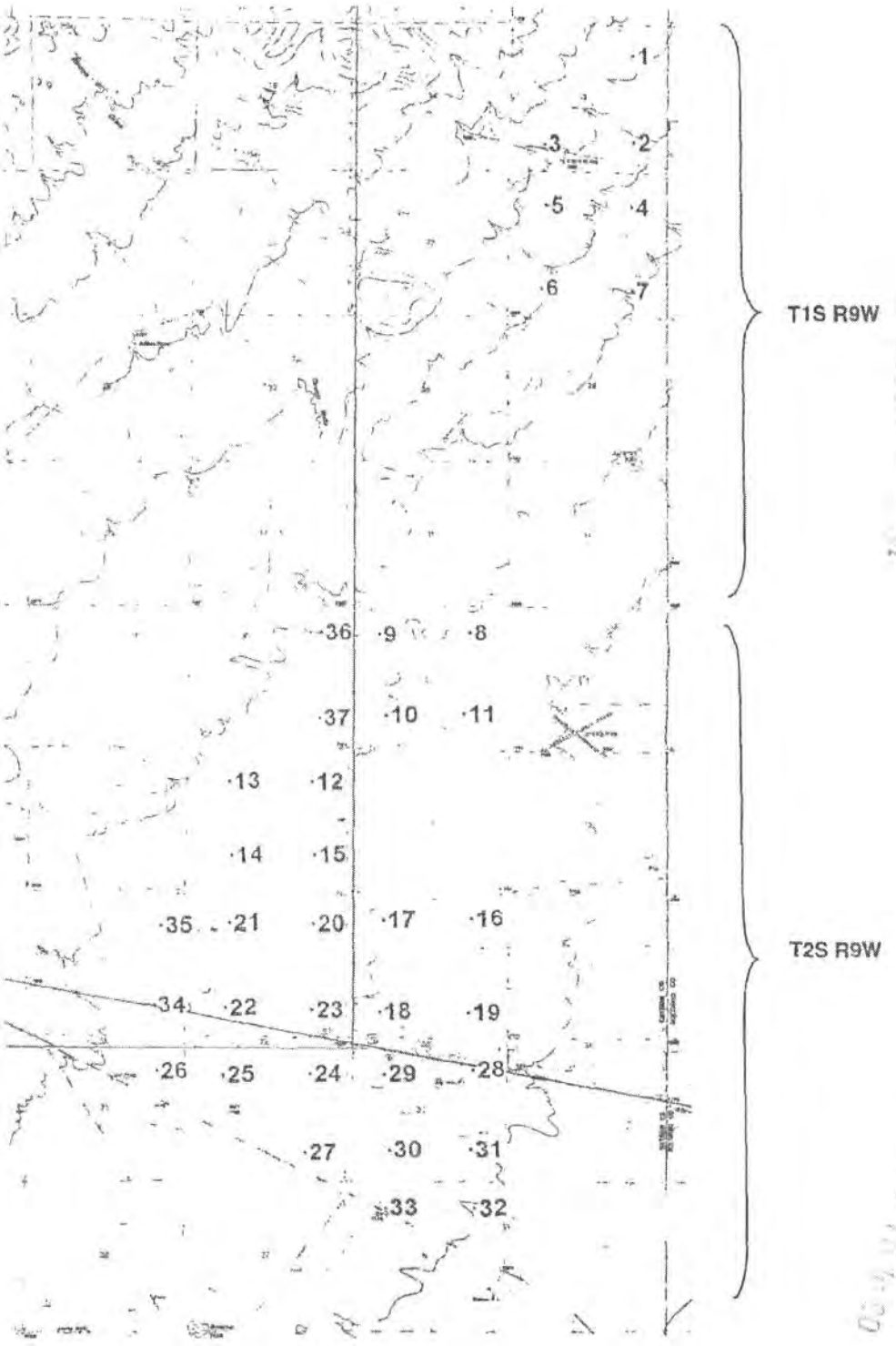


EXHIBIT C TO ATTACHMENT 2

Exhibit D to Groundwater Application Attachment 2

AUGUSTIN PLAINS RANCH WATER RESOURCE DEVELOPMENT PROJECT

Routing Constraints Analysis

Prepared for:

AUGUSTIN PLAINS RANCH

Prepared by:

SWCA ENVIRONMENTAL CONSULTANTS
5647 Jefferson Street NE
Albuquerque, New Mexico 87109

SWCA Project No. 17644

August 2012

EXHIBIT D TO ATTACHMENT 2

CONTENTS

FIGURES

TABLES

1 INTRODUCTION

For several years it has been widely recognized that New Mexico's water supply is an over utilized and dwindling resource. The regional drought that has plagued the Southwest for the past decade has seriously exacerbated water shortages and resulted in significant impact to the local and regional economy and those environmental elements that depend on flowing streams, shallow groundwater, and riparian habitats. Litigation over management of the limited water supplies has been initiated by environmental advocates, as well as local farmers, tribes, municipalities and adjacent states (Pease 2010). Solutions to these water problems, even once the current drought is over, will continue to be a serious challenge for the foreseeable future. Nowhere in New Mexico are the problems of drought and insufficient water more poignantly characterized than in the management of endangered species and other wildlife and human consumptive needs than in the Middle Rio Grande (MRG) valley.

The year 1996 was the first year of significant drought in the MRG in several decades. While the current drought and its associated problems are well known throughout the state, local water shortages and dwindling river flows during 2011 and 2012 exemplify conditions of the past 16 years and represent a harbinger of what is likely to occur in the future. During the 2011 water year, farmers along the Rio Grande were forced to pump groundwater to irrigate their crops, and due to poor range conditions and a lack of snowpack and rain, ranchers were forced to sell off livestock. In mid-summer, river flows were characterized by several weeks when the river ceased flowing for over 40 miles of the lower MRG before it enters Elephant Butte Reservoir. Adding to the environmental crisis, wildfires burned up hundreds of thousands of acres of forest and range vegetation in both upland and riparian wildlife habitats.

Augustin Plains Ranch (Ranch) has developed a proposal to develop a substantial, largely untapped groundwater source and deliver it to the banks of the MRG. The water supply comes from a deep aquifer beneath the Ranch on the Plains of San Augustin within the Rio Grande Basin, approximately 50 miles west of Socorro (Figure 1). It has been estimated that this project has the potential to sustain pumping of 54,000 acre-feet per year for 300 years (Augustin Plains Ranch LLC 2011). By comparison, metropolitan Albuquerque uses about 107,000 acre-feet per year. The Ranch has applied to the State of New Mexico for a permit to divert this water and deliver it to the Rio Grande in the vicinity of Socorro. The stated uses of the permit would be to develop the water resource to meet wildlife management and/or human consumptive purposes. The Ranch anticipates that all uses of the delivered water would be determined in collaboration with state and local elected officials, water managers, and end-users, including water planners, municipalities, industry, and representatives of irrigators and environmental groups. According to the water development plan, the Ranch is committed to public priorities for water use and intends to bring the water to market in a manner that upholds the public welfare, incorporates best practices in water conservation, does not impair existing water rights, protects the environment, and upholds New Mexico's cultural heritage and agricultural traditions.

This document identifies potential environmental and land use constraints associated with the Ranch's proposed pipeline route and optimal route alternatives for the Augustin Plains Ranch Water Resource Development Project. The development of the proposal focuses on how implementation of the project could provide supplemental water that will benefit the Rio Grande silvery minnow (*Hybognathus amarus*; silvery minnow) and the southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher) and their critical habitats while simultaneously providing other environmental benefits to the MRG state above.

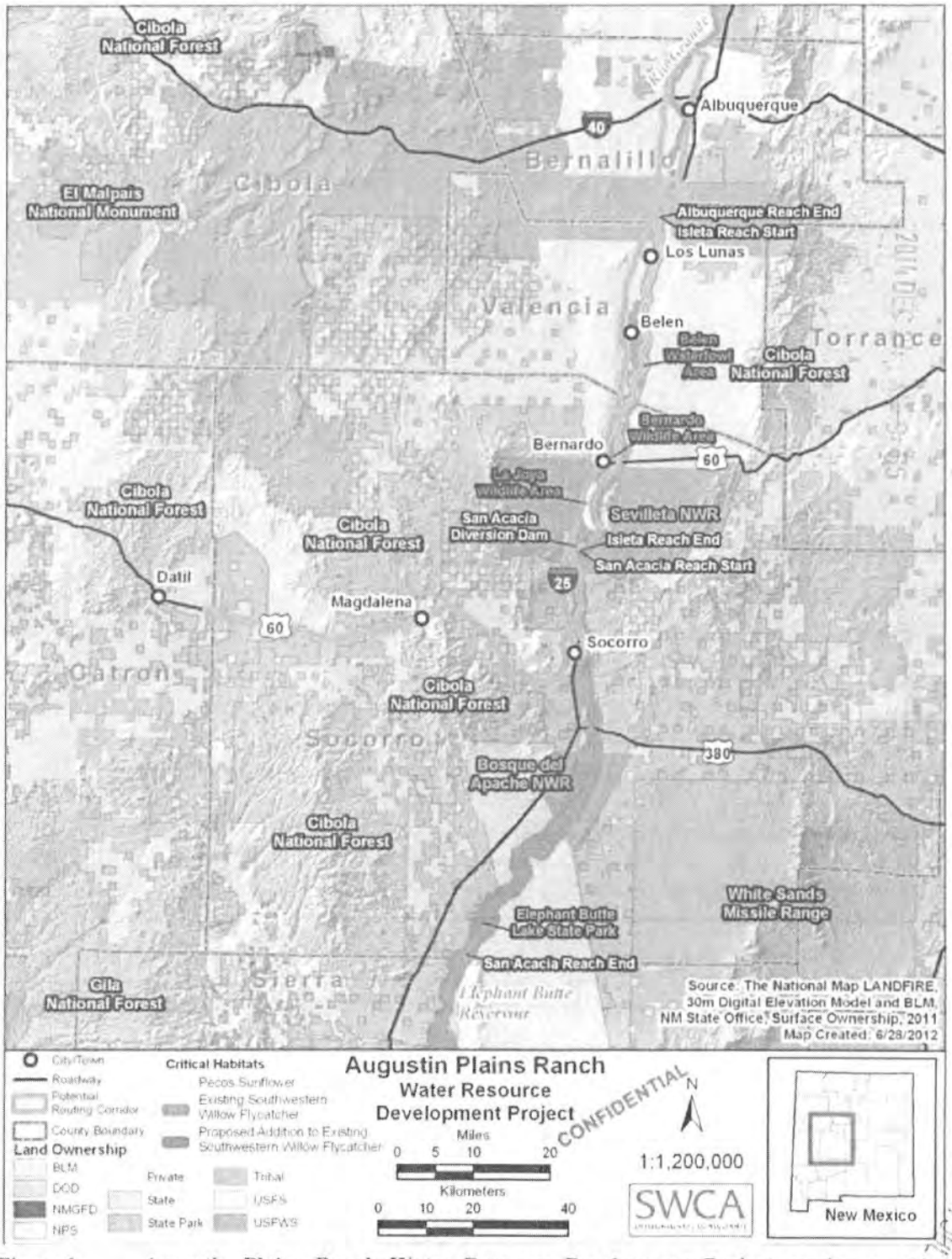


Figure 1. **Augustin Plains Ranch Water Resource Development Project routing corridor showing existing and proposed listed species critical habitat along the Middle Rio Grande.**

2 Overview of the Routing Process

2.1 Route Selection Process

The goal of the routing study was to identify viable route options, evaluate potential environmental and land use constraints associated with those routes, and identify the optimal route alternatives for the project. The specific criteria used for the routing study are identified in Section 2.4, Routing Criteria. The overarching goals were to minimize potential impacts and conflicts between the project and other existing infrastructure, environmentally and culturally sensitive areas, and human activities by routing along existing linear facilities to the extent practical, avoiding unreasonable circuitous routes, avoiding extreme costs, and minimizing nonstandard design requirements. The routing objectives were accomplished through the identification of the proposed segments that minimized potential impacts to environmental, social, and cultural resources while meeting the purpose and need for the project. The specific routes considered and either discarded or carried forward for analysis are discussed in Sections 2.2, through 2.5.

2.2 Summary of Routing Process

An evaluation process was conducted for the routing study to identify the optimal route for the project. To accomplish this objective, the routing process focused on identifying and evaluating, based on available data, existing linear facilities that could present opportunities for locating the project. Once candidate routes were identified, they were vetted by the team using the routing criteria. The team cast a wide net initially and then winnowed the list down to best-fit options, which were evaluated again by the team to determine the proposed route and alternatives.

The major steps undertaken as part of the study's routing process were:

- Step 1: Selection of the study area for the project that defined the extent of the geographical area within which feasible routes for the project were identified;
- Step 2: Development of the study's routing criteria (opportunities and constraints) that were used in evaluating potential routes;
- Step 3: Development of geographic system information (GIS)-based maps to identify and analyze routing opportunities and constraints;
- Step 4: Identification of route options that minimized adverse impacts while maximizing use of the highest-value route opportunities, informed by public and agency feedback; and
- Step 5: Analysis of the routing opportunities and constraints.

2.3 Study Area Definition

The routing corridor is approximately 600 feet wide and runs along U.S. Highway 60 (U.S. 60) east of Datil until it reaches Socorro where the route then follows Interstate 25 (I-25) north to the southern aspect of Albuquerque (see Figure 1). The routing corridor along I-25 is approximately 11,000 feet wide and extends from the west bank of the Rio Grande to 300 feet west of I-25. Once to the City of Albuquerque, a corridor along Coors Road is also described.

2.4 Routing Criteria

The study employed two general types of routing criteria for this portion of the project: routing opportunities and routing constraints (see Table 1).

Opportunities – Routing opportunities, consisting of existing linear facilities such as transmission and distribution lines, roads, railroads, and pipelines were used as the basis for identifying potential optional

route segments. . The use of existing linear features/corridors for routing purposes makes it unnecessary to introduce a new linear feature into the land use patterns of an area, which helps minimize associated impacts. This approach to linear facility siting is generally consistent with land use planning by federal, state, and local land management agencies and siting authorities. As part of the routing study, all reasonable efforts were made to identify and analyze viable routing opportunities within the study area.

Constraints – Routing constraints are resources and land use features that have differing levels of negative compatibility with new pipeline construction. Two general categories of constraints were identified:

- Avoidance Areas – These are areas where siting the pipeline would be extremely difficult or nearly impossible for one or more reasons (economics, statutory prohibition, permitting time frames, construction difficulty, etc.). These areas were excluded from consideration.
- Sensitive Areas – These are areas where siting the pipeline would be possible but specific issues or conditions exist that could make developing the project more difficult, more time consuming, or more costly. The impact of these segments on the identified areas of routing constraints was then analyzed to identify potential routes with the least possible adverse impacts to environmental and human activities.

Table 1. Summary of Opportunities and Constraints Evaluated in Routing Study Corridor

Criteria	Feature
Opportunities	Right-of-way along existing linear features such as roads, pipelines, transmission and distribution lines, and/or railroads.
Constraints	Cultural and historic resources.
	Biological and environmental resources including threatened and endangered species, wetlands and water resources.
	Infrastructure limitations.
	Land ownership and landuse patterns

2.5 Data Used for the Routing Study

A key component of the project routing study was the development of a comprehensive set of maps and associated data that made it possible to efficiently identify, measure, label, and track constraints and opportunities within the corridor. The data were obtained in electronic format from various federal, state, and local agencies, as well as commercial and other sources. The ESRI ArcGIS 9.3.1 platform was used to manage the electronic data and analyze the various routing options under evaluation. This data included a broad range of physical, ecological, cultural, and land use information from a number of sources which are identified in the appropriate sections.

3 DEVELOPMENT OF THE POTENTIAL ROUTES

3.1 Identification of Route Options

SWCA evaluated a route along U.S. 60 using a 300-foot buffer on each side of the highway. The sporadic land ownership pattern in this corridor requires the project to cross state and federal land managed by two agencies, the Bureau of Land Management (BLM) and U.S. Forest Service (USFS). Staying within the highway right-of-way may avoid crossing the jurisdiction of one or more of these public agencies, including NMDOT. The route along I-25 was expanded to provide additional flexibility in siting locations due to the anticipation of encountering sensitive state, federal, and tribal lands. This corridor, running parallel to the Rio Grande, averages 11,000 feet wide extending from the west bank of the river to a 300-foot buffer west of I-25. In addition to sensitive land ownership, and as previously discussed in the

Augustin Plains Ranch Water Recourse Development Project Final Report (SWCA 2012), two federally listed species (silvery minnow and flycatcher) are present in the Rio Grande or adjacent riparian area, creating a further constraint to locating the pipeline too far to the east. A third federally protected species, the Pecos sunflower (*Helianthus paradoxus*), presents an additional constraint if the pipeline is located closer to the river. Based on these criteria and on the subcorridors described below, the north-south route was evaluated and an alternative corridor route was identified in southwest Albuquerque to reduce potential conflicts. Corridors Considered

East-west route options were evaluated along the south and north sides of U.S. 60 both of which may require crossing state and/or federal land ownership. The preferred Route Option A follows the south side of U.S. 60 and descends quickly from the foothills of the Datil Mountains until reaching the City of Soccorro at milepost 56 (Figure 2). As the route approaches Socorro, the route will veer from U.S. 60 and follow the railroad line to I-25. An alternative corridor (A1) was identified to avoid extensive infrastructure (Appendix B, Figure B.25). This option will depart in a northeast direction from U.S. 60 near Michigan Avenue and travel just west of the New Mexico Tech golf course before turning on East Raod to tie into I-25.

Three north-south route options were considered: A) the west I-25 subcorridor, B) the central subcorridor following the railroad line above the river valley, and C) the east subcorridor along the river valley. All three of these options encountered a variety of sensitive private, state, federal, and tribal lands. Option C was eliminated due to the large number of regulatory constraints. From Socorro, the remaining north-south route (option A) stays within the west I-25 right-of-way corridor to Coors Road and up to Alameda to tie into the Albuquerque Bernalillo County Water Utlity Authority (ABCWUA) facility. The alternative option (B) will follow the railroad line north to the ABCWUA facility. Option A is relatively level with a slight increase approaching Albuquerque (Figure 3).

The corridor section A with the option A1 is considered the preferred route. No elevation profile is currently available for option A1. Elevation and GPS coordinates for each of the milepost markers are included in Appendix A and on maps in Appendix B (Figure B.10-Figure B.17).

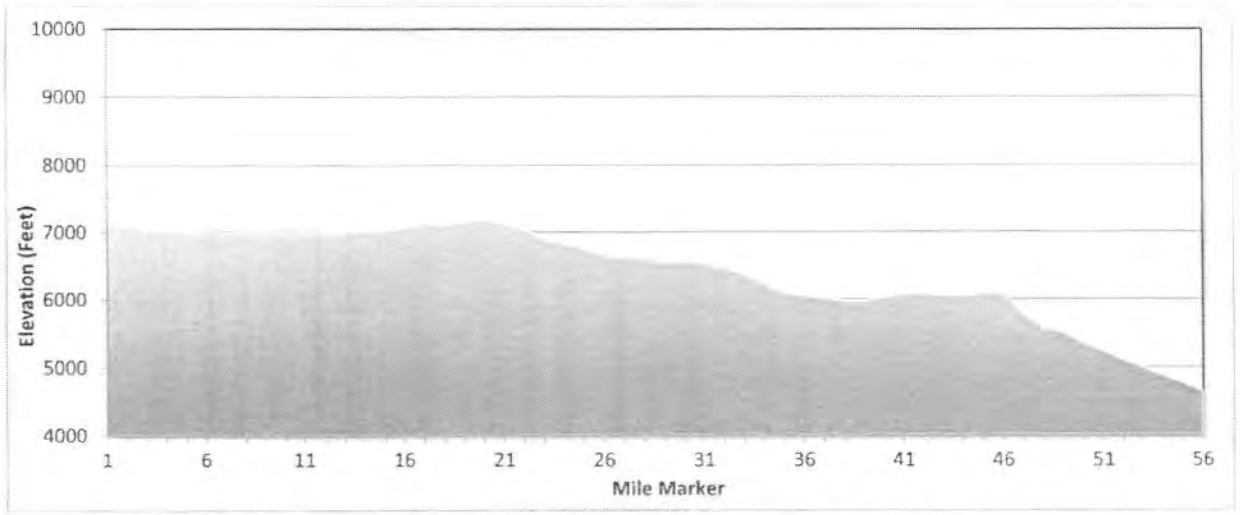


Figure 2. Preferred Route A Datil to Socorro elevation profile

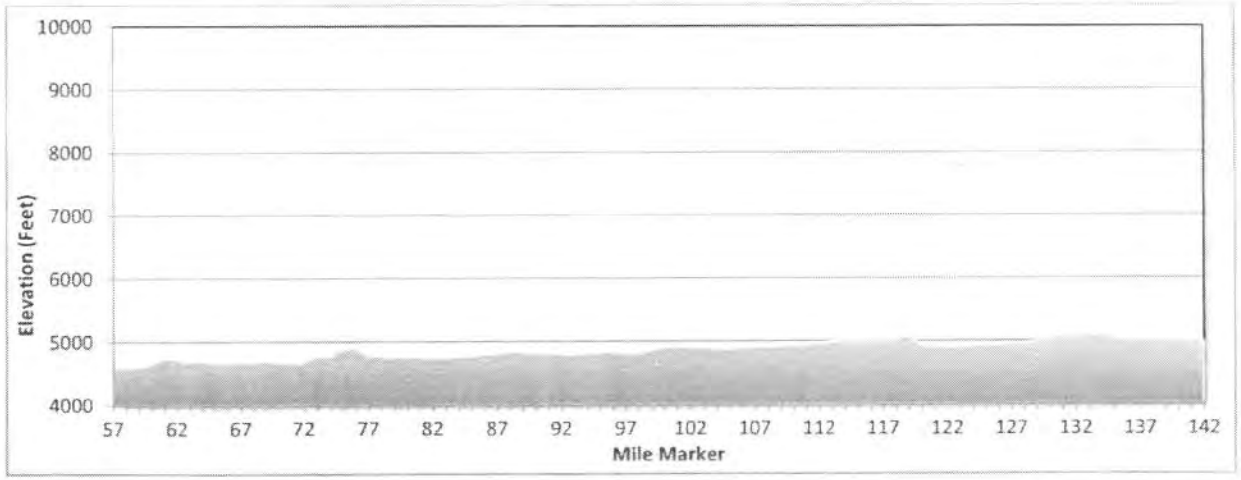


Figure 3. Preferred Route A Socorro to Albuquerque elevation profile

4 INITIAL ROUTING CONSTRAINTS

4.1 Cultural and Historic Resources

The project could have potential impacts to cultural resources and traditional cultural properties within the project's corridor. Data from the New Mexico Historic Preservation Division were obtained for the routing study area to determine the number of previous surveys and previously recorded sites present. To best understand the potential for impacting cultural resources, the study area was divided into physiographic zones. These zones correspond to areas of differing access to resources for the prehistoric and historic inhabitants, which may indicate a greater or lesser number of cultural resources. The first zone is along U.S. 60 in the higher terrain areas (over 6,000 feet), the second is the transition zone between the highlands and the river valley (5,999–5,100 feet), and third is the river valley (below 5,100 feet). There are different resources that were available to the prehistoric and historic occupants in these three areas. As expected, the most abundant and varied resources are in the transitional area because the inhabitants would be able to take advantage of all three physiographic environmental zones.

The next step was to determine the acres surveyed in each area, the number of sites recorded, and the number of sites eligible for the National Register of Historic Places (NRHP). These data indicated the known sites (constraints) in the project area and form the basis foran estimate of additional sites (constraints) that could be present.

Table 2 summarizes the known data and Figure 4 generally indicates the constraints as low, moderate, or high risk of sites eligible for the NRHP. The areas of low risk are in the higher terrain areas, have few known sites, have few or no natural water sources, and are not near any towns or cities. The moderate risk areas have a moderate number of known sites, are in transitional or river valley areas that are near natural water sources, and are near small towns. The high risk areas have a high number of known sites, are in the river valley area, are also near secondary water sources, and are in or near small towns or cities. In general prehistoric archaeological sites will be on the first or second terrace above the river valley or near natural water sources. Historic resources are in or near towns and cities and are more often found in the river valley. For routing in the river valley, staying on the terrace above the floodplain, but not next to its edge, would likely impact the fewest sites. Prehistoric sites may be in this zone but they are often smaller, easier to avoid, or easier to mitigate than the historic resources in the river valley.

Table 2. Summary of Previous Cultural Resource Surveys and Sites in Routing Study Corridor

CR Analysis Area	Acres Surveyed	% of Area Surveyed	# Known Sites	% Eligible Sites	Sites per Acre Surveyed
Higher terrain (>6,000 feet)	2,108	7.6%	43	18.6%	1 per 49 acres
Transitional (5,999–5,100 feet)	982	10.8%	43	51.2%	1 per 23 acres
River valley (<5,100 feet)	10,881	9.5%	213	38.0%	1 per 51 acres

Below is a summary list of potential cultural constraints:

- The higher terrain area has the fewest known sites and the least potential for new sites;
- A moderate amount of archaeological or historic resources are in transitional areas near natural water sources; and
- High numbers of archaeological or historic resources are in the river valley, near natural water sources, and near towns and cities.

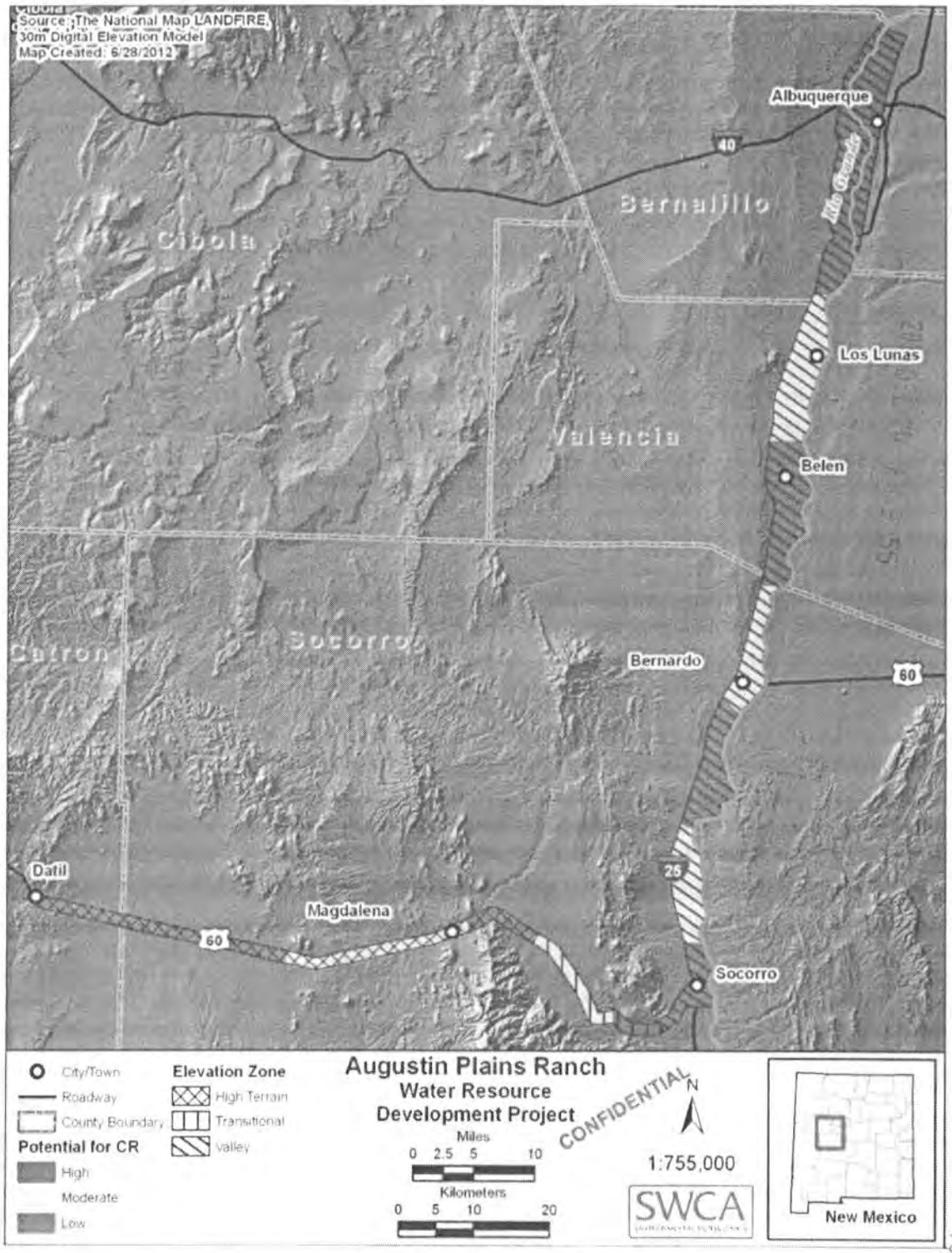


Figure 4. **Low, moderate, or high risk cultural resource areas along Augustin Plains Ranch Water Resource Development Project Corridor.**

4.2 Biological and Environmental Resources

SWCA Environmental Consultants (SWCA) developed a list of all federally threatened, endangered, candidate, or species of concern, and all species designated by the State of New Mexico as threatened or endangered, known or thought to occur in Catron, Socorro, Valencia, and Bernalillo counties (Appendix C). Due to the large amount of BLM ownership within the project corridor, additional sensitive species designated by this agency were also included. Information used to develop this list was obtained from the websites of the U.S. Fish and Wildlife Service (USFWS 2012), the New Mexico Department of Game and Fish (NMDGF 2012), and the New Mexico Rare Plant Technical Council (2012).

Using preliminary and very course habitat maps developed from the Southwest Regional Gap Analysis Project (SWReGAP) and their knowledge of species habitat requirements, SWCA biologists completed an assessment to determine the potential for sensitive species to be present in the project corridor (see Appendix B). Numerous species were considered not present in the project corridor based on absence of suitable habitat and/or known range limitations. The remaining species with the potential to be present were assigned an occurrence designation of unlikely, possible, or probable. Many of those species listed for possible occurrence are rare or have very limited habitat within the project corridor. Other species characterized as possible or unlikely may exhibit unpredictable distribution, or information regarding their distribution may not be available. To accurately determine the status of these species in the project area, additional analysis, not covered as part of this routing report, may be necessary.

Based on accurate and readily available distribution data, two threatened or endangered species were identified as having a high probability of occurrence in the project corridor. The flycatcher is listed as endangered by the USFWS and the NMDGF. This species breeds in the riparian forests of the Rio Grande. Critical habitat was designated in 2005 with further revisions proposed in 2011 (USFWS 2011). A final rule regarding these revisions is due by July 31, 2012. A map of critical habitat relative to the project corridor is in shown Figure 4 above.

Little is known about the historic distribution of the Pecos sunflower, which inhabits saline soils in desert wetlands usually associated with springs. One large population has been documented in Socorro County near the confluence of the Rio Grande and Rio Puerco. The species is designated as threatened by the USFWS and endangered by the NMDGF. The La Joya State Wildlife Area, which extends into the project corridor, is considered essential habitat for the conservation of this species (USFWS 2005) and has been designated as critical habitat (see Figure 1).

Other environmental constraints might include the presence of drainages or wetlands, and the regulatory compliance issues pertaining to these resources have been discussed previously in the Augustin Plains Ranch Water Recourse Development Project Final Report (SWCA 2012). There are three springs in the vicinity of the project corridor (see Appendix B, Figure B.4 and Figure B.5). These aquatic systems are unique environments, and many contain rare endemic populations of invertebrates, such as the Socorro isopod (*Thermosphaeroma thermophilum*), that receive legal state and/or federal protection. The current orientation of the proposed pipeline appears to avoid these wetland springs; however, their locations need to be carefully considered should any modification to the project route be necessary.

4.3 Infrastructure

There is minimal infrastructure along the U.S. 60 corridor, with the exception of New Mexico Highway (NM) 52 and NM 168, which terminate on the south side of U.S 60 (see AppendixB, Figure B.18 and Figure B.19). However, NM 107 does cross U.S. 60 just west of Magdalena. The number of state roads to be traversed increases along the I-25 corridor. Major highway intersections are associated with the cities of Belen (NM 548) and Los Lunas (NM 6). Larger populated areas in the corridor including Belen, Los Lunas, Magdelena, Socorro, and Albuquerque contain numerous secondary paved and in some cases

unpaved roads that will be crossed by the project corridor. Some of the state highways, such as U.S. 60 at Bernardo and NM 408 do not cross to the west side of I-25 (see Appendix B, Figure B.21). State highway crossings and use of 10xisting right-of-ways may require consultation with the New Mexico Department of Transportation.

Each populated area also has considerable commercial and industrial infrastructure that might be impacted by the project route. The route could potentially be deviated around smaller developed areas such as Magdelena, but the route through the larger populated areas and especially the southern part of Albuquerque will encounter considerable development and will be difficult to avoid. In general, the area west of I-25 has fewer road crossings and infrastructure, except for where the corridor crosses to the east of the river just south of Albuquerque (see Appendix B, Figure B.24). Here the corridor will either be in conflict with the riparian area or encounter increased infrastructure outside the Rio Grande floodplain, and it may require a crossing of the Rio Grande. This could be avoided by routing the pipeline to the west of Coors Road (see Appendix B,Figure B.24) and then adding a lateral pipeline along an east-west roadway to where the water will be distributed to the river.

A natural gas pipeline owned by El Paso Natural Gas will intersect with the current project corridor just south of Belen (see Appendix B, Figure B.23). The Burlington Northern Santa Fe railroad extends through the entire north-south corridor (see Appendix B, Figure B.21 through Figure B.25). The railroad line generally runs parallel to and between the river and I-25. If the pipeline stays west of the railroad, it will need to cross two branch lines, one south and one north of Los Lunas (see Appendix B, Figure B.24).

4.4 Land Ownership and Use

The current project corridor crosses privately owned land or public land managed by the BLM, USFS, and State of New Mexico. In addition, the route enters tribal land on the Pueblo of Isleta. Less than 0.5 acre of USFS land extends into the corridor and could be avoided by shifting the route to the south onto BLM land (Figure B.19). The New Mexico State Land Office (SLO) frequently leases land for development, but has minimal regulatory compliance requirements. However, the presence of several state wildlife areas in the project corridor will require consultation with the NMDGF (see Appendix B, Figure B.21 through Figure B.23). The extensive coverage of BLM land will trigger the requirement to complete a National Environmental Policy Act (NEPA) evaluation of the project's environmental impacts (see permitting needs and environmental constraints report). The project route also crosses the Sevilleta National Wildlife Refuge requiring further consultation with the USFWS. And finally, consultation will also be necessary with the Pueblo of Isleta since the project corridor extends across tribal land.

Each Tribe must provide environmental clearance for development projects that cross tribal lands, even in state or federal highway right-of-ways. The same rule applies for acquiring clearance from the appropriate agencies for all right-of-ways crossing state and federal lands. Therefore, depending on the routing corridor selected, clearance may also be required from the SLO, BLM, and USFS. Environmental clearance must also be coordinated through a NMDOT District Permit Agent and Traffic Engineer. The corridor route passes through NMDOT Districts 1, 6 and 3.

Land use within the project corridor consists primarily of agricultural land confined mainly to the section just west of the Rio Grande. This land use includes crop and pasture, with minimal groves and vineyards. Some agriculturally productive land may be impacted if the corridor deviates from the highway right-of-way, requiring negotiations and likely compensation for private landowners. West of Socorro, the land use impacted by the project route is mostly rangeland. Other land uses in the corridor include urban and other developed land, forest land, water, barren land, and forested riparian.

5 CONCLUSIONS AND RECOMMENDATIONS

The route along U.S. 60 consists primarily of rangeland, but will extend across three different public land jurisdictions. However, only 0.5 acre of USFS land extends into the corridor and can be avoided by routing the line on the south side of the road or close to the highway right-of-way on the north side. . We suggest routing the pipeline on the south side of US 60. It appears the biggest constraint for the U.S. 60 segment will be crossing through the commercial and industrial infrastructure in urban areas. With the exception of springs, arroyos, and potential wetlands, there would be few environmental constraints in this section, although additional literature review, consultation with species experts, and field surveys may be needed as confirmation of the absence of sensitive species or habitats. Route A is recommended since it has the fewest environmental and cultural resource constraints, and it reduces by one the number of federal agencies requiring compliance. Route A1 is also recommended to avoid the extensive infrastructure development in the Socorro area.

The I-25 corridor appears to be more problematic with the presence of tribal land; federal and state wildlife areas; and prime agricultural lands. In addition, three endangered/protected species occur in this corridor. Impacts to cultural resources and traditional cultural properties will also be more likely to occur within the riparian area, but diminish with increasing elevation and distance away from the river. Locating the route in the west corridor (west of I-25) and using the alternative route in southwest Albuququerque (west of Coors Road) would be most advantageous in avoiding cultural resource impacts, endangered species critical habitat, sensitive public land, and infrastructure. Avoiding any federal or state land designations would preclude the need to obtain additional environmental clearance from multiple agencies. This route would also require fewer highway crossings and avoid potentially crossing the Rio Grande. Therefore, route A is the recommended since it has the fewest environmental and cultural resource constraints.

6 LITERATURE CITED

Augustin Plains Ranch LLC. 2011. Water Resource Development Project.

Degenhardt, W.G., C.W. Painter, and A.H. Price. 1996. Amphibians and Reptiles of New Mexico. Albuquerque: University of New Mexico Press.

New Mexico Department of Game and Fish (NMDGF). 2012. Biota Information System of New Mexico (BISON-M). BISON-M Homepage. Available at: http://bison-m.org/index.aspx. Accessed July 2012.

New Mexico Rare Plant Technical Council. 2012. Available at: http://nmrareplants.unm.edu/rarelist_single.php?SpeciesID=54. Accessed July 2012.

Pease, M. 2010. Constraints to water transfers in unadjudicated basins: the Middle Rio Grande as a case study. Journal of Contemporary Water Research and Education 144(1):37–43.

SWCA Environmental Consultants (SWCA). 2012. Augustin Plains Ranch Water Resource Development Project Final Report. Prepared for Augustin Plains Ranch LLC. Albuquerque. SWCA Environmental Consultants.

U.S. Fish and Wildlife Service (USFWS). 2005. Pecos Sunflower (*Helianthus paradoxus*) Recovery Plan. Albuquerque: U.S. Fish and Wildlife Service, Southwest Region. Available at: http://ecos.fws.gov/docs/recovery_plan/050915.pdf. Accessed June 2012.

———. 2011. Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for Southwestern Willow Flycatcher; Proposed Rule. Federal Register 76, No. 157.

———. 2012. Ecological Services Southwest Region. Available at: http://www.fws.gov/southwest/es/EndangeredSpecies/EndangeredSpecies_Lists/EndangeredSpecies_ListSpecies.cfm. Accessed July 2012.

APPENDIX A.
ELEVATION AND GPS COORDINATES (NAD 83) FOR MILEPOSTS ALONG ALTERNATIVE ROUTE A

Mile	Elev_feet	Elev_meter	X_NAD83	Y_NAD83
1	7116	2169	247525.10	3779209.14
2	7083	2159	249094.80	3778854.61
3	7057	2151	250663.72	3778496.64
4	7028	2142	252233.70	3778143.31
5	7001	2134	253802.31	3777783.92
6	6988	2130	255370.53	3777422.78
7	6982	2128	256940.39	3777069.18
8	6982	2128	258510.13	3776715.02
9	6982	2128	260079.15	3776357.80
10	6982	2128	261648.08	3776001.01
11	6982	2128	263216.28	3775644.98
12	6991	2131	264785.09	3775286.73
13	7001	2134	266354.04	3774928.71
14	7018	2139	267923.26	3774571.99
15	7028	2142	269492.69	3774216.34
16	7073	2156	271062.58	3773862.58
17	7139	2176	272632.53	3773509.09
18	7113	2168	274201.10	3773149.98
19	7149	2179	275784.25	3773150.03
20	7211	2198	277357.52	3773488.67
21	7123	2171	278930.91	3773826.50
22	7051	2149	280504.12	3774165.26
23	6903	2104	282077.31	3774503.96
24	6827	2081	283651.33	3774838.96
25	6762	2061	285224.28	3775178.92
26	6667	2032	286798.42	3775513.24
27	6621	2018	288371.35	3775852.85
28	6614	2016	289944.80	3776190.40
29	6552	1997	291460.45	3776720.13
30	6575	2004	292950.58	3777327.70
31	6539	1993	294440.55	3777935.46
32	6483	1976	295929.36	3778546.29
33	6388	1947	297335.88	3779310.62
34	6234	1900	298819.86	3779729.58
35	6106	1861	300215.47	3778958.60
36	6056	1846	301569.20	3778088.59
37	6027	1837	302918.54	3777211.79
38	5981	1823	304269.69	3776337.78
39	5978	1822	305621.19	3775464.28
40	6027	1837	306823.92	3774431.20
41	6086	1855	307745.89	3773112.44
42	6096	1858	308665.06	3771791.83
43	6060	1847	309588.39	3770474.01
44	6053	1845	310425.01	3769106.56
45	6086	1855	311079.34	3767636.46
46	6093	1857	311731.93	3766165.64
47	5801	1768	313214.82	3765925.99
48	5594	1705	314750.55	3766037.68

Mile	Elev_feet	Elev_meter	X_NAD83	Y_NAD83
49	5512	1680	315878.47	3764892.82
50	5354	1632	317389.72	3764414.45
51	5246	1599	318997.73	3764362.09
52	5112	1558	320506.96	3764780.04
53	4997	1523	321847.89	3765669.59
54	4888	1490	322802.81	3766901.56
55	4780	1457	323624.70	3768284.95
56	4656	1419	324768.02	3769275.84
57	4593	1400	325781.24	3770095.52
58	4596	1401	325518.47	3771672.88
59	4606	1404	325027.92	3773195.26
60	4646	1416	324722.62	3774771.79
61	4764	1452	324409.67	3776349.45
62	4721	1439	324053.39	3777918.48
63	4695	1431	323651.60	3779476.14
64	4705	1434	323239.23	3781030.81
65	4672	1424	322945.33	3782610.61
66	4669	1423	322704.54	3784201.32
67	4685	1428	322607.74	3785802.06
68	4682	1427	322733.68	3787402.21
69	4711	1436	323230.95	3788932.49
70	4669	1423	323730.70	3790461.98
71	4669	1423	324229.37	3791991.25
72	4672	1424	324726.66	3793521.28
73	4780	1457	325226.69	3795050.58
74	4767	1453	325727.61	3796579.42
75	4898	1493	326229.27	3798107.99
76	4902	1494	326776.25	3799620.79
77	4783	1458	327171.04	3801174.30
78	4783	1458	327406.98	3802764.49
79	4747	1447	327838.62	3804304.21
80	4770	1454	328546.38	3805749.22
81	4757	1450	329253.29	3807194.71
82	4744	1446	330016.54	3808608.77
83	4744	1446	330894.02	3809957.48
84	4777	1456	331645.56	3811367.11
85	4790	1460	332061.63	3812921.43
86	4810	1466	332476.19	3814476.07
87	4816	1468	332891.53	3816030.57
88	4846	1477	333306.13	3817585.26
89	4839	1475	333720.78	3819139.94
90	4816	1468	334143.10	3820692.34
91	4810	1466	334550.85	3822248.93
92	4810	1466	334962.46	3823804.07
93	4787	1459	335229.99	3825390.98
94	4823	1470	335495.43	3826978.19
95	4833	1473	335762.65	3828564.97

Mile	Elev_feet	Elev_meter	X_NAD83	Y_NAD83
96	4836	1474	336029.02	3830151.92
97	4816	1468	336295.75	3831738.85
98	4810	1466	336549.33	3833327.63
99	4859	1481	335997.40	3834802.84
100	4915	1498	335415.94	3836290.48
101	4911	1497	335395.44	3837886.00
102	4898	1493	335567.82	3839486.01
103	4902	1494	335744.12	3841085.45
104	4892	1491	336041.74	3842666.28
105	4882	1488	336288.89	3844254.30
106	4898	1493	336331.91	3845862.86
107	4911	1497	336494.88	3847458.26
108	4925	1501	337049.16	3848968.65
109	4918	1499	337608.85	3850477.48
110	4941	1506	338173.14	3851984.39
111	4961	1512	338733.12	3853492.77
112	4964	1513	339297.15	3855000.01
113	4984	1519	339844.33	3856513.07
114	5003	1525	340422.75	3858011.97
115	5000	1524	341114.78	3859464.77
116	5016	1529	341808.45	3860916.69
117	4997	1523	342165.88	3862476.91
118	5026	1532	342499.28	3864049.76
119	5105	1556	342884.80	3865612.12
120	4928	1502	343443.60	3867101.80
121	4931	1503	343916.81	3868348.32
122	4908	1496	343318.48	3869841.99
123	4918	1499	343070.28	3871403.52
124	4921	1500	343101.79	3873012.13
125	4931	1503	343275.22	3874611.16
126	4928	1502	343491.87	3876205.17
127	4944	1507	343705.80	3877799.83
128	4954	1510	344076.24	3879363.32
129	4993	1522	344364.11	3880887.09
130	5046	1538	343850.02	3882408.15
131	5092	1552	344062.04	3883898.54
132	5095	1553	344410.59	3885453.95
133	5102	1555	344927.87	3886973.92
134	5115	1559	344971.15	3888581.43
135	5066	1544	345358.28	3890082.10
136	5010	1527	346564.48	3891134.76
137	5020	1530	347293.83	3892566.25
138	5007	1526	347845.41	3894059.43
139	5036	1535	348914.00	3895261.64
140	5016	1529	349876.64	3896546.74
141	5000	1524	350886.72	3895917.47
142	4997	1523	350647.99	3895469.49

Appendix B.
Routing Corridor Map Tiles for Drainage, Elevation, and Land Ownership

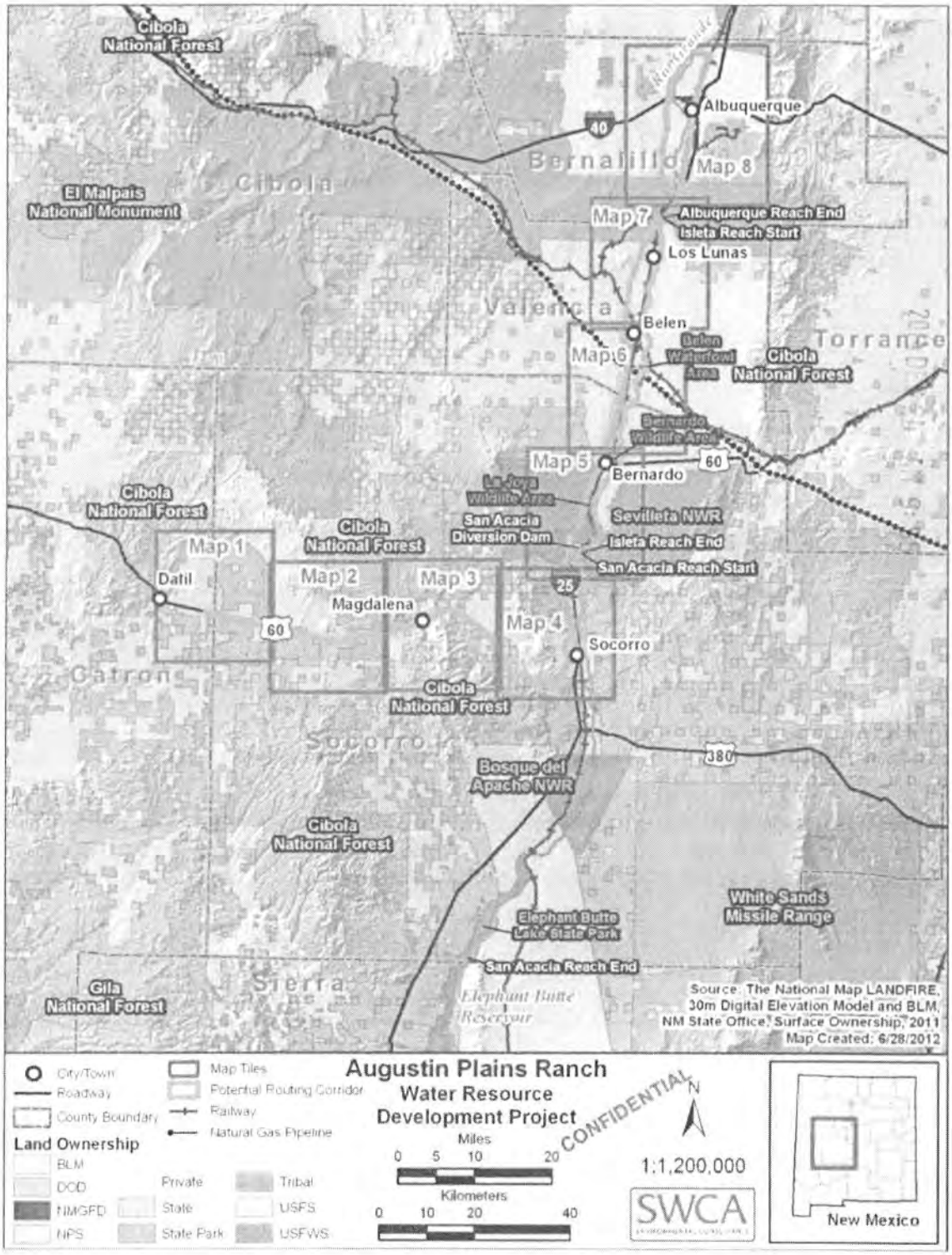


Figure B.1. Map tile overview of the project area.

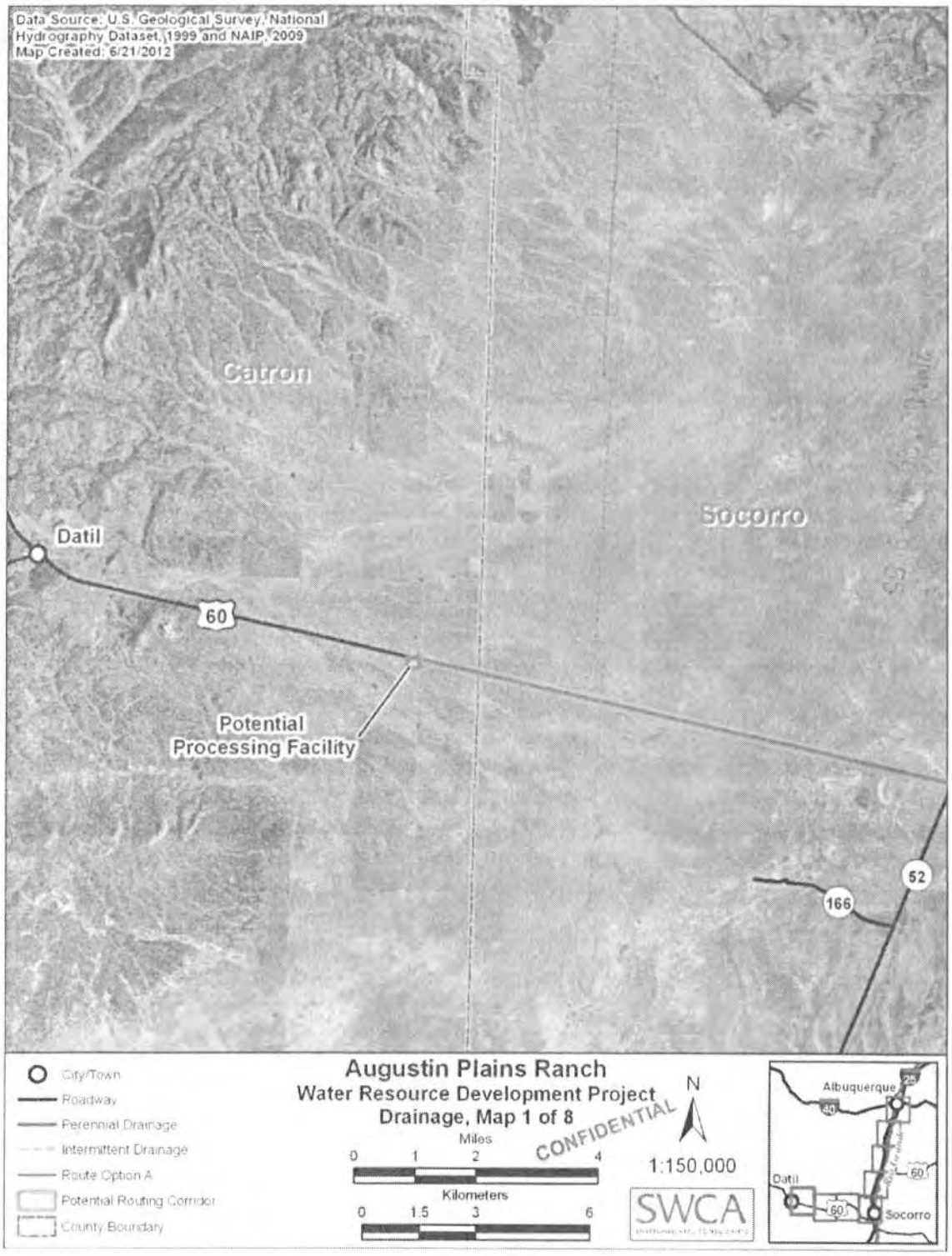


Figure B.2. Drainages in the project area, map 1 of 8.

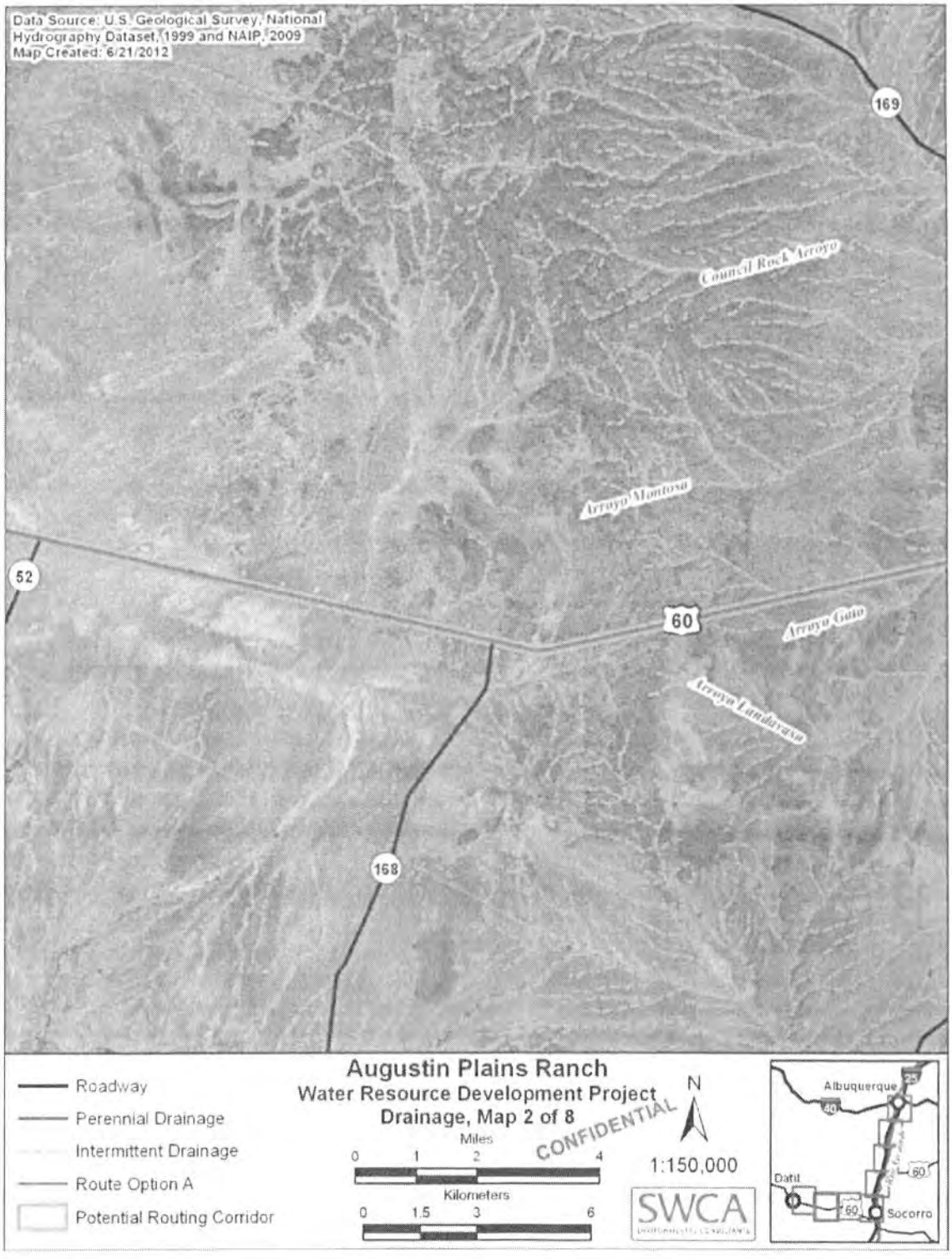


Figure B.3. Drainages in the project area, map 2 of 8.

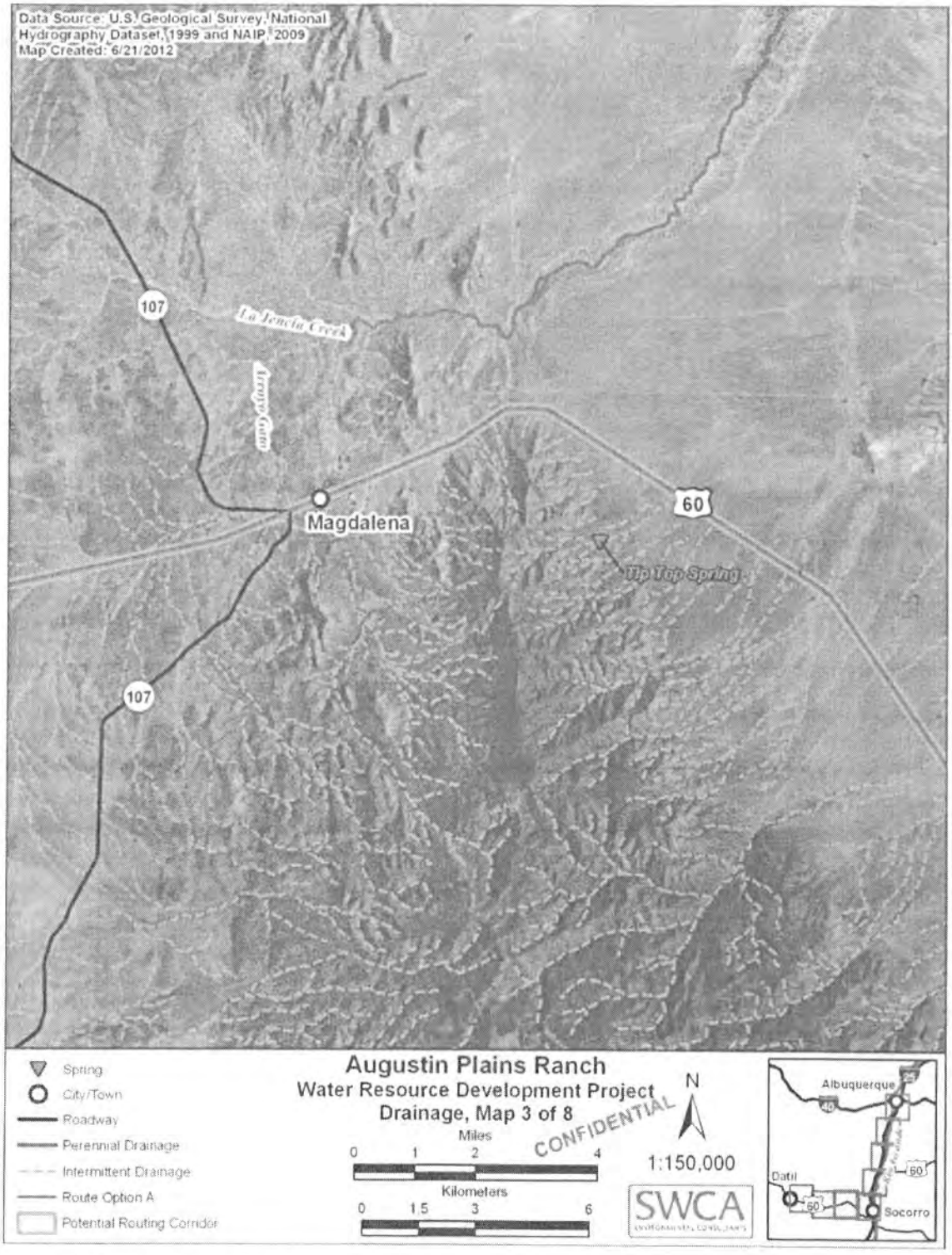


Figure B.4. Drainages in the project area, map 3 of 8.

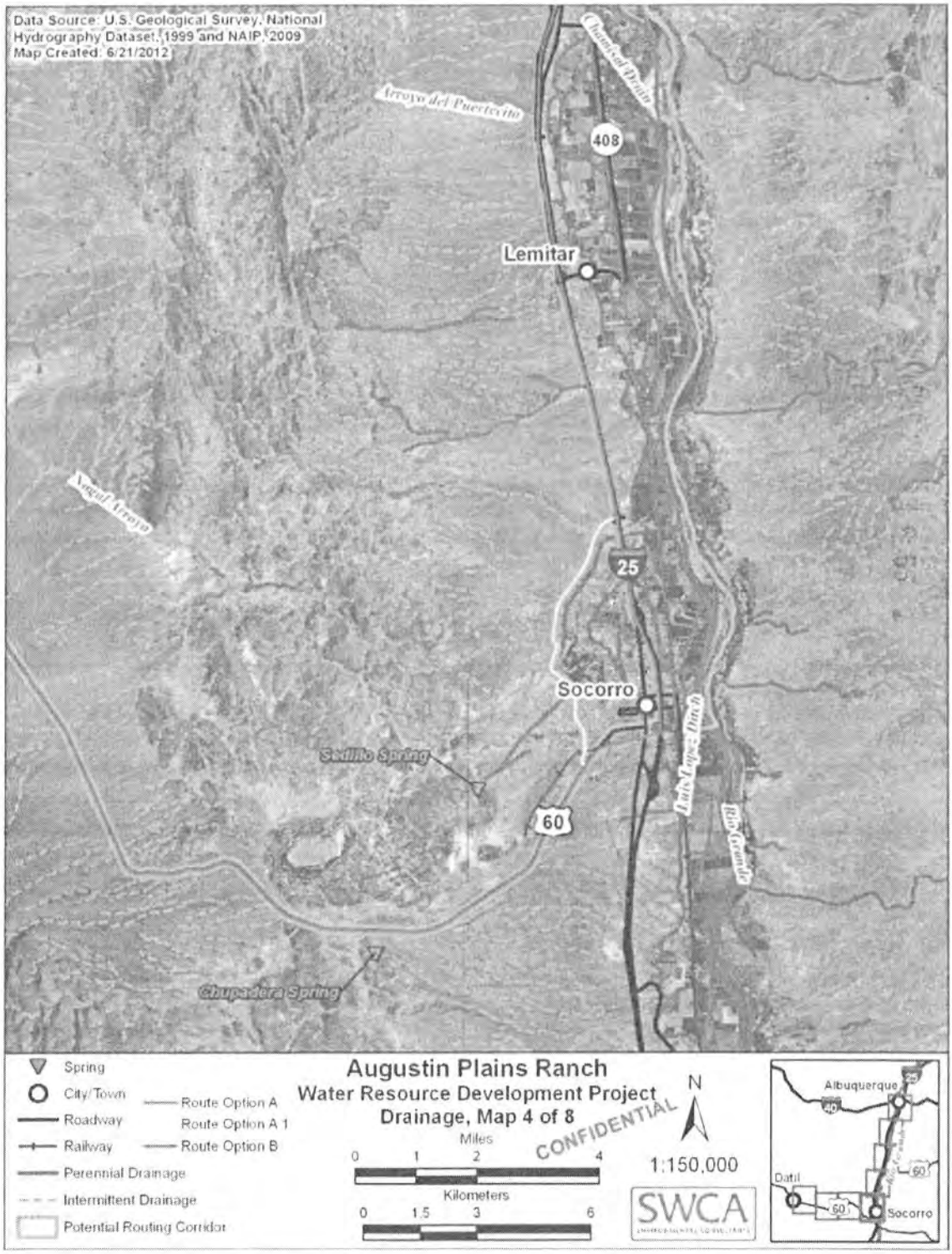


Figure B.5. Drainages in the project area, map 4 of 8.

Figure B.6. Drainages in the project area, map 5 of 8.

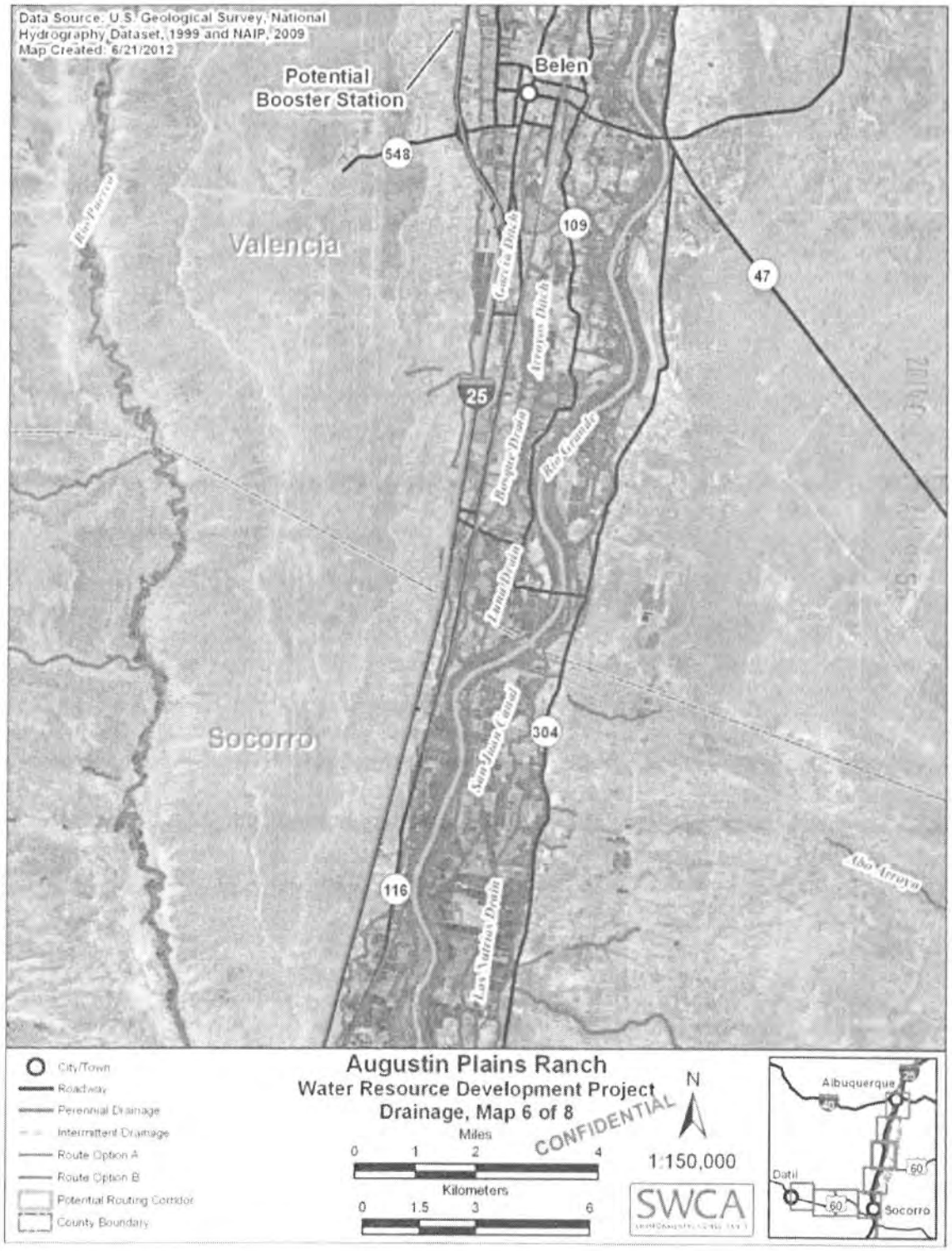


Figure B.7. Drainages in the project area, map 6 of 8.

Figure B.8. Drainages in the project area, map 7 of 8.

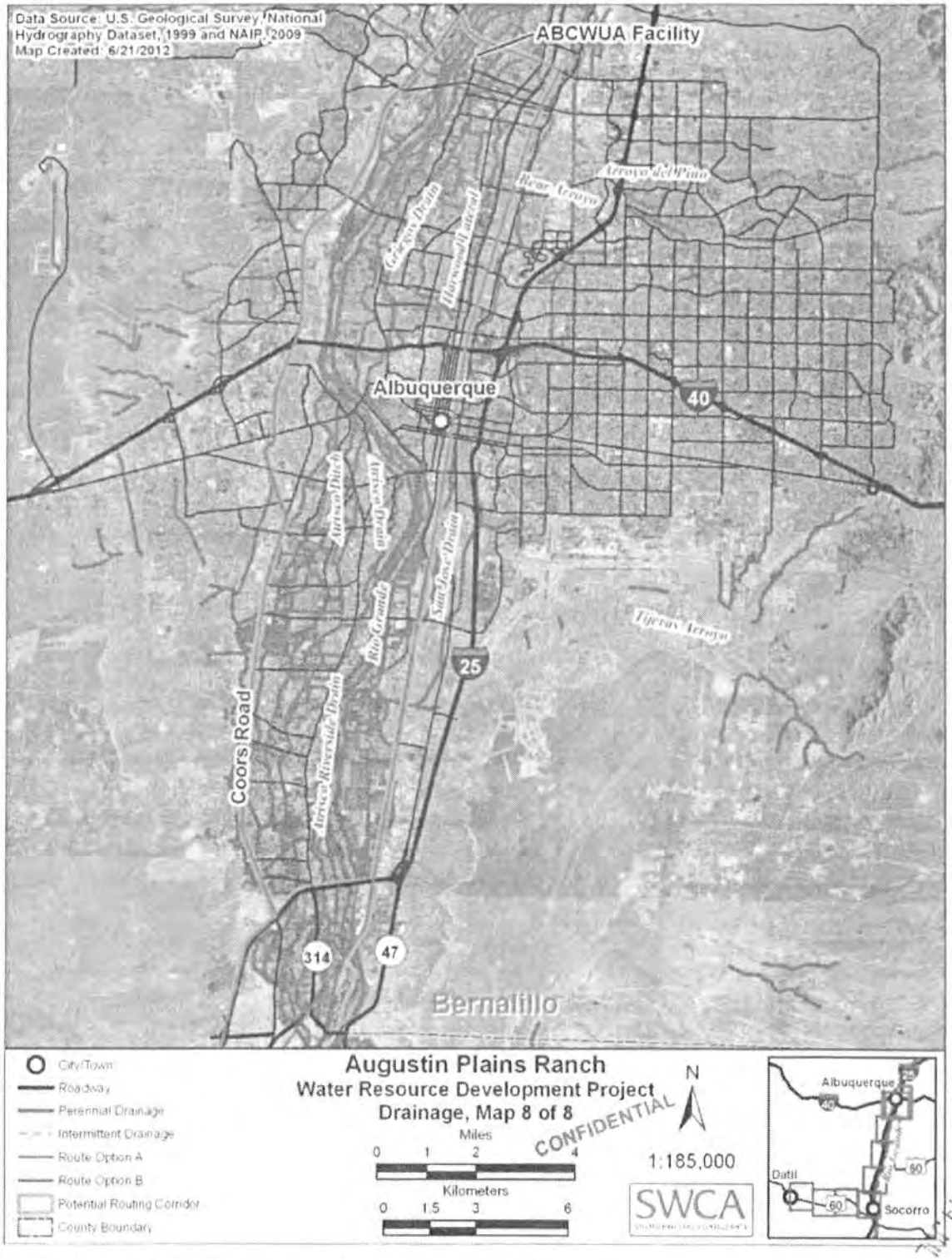


Figure B.9. Drainages in the project area, map 8 of 8.

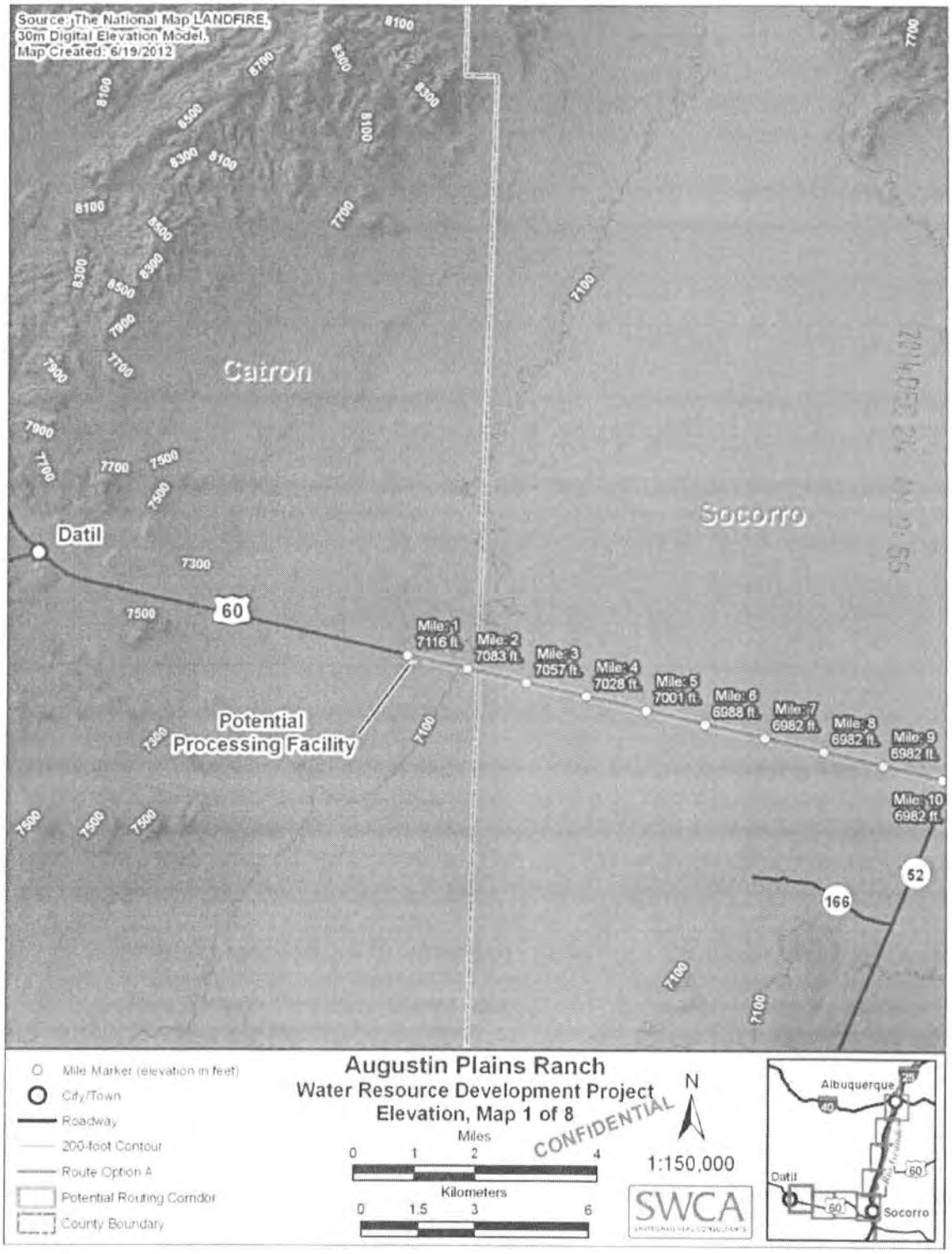


Figure B.10. Elevation in the project area, map 1 of 8.

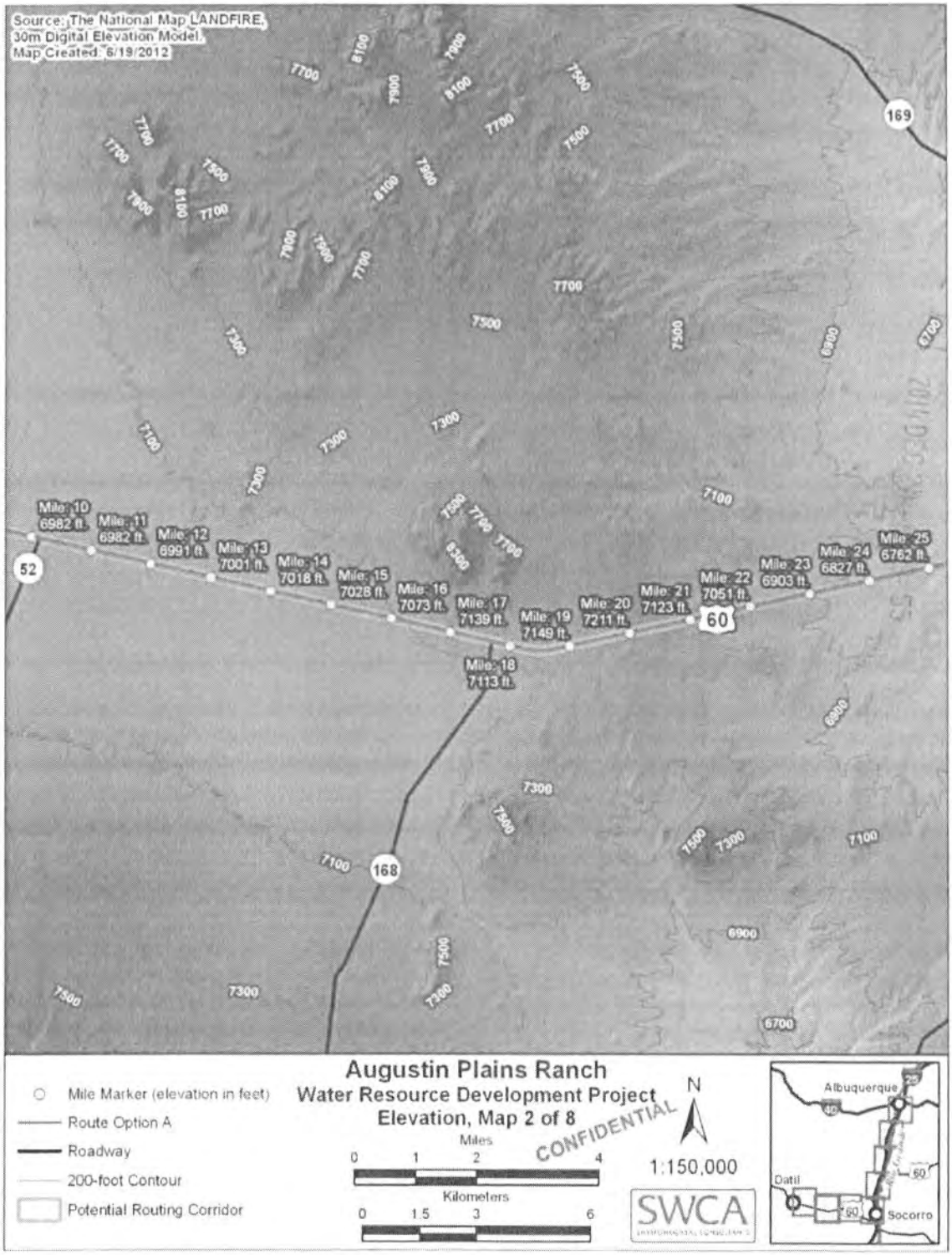


Figure B.11. Elevation in the project area, map 2 of 8.

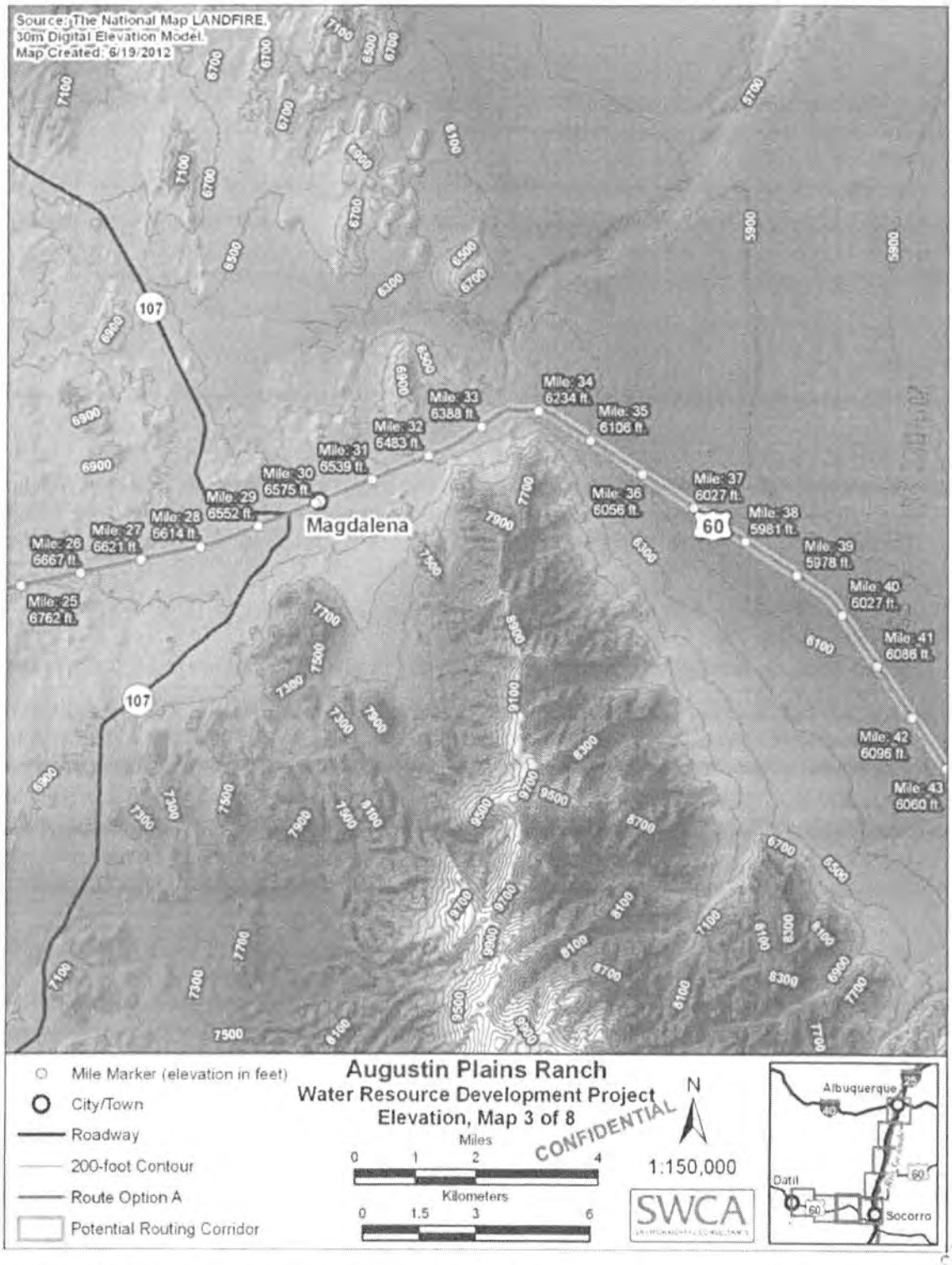


Figure B.12. Elevation in the project area, map 3 of 8.

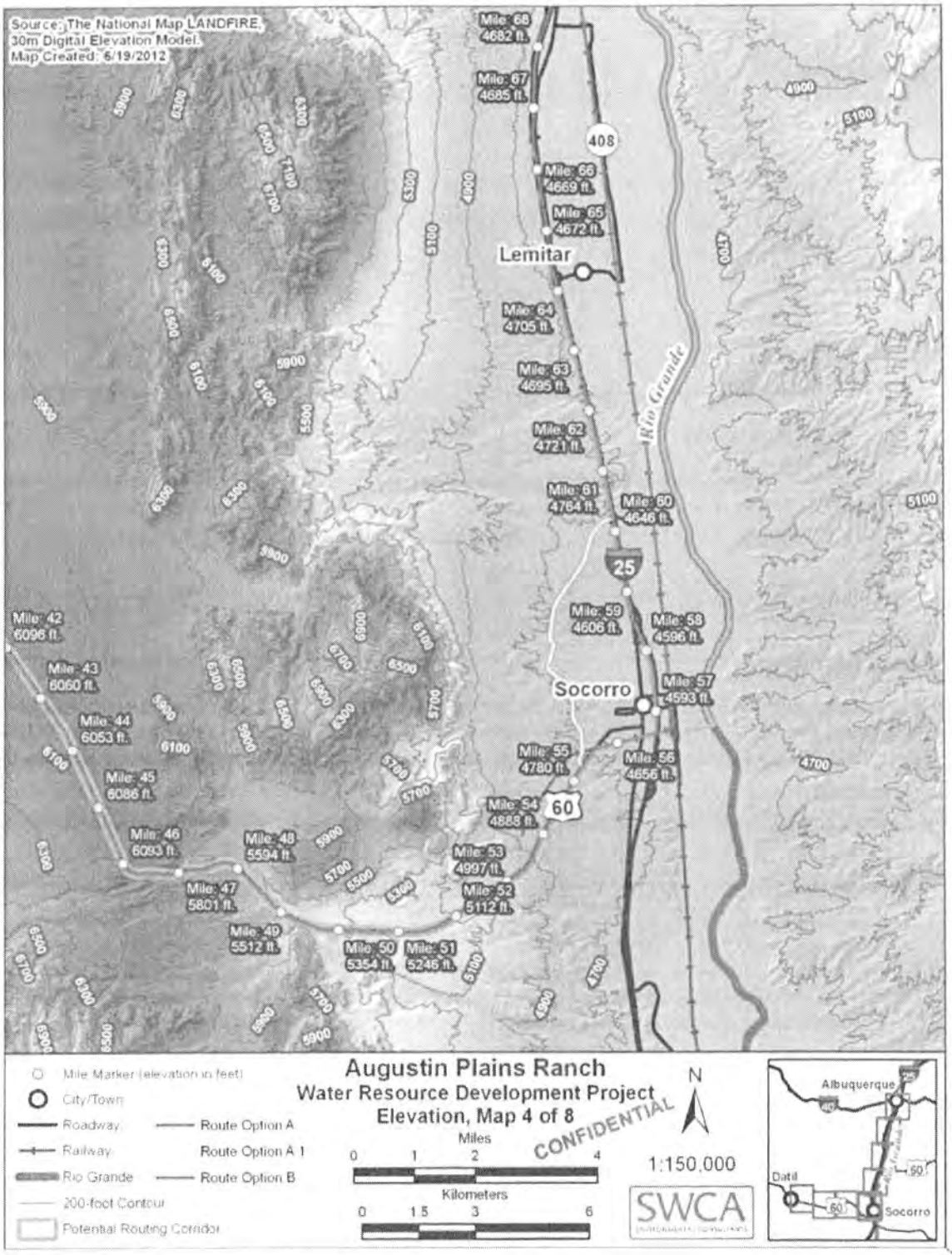


Figure B.13. Elevation in the project area, map 4 of 8.

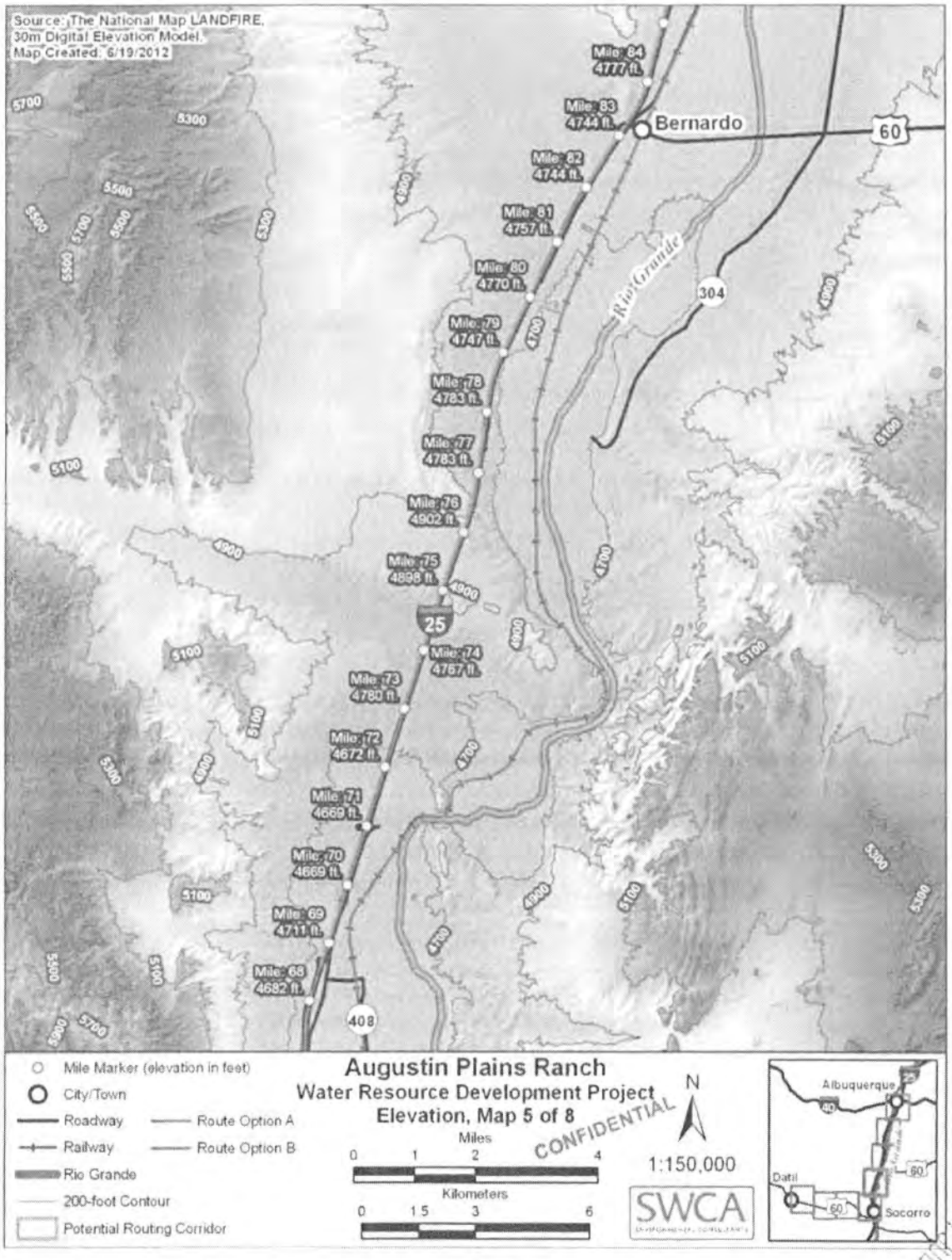


Figure B.14. Elevation in the project area, map 5 of 8.

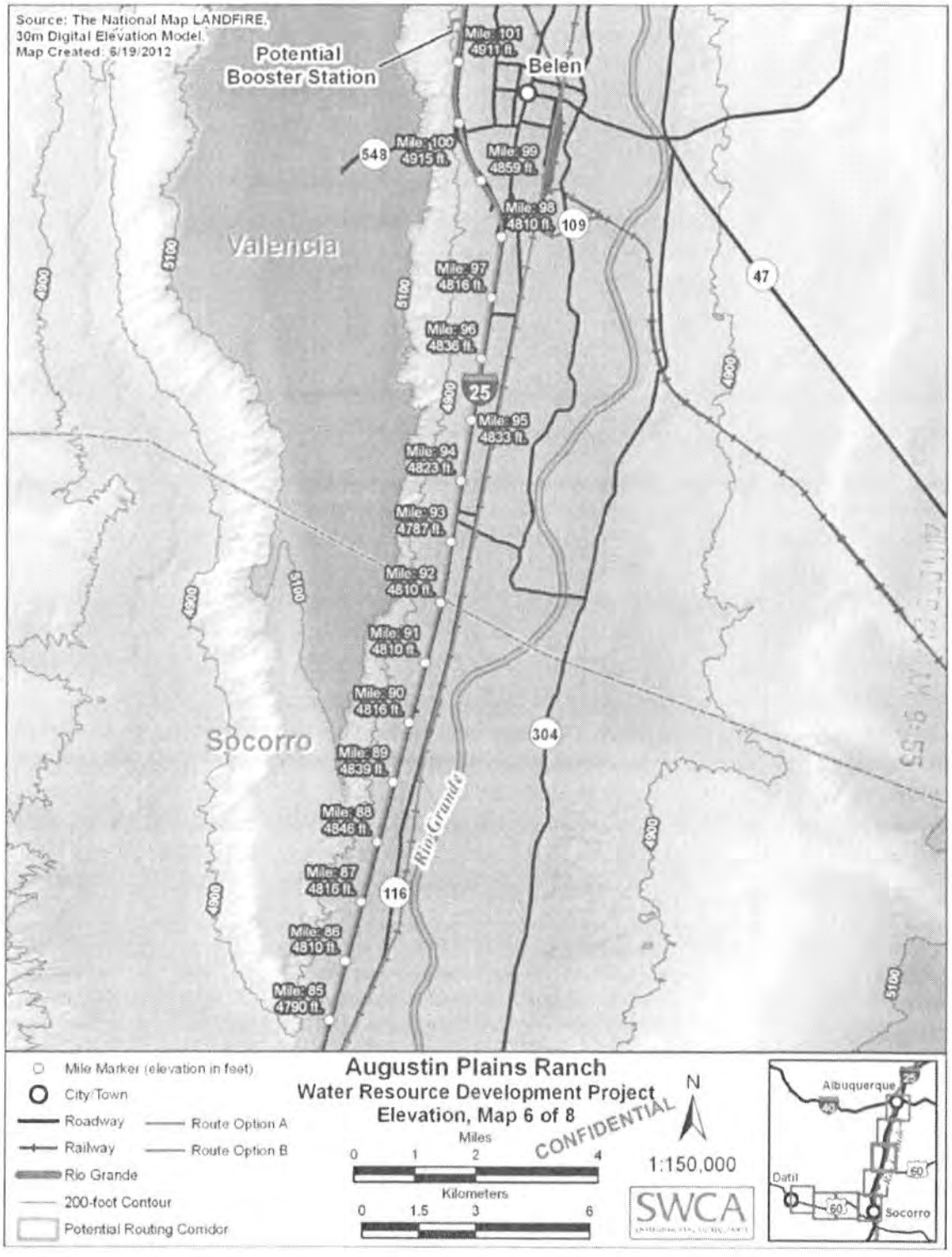


Figure B.15. Elevation in the project area, map 6 of 8.

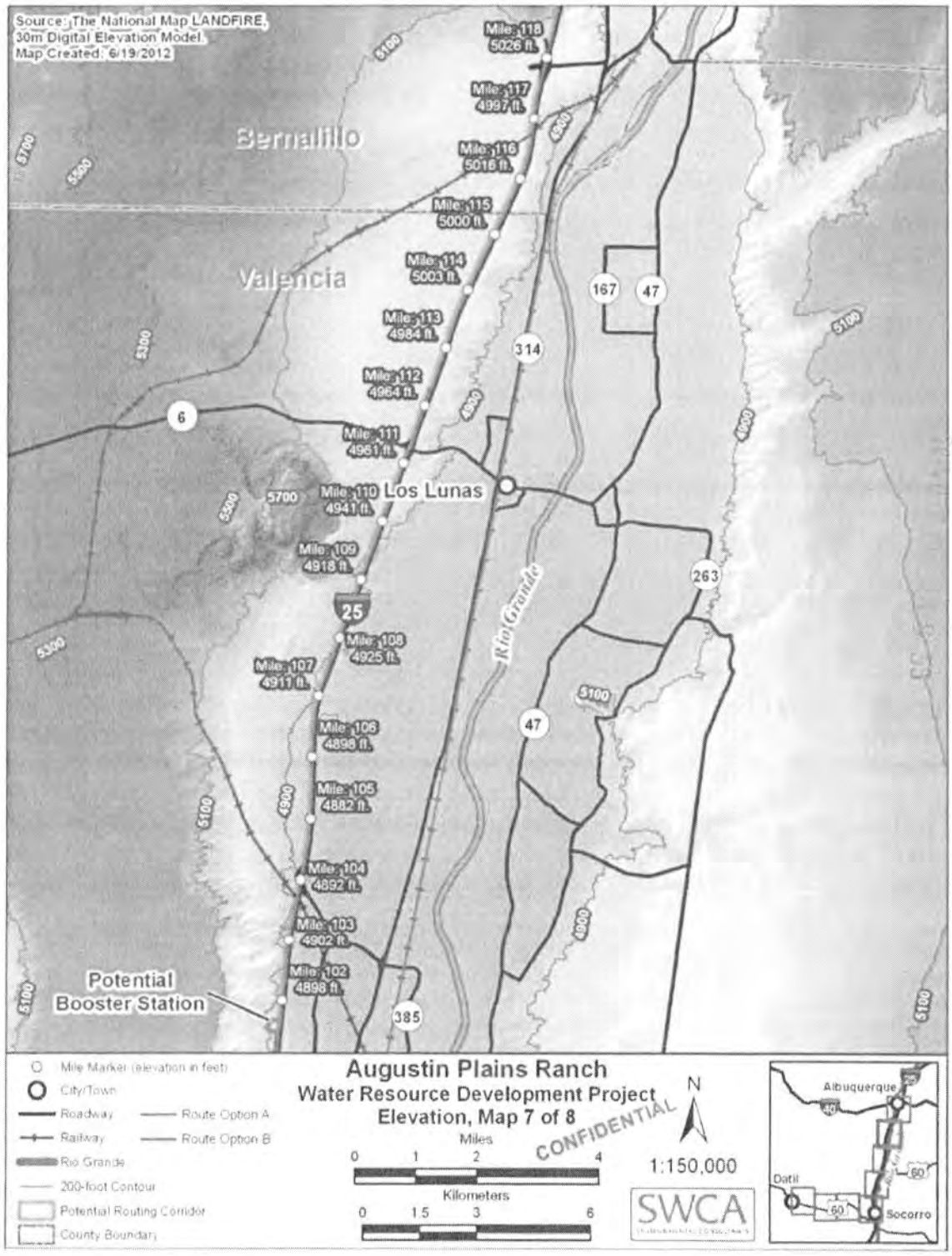


Figure B.16. Elevation in the project area, map 7 of 8.

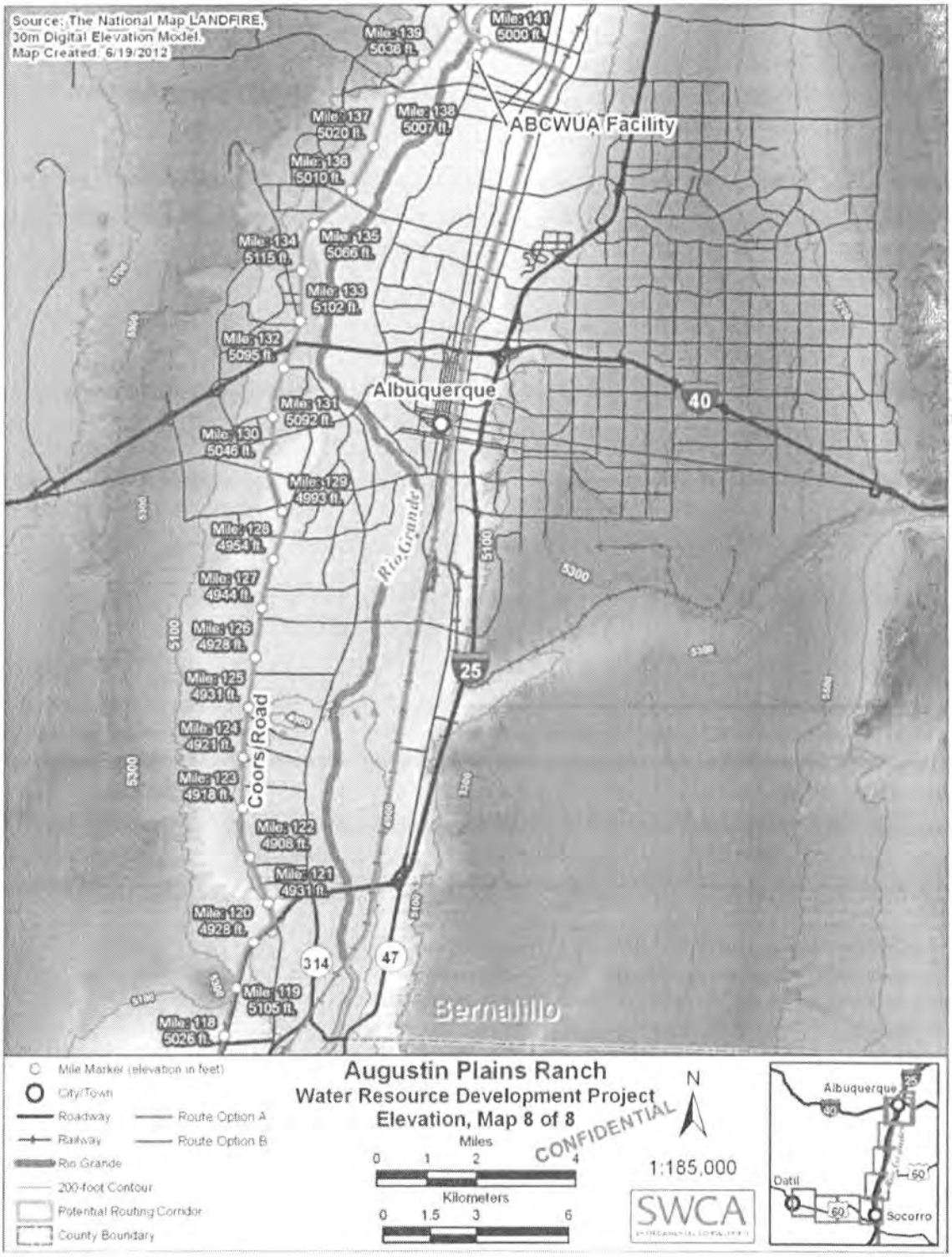


Figure B.17. Elevation in the project area, map 8 of 8.

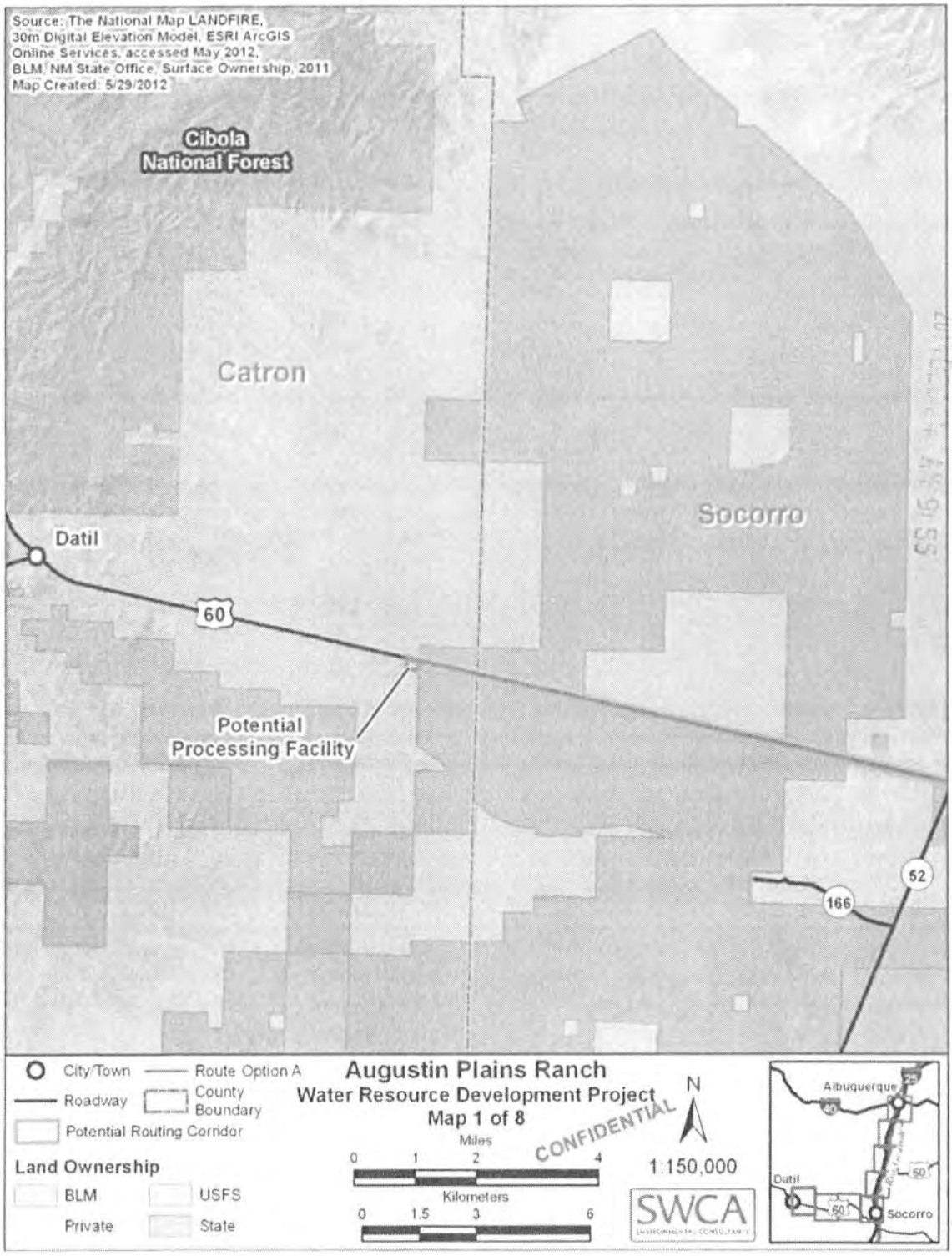


Figure B.18. Land ownership in the project area, map 1 of 8.

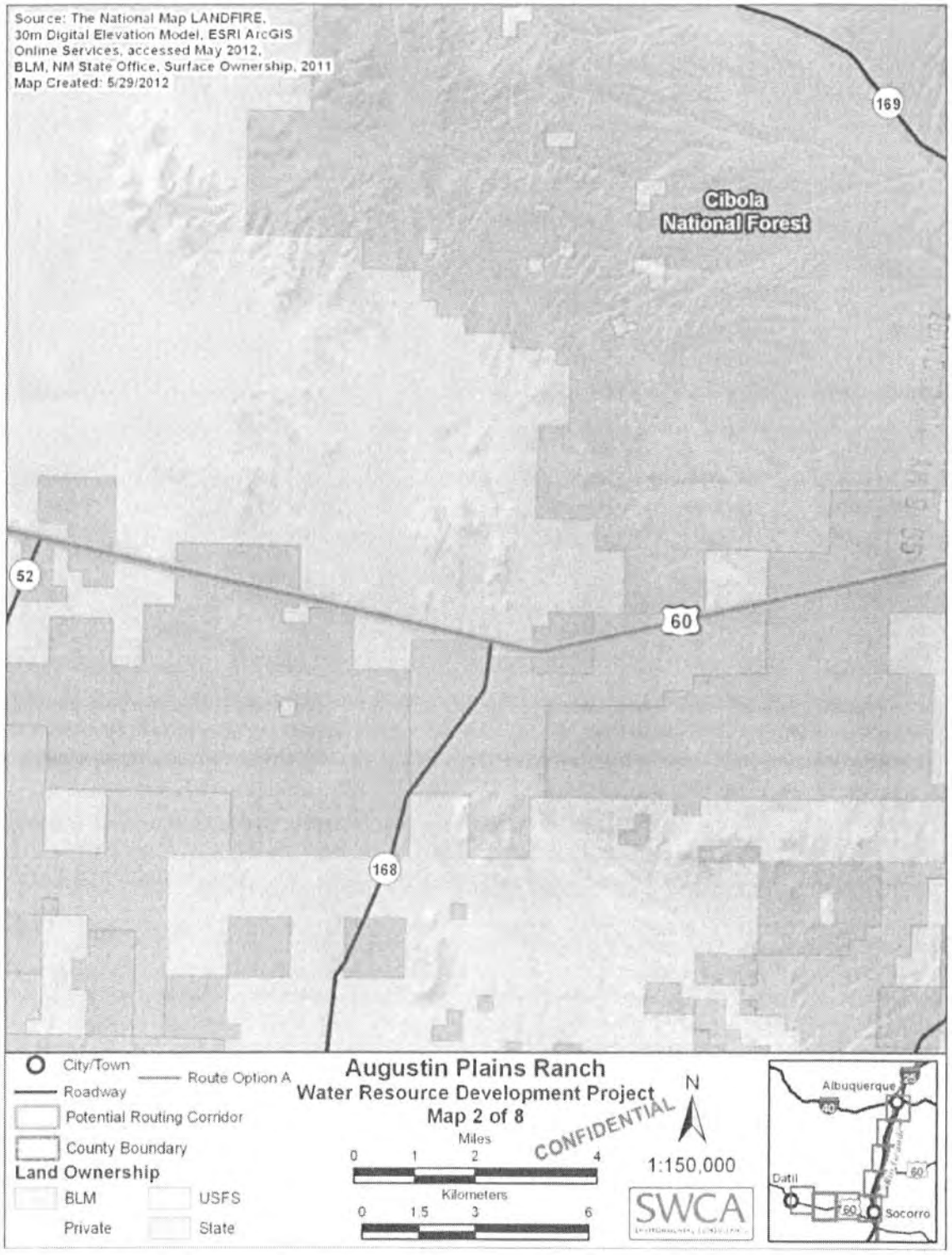


Figure B.19. Land ownership in the project area, map 2 of 8.

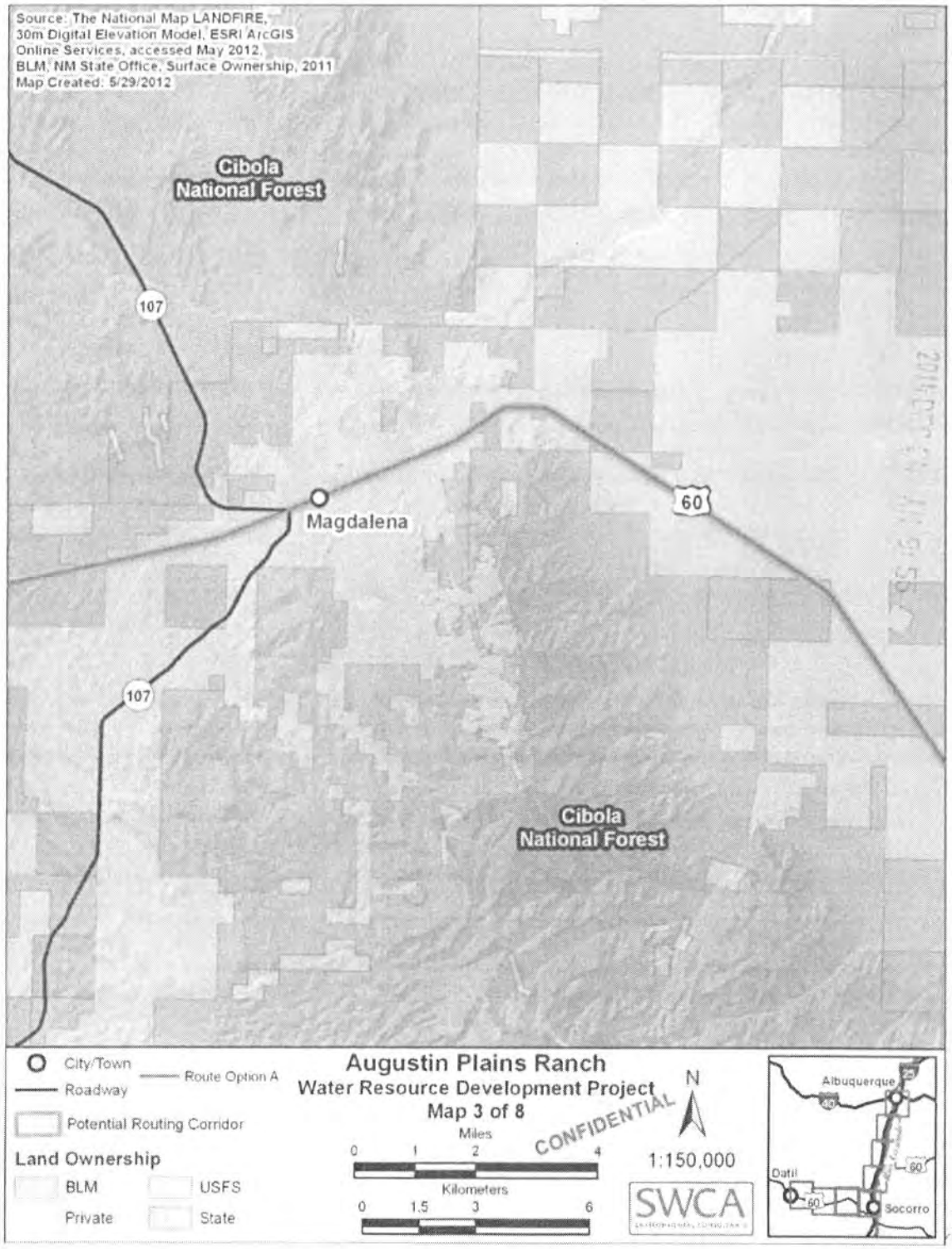


Figure B.20. Land ownership in the project area, map 3 of 8.

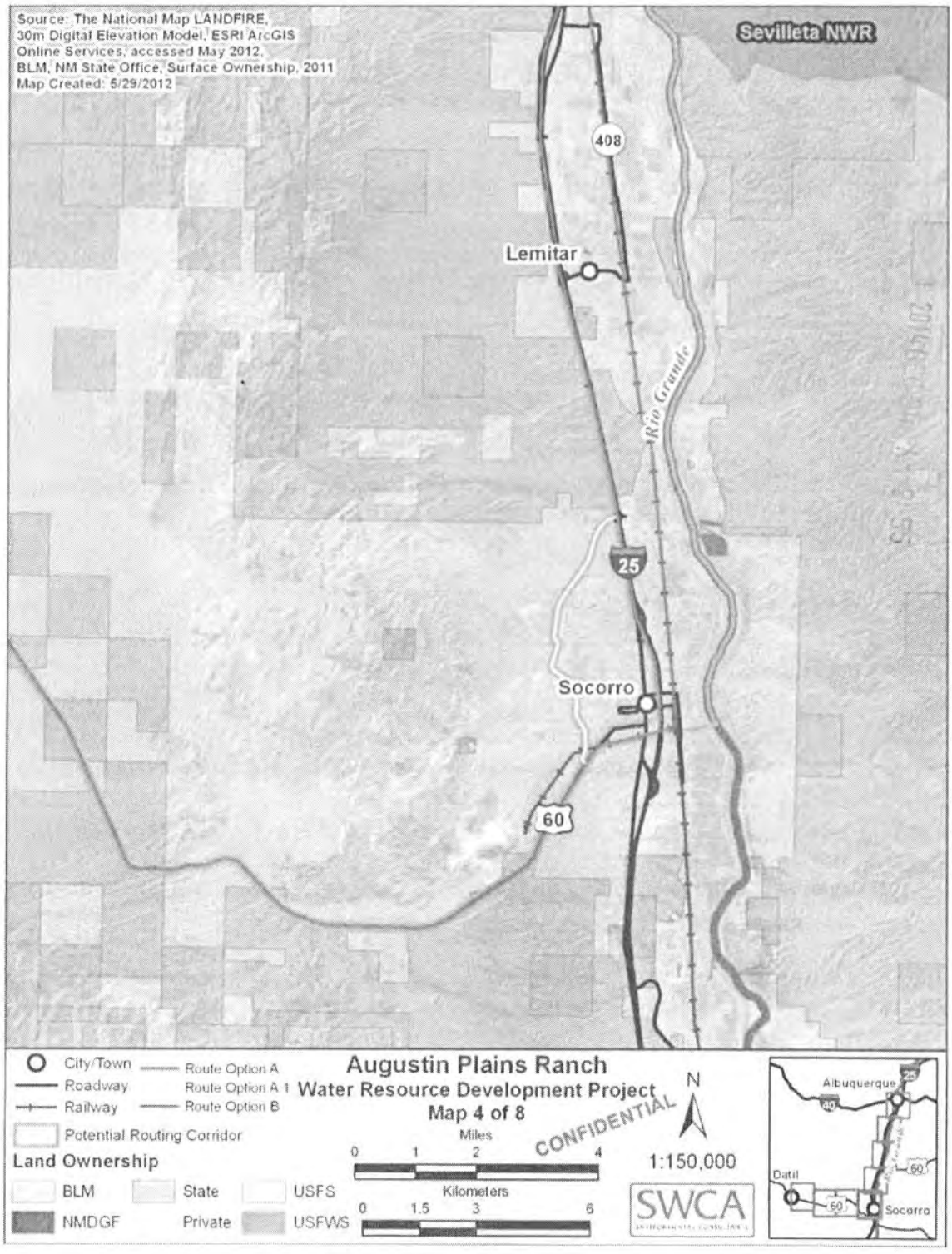


Figure B.21. Land ownership in the project area, map 4 of 8.

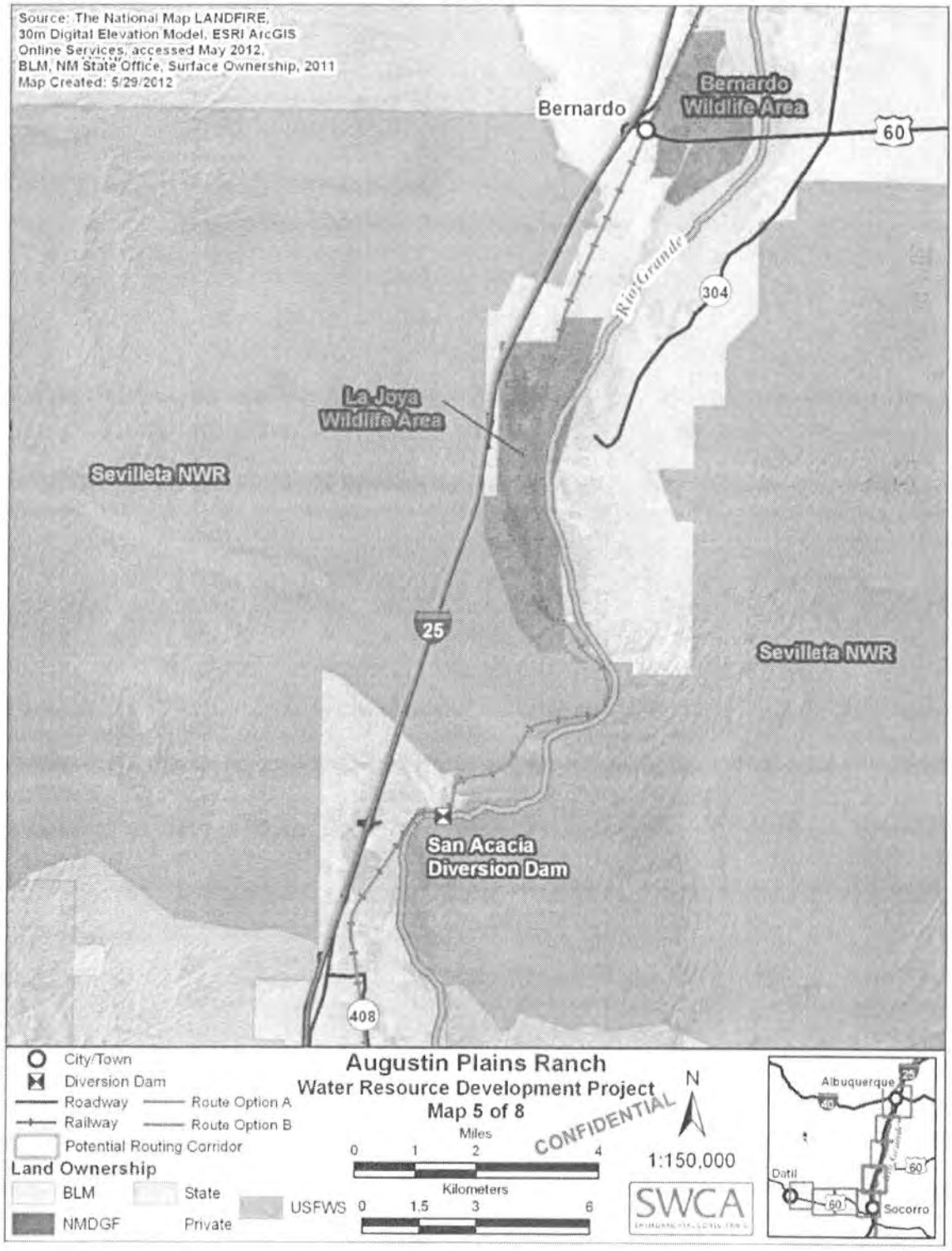


Figure B.22. Land ownership in the project area, map 5 of 8.

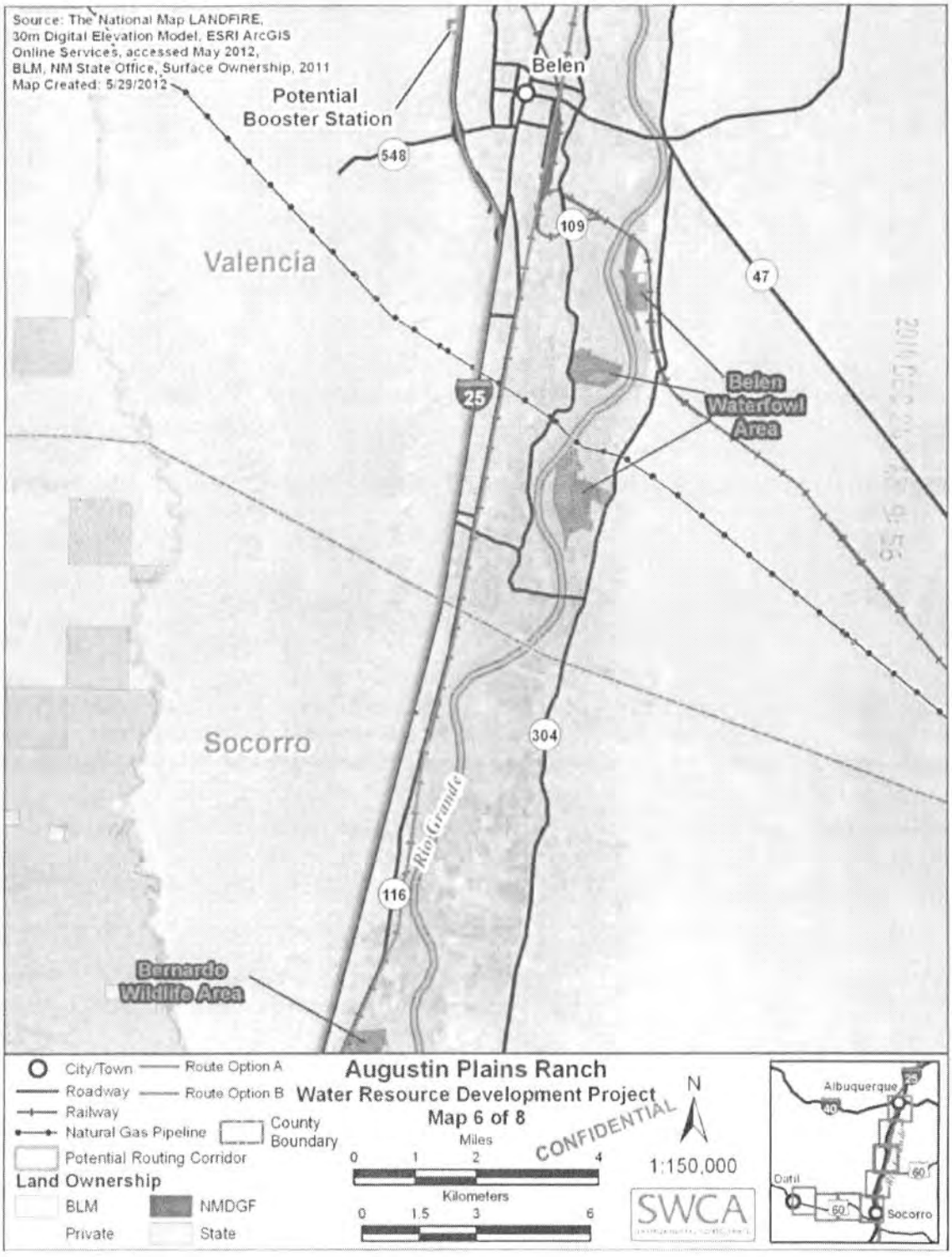


Figure B.23. Land ownership in the project area, map 6 of 8.

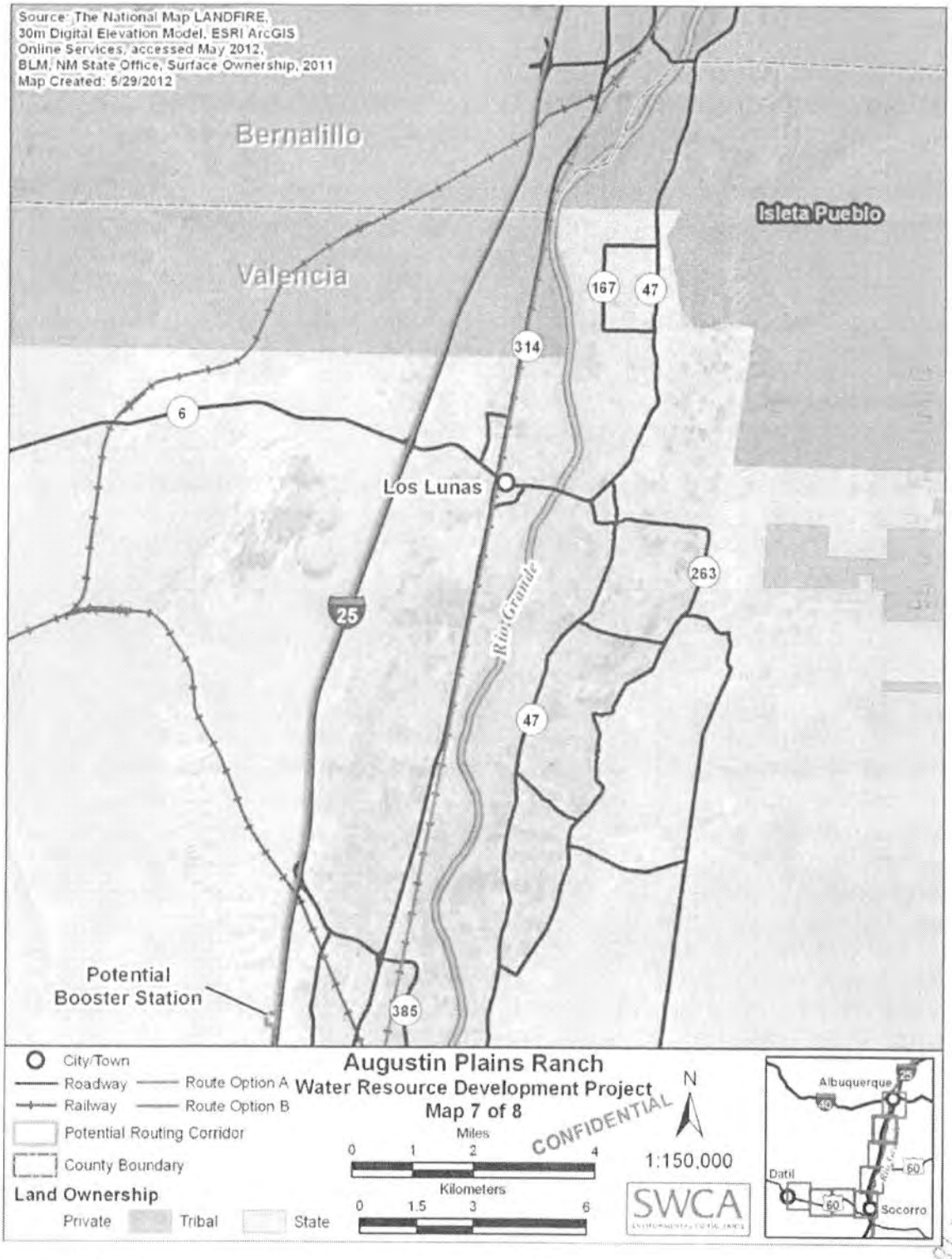


Figure B.24. Land ownership in the project area, map 7 of 8.

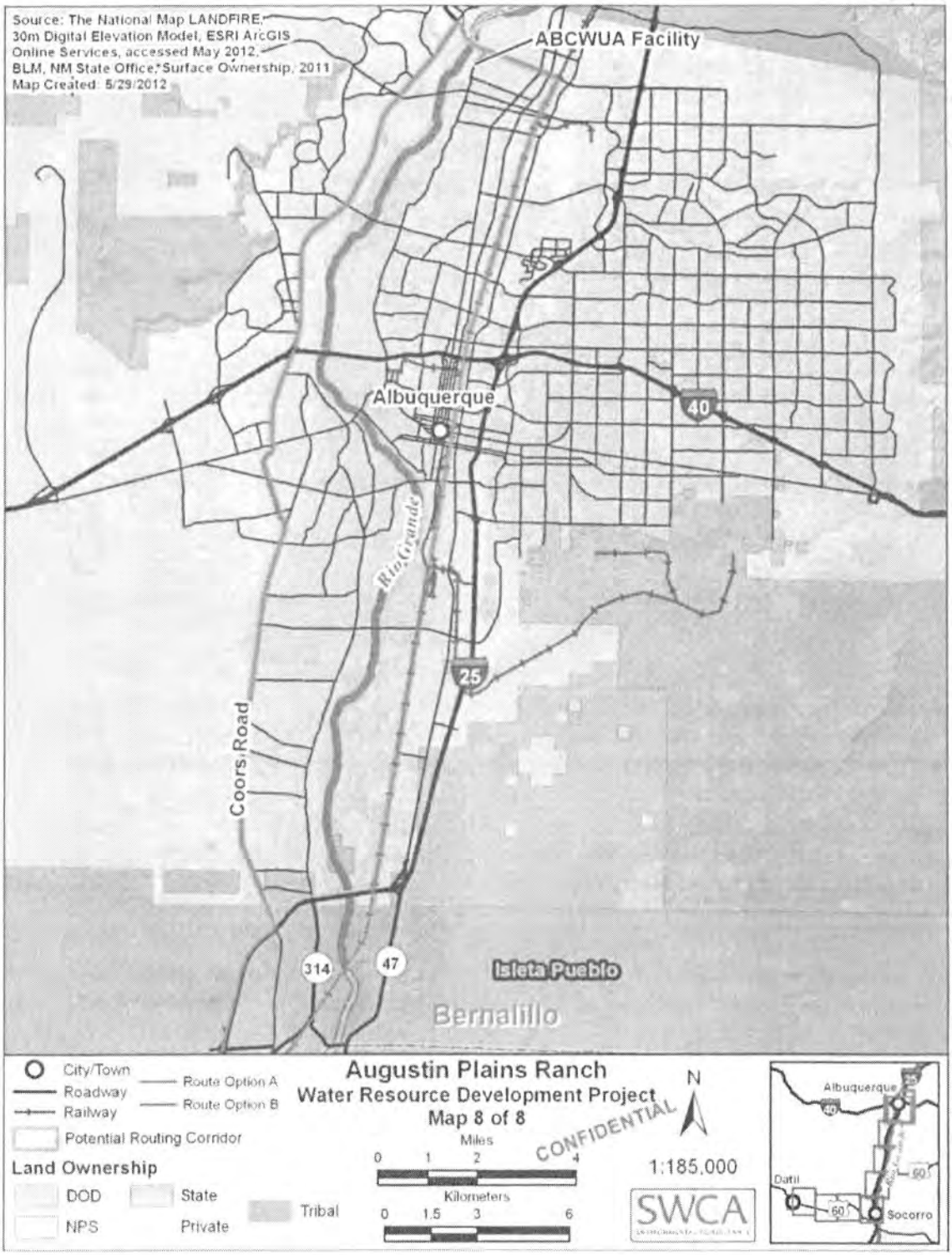


Figure B.25. Land ownership in the project area, map 8 of 8.

APPENDIX C.
USFWS, BLM, AND STATE LISTED AND SENSITIVE SPECIES IN NEW MEXICO BY COUNTY

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Fish					
Longfin dace	*Agosia chrysogaster*	Catron	BLM: Sensitive	Native to the Gila Basin (including the San Francisco) where it is stable. Habitat ranges from clear, cool mountain brooks to small, intermittent desert streams with a sand or gravel substrate	No
Desert sucker	*Catostomus clarki*	Catron	USFWS: SOC BLM: Sensitive	Native in the Gila Basin and the San Francisco drainage except in extreme headwater situations. Found in rapids and flowing pools of streams, primarily over bottoms of gravel-rubble with sandy silt in the interstices.	No
Sonora sucker	*Catostomus insignis*	Catron	USFWS: SOC BLM: Sensitive	Native to the Gila and San Francisco drainages (except in extreme headwaters). Inhabits lentic and pool habitats.	No
Rio Grande sucker	*Catostomus plebeius*	Catron Socorro	USFWS: SOC	Found in the northern Rio Grande, the tributary streams of the Rio Grande, and the Mimbres River. It has been introduced into the Rio Hondo (of the Pecos drainage) along with its headwater tributary streams and into the San Francisco drainage. It also occurs in Sapello Creek (tributary of the Gila River). Usually found over gravel and/or cobble, but also in backwaters and in pools below riffles. It is rarely found in waters with heavy loads of silt and organic detritus.	No
Gila chub	*Gila intermedia*	Catron	BLM: Sensitive State NM: Endangered	This species historically occurred in the San Francisco, Gila, and San Simon drainages. Now known only from Turkey Creek in New Mexico. Relict populations may exist in Mule Creek. Occurs in pool habitats of small streams or springs in Arizona, but it may have formerly occupied larger, more complex habitats as well.	No
Headwater chub	*Gila nigra*	Catron Socorro	USFWS: Candidate State NM: Endangered	Headwater chub is restricted to the Gila River Basin in Arizona and New Mexico, in mid- to headwater reaches of mid-sized streams.	No
Roundtail chub	*Gila robusta*	Catron	USFWS: Candidate	The species occurs in the San Juan and Gila basins, and it was formerly also present in the Zuni and San Francisco drainages. It is now extirpated from the Zuni and San Francisco.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Rio Grande silvery minnow	*Hybognathus amarus*	Bernalillo Socorro Valencia	USFWS: Endangered State NM: Endangered	The species currently occupies about 5% of its historical range. It was extirpated from the Pecos River and from the Rio Grande upstream of Cochiti Dam and downstream from the upper extent of Elephant Butte Reservoir. Its current range is the Rio Grande between Algodones and Elephant Butte Reservoir.	Unlikely, unless the pipeline construction impacts river habitat
Chihuahua catfish	*Ictalurus* sp.	Catron	USFWS: SOC	Found in the East fork of the Gila River (upper end); it was probably introduced into this region.	No
Spikedace	*Meda fulgida*	Catron	USFWS: Endangered State NM: Endangered	Formerly widespread in the Gila River system of southwestern New Mexico, Arizona, and Sonora but has been eliminated from over 85% of its historic range. Currently, it persists only in the Verde River and Aravaipa Creek in Arizona and the Cliff-Gila Valley reach of the Gila River in New Mexico.	No
Rio Grande shiner	*Notropis jemezanus*	Socorro	BLM: Sensitive	Uncommon in the Rio Grande downstream of the confluence of the Rio Conchos. It is extirpated from the Rio Grande in New Mexico. In the Pecos River in New Mexico, and it currently persists from Old Fort State Park (near Fort Sumner) downstream to about Brantley Reservoir.	No
Gila trout	*Oncorhynchus gilae*	Catron	USFWS: Threatened State NM: Threatened	Formerly occurred in the Gila River from its confluence with Mogollon Creek upstream through its headwaters and in tributaries of the San Francisco River. Now occurs mainly in small headwater streams in such streams availability of pool habitat appears to be critical to abundance.	No
Flathead chub	*Platygobio gracilis*	Bernalillo Socorro Valencia	BLM: Sensitive	Native to the Rio Grande, Pecos, and Canadian drainages including the Dry Cimarron drainage. Inhabits turbid alkaline waters with shifting sand or gravel substrates.	Unlikely, unless the pipeline construction impacts river habitat
Speckled dace	*Rhinichthys osculus* (Gila population)	Catron	BLM: Sensitive	Native to the Gila, San Francisco, Zuni, and San Juan drainages. It was introduced to the Mimbres River during the 1970s. A bottom dwelling species which inhabits shallow, rocky, headwater streams with relatively swift flow, sometimes in areas with considerable aquatic vegetation.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Loach minnow	*Tiaroga cobitis*	Catron	USFWS: Endangered State NM: Endangered	In New Mexico, the minnow was historically found throughout warmwater reaches of the San Francisco and Gila rivers, and major tributaries of each. Found almost exclusively among cobble in riffle habitats where water velocity is rapid.	No
Amphibians and Reptiles					
Arizona toad	*Bufo microscaphus microscaphus*	Catron Socorro	BLM: Sensitive	Occurs between 6,234 and 8,858 feet in elevation in New Mexico. Habitat requirements include small streams and rivers, and temporary woodland pools.	Unlikely, but habitat for this species could be present
Texas horned lizard	*Phrynosoma cornutum*	Socorro	BLM: Sensitive	Found in the southwest corner of and eastern edge of New Mexico. Found in open deserts and grasslands up to 6,004 feet in elevation (Degenhardt et. al. 1996).	No
Chiricahua leopard frog	*Rana chiricahuensis*	Catron Socorro	USFWS: Threatened	In New Mexico, the species is known from the southwestern portion of the state and is most abundant in the Gila and San Francisco river drainages. The Rio Grande drainage is occupied by these frogs only in Alamosa Creek in Socorro County and Cuchillo Negro Creek in Sierra County. Other localities include the Mimbres River drainage of Grant and Luna counties and the numerous stock tanks and intermittent creeks of southwestern Hidalgo County, including those in the Animas and Peloncillo mountains. Occurs or occurred in the Horse Springs/Patterson Lake area, Catron County (on the Continental Divide) and thus may be marginal in the Plains of San Agustin hydrologic unit.	Unlikely, but habitat for this species, such as stock tanks could be present on private land
Northern leopard frog	*Rana pipiens*	Bernalillo Catron Socorro Valencia	USFS Sensitive: Region 3	Historically, the northern leopard frog was documented from a large area in the northern and western part of New Mexico and along the entire length of the Rio Grande valley, except southern Elephant Butte and northern Caballo reservoirs. Recent survey efforts indicate that northern leopard frogs are persisting in northern New Mexico, but most occupied sites contained small numbers of frogs with very few robust populations.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Lowland leopard frog	*Rana yavapaiensis*	Catron	USFWS: SOC BLM: Sensitive State NM: Endangered	Known from 3,700 to 5,575 feet in western Catron, Hidalgo, and Grant counties. Found in permanent to semi-permanent streams and ponds; most populations occupy small streams and rivers, springs, and associated pools at low elevations in desert scrub localities.	No
Mexican garter snake	*Thamnophis eques*	Catron	USFWS: Candidate State NM: Endangered BLM: Sensitive	In New Mexico, this species likely occurred at scattered sites throughout the Gila and San Francisco watersheds from 3,690 to 5,420 feet in western Grant and Hidalgo counties. Riparian obligate and occurs chiefly in source-area wetlands, large river riparian woodlands and forests, and streamside gallery forests.	No
Narrowhead garter snake	*Thamnophis rufipunctatus rufipunctatus*	Catron	USFWS: SOC BLM: Sensitive State NM: Threatened	Confined to Catron, Grant, and Hidalgo counties where it reaches the eastern edge of its distribution. It is a habitat specialist, occurring only in shallow, swift-flowing, rocky rivers and streams of the San Francisco and Gila River drainages.	No
Birds					
Northern goshawk	*Accipiter gentilis*	Bernalillo Catron Socorro Valencia	USFWS: SOC BLM: Sensitive	Occurs irregularly statewide with year round distribution occurring in various mountain ranges throughout the state. Breeds in most montane and sub-alpine forest cover types especially ponderosa (*Pinus ponderosa*) but has been found in riparian, piñon-juniper and mixed conifer forests.	Unlikely, only marginal habitat for this species is present
Violet-crowned hummingbird	*Amazilia violiceps ellioti*	Socorro	State NM: Threatened	Their breeding populations cross into the United States only in the Mexican Highlands and the lower Rio Grande Valley. Vagrant elsewhere.	No
Baird's sparrow	*Ammodramus bairdii*	Bernalillo Catron Socorro Valencia	USFWS: SOC BLM: Sensitive State NM: Threatened	In New Mexico is reported as primarily migrants moving through the eastern plains and southern lowlands, although wintering birds do occur locally in southern grasslands, particularly Otero, Luna, and Hidalgo counties. They are also reported generally to breed in the northern Great Plains.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Burrowing owl	*Athene cunicularia hypugaea*	Bernalillo Catron Socorro Valencia	USFWS: SOC BLM: Sensitive	Grasslands, pastures, coastal dunes, desert scrub, edges of agricultural fields, and other human areas where there is sufficient friable soil for a nesting burrow from 650 to 6,140 feet in elevation.	Possible, habitat for this species may be present
Ferruginous hawk	*Buteo regalis*	Bernalillo Catron Socorro Valencia	BLM: Sensitive	This species may generally be found in arid habitats throughout the western United States. Nests in riparian communities, sometimes in isolated or roadside trees, occasionally near urban areas. Forages only in open plains and grasslands. May also use some agricultural lands (e.g., alfalfa and dry or fallow pasture).	Possible, trees along the roadside may be used for nesting
Common black-hawk	*Buteogallus anthracinus anthracinus*	Bernalillo Catron Socorro Valencia	USFWS: SOC State NM: Threatened	Common black-hawks migrate and summer in the southwest portion of New Mexico. They occasionally occur in the Middle Rio Grande valley and regularly occur in the lower San Francisco, Gila, and Mimbres valleys. Breeding common black-hawks require mature, well-developed riparian forest stands that are located near permanent streams where prey is located.	No
Piping plover	*Charadrius melodus circumcinctus*	Socorro	USFWS: Threatened State NM: Threatened	In New Mexico, this bird is a rare migrant that occurs on sandflats or along bare shorelines of rivers, lakes, or coasts.	No
Black tern	*Chlidonias niger surinamensis*	Bernalillo Socorro	USFWS: SOC BLM: Sensitive	Found near water at lower (2,800–5500 feet) and middle (5,000–7,500 feet) elevations. Migrates statewide and is considered rare to locally fairly common. They are most frequent in summer in the San Juan Valley, Jicarilla Apache Indian Reservation, the MRG valley, and at Bitter Lake National Wildlife Refuge.	Unlikely, unless the pipeline construction impacts suitable emergent wetland habitat
Yellow-billed cuckoo	*Coccyzus americanus occidentalis* (western population)	Bernalillo Catron Socorro Valencia	USFWS: Candidate	Typically found in riparian woodland vegetation (cottonwood [Populus sp.], willow [Salix sp.], or saltcedar) at elevations below 6,600 feet. Dense understory foliage appears to be an important factor in nest site selection.	Possible, if pipeline impacts riparian habitat along the Rio Grande

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Common ground-dove	*Columbina passerina pallescens*	Socorro Valencia	State NM: Endangered	The common ground-dove was formerly resident in southern New Mexico, but is now apparently only a rare visitor here. Common ground-doves prefer native shrublands and weedy areas, including such habitats in riparian areas.	No.
Broad-billed hummingbird	*Cynanthus latirostris magicus*	Bernalillo Valencia	State NM: Threatened	Accidentally transient in residential/developed areas near the Rio Grande, Pecos Basins, the Rio Grande in Albuquerque, and the Sandia Mountains. In New Mexico, the species is a regular summer resident only in the Guadalupe Canyon	No
Southwestern willow flycatcher	*Empidonax traillii extimus*	Bernalillo Catron Socorro Valencia	USFWS: Endangered State NM: Endangered	Found in dense riparian habitats along streams, rivers, and other wetlands where cottonwood, willow, boxelder (*Acer negundo*), saltcedar (*Tamarix* sp.), Russian olive (*Elaeagnus angustifolia*), buttonbush (*Cephalanthus occidentalis*), and arrowweed (*Pluchea sericea*) are present. Nests are found in thickets of trees and shrubs, primarily those that are 13 to 23 feet tall, among dense, homogeneous foliage. Habitat occurs at elevations below 8,500 feet.	Probable, if pipeline impacts riparian habitat along the Rio Grande
Aplomado falcon	*Falco femoralis septentrionalis*	Bernalillo Socorro	USFWS: Endangered State NM: Endangered	Open country, especially savanna and open woodland, and sometimes in very barren areas; preferred habitat in New Mexico consists of grassy plains and valleys with scattered mesquite (*Prosopis* sp.), yucca (*Yucca* sp.), and cactus; nests in old stick nests of other bird species.	Unlikely, species is rare but suitable nesting habitat could be present
Peregrine falcon	*Falco peregrinus anatum*	Bernalillo Catron Socorro Valencia	USFWS: SOC State NM: Threatened USFS Sensitive: Region 3	In New Mexico, the breeding territories of peregrine falcons center on cliffs that are in wooded/forested habitats, with large "gulfs" of air nearby where they can forage. Prefers elevations of 6,500 to 8,600 feet but may be found in 3,500 to 9,000 feet.	No
Arctic peregrine falcon	*Falco peregrinus tundrius*	Bernalillo Catron Socorro Valencia	USFWS: SOC State NM: Threatened	In New Mexico, this tundra subspecies is a very rare migrant through the state and would be found in habitats similar to *F.p. anatum*.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Whooping crane*	*Grus americana*	Bernalillo Catron Socorro Valencia	USFWS: ENP*	Found in marshes and prairie potholes in the summer. In winter, found in coastal marshes and prairies.	No
Bald eagle	*Haliaeetus leucocephalus alascanus*	Bernalillo Catron Socorro Valencia	State NM: Threatened	The species is primarily water oriented, and the majority of the populations occurring in New Mexico are found near rivers and lakes. Nests in cliffs, conifer forests, hardwood forests, mixed woodlands, conifer woodlands, and hardwood woodlands with standing snags and hollow trees.	Possible, species occurs in the Rio Grande corridor during winter months
White-eared hummingbird	*Hylocharis leucotis borealis*	Bernalillo Catron	State NM: Threatened	This hummingbird is said to be accidentally transient in areas of desert scrub/rocky slopes, juniper Savannah, piñon/juniper woodland, and Ponderosa/oak forests near Montane regions. Bernalillo County locations are in the Manzano Mountains.	No
Loggerhead shrike	*Lanius ludovicianus*	Bernalillo Catron Socorro Valencia	BLM: Sensitive	Ranges altitudinally from agricultural lands on the prairies to montane meadows, nesting in sagebrush areas, desert scrub, piñon-juniper woodlands, and woodland edges.	Unlikely, some nesting habitat may be present
Gila woodpecker	*Melanerpes uropygialis uropygialis*	Catron	State NM: Threatened	This woodpecker is resident in the Gila Valley (northeast to Mogollon Creek in Grant County) and in Guadalupe Canyon (Hidalgo County), which are key habitat areas for it in the state). Vagrants have been reported near Glenwood (Catron County), at Silver City, and in Hidalgo County (Animas Creek and Cloverdale).	No
Varied bunting	*Passerina versicolor versicolor*	Catron Socorro	State NM: Threatened	Varied buntings summer in Guadalupe Canyon and in Carlsbad Canyon National Park and are considered rare to uncommon and local. They are casual farther north in the southwest and are considered rare and very local. In New Mexico the species seems to prefer dense stands of mesquite and associated growth in canyon bottoms	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Brown pelican	*Pelecanus occidentalis carolinensis*	Bernalillo Catron Socorro	State NM: Endangered	This species is a vagrant to New Mexico. Most found in New Mexico occur primarily as immature-aged wanderers during the summer-fall seasons near large lakes or permanent streams.	No.
Neotropic cormorant	*Phalacrocorax brasilianus*	Bernalillo Catron Socorro Valencia	State NM: Threatened USFS Sensitive: Region 3	Within New Mexico, the neotropic cormorant is known to breed only in the MRG valley. Non-breeders occasionally occur north to Bernalillo, west to the Gila Valley and Hidalgo County, and east to the Tularosa and lower Pecos valleys. Cormorants are generally found on larger bodies of water such as reservoirs, where they prey on fish.	No
White-faced ibis	*Plegadis chihi*	Bernalillo Catron Socorro Valencia	BLM: Sensitive	Found in shoreline and marsh habitats that border open water with cattails and rushes. Other plant species including woody shrub and trees may be used for breeding.	Unlikely, unless the pipeline construction impacts emergent wetland habitat
Least tern	*Sterna antillarum athalassos*	Catron Socorro	USFWS: Endangered State NM: Endangered	Species is found near water and in New Mexico uses bare ground, islands, and sandbars for breeding. These terns (presumably of the subspecies *S. a. athalassos*) breed in the vicinity of Roswell, including regularly at Bitter Lake National Wildlife Refuge, and perhaps rarely at Bottomless Lake State Park and Wade's Bog. The species occurs in migration in Eddy County and as a vagrant elsewhere.	No
Mexican spotted owl	*Strix occidentalis lucida*	Bernalillo Catron Socorro Valencia	USFWS: Threatened	Mexican spotted owls are dependent on the presence of large trees, snags, down logs, dense canopy cover, and multi-storied conditions within predominantly mixed-conifer and pine-oak habitats.	No
Elegant trogon	*Trogon elegans canescens*	Catron	State NM: Endangered	The elegant trogon occurs rarely and irregularly in riparian habitats in montane canyons in the southwestern most part of the state.	No
Thick-billed kingbird	*Tyrannus crassirostris*	Catron	State NM: Endangered	Thick-billed kingbirds inhabit lowland riparian woodlands in the extreme southwestern part of the state.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Bell's vireo	*Vireo bellii*	Bernalillo Catron Socorro Valencia	USFWS: SOC State NM: Threatened	Within New Mexico, it occurs in the southernmost portion of the state, where small numbers summer primarily in the Gila Valley, Guadalupe Canyon, and the lower Rio Grande and Pecos valleys and associated drainages. The species prefers dense, typically low, shrubby vegetation (e.g., hackberry [*Celtis* sp.], mesquite, saltcedar) in riparian areas.	Unlikely, north of known breeding range
Gray vireo	*Vireo vicinior*	Bernalillo Catron Socorro	State NM: Threatened	In New Mexico, most often found in arid juniper woodlands on foothills and mesas, these often associated with oaks (*Quercus* sp.) and usually in habitat with a well-developed grass component.	Unlikely, limited nesting habitat in the project area
Mammals					
Desert bighorn sheep	*Ovis canadensis mexicana* (listed populations)	Socorro	State NM: Threatened	The desert subspecies of the bighorn occurs in arid, rocky mountains, mainly in open habitats. Currently, free-ranging desert bighorn sheep are found in the following mountain ranges in New Mexico: Big Hatchet, Little Hatchet Mountains, Peloncillo, San Andres, Fra Cristobal, Caballo, and Ladron.	No
Spotted bat	*Euderma maculatum*	Bernalillo Catron Socorro Valencia	BLM: Sensitive State NM: Threatened	Frequently reported near cliffs over perennial water, but individuals range from low deserts to evergreen forests.	No.
Oscura Mountains Colorado chipmunk	*Neotamias quadrivittatus oscuraensis*	Socorro	BLM: Sensitive State NM: Threatened	This subspecies is only found in the Oscura mountains. Chipmunks in the Oscura Mountains have been most frequently observed along northwest-facing limestone cliff edges in the piñon-juniper-oak woodlands.	No.
Black-footed ferret*	*Mustela nigripes*	Bernalillo Catron Socorro Valencia	USFWS: Endangered	The distribution of the black-footed ferret is closely sympatric with that of prairie dogs. Occurs in mixed shrub habitats.	No; extirpated from the state

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Townsend's big-eared bat	*Corynorhinus townsendii*	Bernalillo Catron Socorro	USFWS: SOC	Occupies semi-desert shrublands, piñon-juniper woodlands, and open montane forests. Frequently associated with caves and abandoned mines for day roosts and hibernacula but will also use abandoned buildings and crevices on rock cliffs for refuge.	Unlikely, limited habitat in the project area
Big free-tailed bat	*Nyctinomops macrotis*	Bernalillo Catron Valencia	BLM: Sensitive	Prefers coniferous, mixed woodland or riparian habitats for foraging and depend on rocky cliffs for roosting.	Unlikely, limited habitat in the project area
New Mexico meadow jumping mouse	*Zapus hudsonius luteus*	Bernalillo Socorro Valencia	USFWS: Candidate BLM: Sensitive State NM: Endangered	Preferred habitat includes permanent streams, moderate to high soil moisture, and dense and diverse streamside vegetation consisting of grasses, sedges (*Carex* sp.), and forbs. Also wet meadows and the edges of permanent ditches and cattail (*Typha* sp.) stands.	Possible, known to occur in the Isleta reach of the Rio Grande and on the Bosque del Apache National Wildlife Refuge
Long-eared myotis bat	*Myotis evotis evotis*	Catron Socorro Valencia	BLM: Sensitive	Occurs in coniferous forests at moderate elevations. It is most common in ponderosa pine woodlands and is also found in piñon-juniper woodlands and subalpine forests. Uses day roosts in tree cavities, under loose bark, and in buildings. These sites as well as caves and mines are used for night roosts. Feeds over water and along the margins of vegetation.	Unlikely, limited habitat in the project area
Western small-footed myotis bat	*Myotis ciliolabrum melanorhinus*	Bernalillo Catron Socorro Valencia	BLM: Sensitive	Occurs primarily in wooded, montane areas, but a few specimens have been taken in grassland and desert scrub habitats. Seeks daytime roosts primarily in rock crevices, caves, and mines. Maternity colonies often are in abandoned houses, barns, or similar structures.	Unlikely, limited habitat in the project area
Fringed myotis bat	*Myotis thysanodes thysanodes*	Bernalillo Catron Socorro Valencia	BLM: Sensitive	Varied habitats from desert scrub to fir-pine. Known to roost in caves, mines and buildings.	Unlikely, limited habitat in the project area

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Long-legged myotis bat	*Myotis volans interior*	Bernalillo Catron Socorro Valencia	BLM: Sensitive	Relatively common in ponderosa pine forests and piñon-juniper woodlands. Also known from some lowland sites. This bat roosts in a variety of sites including trees, buildings, crevices in rock faces, and even fissures in the ground in evenly eroded areas. Caves and mines do not appear to be important as day roosts, but are used as night roosts if available.	Unlikely, limited habitat in the project area
Yuma myotis bat	*Myotis yumanensis yumanensis*	Bernalillo Catron Socorro Valencia	BLM: Sensitive	More closely associated with water than most other North American bats. Found in a wide variety of upland and lowland habitats, including riparian, desert scrub, moist woodlands and forests, but usually found near open water. Flies low. Nursery colonies usually are in buildings, caves and mines, and under bridges.	Unlikely, limited habitat in the project area
Pale Townsend's big-eared bat	*Corynorhinus townsendii pallescens*	Bernalillo Catron Socorro	BLM: Sensitive	Occupies semi-desert shrublands, piñon-juniper woodlands, and open montane forests. Frequently associated with caves and abandoned mines for day roosts and hibernacula but will also use abandoned buildings and crevices on rock cliffs for refuge.	Unlikely, limited habitat in the project area
Gunnison's prairie dog	*Cynomys gunnisoni*	Bernalillo	USFWS: Candidate	This species inhabits grasslands from low valleys to montane meadows.	Possible, suitable habitat may be present
Mexican gray wolf	*Canis lupus baileyi*	Catron	USFWS: ENP State NM: Endangered	Reintroduced wolves from Arizona are now present in western Catron, Grant, and Hidalgo counties.	No
Black-tailed prairie dog	*Cynomys ludovicianus*	Socorro	USFWS: SOC	Black-tailed prairie dogs are inhabitants of shortgrass plains. Formerly they were widespread and abundant east of the Rio Grande and in the grasslands of southwestern New Mexico. Colonies were often reported in marginal habitat, such as open woodland, and in the southwestern part of the state they occupied semi-desert conditions.	No
Organ Mountains Colorado chipmunk	*Eutamias quadrivittatus australis*	Socorro	USFWS: SOC	The distribution of this subspecies is in the Organ Mountains in Doña Ana County and the Oscura Mountains in Socorro County; however, the Oscura Mountain population may be a different subspecies	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Desert pocket gopher	*Geomys arenarius arenarius*	Socorro	USFWS: SOC BLM: Sensitive	This subspecies is restricted to a narrow strip of bottom land along the upper Rio Grande valley from Porvenir, Chihuahua, north to Las Cruces, New Mexico.	No
Allen's big-eared bat	*Idionycteris phyllotis*	Catron Socorro	USFWS: SOC BLM: Sensitive	This big-eared bat seems to be largely a dweller in forested zones, from the yellow pine zone down to the riparian forest of sycamores (*Platanus* sp.), cottonwoods, and walnuts (*Juglans regia*).	Unlikely, limited habitat in the project area
Western red bat	*Lasiurus blossevillii*	Catron	USFWS: SOC	Riparian and other wooded areas. Roosts by day in trees. Summer roosts usually in tree foliage, sometimes in leafy shrubs or herbs.	Possible, if pipeline impacts riparian habitat along the Rio Grande
Southwestern otter	*Lutar canadensis sonorae*	Catron	USFWS: SOC	Historically, the river otter occurred in the upper Rio Grande, the Canadian and the Gila river drainages of the state; the only recent verified record is from the latter area in 1953. Considered likely extirpated from New Mexico.	No
Arizona montane vole	*Microtus montanus arizonensis*	Catron	State NM: Endangered	Confined to central-eastern Arizona and adjacent New Mexico in damp to wet places, live in thick grass, and usually make runways through the grass.	No
Occult little brown myotis bat	*Myotis lucifugus occultus*	Bernalillo Catron Socorro	BLM: Sensitive	Extreme southeastern California through central and eastern Arizona into New Mexico, southward through extreme West Texas into Chihuahua. In New Mexico it is considered to be resident around large permanent bodies of water and transient elsewhere.	No
Cave myotis bat	*Myotis velifer*	Catron	BLM: Sensitive	Southwestern half of Arizona and immediately adjacent parts of California, Nevada, New Mexico and northern third of Sonora, Mexico. Desert scrub of creosotebush (*Larrea tridentata*), brittlebush (*Encelia farinose*), palo verde, and cacti. Roost in caves, tunnels, and mineshafts and under bridges and sometimes in buildings within a few miles of water.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Pecos River muskrat	*Ondatra zibethicus ripensis*	Bernalillo Socorro Valencia	USFWS: SOC BLM: Sensitive	Confined to the Pecos River and its tributaries.	No
Invertebrates					
Slate millipede	*Comanchelus chihuanus*	Bernalillo Valencia	USFWS: SOC BLM: Sensitive	Albuquerque and Tomé Hill inhabit volcanic escarpment on south-facing slopes.	No
Obsolete (desert) viceroy butterfly	*Limenitis archippus obsoleta*	Socorro	USFWS: SOC	Moist open or shrubby areas such as lake and swamp edges, willow thickets, valley bottoms, wet meadows, and roadsides.	No
Alamosa springsnail	*Pseudotryonia alamosae*	Socorro	USFWS: Endangered State NM: Endangered	The species is known only from Ojo Caliente and Warm Spring, near the former Fort Harmony, at the head of the Alamosa River.	No
Chupadera springsnail	*Pyrgulopsis chupaderae*	Socorro	USFWS: Proposed State NM: Endangered	The species occurs only in Willow Spring, at the south end of the Chupadera Mountains.	No
Gila springsnail	*Pyrgulopsis gilae*	Catron	State NM: Threatened	The species is limited to a series of thermal springs along the East Fork Gila River and on the mainstem below the confluence of the East and West forks.	No
Socorro springsnail	*Pyrgulopsis neomexicana*	Socorro	USFWS: Endangered State NM: Endangered	The species is limited to Torreon Springs (Socorro County), which is the key habitat for the species in the state and overall. This snail formerly occurred in the immediate vicinity of Socorro.	No
New Mexico hot springsnail	*Pyrgulopsis thermalis*	Catron	State NM: Threatened	The species is limited to a series of thermal springs along the East Fork Gila River and on the mainstem below the confluence of the East and West forks.	No
Sacramento Mountains silverspot butterfly	*Speyeria atlantis capitanensis*	Catron	USFWS: SOC	Forest openings, upland pastures, bogs, meadows, and moist canyons. Endemic to the Sacramento Mountains.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Mountain silverspot butterfly	*Speyeria nokomis nitocris*	Catron	USFWS: SOC	Permanent spring-fed meadows, seeps, marshes, and boggy streamside meadows associated with flowing water in arid country. Habitat requirements include: spring fed and/or subirrigated wetlands at low (7,500 feet or less) elevation, larval foodplant (*Viola nephrophylla*), wet meadows interspersed with willows and other woody wetland species and adult nectar sources (mostly composites).	Possible, habitat for this species may be present
Socorro isopod	*Thermosphaeroma thermophilum*	Socorro	USFWS: Endangered State NM: Endangered	The species is confined to Sedillo Spring, about 5 miles west of Socorro (Socorro County) and 1.3 miles from the project area.	Unlikely, if project area avoids the spring
Ovate vertigo snail	*Vertigo ovata*	Socorro	State NM: Threatened	The only known living population occurs at Blue Spring near Carlsbad in Eddy County. Historically found in Socorro County.	No
Plants					
Goodding's onion	*Allium gooddingii*	Catron	USFWS: SOC State NM: Endangered	Various mountain ranges in southeast Arizona and southwest New Mexico. Mixed conifer and spruce-fir zones from 7,500 to 11,250 feet.	No
Fugate's blue-star	*Amsonia fugatei*	Socorro	USFWS: SOC BLM: Sensitive	Limy conglomerate ridges and associated outwash slopes in Chihuahuan desert scrub; 5,000 to 5,900 feet.	Possible, habitat for this species may be present
Sandhill goosefoot	*Chenopodium cycloides*	Socorro	USFWS: SOC BLM: Sensitive	Grows in open sandy regions of eastern Colorado, eastern New Mexico, southwestern Kansas, southwestern Nebraska, and western Texas. Found frequently but not exclusively around the vegetated edges of blowouts on sand dunes.	Possible, habitat for this species may be present
Wright's marsh thistle	*Cirsium wrightii*	Socorro	USFWS: Candidate State NM: Endangered	Alamosa Springs of Socorro County. Wet, alkaline soils in spring seeps and marshy edges of streams and ponds; 3,450 to 8,500 feet.	Possible, habitat for this species may be present
Hess' fleabane	*Erigeron hessii*	Catron	USFWS: SOC State NM: Endangered	Mogollon Mountains. Andesitic dikes in otherwise rhyolitic rock; growing from bedrock cracks in open areas in upper montane to subalpine conifer forest; 9,500 to 10,200 feet.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint
Zuni fleabane	*Erigeron rhizomatus*	Catron	USFWS: Threatened State NM: Endangered BLM: Sensitive	Generally associated with the distribution of Uranium deposits in west central New Mexico. Nearly barren detrital clay hillsides with soils derived from shales of the Chinle or Baca formations (often seleniferous); most often on north- or east-facing slopes in open piñon-juniper woodlands at 7,300 to 8,000 feet.	Unlikely, occurs in the Datil Mountains, limited habitat may be present in the project corridor
Pecos sunflower	*Helianthus paradoxus*	Socorro Valencia	USFWS: Threatened State NM: Endangered	Saturated saline soils of desert wetlands. Usually associated with desert springs (cienegas) or the wetlands created from modifying desert springs; 3,300 to 6,600 feet. Pecos sunflower is a true wetland species that requires saturated soils; adult plants still grow well when inundated	Probable, species may be present in the project corridor
Dune pricklypear	*Opuntia arenaria*	Socorro	State NM: Endangered BLM: Sensitive	Socorro County occurrences of this species are suspect, no collected specimens. Occurs in southern Doña Ana and Luna counties into northern Mexico and southern Texas. Sandy areas, particularly semi-stabilized sand dunes among open Chihuahuan desert scrub, often with honey mesquite and a sparse cover of grasses; 3,800 to 4,300 feet.	No
Parish's alkaligrass	*Puccinellia parishii*	Catron	USFWS: SOC State NM: Endangered BLM: Sensitive	Western New Mexico. Alkaline springs, seeps, and seasonally wet areas that occur at the heads of drainages or on gentle slopes at 2,600 to 7,200 feet range-wide. The species requires continuously damp soils during its late winter to spring growing period.	No
Gila groundsel	*Senecio quaerens*	Catron	USFWS: SOC	White Mountains. High elevation riparian spruce-fir and ponderosa pine forests; usually among shrubby or grassy hummocks in partial shade of forest over-story half to full shade); also known from logged areas, 2,285 to 2,800 feet in elevation.	No
Mogollon clover	*Trifolium longipes* var. *neuophyllum*	Catron	USFWS: SOC	Catron County and adjacent Arizona. Wet meadows, springs and along riparian corridors in montane coniferous forest; 6,500 to 9,000 feet.	No

Common Name	Scientific Name	County	Status	Range and Habitat	Possible Constraint

Note:

Endangered: Any species that is in danger of extinction throughout all or a significant portion of its range.

Threatened: Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Candidate: Taxa for which the USFWS have sufficient information to propose that they be added to list of endangered and threatened species, but the listing action has been precluded by other higher priority listing activities.

Proposed: Any species of fish, wildlife or plant that is proposed in the *Federal Register* to be listed under Section 4 of the Endangered Species Act. This could be either proposed for endangered or threatened status.

Experimental, Non-essential Population (ENP): A reintroduced population established outside the species' current range, but within its historical range. For purposes of Section 7 consultation, this population is treated as a proposed species, except when it is located within a National Wildlife Refuge and National Park, when the population is considered threatened.

Under Review: Determining whether the status of the species meets the definition of threatened or endangered.

Species of Concern (SOC): Taxa for which further biological research and field study are needed to resolve their conservation status OR are considered sensitive, rare, or declining on lists maintained by natural heritage programs, state wildlife agencies, other federal agencies, or professional/academic scientific societies. Species of concern are included for planning purposes only.

Sensitive: When a particular animal species becomes in danger of rapidly dwindling to extinction, national policy directs the BLM to add that animal on a BLM sensitive species list.

Exhibit E to Groundwater Application Attachment 2

Rio Rancho
City of Vision

Gregory D. Hull
Mayor

June 18, 2014

Michel Jichlinski, Principal
Augustine Plains Ranch, LLC
8070 Goergia Avenue, Suite 113
Silver Spring, MD 20910

RE: Augustine Plains Ranch, LLC

Dear Mr. Jichlinski,

Rio Rancho has a priority of developing/identifying a long term solution/plan to our current and future water needs. Securing a long term supply of water to our community is of great importance.

Should Augustin Plains Ranch, LLC succeed in the application process and successfully put in place a delivery system to deliver water to Rio Rancho, Rio Rancho would most certainly consider engaging Augustin Plains Ranch, LLC as a customer for this water.

Sincerely,

Greggory D. Hull
Mayor

EXHIBIT E TO ATTACHMENT 2

RRioRancho
City of Vision

April 18, 2014

Michel Jichlinski, Principal
Augustin Plains Ranch, LLC
8070 Georgia Avenue, Suite 113
Silver Spring, MD 20910

RE: Augustin Plains Ranch, LLC

Dear Mr. Jichlinski,

As you know, Rio Rancho currently has a need for several thousand acre feet of water, therefore the City of Rio Rancho supports the applications for changes of place and purpose of use of Augustin Plains Ranch.

If Augustin Plains Ranch is successful in its application, we are interested in discussing with Augustin Plains Ranch moving water into Rio Rancho's water utility system to serve Rio Rancho's municipal, industrial and commercial uses.

Sincerely,

Keith Riesberg
City Manager

3200 Civic Center Circle NE • Rio Rancho, New Mexico 87144
Office (505) 896-8715 • Fax (505) 891-5201

Exhibit F to Groundwater Application Attachment 2

SAMPLE GRANT OF AUTHORITY TO APPROPRIATE

This Grant of Authority to Appropriate ("Grant") is entered into by and between the City of _____ ("City") and AUGUSTIN PLAINS RANCH LLC ("APR"), the City and APR may be hereinafter referred to individually as a "Party," and collectively as the "Parties."

RECITALS:

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

B. 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").

C. The City understands that the Application may involve lengthy hearings and the expenditure of substantial sums of money for legal and engineering services with no guaranty that the expenditure will result in a permit to divert groundwater. The City does not want to risk public funds to participate in the uncertain Application process.

D. APR is willing to undertake the risk of prosecuting the Application to obtain the Water Rights for use by the City, subject to a permit term that any permits granted pursuant to authority granted by the City may be terminated or transferred to another qualifying municipal or governmental water user if the City does not execute a purchase agreement with APR as defined in this Grant.

E. The Parties understand that the Office of the State Engineer requires applicants for water rights to define the nature, scope and location of proposed municipal uses sought in applications for groundwater rights. The purpose of this Grant is to describe the terms of how the City will allow APR to apply for water rights on its behalf in order to fulfill the State Engineer's requirement for appropriating municipal water rights.

NOW THEREFORE, in consideration of the mutual covenants and promises between the Parties, which the Parties acknowledge and agree constitute adequate consideration, with such consideration having been received, the Parties agree as follows:

1 **Limited Authority Granted**. The City grants APR the limited authority to appropriate _____AFY on its behalf and to define the nature, scope and location of proposed municipal uses based in order to meet all or part of the City's 40 Year water demands.

EXHIBIT F TO ATTACHMENT 2

2 **Reasonable Assistance.** The parties acknowledge and agree to cooperate in completion of the permitting and development of the Water Rights. APR will prosecute all proceedings, as determined by APR in its sole discretion, to obtain permitting as may be required for municipal and other uses, including use by the City and others of Water Rights. APR will be solely responsible for all costs of proceedings to obtain such permitting, unless otherwise agreed to by the parties. The City agrees to assist APR in any hearing or meeting before the State Engineer and including all appeals, regarding the Water Rights, including, but not limited to, affidavits and testimony about the City's (1) intended use of the Water Rights; (2) 40 year Plan including information about the City's existing water supply area and its demand projections for the next 40 years; (3) the City's current and future service areas, both within and without its municipal boundaries; (4) the nature, scope and effectiveness of the City's water conservation plan.

3 **Right to Purchase.** The City has the first and exclusive right to purchase _____AFY of Water Rights from APR.

4 **The Purchase Date**. The Purchase Date is defined as the later of one year after the date upon which the State Engineer issues a final non-appealable permits to APR; or one year after the date the last Federal, State or Local permit necessary to construct the Water Rights delivery pipeline is granted; or one year after the Water Delivery Rate is determined pursuant to Schedule A.

5 **Miscellaneous.**

5.1 **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.

5.2 **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.

5.3 **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.

5.4 **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.

5.5 **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.

5.6 **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.

5.7 **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.

5.8 **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.

5.9 **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.

5.10 **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.

5.11 **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:

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

5.13 **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.

5.14 **Recitals and Exhibits**. The recitals to this Agreement and the exhibits attached to this Agreement are incorporated herein by this reference.

5.15 **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."

Signature pages

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 Paragraph15, 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 permited 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(l).

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(l) 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 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 delivery 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."

[remainder of page intentionally left blank]

Signature Blocks

Exhibit 1

Initial Delivery Location

Exhibit 2

Delivery Schedule

Exhibit 3

Form of Consent Agreement

AUGUSTIN PLAINS RANCH WATER
SAMPLE INFRASTRUCTURE
PARTICIPATION AGREEMENT

This Infrastructure Participation Agreement ("Agreement") is entered into by AUGUSTIN PLAINS RANCH LLC ("APR") and _____ ("Participant") (individually, a "Party" and collectively, 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 such 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. To fully develop and deliver the groundwater, APR will design and build infrastructure including a well field with interconnecting pipelines, holding tanks, recharge ponds, hydroelectric generation, a 140+ mile delivery pipeline and solar energy panels. ("APR Infrastructure Project or APRIP")

C. Participant desires to reserve capacity in the APRIP prior to completion of the permitting process.

D. APR establishes the participation interests set forth in this agreement to allow Participants to delay payment of the ultimate purchase price until the permitting, financing and engineering phases of the project achieves defined milestones.

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.

1. **Reservation of Capacity**. Subject to receiving the payments required in section 2 below, APR agrees to reserve ____AFY of the capacity in the APRIP for Participant.

2. **Payment Milestones**. Participant shall pay APR the following nonrefundable payments to continue their capacity reservation:

2.1 **Initial Subscription.** Participant shall pay _____ to APR at the time of the execution of this agreement.

2.2 **Permitting.** At the time the State Engineer issues a final non-appealable Water Rights permit to APR, Participant shall pay _____ to APR.

2.3 **Water Rights Purchase**. Participant shall execute a definitive agreement with APR to acquire Water Rights and a Carriage agreement in the APR delivery pipeline no later than 12 months after the State Engineer issues a final non-appealable Water Rights permits to APR.

2.4 **Failure to make Milestone Payment**. Failure to make the payments specified in this section when due shall forfeit the Participant's reservation of capacity in the APRIP.

3. **Miscellaneous.**

3.1 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.

3.2 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.

3.3 **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.

3.4 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.

3.5 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.

3.6 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.

3.7 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.

3.8 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.

3.9 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.

3.10 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.

3.11 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:

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

3.13 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.

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

3.15 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."

Signature pages

SAMPLE WATER DELIVERY PRICING SCHEDULE

1. **General.** APR intends to provide wholesale water for resale to a limited set of commercial customers. APR has no intention of making its water generally available to the public, and has no intention of becoming a public utility as that term is defined in the Public Utility Act. Nonetheless, pricing for water deliveries from the APR well field and pipeline (the "Delivery Rate") is intended to be based on the principles of cost-of-service utility rate setting. However, it is understood by the Parties that specific circumstances defined under this Agreement require advanced understanding and application of those principles and that the Parties have adapted in some cases an application of rate setting principles that are particular to this Agreement, the characteristics of the services provided, and the purpose and intent of the Parties themselves. In cases where generally accepted principles of utility rate setting may appear to differ from the pricing of water deliveries under this Agreement, the terms defined in this Attachment A of the Agreement will prevail. If a term or condition necessary for the pricing of water deliveries under this Agreement is missing from this Attachment, that term and condition will be established by mutual agreement of the Parties.

2. **Overall Principles.** The Delivery Rate incorporates the following overarching principles:

   2.1. **Appropriate Return on Investment.** The Delivery Rate will allow those who own Facilities ("Owner") to receive an appropriate return on historical and new investments in the Facilities as defined in this Attachment.

   2.2. **Consistent with Owners' Internal Ratemaking and Financial Practices.** The Delivery Rate will be consistent with the financial requirements and internal ratemaking practices of the Owner.

   2.3. **Equitable and Transparent Allocation of Costs.** The costs incurred to provide deliveries under this Agreement include the operating and maintenance costs in addition to various capital components. Equitable pricing means that these costs will be allocated to those receiving water deliveries from the project each in accordance with their particular demand characteristics and their contractually defined delivery requirements. Transparency exists when the process for such an allocation can occur within a framework that is visible, understood by all the Parties, and repeatable over time with consistent and predictable results.

3. **Facilities.** The APR Facilities include all tangible assets, and intangible real property rights (e.g. water rights), that are used and useful in providing the water deliveries under this Agreement. A listing of the current Facilities is included in Table 1.The listing of Facilities may change from time to time. No changes to the Facilities listed in Table 1 will be made without the consent of the Parties which consent shall not be unreasonably withheld or denied. All Facilities, current and future, include the following overall characteristics:

   3.1. **Facilities are Used.** To be considered a Facility, the asset must be physically used for delivery of water under this Agreement with measurable flows of water occurring on a regular and recurring basis. Any Facility included in the Delivery Rate is either: a)

currently used with measurable flows, or b) will be used in the year immediately following Owner's budget year as part of the normal operations of the Facilities.

3.2. **Facilities are Useful.** A Facility must provide a specific function that enables the delivery of water as described in this Agreement. Facilities, or parts of Facilities, that do not enable the deliveries under this Agreement are not included in the Delivery Rate. Facilities that are only used by the Facilities' Owner are not included in the Delivery Rate.

3.3. **Exceptions.** Additional Facilities will be required in the future to maintain current deliveries and provide increased deliveries to _____ in excess 54,000 acre feet per year. In some cases, those Facilities may need to be constructed ahead of the Owners' planned schedules. Exceptions to Paragraphs 3.1 and 3.2 may be required to address the additional costs, if any, incurred in accelerating construction of planned Facilities. Facilities may be added to the Delivery Rate in anticipation of future construction under the following conditions:

3.3.1. **Conditions for Exception:**

3.3.1.1. **Acceleration of planned Facilities.** The Owners need to accelerate planned infrastructure to maintain the current delivery commitment.

3.3.1.2. **Increased Delivery Requested.** The _____ has requested increased delivery from a previous commitment level, and the Owners are willing and able to meet the requested deliveries.

3.3.1.3. **Additional Facilities Required.** The Owners cannot meet the requested increased delivery without additional Facilities. The Facilities required are either newly identified and were not part of the Owners' prior plans, or must be constructed ahead of the Owners' plans.

3.3.1.4. **Owner Investment Required.** The Owners pay for the additional Facilities and incur an Owner Investment consistent with Paragraph 5.2.1 below.

3.3.2. **Allowances in Pricing.** If the conditions in Paragraphs 3.3 and 3.3.1 are met, then the pricing for the next determination of the Delivery Rate will include the reasonably estimated costs for the identified Facilities.

3.3.2.1. **Capital Costs.** The capital costs calculated under this provision will include a return to the Owners as described in Paragraph 5.2 based on the reasonably estimated construction cost of the Facilities in question. The pricing will not include any depreciation expense as described in Paragraph 5.1 or working capital as described in Paragraph 5.2.1.3, however, until the Facilities are constructed and placed into service and used and useful for delivery of water under this Agreement. All other provisions of Section 5.2 will apply.

3.3.2.2. **Operating Costs**. Operating and maintenance expenses as described in Paragraph 6, below, will not be included in the pricing analysis until such time as the Facility is placed into service for the delivery of water under this Agreement.

4. **Ownership**. Each of the Facilities has at least one Owner. The Owner(s) will be identified for each of the Facilities by name and by percentage of ownership.

5. **Capital Costs.** Capital costs include the depreciation expense on the Facilities, plus a return to the Owner of the Facilities.

5.1. **Depreciation Expense.** Depreciation expense has the same meaning as is normally applied by the Government Accounting Standards Board. All depreciation is to be determined using the Straight-Line method based on the initial term of the Facility's life. Determination of salvage value, if any, is at the discretion of the Facility Owner.

5.2. **Return.** Owner(s) will be compensated for their investment in the Facilities in an amount equal to the Owner(s) weighted average cost of capital (WACC) times the Owner(s) investment in the Facilities.

5.2.1. **Measuring Owner Investment.** Owner investment is also referred to as "Rate Base." The Rate Base is meant to accurately measure the Owner(s) actual investments in the Facilities. It includes the following components:

5.2.1.1. **Net Book Value of Facilities.** This is equal to the actual original cost of the Facility less accumulated depreciation. The book value may be increased by additions or improvements to the Facilities; it decreases with asset deletions, retirements, and accumulated depreciation.

5.2.1.2. **Construction Work in Process.** Future Facility investments may be included in the Rate Base if the Facility meets the definitions in Paragraph 3 above.

5.2.1.3. **Working Capital.** Owners are allowed to include an allowance for working capital equal to 90 days of their operating & maintenance expenses incurred at the Facilities. The working capital allowance for each Facility shall be calculated as the annual operating and maintenance expense, divided by 365 days, times 90 days.

5.2.1.4. **(Less) Contributions Received.** Any capital payments or assets in kind paid by _____ to the Owner(s) to defray the Owner(s) Investment shall be accounted for as capital contributions and credited to _____ as a reduction in the Owner(s) Investment. Contributions reduce both the Return

and depreciation expenses related to the Facilities. All contributions will be amortized at a rate equal to the rate of depreciation for the Facility in question.

5.2.2. Measuring the Weighted Average Cost of Capital. The weighted average cost of capital is the sum of the weighted debt cost and weighted equity cost; it will be used as the rate of return described in section **Error! Reference source not found.**.

5.2.2.1. **Total Cost of Capital.** The cost of capital will include an allowance for the Owner(s) actual cost of debt financing, as well as a return for the Owner(s) equity.

5.2.2.1.1. **Cost of Debt** – The cost of debt is the average annual interest rate paid on the Owner(s) portfolio of outstanding long-term debt. For the purposes of this Agreement, the cost of debt shall be calculated as follows:

5.2.2.1.1.1. Determine the total amount of long-term debt issued and outstanding as measured from the Owner(s) most recently audited and publicly available financial statements. Total long-term debt outstanding shall include all portions of long-term debt due and payable within one year, also called the "current portion", together with those amounts payable at any time after one year, also called the "long-term portion."

5.2.2.1.1.2. Determine the net interest payment due on each component of the long-term debt during the 12-month period in which the Delivery Rate will be determined. Interest payments due shall reflect the total of scheduled interest payments, net of any discounts, premiums, grants, state/federal subsidization, or other reductions.

5.2.2.1.1.3. Divide the total amount of interest due by the total amount of long-term debt outstanding to derive the annual effective interest rate.

5.2.2.1.2. **Cost of Equity** – the cost of equity is the interest rate to be paid on the use of the Owner(s) equity capital. For the purposes of this Agreement, the cost of the Owner(s) equity shall be calculated as follows:

5.2.2.1.2.1. Determine the cost of equity using the Build-Up Method (BUM) expressed as the following formula: Cost of Equity (Ke) = Risk Free Rate (Rf) + Market Risk Premium (MRP) + Industry Risk Premium (IRP) + Size Premium (SP).

5.2.2.1.2.2. Risk Free Rate (Rf). The risk-free rate is equal to the yield on a 20-year US Treasury bond. For the purposes of this Agreement, the yield shall be the average calculated for the 12 months immediately preceding the determination of the Delivery Rate.

5.2.2.1.2.3. Market Risk Premium (MRP). The MRP represents the additional return required by equity holders over debt holders in general. For the purposes of this Agreement, the MRP will be taken from *Ibbotsons Stocks, Bonds, Bills, and Inflation Valuation Yearbook*. The MRP shall be the historical long-term horizon expected equity risk premium as published in the Ibbotson SBBI Valuation Yearbook, and not the supply side equity risk premium.

5.2.2.1.2.4. Industry Risk Premium (IRP). The IRP represents the additional or reduced return required by equity holders in the same industry as the Owner(s). For the purposes of this Agreement, the Owner(s) industry is Water Supply, classified under the Standard Industrial Code of 494, or the NAICS code of 221310. The IRP will be taken from the then current edition of *Ibbotsons Stocks, Bonds, Bills, and Inflation Valuation Yearbook.*

5.2.2.1.2.5. Size Premium (SP). The SP represents the additional or reduced return required by equity holders as a result of the size of the Owner(s) specific enterprise. For the purposes of this Agreement, the SP will be taken from *Ibbotsons Stocks, Bonds, Bills, and Inflation Valuation Yearbook* for the appropriate decile (the text provides an appropriate SP for different enterprise sizes grouped into deciles). For the purposes of this Agreement, the Owner(s) size shall be determined as the book value of its equity. Book value of the Owner(s) equity shall be determined based on the most recently audited and publicly available financial statements; book value is equal to total assets less total liabilities with no further adjustments whatsoever.

5.2.2.1.2.6. In the event that *Ibbotsons Stocks, Bonds, Bills, and Inflation Valuation Yearbook* is no longer published in its current form, the parties agree to negotiate in good faith to identify a comparable substitute publication for the purposes of this Attachment C.

5.2.2.2. **Weightings.** The weighted average cost of capital is affected by the relative percentage of debt and equity financing used by the Owner(s) in the Owner(s) overall water utility enterprise.

5.2.2.2.1. **Total Invested Capital.** An Owner's total invested capital is equal to the sum of: (a) total long-term debt as described in **Error! Reference source not found.**; and (b) his total equity as measured from the most recently published, publicly available, audited financial statements as the Owner(s) total assets less total liabilities.

5.2.2.2.2. **Determine the Weight of Debt as a Portion of Invested Capital.** The total long-term debt divided by Total Invested Capital is the debt weighting.

5.2.2.2.3. **Determine the Weight of Equity as a Portion of Invested Capital.** The equity weighting shall be determined as 100% minus the debt weighting described in **Error! Reference source not found.**.

5.2.2.3. **Calculate the WACC.** The WACC for the Owner(s) shall be calculated using the formula: WACC = Wd(Kd) + We(Ke). Where Wd = weight of debt as described in **Error! Reference source not found.**; Kd = cost of debt as described in **Error! Reference source not found.**; We = weight of equity as described in **Error! Reference source not found.**; and Ke = cost of equity as described in **Error! Reference source not found.**

6. **Operating & Maintenance Costs.** The costs of operating and maintaining the Facilities will be properly budgeted and accounted for on a regular basis. Whether or not operating and maintenance costs are incurred, and the level, if any, of those costs is determined at the sole discretion of the Owner(s) of the Facilities. Only the operating and maintenance costs incurred in the operation of the Facilities are included in the basis for the Delivery Rate.

   6.1. **Direct Operating and Maintenance Costs.** The direct expenses in operating and maintaining the Facilities are to be included in the Delivery Rate determined under this Agreement. Direct operating and maintenance costs include the fixed and variable costs of operating the Facilities. Capital repairs and replacements are not to be included as operating and maintenance costs. Any expenditure meeting the Owner(s) then existing capitalization policy should be recorded as an asset and included in the determination of Rate Base as described above.

7. **APR Raw Water Rate.** The "APR Raw Water Rate" shall be determined as the then published rate established by _____ for non-reusable nonpotable water service charged to its Outside Combined Service Area customers times 1.625 for all reusable water supplied under this Agreement.

8. **Direct Overhead and Administration.** Administrative costs directly incurred in the management of this Agreement are to be included in the Delivery Rate. Owners are responsible for accounting for any direct overhead and administrative costs, both fixed and variable.

9. **Indirect Overhead and Administration.** Costs that are not directly attributable to the performance of this Agreement are not included in the Delivery Rate.

10. **Ratemaking Process.** Except as noted in Paragraph 10.1, the Owners will at their expense, prior to proposing to increase the Delivery Rate for any year, prepare a cost-of-service allocation for the Facilities' costs in accordance with this Attachment C. The cost-of-service allocation will be based on the Owners' budgeted expenditures for the forthcoming year, and the capital costs will be based on the expected Rate Base for the same forthcoming year. The APR Pricing Summary results of the Rate Model for 2013 are attached hereto as Exhibit 1. A full model print-out has been provided to the Parties for 2013. The Owners will provide reasonable back-up documentation with similar detail when proposing future Delivery Rate increases.

10.1. **Water Supply Rate Adjustments.** The rate may be increased annually to reflect changes to the APR Raw Water Rate as determined in accordance with paragraph 7. If the Owner is increasing the Delivery Rate solely as a result of an increase in the APR Raw Water Rate, then the Owner is not required to prepare a new cost-of-service allocation but can incorporate the updated APR Raw Water Rate into the Delivery Rate.

10.2. **Annual Period.** Except for Delivery Rate changes pursuant to 10.1, the Delivery Rate will be prepared for the forthcoming year in which a new Delivery Rate is to take effect. For the purposes of rate administration, all changes to the Delivery Rate charged under this Agreement will be prepared and placed into effect on January 1 of each year.

10.3. **Information Requirements**. Using the annual delivery amount to _____ of 54,000 AF to be adjusted in the future if additional commitments are agreed to, the Owner will then take the following steps:

10.3.1. **Determine the Operating and Maintenance Costs for Each Facility.** The Owners will prepare, at their expense, a detailed budget of operating and maintenance expenses anticipated for each Facility for the Delivery Year. Operating and maintenance expenses shall not include any provision for capital expenditures of any kind. All capitalized asset purchases should be reported as additions to the fixed assets as described in Paragraph 10.3.3, below.

10.3.2. **Update Fixed Asset Register.** The Owner will provide, at their expense, a detailed listing of fixed assets for each Facility that will be updated, current, and audited as of the end of the Owner's financial reporting year immediately preceding the Delivery Year. The fixed asset register will detail the following information for each Facility and will be reported in accordance with generally accepted accounting principles of the Government Accounting Standards Board, except in no case will the fixed assets be reported for the purposes of this Agreement using the so-called "Modified Approach" as described under GASB Rule No. 34: (i) Name and description of the asset, (ii) the original acquisition cost of the asset, (iii) the month and year the asset was acquired and physically placed into service, (iv) the estimated useful life of the asset as estimated for accounting purposes using straight line depreciation methods, and (v) the accumulated depreciation for the asset.

10.3.3. **Determine the Owners' Rates of Return.** The Owners' rates of return shall be determined each year based on the provisions of Paragraph 5.

10.3.4. **Determine the APR Raw Water Rate.** The APR Raw Water Rate shall be determined in accordance with Paragraph 7.

10.3.5. **Allocate the Costs of Service.** The cost-of-service Delivery Rate will be determined as follows:

10.3.5.1. Standard Method. The Delivery Rate will be determined by allocating the total costs of the Facilities to the Parties based on the water demands as described in Section 10.3.1; provided, however, that the following adjustment for water deliveries characterized as less-than-firm or interruptible under this Agreement shall be made: the total costs of the Facilities will be limited to the total costs of providing the average daily demand (ADD) and will exclude any costs associated with the capacity in the Facilities above and beyond that necessary to provide for the ADD (*i.e.*, Parties with interruptible deliveries will be allocated 0% of the "Share of Facility Capacity" as that term is used in the Rate Model Report).

10.3.5.2. Exceptions. Changes in delivery characteristics, addition of new Facilities, and the ownership structure of new and/or existing Facilities dictate a change in cost allocation methods. APR reserves the right to modify the cost allocation methods under such circumstances to reflect the actual delivery characteristics. No changes to the cost allocation methods shall be made without the consent of the _____ which consent shall not be unreasonably withheld, conditioned or delayed.

10.3.6. **Determine Rates.** The Delivery Rate will be specific for each Party based on each Party's particular usage of the Facilities. Rates may include a charge for volume of water delivered, charges for reservations of capacity, or any combination of these based on specific circumstances and characteristics of demand for each Party.

Table 1

Facility Name	Description
Well Field	
Recharge Facilities	
Hydroelectric generation plant	
Solar Power System	
Pipeline	

** Infrastructure no longer used to provide APR Water deliveries shall be deleted.

Exhibit G to Groundwater Application Attachment 2

Summary of Updated Conceptual Design for Augustin Plains Ranch Water Resource Development Project

PREPARED FOR:	Augustin Plains Ranch, LLC
COPY TO:	File
PREPARED BY:	CH2M HILL
DATE:	December 19, 2014
PROJECT NUMBER:	461890

Introduction

The purpose of this technical memorandum (TM) is to present the preliminary conceptual level design for the Augustin Plains Ranch, LLC (APR)'s Water Resource Development Project. This project includes a pipeline, approximately 140 miles long, and collection well system to deliver water from a deep aquifer beneath the APR (located approximately 50 miles west of Socorro, New Mexico [NM]) to entities along the pipeline route as far North as Rio Rancho, NM. This TM includes a hydraulic analysis of the system as well as a preliminary conceptual design of the main transmission pipeline and supply laterals. This work is based on industry standards for pipeline design (AWWA, ASTM), readily available information, and previous experience.

Background

The project includes constructing up to 37 wells to an average depth of about 2,500 feet below the ground surface on 17,780 acres of fee title property (APR property) in the Plains of San Augustin, NM. The site may be permitted for up to 37 wells with only 25 wells required at the anticipated well yield. The wells are expected to have capacities of about 2,000 gallons per minute (gpm) each and be operated to produce a system total of 54,000 acre-feet per year (afy) (~35,000 gpm) of groundwater. Although the combined maximum daily production of 25 wells at 2,000 gpm each could be about 50,000 gpm, only about two-thirds of the wells are expected to operate at any one time, on a rotating basis, to achieve the average 35,000 gpm. Two 10 million gallon (MG) water storage tanks would be used for short-term operational storage of groundwater pumped from the wells before sending it to the transmission pipeline and then after production of hydropower.

Background Information Provided

In addition to the background information stated above, the following data were provided by APR to be used in this analysis:

- APR Water Resource Development Project, Routing Constraints Analysis, August 2012, SWCA Environmental Consultants (SWCA).
- Preliminary Solar Power Feasibility Study: Datil Property in Catron County, NM, URS, June 11, 2010.
- Memorandum - High Level Evaluation of Supplying Water from the Augustin Plains Ranch to Albuquerque from Capital Costs to O&M Costs, Bohannan Huston Inc. (BHI), February 26, 2008.
- Information provided by the APR representatives and/or included in the above reports are as follows:
  - A maximum of 37 wells can be permitted for construction and each could produce about 2,000 gpm
  - Static lift in each well will be about 800 feet

The information presented in the documents listed above is assumed to be correct and appropriate for the purpose of this analysis.

EXHIBIT G TO ATTACHMENT 2

Project Description

Appendix 1 shows the general layout of the system. Based on analysis of the proposed layout, it was determined that the project could be segregated into two parts: 1) the wells and well field piping, and 2) the roughly 140-mile-long pipeline that conveys water from the APR property to the Albuquerque area. The proposed pipeline route is roughly along a corridor of Highway 60 and Interstate 25, as outlined in *Augustin Plains Ranch Water Resource Development Project, Routing Constraints Analysis, August 2012, SWCA.*

Augustin Plains Ranch Wells

The APR property, where a maximum of 37 wells will be constructed, consists of approximately 17,700 acres. Highway 60 crosses the southern end of the property and the proposed start of the transmission pipeline will be in the southeast corner of the property, along Highway 60. The highest point of the property is in the northwest corner at elevation 7,700 +/- feet and generally falls to the east and southeast to the lowest spot (elevation 7,100+/-) in the southeast corner near Highway 60.

Transmission Pipeline

The transmission pipeline starts along Highway 60 near the southeast corner of the APR property and travels about 56 miles east along Highway 60 to Socorro, NM. The pipeline then turns north and is routed parallel to Interstate 25 about 85 miles to Albuquerque, NM. The starting elevation of the pipeline is about 7,125 feet and has a slight uphill climb for about 20 miles peaking at a pipeline system highpoint elevation of about 7,220 feet. The pipeline then goes downhill to Socorro to an elevation of about 4,600 feet before going back uphill slightly to a final elevation of about 5,200 feet in Albuquerque.

In addition to supplying water to the greater Albuquerque metropolitan area, this project may also include additional deliveries along the pipeline alignment. Actual key connection points within the Albuquerque Bernalillo County Water Utility Authority, Rio Rancho, and all utility transmission systems will be determined at a later date once utility needs and hydraulic capacity can be assessed. Appendix 1 provides an overview of the alignment with supply laterals to locations along the Rio Grande, as well as the potential area of water sales. For the purposes of this analysis, two delivery points are noted for Albuquerque in Appendices 7 and 8 – to a water storage tank near mile 134 of the pipeline and into the pump station that supplies the San Juan-Chama drinking water project. There will also likely be several turnouts installed along the pipeline at various locations along the Rio Grande including Datil, Magdalena, Socorro, Belen, Los Lunas, and Rio Rancho, NM (Appendices 2, 3, 4, 5, 6, and 9, respectively). In addition there are two discharge points to the Rio Grande and two discharge points to irrigation canals. All connection points shown are conceptual. Final connection points will depend on the specific agreements in place as well as individual system hydraulic and demand analysis. It is not expected that the potential connections at intermediate locations will have significant flow when compared to the overall system capacity, so not all potential turnouts are listed. The small changes in flow due in the mainline due to these relatively small connections were not factored into the hydraulic analysis.

Supply Lateral Connections

There will be several lateral connections to the main transmission pipeline throughout the alignment that can be used to supply communities along the alignment once agreements are finalized. The first supply lateral serving Datil, NM will connect to the main transmission pipeline at mile 0 and run east to west for approximately 6.45 miles. There is no water storage tank in Datil, but the supply lateral could be connected to a water distribution system if agreements were in place to provide water supply or water storage could be constructed and used as a delivery point. Appendix 2 shows the supply lateral alignment to Datil. Further along the alignment another supply lateral will be connected in Magdalena, NM between mile 25 and 30. The supply lateral runs west to east for approximately 0.95 miles and connects to a water storage tank to the southwest of the city. Appendix 3 shows the supply lateral alignment in Magdalena. In Socorro between mile 50 and 55 another supply lateral runs east to west for approximately 1.87 miles to a water storage tank west of the New Mexico Tech Golf Course. There is also a lateral from the main transmission pipeline that allows water to be discharged into the Rio Grande for sales to agencies like the New Mexico Interstate Stream Commission or the US Bureau of Reclamation for environmental or other purposes. Appendix 4 shows the supply lateral alignment as well as the south connection to the Rio

Grande in Socorro. Further north between mile 95 and 100 a supply lateral would connect from the main transmission pipeline to a water storage tank on the west side of I-25 in Belen. This supply lateral is very close to the main transmission pipeline and is approximately 0.01 miles long. Appendix 5 shows the supply lateral alignment in Belen. In Los Lunas between mile 110 and 115 of the alignment a supply lateral would connect to the main transmission pipeline and end in at a water storage tank east of I-25. The supply lateral is approximately 0.11 miles in length and is shown in Appendix 6. Appendix 7 shows a discharge to the Belen Highline Canal.

After the main transmission pipeline line reaches Albuquerque and continues north through the west side of the city, a supply lateral will connect near Coors Avenue and run east to west for approximately 1.63 miles. The supply lateral will end at a water storage tank north of Central Ave. near 98th St. There will also potentially be a discharge to the Rio Grande at Alameda Blvd, a discharge to the Atrisco Feeder Canal, and a connection to the San Juan-Chama Water Treatment Plant (SJCWTP) Diversion Pump Station. A supply lateral will run east from the main pipeline along Coors Blvd to the river. Appendix 8 shows the supply lateral alignment and Appendix 9 shows the lateral to the river and subsequently the SJCWTP. The final supply lateral will connect to the main transmission pipeline in Rio Rancho near mile 139 of the alignment. The supply lateral will run east to west for approximately 4.39 miles and end at a water storage tank west of Unser Blvd. Appendix 10 shows the alignment of the supply lateral in Rio Rancho.

It should be noted that all connections to water storage tanks or distribution systems mentioned are based on completing agreements between the municipalities, utilities, agencies, or other customers and the water supplier. Also, the locations of tanks and other inter-connections are based on a preliminary review of available data. Coordination with municipalities, utilities, agencies, or other customers will be completed along with additional analysis of individual system hydraulics and anticipated system demands to verify and further refine appropriate connection points. Based on these analyses, it is likely that connection points will change and/or additional connection points may be needed.

Hydraulic Analysis

Based on a review of the available information, data, and background documentation provided by APR, CH2M HILL completed a hydraulic evaluation for the project. It was assumed that a residual pressure of 60 pounds per square inch (psi) to 80 psi would be required at approximately mile 134, a potential connection to the Albuquerque potable water system near the end of the pipeline (Mile 141). Since it is unknown exactly where this connection will be and to what system (tank or distribution system) it will connect, it was assumed that modeling the hydraulics to the 141 mile mark in the original background information would be sufficient provided the residual pressure at mile 134 is met.

The proposed operational scheme for the overall project includes high pressure in the pipeline between APR and Socorro which would be used to generate hydroelectric energy at a location that would then allow water to flow by gravity to Albuquerque. Associated with the segregation of the APR well piping and collection system and the main transmission pipeline, there appears to be a segregation point for these two systems as evidenced by a high point at about mile 20 (20 miles east of the APR property). The hydraulic analysis includes an evaluation of how this high point affects the proposed operational scheme layout. This section provides an evaluation of the wells and well collection system and a separate evaluation of the transmission main.

Criteria assumed for the hydraulic analysis include:

- Hazen-Williams friction factor (C value) - 130
- Only about two-thirds of the 25 wells will operate at any given time, resulting in a well field flow of 35,000 gpm
- Flow from each well is about 2,000 gpm
- Static lift for each pump is 800 feet to ground surface plus friction losses (results in about 600 horsepower motor)
- Maximum pipe velocities should be between 4-6 feet per second
- Pump motors and hydroelectric generators have operational efficiency - 75 percent

- Pipe wall thicknesses will be based on static water levels when there is no flow
- Yield strength pipe – maximum 70 kips per square inch (ksi)
- All joints will be welded

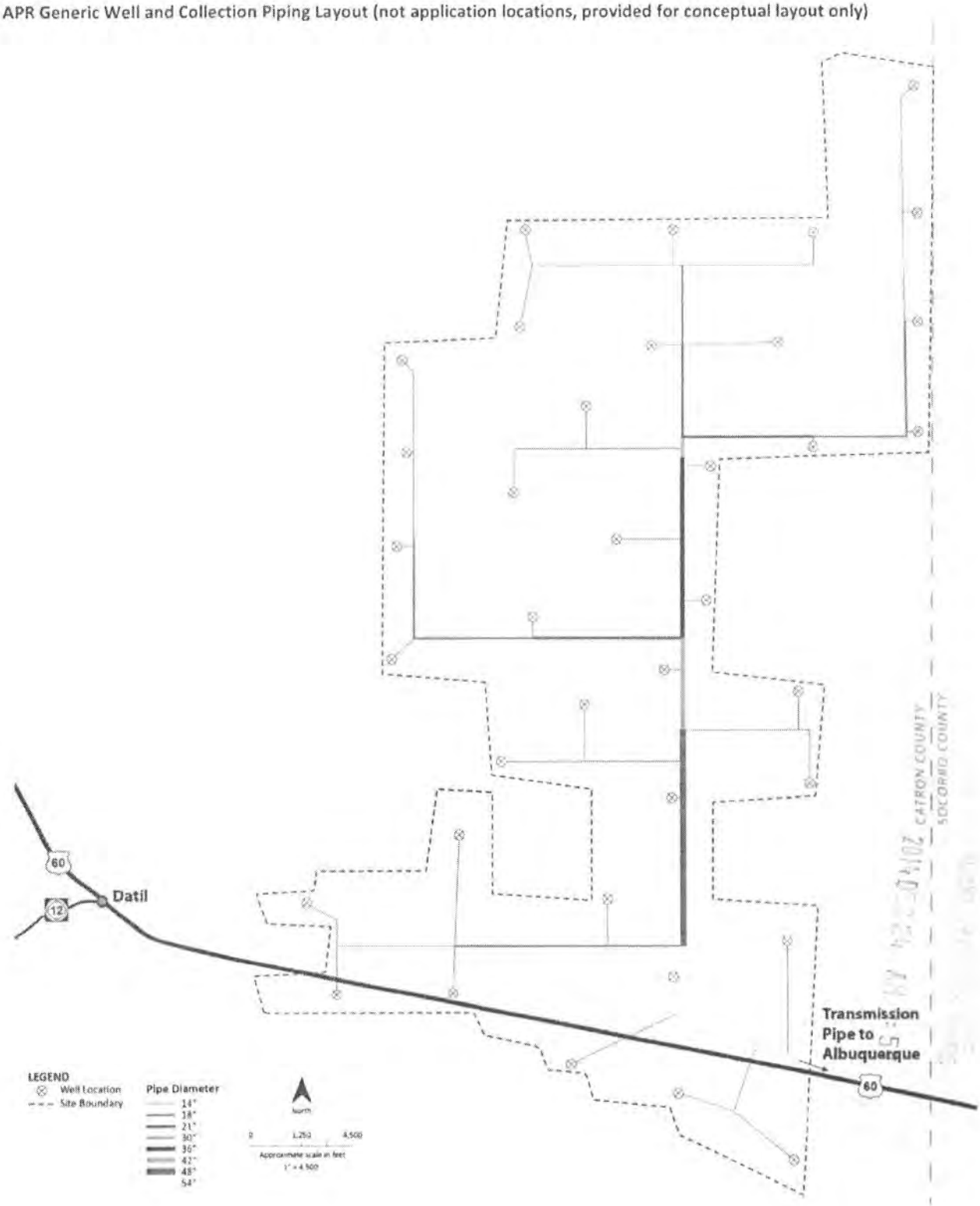
Augustin Plains Ranch Property Wells and Well Collection System

CH2M HILL did not conduct a detailed hydraulic analysis of the well pump collection system, but rather included simplifying assumptions to locate a maximum of 37 wells on the APR property and lay out well discharge piping for costing purposes (See Attachement 1). The layout of the wells was based on a uniform spacing to maximize water recovery from the aquifer. The well collection piping was sized based on a 2,000 gpm flow from every other well (based on earlier discussion of only half the wells operating). In total, this layout resulted in about 40 miles of collection piping with diameters ranging from 14 inches to 54 inches. Under this condition, only half the wells would be operating at any one time 24 hours each day. The minimum number of wells to be constructed will be 25, which would require all wells to operate about two-thirds of the time under peak flow conditions. Our analysis in this report assumes construction of at least 25 wells.

Groundwater would be pumped from each well to a tank located at mile 20 (off the APR property). The well pumps would be sized to lift water approximately 800 feet to the ground surface, plus any additional head required to convey water to the tank. Once the water reaches the tank, then flow would occur by gravity down toward Socorro.

EXHIBIT 1

APR Generic Well and Collection Piping Layout (not application locations, provided for conceptual layout only)



Transmission Pipeline System

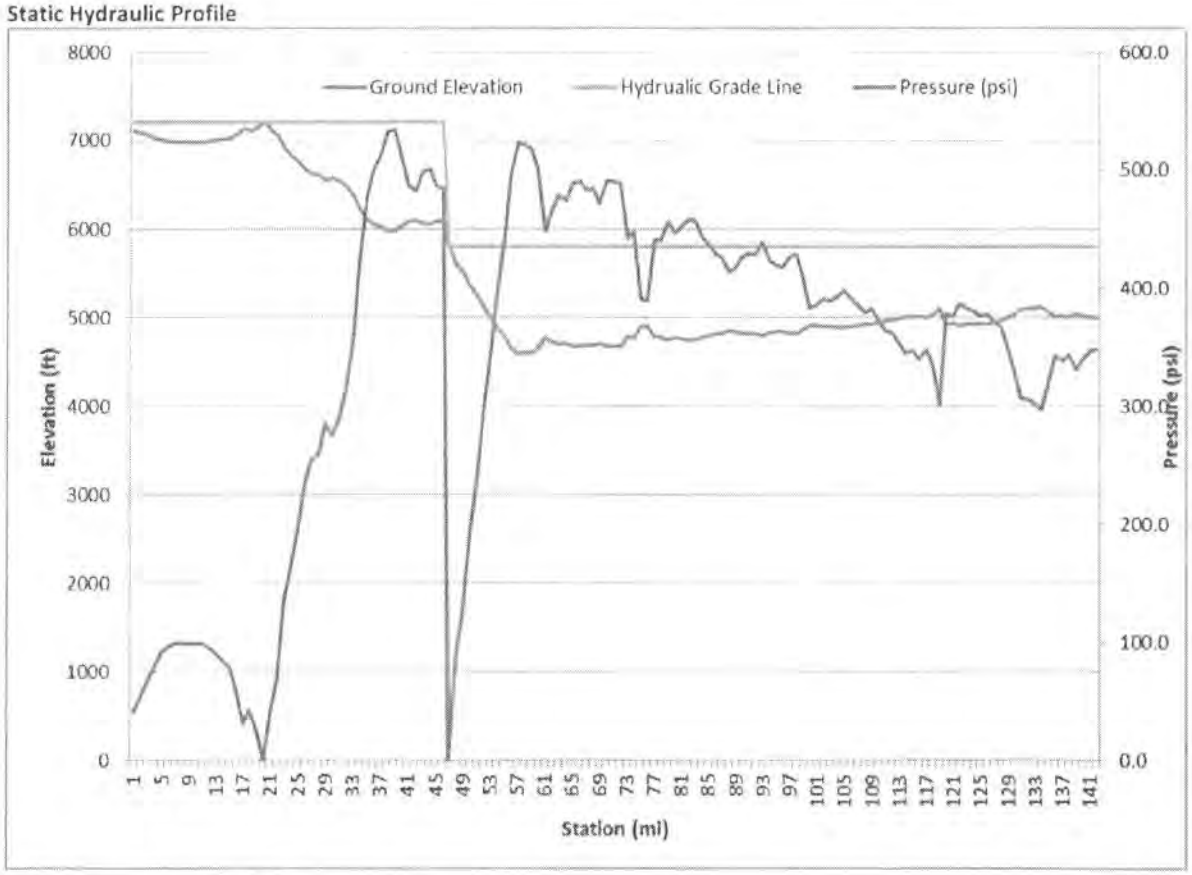
In order to deliver water from the APR property to the Albuquerque area, it was assumed the main transmission pipeline would need to convey an average flow of 35,000 gpm for a 24 hour period from the well field to the upper 10 MG storage tank at mile 20. From the upper 10 MG storage tank, the flow would continue at a rate of about 35,000 gpm for a 24-hour period through a hydroelectric plant which will be located along the pipeline west of Socorro. In order to provide enough residual pressure beyond the hydroelectric plant to allow gravity flow to Albuquerque, the hydroelectric plant will be located at Mile 47 (just west of Socorro) which is at elevation 5,800 feet. For short-term operational purposes, tanks will be located at the high point in the system and at the discharge of the hydroelectric plant.

Once the flow passes the hydroelectric facility, it is discharged into a second 10 MG tank and then conveyed downstream towards Albuquerque at an average flow of 35,000 gpm. A 54-inch pipe diameter for the entire length of the pipeline was determined to be the most suitable diameter to convey this amount of water. This diameter allows for sufficient head for the hydroelectric facility, and provides the necessary pressure at the end of the alignment (60-70 psi). The maximum pipe wall thickness required is 0.438 inches in order to maintain the pressure within the transmission pipeline. See Exhibits 2 and 3 for the dynamic and static hydraulic profiles.

EXHIBIT 2

Dynamic Hydraulic Profile – 35,000 gpm Flow

EXHIBIT 3
Static Hydraulic Profile



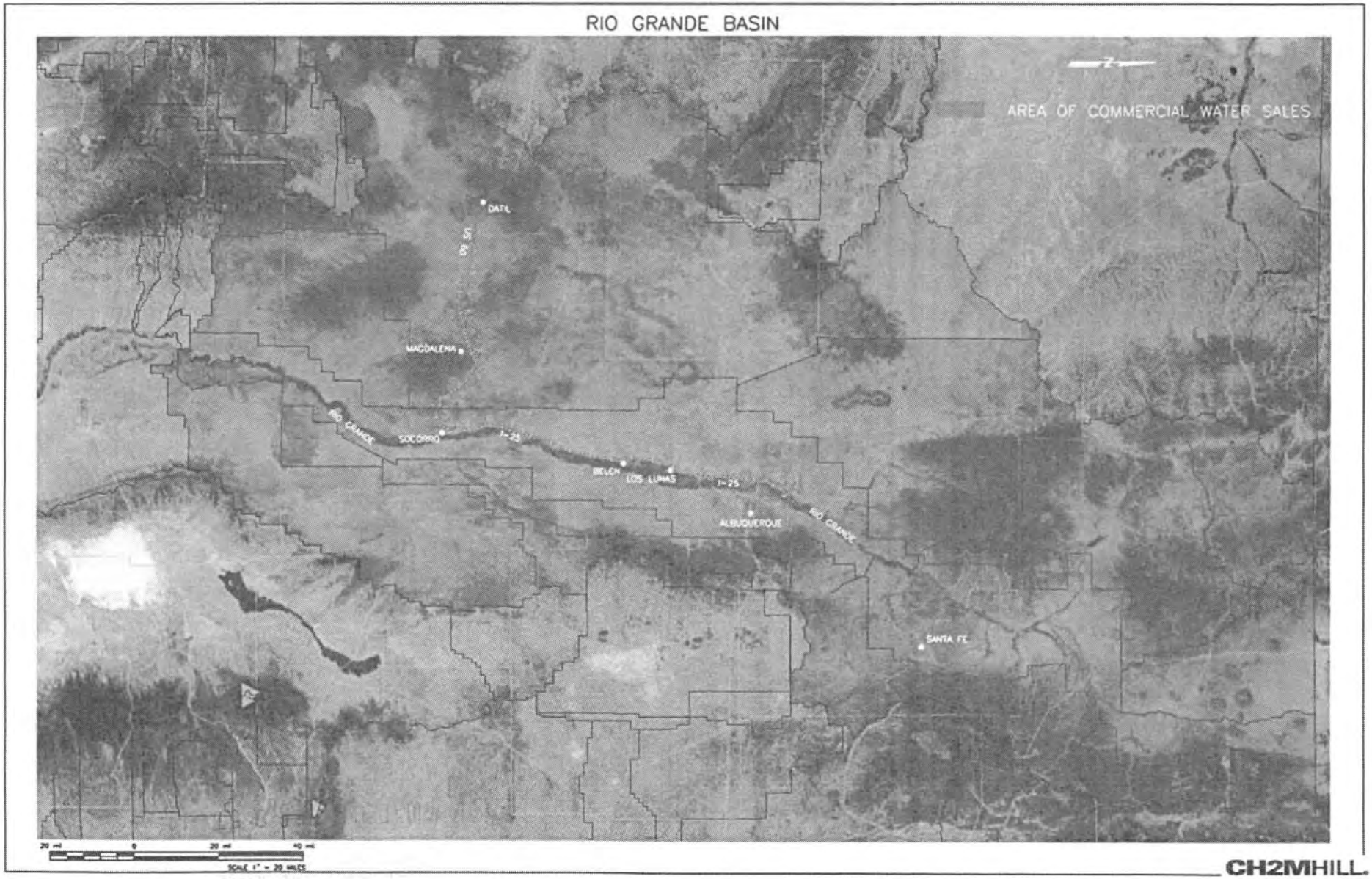
Energy Requirements

In order to quantify energy requirements an analysis was performed based on the proposed operational configuration using hydroelectric/gravity. This approach will use power, but also generate power through the hydroelectric facility.

As part of the hydraulic analysis, the pumping requirements for the wells were determined using assumptions previously provided. Using this information, it was determined that pumping about 54,000 acre-feet from the well field will take about 70 Gigawatt-hours (GWh).

The expected energy generated from the hydroelectric power plant is about 53 GWh when 54,000 acre-feet are delivered. Lift and friction losses from the wells reduce available head by 900 feet and the head available for the hydroelectric power plant is about 1230 feet. The reason for the difference in Gigawatts used/generated is due to the compounded efficiencies of the well pump and motor and the hydroelectric generator. Both are assumed to have an efficiency of about 75% making the overall efficiency about 56% at best. In order to make power use and power generated equal between the hydroelectric and well pumps, the hydroelectric head will need to be almost twice the pump head requirement (friction and lift).

Appendix 1
Augustin Plains Site Map


RIO GRANDE BASIN
AREA OF COMMERCIAL WATER SALES
DATIL
MAGDALENA
SOCORRO
RIO GRANDE
I-25
BELEN
LOS LUNAS
ALBUQUERQUE
SANTA FE
20 mi
0
20 mi
40 mi
SCALE 1" = 20 MILES

CH2MHILL

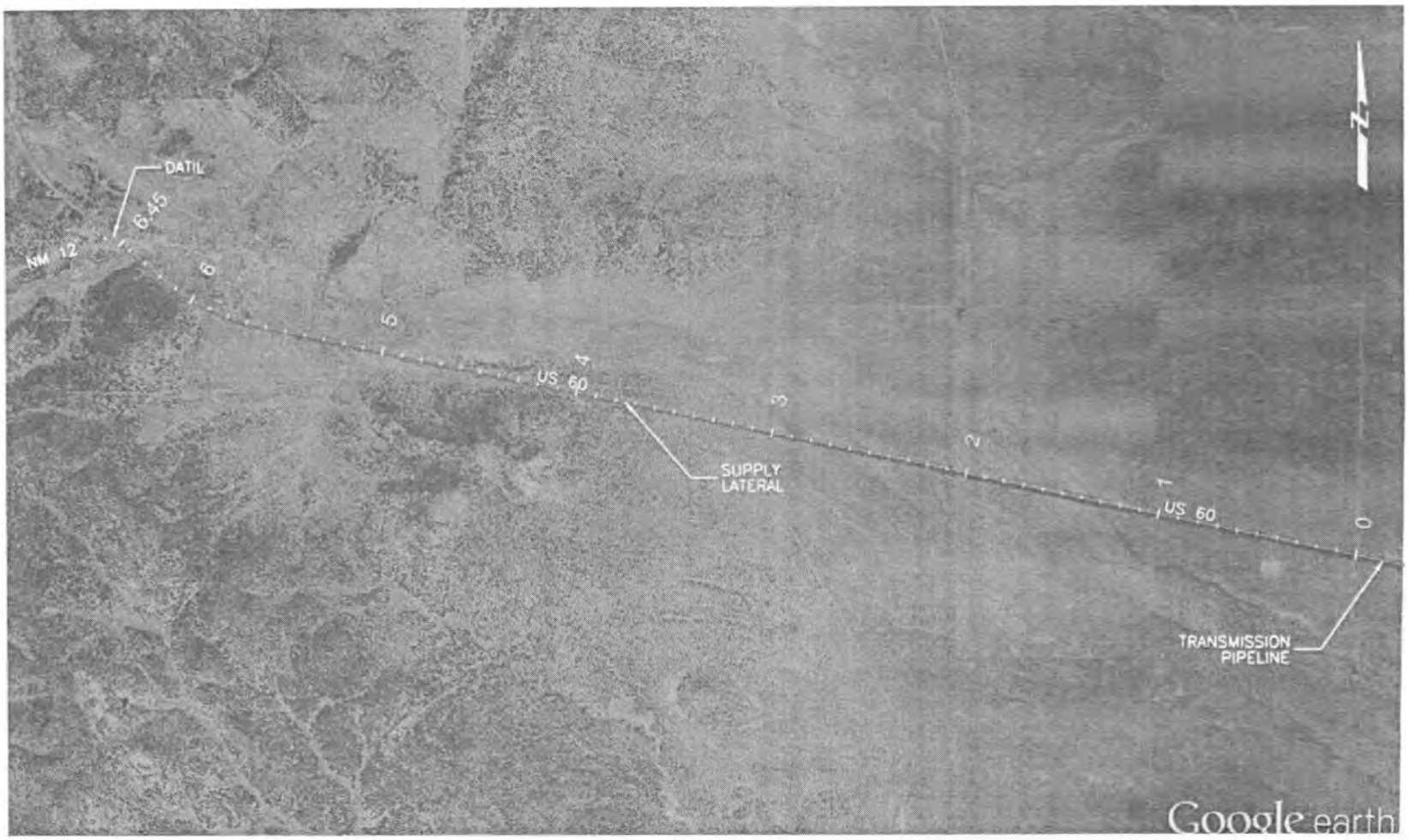
AUGUSTIN PLAINS SITE MAP

20140EC24 AM 9:57

CH2MHILL.

Appendix 2
Datil, NM – Supply Lateral Alignment

DATIL, NM



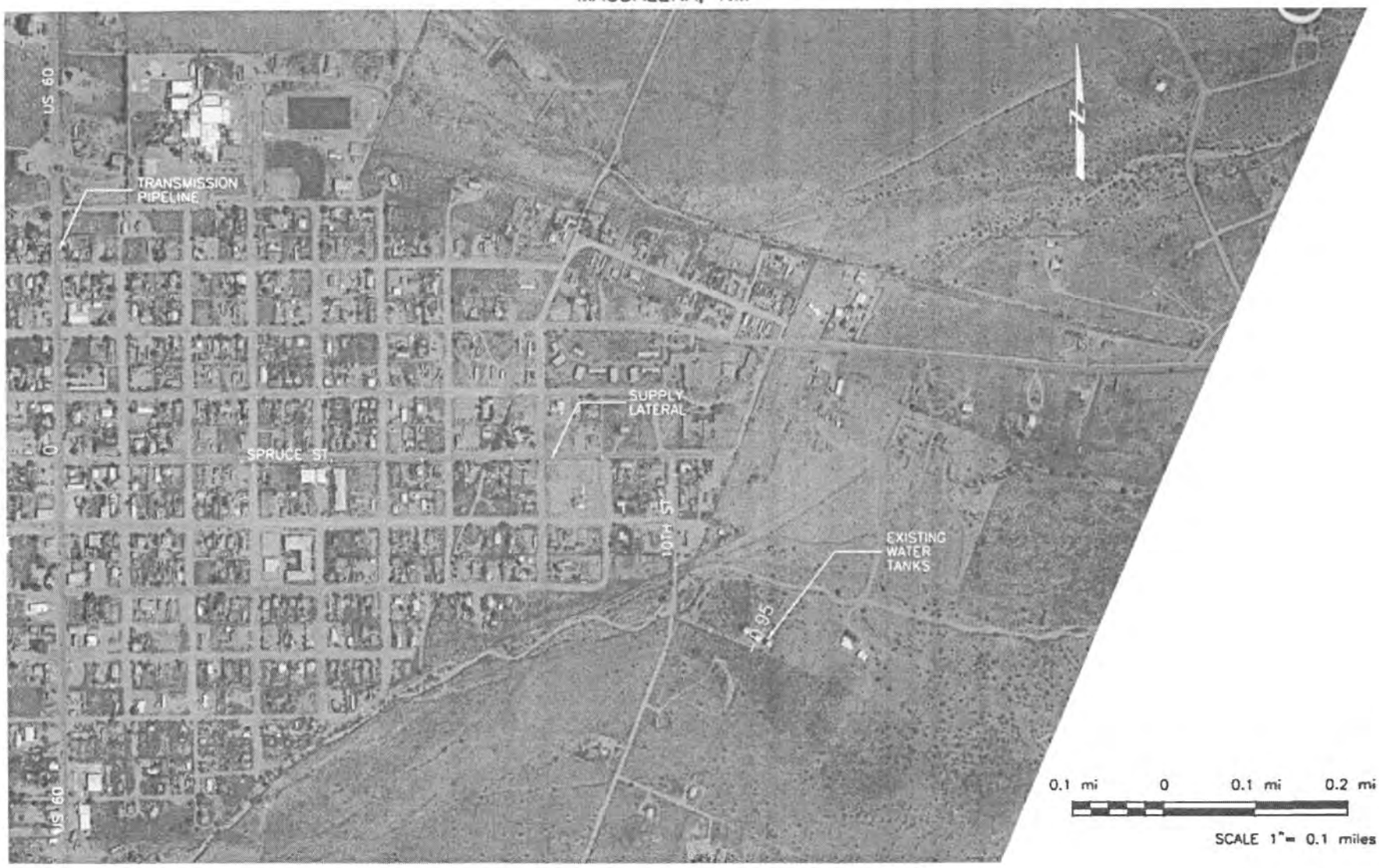
0.5 mi 0 0.5 mi 1.0 mi

SCALE 1"= 0.5 miles

CH2MHILL.

Appendix 3
Magdalena, NM – Supply Lateral Alignment

MAGDALENA, NM



CH2MHILL.

Appendix 4
Socorro, NM – Supply Lateral Alignment

SOCORRO, NM

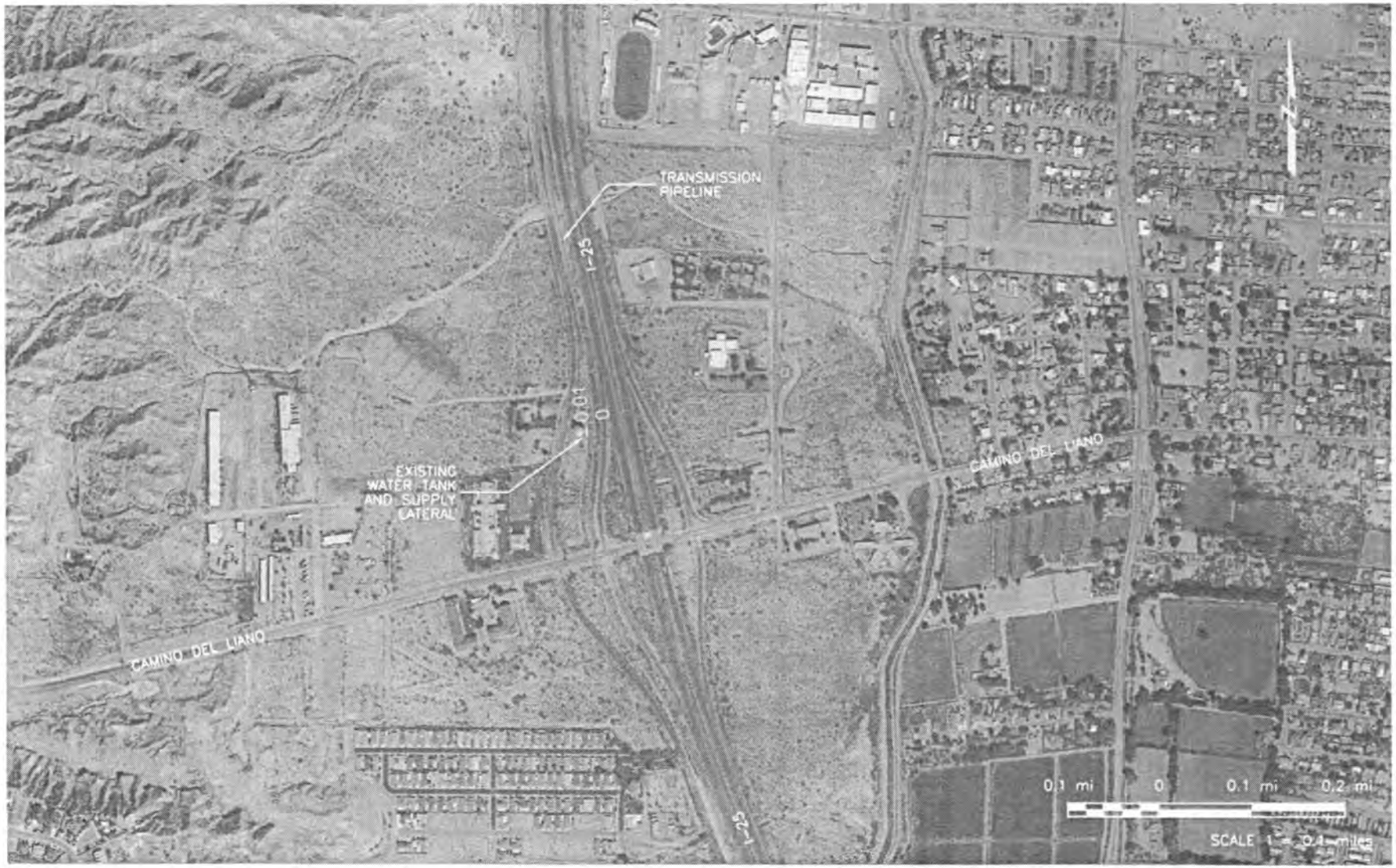
0.25 mi 0 0.25 mi 0.5 mi

SCALE 1" = 0.25 miles

CH2MHILL.

Appendix 5
Belen, NM – Supply Lateral Alignment

BELEN, NM



CH2MHILL.

Appendix 6
Los Lunas, NM – Supply Lateral Alignment

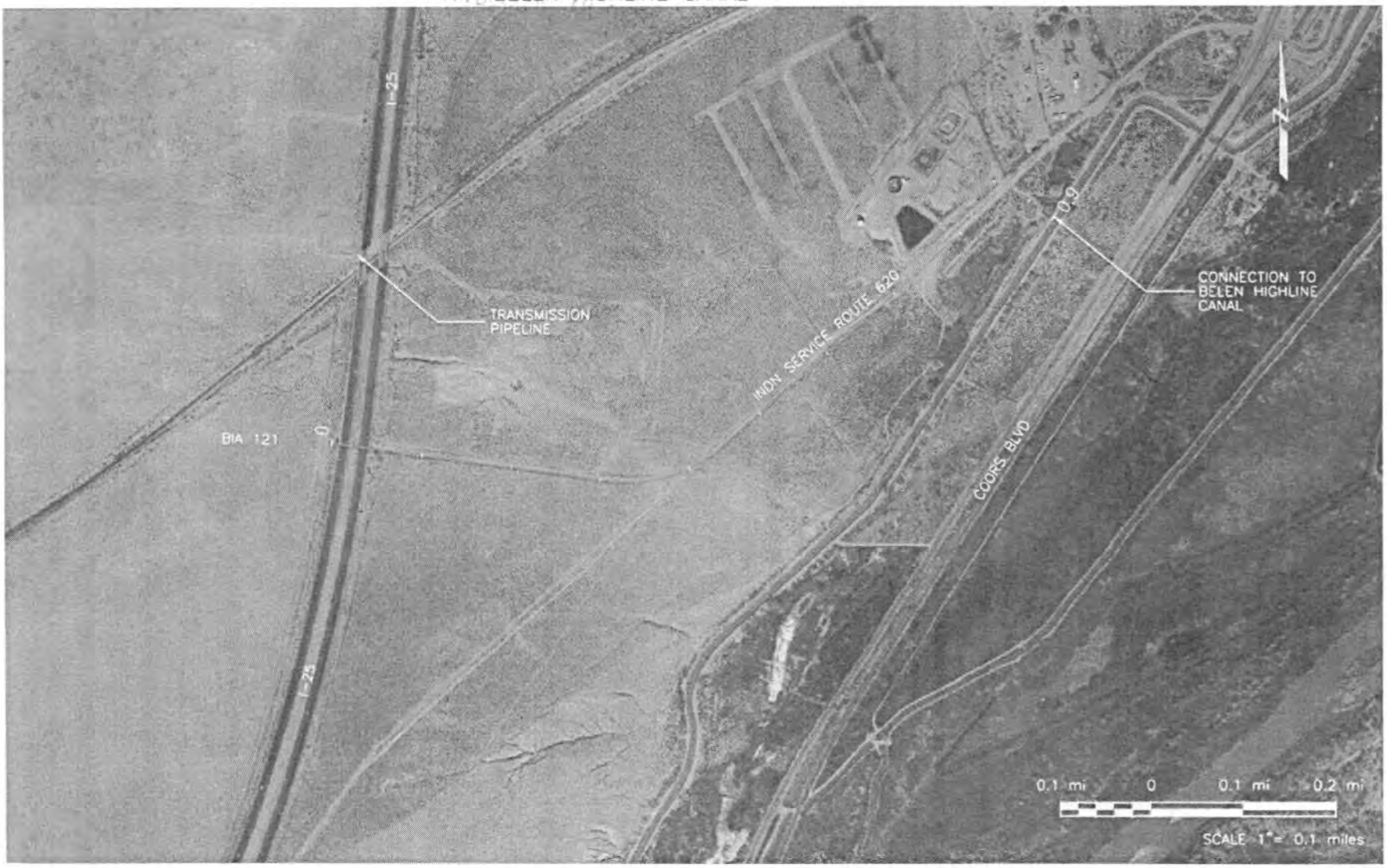
LOS LUNAS, NM

CH2MHILL

Appendix 7
Isleta, NM – Supply Lateral Alignment

2014 D

BELEN HIGHLINE CANAL



CH2MHILL.

Appendix 8
Albuquerque, NM – Supply Lateral Alignment

ALBUQUERQUE NM

CH2MHILL.

Appendix 9
Albuquerque, NM – North Connection Tie-in

ALBUQUERQUE, NM TIE-IN

CH2MHILL.

Appendix 10
Rio Rancho, NM – Supply Lateral Alignment

2014 DEC 24 AM 9:58

RIO RANCHO, NM

0.25 mi 0 0.25 mi 0.5 mi

SCALE 1" = 0.25 miles

CH2MHILL.

CITY OF SOCORRO

RAVI BHASKER
MAYOR

111 SCHOOL OF MINES ROAD
P.O. DRAWER K
SOCORRO, NEW MEXICO 87801
PHONE: (575) 835-0240
FAX: (575) 838-4027
WWW.SOCORRONM.GOV

MABLE GONZALES
CLERK / TREASURER

State Engineer
5550 San Antonio Drive NE
Albuquerque, NM 87109-4127

9/22/2016

STATE ENGINEERS OFFICE
ALBUQUERQUE, NEW MEXICO
2016 SEP 29 AM 10:15

Mayor, Ravi Bhasker, City of Socorro, NM
City Council
PO Box K
Socorro, NM 87801

Dear Sir:

We are writing with regard to RG-89943, an application that proposes to mine water in the Plains of San Augustin.

Our protest to this application is based principally on concerns of impairment to the City of Socorro's water supply, impairment to Socorro businesses and the public welfare of the residents of the City of Socorro and Catron County, not to mention a reduction in conservation efforts.

Though we are unsure, a large reduction in the water in the Plains of San Augustin could have an adverse effect on the water supply the City of Socorro receives via our spring. The City currently receives approximately 500 gallons of water per minute from our spring. Also, a reduction large enough to effect the residents of Catron County could have an adverse effect on businesses in Socorro. Socorro businesses rely on the residents of Catron County to help keep their entities viable. If the residents of Catron County lose their livelihood, they will no longer frequent the businesses in Socorro.

The applicant, the Augustin Plains Ranch LLC (APR LLC), proposes to pump 54,000 acre feet of water per year and pipe it to the Albuquerque area. I doubt this massive amount of water can be withdrawn from their small portion of the San Augustin basin without somehow adversely affecting the City of Socorro's water supply.

EXHIBIT
2

The applicant asserts it will recharge the aquifers by capturing runoff into the basin. This seems highly unlikely due to very limited rainfall in the area and the existing equilibrium in the basin. In fact, it is known that the water is ancestral and will not be replaced. Evidence shows that outflow from the basin now flows toward the Gila River system. It may also go to the Rio Grande, towards Socorro. It is likely that this outflow would be compromised by the proposed pumping. There is no "offset" for the water taken from the existing natural flows. Such a result would impair the City of Socorro and be contrary to the public interest.

Providing a new source of water does not encourage conservation. Water is not now needed in the Albuquerque area where the proposed pipeline would deliver it. Albuquerque is committed to water conservation and has reduced its water use per person in recent years. The people of Albuquerque are not clamoring for a new supply of water. Instead, it is the applicant who has been clamoring to sell San Augustin Plains water to anyone who will buy it. The major consequence of the pumping would be to leave large chunks of Catron County, and possibly the City of Socorro, literally high and dry. This would not be in the public interest and would be contrary to rational water conservation policy.

The State Engineer has not accepted responsibility for carrying out a proper study to determine if the Plains, or the City of Socorro, can support such massive water pumping without destroying existing uses, existing flows, and the lives of the residents. Instead, it is deemed largely the job of the protesting citizens to fund their own study to refute the pumping scheme. There are no such funds available in a sparsely populated, low income county, nor the City of Socorro. The state has the responsibility for such a study before considering a massive proposal that would disrupt, and probably destroy, such a large region and so many people. It would be contrary to public interest and to the conservation of water not to conduct such a study before considering this massive scheme for the financial benefit of a corporation with foreign roots.

We also question if this proposal is in fact a beneficial use of the basin's water. In economic terms alone, this project surely would cost the residents of the City of Socorro and Catron County more in loss of property value and economic viability than the APR, LLC, would gain. The project could also cost all New Mexicans a lot of money. The APR LLC has advocated for a public/private partnership arrangement to accomplish this project. Such an arrangement would obligate the taxpayers of New Mexico to assume the risk that the project is economically viable. Profit for one corporation does not qualify as a beneficial use for the citizens of New Mexico.

We request more research be performed and the findings be shared in a public forum. Until we have concrete evidence that proves the residents of the City of Socorro and Catron County will not be impaired by this process, we must object to the project moving forward.

Respectfully,

Ravi Bhasker, Mayor

Maryann Chavez-Lopez, Councilor
Ernest Pargas, Jr., Councilor
Toby Jaramillo, Councilor
Michael Olguin, Jr., Councilor
Nicholas (Nick) Fleming, Councilor
Anton Salome, Councilor
Peter Romero, Councilor
Gordon (Gordy) Hicks, Councilor

City of Socorro
PO Box K
Socorro, NM 87801
575-838-7526
dmonette@socorronm.gov

Cc: New Mexico Environmental Law Center

BEFORE THE NEW MEXICO STATE ENGINEER

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

SCHEDULING ORDER

This matter, Hearing No. 17-005; OSE File No. RG-89943 POD 1 through POD 37, came before Uday V. Joshi, State Engineer's designated Hearing Examiner upon the need to establish a procedural schedule for the above-captioned matter[1]. The Hearing Examiner proposes the following schedule of proceeding. If the Parties are unable to agree to the following Schedule, the Parties shall *jointly* propose a stipulated schedule of proceeding. Additionally, the Hearing Examiner encourages the Applicant to begin discussions with the Protestants and the Water Rights Division (WRD) in an effort to clarify the salient and substantive elements of the Application.

THEREFORE, this matter is to proceed in accordance with the following schedule of proceeding. The Parties shall jointly file a stipulated schedule for proceeding in the event that the Parties object to this Proposed Scheduling Order.

1 BACKGROUND

Applicant Augustin Plains Ranch, LLC., (APR) filed its Application on July 14, 2014, and subsequently on December 23, 2014, and on April 28, 2016, its 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.

APR 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 APR, located as follows:

[1] Please find "Instructions for Parties" located under State Engineer Administrative Hearings that may serve as a guideline: http://www.ose.state.nm.us/HU/rulesRegs.php

EXHIBIT 3

RG-89943	APR Well No.	Latitude North	Longitude West	Location ¼ Section	Section	Township	Range
POD1	1	34° 13' 29.779"	107 ° 43' 13.037"	SW NE NE	13	1 S	9 W
POD2	2	34° 12' 58.958"	107 ° 43' 12.778"	NW SE SE	13	1 S	9 W
POD3	3	34° 12' 58.177"	107 ° 43' 47.907"	NE SW SW	13	1 S	9 W
POD4	4	34° 12' 35.848"	107 ° 43' 13.644"	SW NE NE	24	1 S	9 W
POD5	5	34° 12' 36.275"	107 ° 43' 47.142"	SE NW NW	24	1 S	9 W
POD6	6	34° 12' 6.665"	107 ° 43' 48.654"	NE SW SW	24	1 S	9 W
POD7	7	34° 12' 5.993"	107 ° 43' 13.036"	NW SE SE	24	1 S	9 W
POD8	8	34° 10' 1.772"	107 ° 44' 16.442"	SW NE NE	2	2 S	9 W
POD9	9	34° 10' 0.982"	107 ° 44' 51.761"	SE NW NW	2	2 S	9 W
POD10	10	34° 9' 31.664"	107 ° 44' 48.998"	NE SW SW	2	2 S	9 W
POD11	11	34° 9' 32.342"	107 ° 44' 18.662"	SE NW SE	2	2 S	9 W
POD12	12	34° 9' 7.181"	107 ° 45' 18.499"	SW NE NE	10	2 S	9 W
POD13	13	34° 9' 7.200"	107 ° 45' 51.100"	SW NE NW	10	2 S	9 W
POD14	14	34° 8' 40.493"	107 ° 45' 50.229"	SW NE SW	10	2 S	9 W
POD15	15	34° 8' 40.850"	107 ° 45' 17.644"	SW NE SE	10	2 S	9 W
POD16	16	34° 8' 17.728"	107 ° 44' 15.850"	SW NE NE	14	2 S	9 W
POD17	17	34° 8' 17.186"	107 ° 44' 49.916"	SE NW NW	14	2 S	9 W
POD18	18	34° 7' 43.544"	107 ° 44' 51.204"	NE SW SW	14	2 S	9 W
POD19	19	34° 7' 43.653"	107 ° 44' 16.864"	NW SE SE	14	2 S	9 W
POD20	20	34° 8' 15.697"	107 ° 45' 17.752"	SW NE NE	15	2 S	9 W
POD21	21	34° 8' 15.832"	107 ° 45' 50.787"	SW NE NW	15	2 S	9 W
POD22	22	34° 7' 44.814"	107 ° 45' 52.419"	NE SW SW	15	2 S	9 W
POD23	23	34° 7' 44.043"	107 ° 45' 18.309"	NW SE SE	15	2 S	9 W
POD24	24	34° 7' 21.076"	107 ° 45' 18.892"	SW NE NE	22	2 S	9 W
POD25	25	34° 7' 20.532"	107 ° 45' 53.118"	NE SW NW	22	2 S	9 W
POD26	26	34° 7' 21.630"	107 ° 46' 19.041"	SW NE NE	21	2 S	9 W
POD27	27	34° 6' 52.325"	107 ° 45' 20.948"	NW SE SE	22	2 S	9 W
POD28	28	34° 7' 22.957"	107 ° 44' 15.086"	SW NE NE	23	2 S	9 W
POD29	29	34° 7' 21.062"	107 ° 44' 49.269"	NW SE NW	23	2 S	9 W
POD30	30	34° 6' 53.305"	107 ° 44' 47.283"	NE SW SW	23	2 S	9 W
POD31	31	34° 6' 53.777"	107 ° 44' 16.047"	NW SE SE	23	2 S	9 W
POD32	32	34° 6' 32.564"	107 ° 44' 14.548"	SW NE NE	26	2 S	9 W
POD33	33	34° 6' 32.477"	107 ° 44' 48.784"	SW NE NW	26	2 S	9 W
POD34	34	34° 7' 45.577"	107 ° 46' 20.103"	NW SE SE	16	2 S	9 W
POD35	35	34° 8' 14.721"	107 ° 46' 17.697"	SW NE NE	16	2 S	9 W
POD36	36	34° 10' 1.553"	107 ° 45' 15.118"	SW NE NE	3	2 S	9 W
POD37	37	34° 9' 30.586"	107 ° 45' 15.791"	NW SE SE	3	2 S	9 W

The two existing and thirty-five proposed 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.

APR 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. APR 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 APR wells. APR also requests credit for the enhanced recharge facilities, which is subject to approval by the State Engineer.

APR also filed the following documents with the Corrected Application: 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 a.m. and 1:00-5:00 p.m. 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/HU/AugPlains. The application was published multiple times, for 3 weeks during the years 2009 thru 2016, respectively. Approximately six-hundred (600) protests were timely filed.

The Water Rights Division filed a Request to Docket Hearing on **February 2, 2017**, and the Hearing Unit issued a Docketing Order on **May 3, 2017**. In response to the Docketing Order, the following occurred:

- Two-hundred and thirty-four (234) parties failed to submit hearing fees (as shown on Attachment A. The 234 parties failing to submit fees in accordance with the Docketing Order and 19.25.2.10 NMAC are dismissed from this proceeding.

- One-hundred and Eight (108) parties had their Orders returned to sender (as shown on Attachment B. Both the Administrative Litigation Unit and the Hearing Unit made attempts to deliver correspondence to these protestants, to no avail. The 108 parties who failed to list an address on their protest letter or, otherwise, apprise the Hearing Unit and all Parties of any change(s) in address, will be dismissed if they do not supply a correct address on or before September 28, 2017, or at the public meeting; [2]

- Eighty-five (85) individuals, including 3 landowner associations, formed a group represented by the New Mexico Environmental Law Center and five (5) individuals formed a group represented by the Domenici Law Firm;

- Twenty-Eight (28) parties are specifically identified on Attachment C (with the following symbol: (◊) as requiring representation by an attorney pursuant to 19.25.2.11(c) which states, "[a] party that is not an individual shall be represented by an attorney." Entries of Appearance for the 28 parties shall be made on or before September 28, 2017, or at the public meeting.

On May 25, 2017, the United States Department of the Interior (DOI) Bureau of Reclamation filed its withdrawal of protest. Therefore, Protestant DOI is dismissed as a party to this proceeding.

After consideration of the large number of parties and applications for the above-captioned matters, the Hearing Examiner proposes a staggered or staged schedule rather than a schedule of proceedings that allows for simultaneous filings in order for the Parties to establish a clear understanding of APR's plan(s) for implementation (i.e. Proposed pumping schedule, end-users, etc.), if granted. This format of the schedule requires APR to provide exhibits first, then the protestants.

This schedule is not based on a Pre-Hearing Scheduling Conference (PHSC) and a PHSC will not be held because of numerous parties' inability to be available on the same day and at the

[2] In order to conserve Parties' resources, the Hearing Examiner is requesting Parties to provide correct or updated addresses, Counsel to formally enter their appearance(s) in lieu of filing an Entry of Appearance, if they have not already filed an Entry, and for Counsel to enter their appearance on behalf of those who are not "individuals" and are required to be represented by Counsel, on or before September 28 2017 or at the Public Meeting. Additionally, as mentioned, Parties and those who are not "individuals" are encouraged to form groups, provided an attorney represents the group.

same time. As stated earlier, if the Parties object to the following proposed schedule, the parties shall *jointly* propose a stipulated schedule of proceeding for the Hearing Examiner's consideration.

2 PUBLIC MEETING

The Hearing Unit will host a public meeting on **September 28, 2017, at 6:00 p.m**. at New Mexico Tech, in the Macey Center, 801 Leroy Place, in Socorro, New Mexico to provide information on the Administrative Hearing Process, Alternative Dispute Resolution, and to provide APR an opportunity, if amenable, to a description and summary of its Application, and for Protestants to succinctly state their positions other than those stated in the respective Protest letters.

Counsel should be prepared at the public meeting to formally enter an appearance on behalf of any eligible parties for which an appearance has not already been entered.

3 JURISDICTION

The jurisdiction of the State Engineer is invoked pursuant to Articles 2, 5, and 12 of Chapter 72, NMSA 1978.

4 STATEMENT OF ISSUES

A. Availability of water to satisfy the application.

B. Whether granting the application would result in impairment or detriment to existing water rights.

C. Whether granting the application would be detrimental to the public welfare of the state.

D. Whether granting the application would be contrary to the conservation of water within the state.

5 DISCLOSURE OF WITNESSES

Applicant APR: On or before **October 27, 2017**, APR shall disclose to the other parties all expert and fact witnesses who may be called at the hearing of this matter. Disclosure shall be by witness lists that contain the name and address of each witness, an indication of whether the witness will be offered as an expert, and a summary of anticipated testimony.

WRD and Protestant Parties: On or before **December 22, 2017**, the WRD and Protestants shall disclose to the other parties all expert and fact witnesses who may be called at the hearing of this matter. Disclosure shall be by witness lists that contain the name and address of each witness, an

indication of whether the witness will be offered as an expert, and a summary of anticipated testimony.

Unless expressly objected to by the parties, the Hearing Examiner finds that properly disclosed expert witnesses, whose areas of expertise are similar, may converse freely with one another outside the presence of counsel or pro se party, it being understood that said conversations are considered informal and not admissible as evidence at hearing.

6 DISCLOSURE OF EXHIBITS

Applicant APR: On or before **March 28, 2018**, the Applicant shall disclose to the other parties any and all exhibits and reports to be offered into evidence at the hearing. The Applicant shall, at a minimum and in addition to any other exhibits proffered, include the following: a) a copy of the present application, b) a copy of the legal notice(s) as published and c) a location map or maps of reasonable size to allow easy recognition of the geographic situation of the application. The exchanged exhibits shall be indexed and labeled for identification. The Applicant shall file the exhibits index list (not the exhibits) with the Hearing Unit by **March 28, 2018**. The Applicant is expected to copy, disclose and exchange, as part of their proposed exhibits, those relevant documents from the files of the OSE that they intend to utilize at hearing and should not rely on the taking of administrative notice as a substitute for production of these items as exhibits. The Applicant shall provide the Hearing Examiner one set of their respective proposed exhibits - appropriately bound, indexed, numbered and tabbed- **at the hearing** and one electronic copy on a thumb-drive or CD.

WRD and Protestant Parties: On or before **July 25, 2018**, the WRD and each Protestant shall disclose and exchange to the Applicant and all other parties any and all exhibits and reports to be offered into evidence at the hearing. The exchanged exhibits shall be indexed and labeled for identification. The WRD and the Protestants shall also file the exhibits index only (not the exhibits) with the Hearing Unit by **July 25, 2018**. The WRD and the Protestants are expected to copy, disclose and exchange, as part of their proposed exhibits, those relevant documents from the files of the OSE that they intend to utilize at hearing and should not rely on the taking of administrative notice as a substitute for production of these items as exhibits. The WRD and the Protestants shall each provide the Hearing Examiner one set of their respective proposed exhibits - appropriately bound, indexed, numbered and tabbed **at the hearing** and one electronic copy on a thumb-drive or CD.

7 DISCLOSURE OF REBUTTAL WITNESSES AND EXHIBITS, SURREBUTTAL

Applicant APR: On or before **November 14, 2018**, the Applicant shall disclose to the other parties all rebuttal witnesses who may be called at the hearing of this matter and all rebuttal exhibits, in the same manner as set forth in section 4, above. The Applicant's rebuttal witness lists and exhibits index are to be filed with the Hearing Unit by **November 14, 2018**. The Applicant shall provide the Hearing Examiner three sets of their respective proposed rebuttal exhibits - appropriately bound, indexed, numbered and tabbed — at the hearing.

WRD and Protestant Parties: Following any disclosure of rebuttal witnesses and exhibits by the Applicants, the WRD and the Protestants may, only for good cause (i.e. citing a need to rebut new issues not previously raised by Applicant), move for leave to file surrebuttal witnesses and exhibits by **December 21, 2018**. Any motion for leave to file surrebuttal should be accompanied by a proposed surrebuttal witness list and exhibit index. The movant must also certify that a copy of the list, index and any proposed surrebuttal exhibit was provided to the Applicant and all other parties. If a motion for leave to file surrebuttal is granted, the movant shall provide the Hearing Examiner one sets of their respective proposed surrebuttal exhibits - appropriately bound, indexed, numbered and tabbed and one electronic copy on a thumb drive or CD **at the hearing**.

8 CLOSE OF DISCOVERY

The deadline for conclusion of discovery is **February 13, 2019**.

9 MOTIONS AND OBJECTIONS

The deadline for filing substantive motions that are opposed and written objections to a proposed witness or exhibit is **March 29, 2019**. Any exhibit not objected to in writing by **March 29, 2019**, shall be deemed admitted into evidence upon presentation at the hearing. Rule 1-006 and Rule 1-007.1 A through E of the Rules of Civil Procedure for the District Courts of New Mexico shall apply with respect to the filing of, and responding to, motions.

10 FILING AND SERVICE

Filing of pleadings and documents are to be made by submitting one original hard copy to the Hearing Unit, Office of the State Engineer, P.O. Box 25102, Santa Fe, New Mexico 87504-5102. The physical location of the Hearing Unit office is at 495 Old Santa Fe Trail, Santa Fe, NM 87504 (2nd floor of the Lew Wallace building). The filing party must certify that it has served a copy of any pleading, or other document submitted for filing, upon the other parties. Upon request, a file stamped copy of the submission will be returned to the submitting party if an

extra hard-copy and a stamped, self-addressed envelope is provided with the submission. Service may be made upon the parties in accordance with the certificate of service (Parties Entitled to Notice) (http://www.ose.state.nm.us/HU/AugustinPlains.php) unless otherwise notified per entry of appearance or other writing filed in this matter.

11 PRE-HEARING CONFERENCE

If the Hearing Examiner deems it necessary to address objections, outstanding motions or other matters prior to hearing, a Pre-Hearing Conference will be scheduled on **May 22-23, 2019,** in Santa Fe, NM; it is anticipated that only one day will be required but two (2) days shall be reserved. The parties will receive advance written notice of the scheduling and absent receipt of notice may assume that the Hearing Examiner determined that a pre-hearing conference was not necessary.

12 EVIDENTIARY HEARING

The hearing of this matter is proposed to commence on **June 17, 2019**, in Albuquerque or Socorro at a time and location to be later designated in written notice to the parties for ten (10) consecutive business days (**June 17-28, 2019**).

13 MODIFICATION

This Scheduling Order shall control these proceedings except that it may be modified upon the consent of the parties and the Hearing Examiner, at the discretion of the Hearing Examiner for good cause shown, or by the Hearing Examiner to prevent manifest injustice.

DONE this 10th day of August, 2017.

Uday V. Joshi

Uday V. Joshi
Hearing Unit, Managing Attorney
Hearing Examiner

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2017, a copy of the foregoing Scheduling Order was mailed to interested parties in Hearing No. 17-005. The Parties Entitled to Notice can be found at: http://www.ose.state.nm.us/HU/AugustinPlains.php.

Irma E. Corral, Law Clerk
Hearing Unit Administrator

Fee Payment Not Submitted

List of Parties without Fee Payment-Addressees	Street Address or P.O. Box	City, State and Zip
74 Ranch	P.O. Box 44	Monticello, NM 87939
76 Slash Cattle Company, LLC- Jim & Sherri Haught	HC 62, Box 625-14	Datil, NM 87821
Connie Adler	P.O. Box 1028	Silver City, NM 88062
Alamo Navajo Chapter- Buddy Mexicano, President	P.O. Box 827	Magdalena, NM 87825
Mrs. Alex Gonzales	Box 181	Cubero, NM 87014
Vaun Allen and Diane Allen	Box 385	Magdalena, NM 87825
Jerry and Lela Allin	P.O. Box 621	Pie Town, NM 87827
Gary Allison	HC 61, Box 154 A	Glenwood, NM 88039
Van Allred & June Allred and Garnelle Allred	P.O. Box 166	Glenwood, NM 88039
Lester and Leigh Davidson	P.O. Box 528	Sabinal, NM 87006
Jake Armijo	1901 Selway Pl. NW	Albuquerque, NM 87120-4167
Raymond Auge	P.O. Box 303	Belen, NM 87002-0303
Gilbert Baca, Jr.	10 Sendero del Oro	Santa Fe, NM 87506
John E. And Donna L. Baerwald	53 Rons Road	Santa Fe, NM 87508-8053
Laura Barich	P.O. Box 651	Datil, NM 87821
Jason Barkemeyer	1008 Paisano Drive	Socorro, NM 87801
Brook Bearpaw	86 Bridger Pass	Datil, NM 87821
Alicia Beavers	P.O. Box 116	Las Cruces, NM 88004
Naomi Bergam	P.O. Box 845	Datil, NM 87821
John Bertrand	2310 State Road	Socorro, NM 87801
Ingrid Biel	115 Mustang Drive	Socorro, NM 87801
Darlene Bissey-Larry Bissey-Janice Black	P.O. Box 622	Pie Town, NM 87827
Robert Blagg	306 Calle Loma Norte	Santa Fe, NM 87501
Joanne and Larry Blount	P.O. Box 165	Glenwood, NM 88039
Horace L. and Jo Bounds, Jr.	P.O. Box 4069	Silver City, NM 88062
Francis W. And Betty L. Boyle	1736 Foster Road	Las Cruces, NM 88001
Daniel Branning	62 Thomas Ranch Road	Datil, NM 87821
Harry Buchner	P.O. Box 9	Glenwood, NM 88039
Sandra Budakowski	P.O. Box 511	Quemado, NM 87829
Craig Bunke	P.O. Box 91	Monticello, NM 87939
Troy Butler	P.O. Box 229	Datil, NM 87821
Jay Carrol	P.O. Box 574	Pie Town, NM 87827
Catron County Emergency Manager/ Fire Marshall-Donald R. Weaver	P.O. Box 621	Reserve, NM 87830
Johnny Chavez	P.O. Box 366	Bosque, NM 87006
City Of Socorro- Ravi Bhasker - Mayor, City Council	P.O. Box K	Socorro, NM 87801
Jim Coates and Nancy Coates	P.O. Box 34	Glenwood, NM 88039
Ernie Cordova	P.O. Box 1798	Eager, AZ 85925
John Covington	9212 Mescalero Road, N.E.	Albuquerque, NM 87111
B.W. Cox	P.O. Box 146	Magdalena, NM 87825

Fee Payment Not Submitted

List of Parties without Fee Payment-Addressees	Street Address or P.O. Box	City, State and Zip
Katherine Craig	P.O. Box 825	Datil, NM 87821
Jack & Stephanie Crane	P.O. Box 543	Quemado, NM 87829
Joshua Cravens	P.O. Box 41	Monticello, NM 87939
George Cunningham	7601 E. Tasman Circle	Mesa, AZ 85207
Frank Dal Molin	#2 Dal Molin Heights	Globe , AZ 85501
David Dalbey	19 Hillside Drive	Datil , NM 87821-2035
Sue Daniel	HC 31, Box 304	Caballo, NM 87931
Stephen Darland	P.O. Box 23	Monticello, NM 87939
Anita Davis	P.O. Box 229	Datil, NM 87821
James Day	510 Galisteo Street	Santa Fe, NM 87501
Lucille Delgado	P.O. Box 631	Reserve, NM 87830
Peter & Eva Dempsey	P.O. Box 231	Datil, NM 87821
Caroll Dezavelle	P.O. Box 968	Magdalena, NM 87825
Patrick Dibartolomeo	324 Highway 408	Socorro, NM 87801
Shannon Donnelly	HC 32, Box 726	Quemado, NM 87829
Patty Duffy	P.O. Box 22	Glenwood, NM 88039
Thomas Duffy	HC 61, Box 184	Glenwood, NM 88039
Adrienne Herrick and Billy Dugger	1119 Broken Arrow Drive	Silver City, NM 88061
Jack & Sue Dunn	P.O. Box 1526	Magdalena, NM 87825
Charles III. Duree and Cheryl Duree	P.O. Box 99	Glenwood, NM 88039
Riley East	#2 Dal Molin Hieghts	Globe, AZ 85501
Carol Eddy	P.O. Box 4	Glenwood, NM 88039-0004
Monte R. & Shirly R. Edwards	33 Airstrip Rd.	Datil, NM 87821
Valla Egge	P.O. Box 622	Hurley, NM 88043
Jane Fassinger, VMD	P.O. Box 113	Magdalena, NM 87825
Sherry Fletcher	602 Broadway	T or C, NM 87901
Debbie Fogle	Box 723	Apline, AZ 85920
Aaron Fogle	P.O. Box 723	Apline, AZ 85920
Robert Foland	1953 Tijeras Road	Santa Fe, NM 87505
Ford County Land & Cattle Co., Inc. - Ronnie Herrmann	12466 Highway 400	Ford, KS 67842
Patricia Fraker	11109 NE San Rafael Street	Portland, OR 97220
Durelle Freeman	P.O. Box 120	Glenwood, NM 88039
Leslie Fritz	1068 Fran Drive	Las Cruces, NM 88007
Ruth Fuson and Terry Fuson	P.O. Box 787	Datil, NM 87821
Charles and Martha Garrity	P.O. Box 162	Lenox Dale, MA 01242-0162
M. Gibson	HC 61, Box 20	Datil, NM 87821
Allen Glick	HC 61, Box 390	Glenwood, NM 88039-9015
Lois Goodwin	HC 61, Box 183	Glenwood, NM 88039
Richard and Ophelia Gordon	P.O. Box 1103	Los Lunas, NM 87031
Stanley Gorodenski	HC 61, Box 1544	Datil, NM 87821
Allen Grace	331 Villeros Street	Santa Fe, NM 87501

Fee Payment Not Submitted

List of Parties without Fee Payment-Addressees	Street Address or P.O. Box	City, State and Zip
Grant Soil & Water Conservation District - David Mccauley, Chairman	3082, 32nd Street Bypass, Suite C	Silver City, NM 88061
Carol Guin	P.O. Box 452	Fairacres, NM 88033
Mr. & Mrs. William Guske	P.O. Box 938	Magdalena, NM 87825
Damacio Gutierrez	HC 62, Box 608	Datil, NM 87821
Judy Harmon	724 S. Mesquite	Las Cruces, NM 88001
Charles Harvell	P.O. Box 504	Reserve, NM 87830
Richard Hazelwood	7601 E. Tasman Circle	Mesa, AZ 85207
Byron Heidlebaugh	P.O. Box 343	Glenwood, NM 88039-0343
Diane Hillen	Box 385	Magdalena, NM 87825
Melissa Holmes	1002 Calle Feliz	Santa Fe, NM 87507
Horse Mountain Volunteer Fire Department - Carrie Sarnicky, Fire Chief	HC 61, Box 15-13	Datil, NM 87821
George Howe	P.O. Box 206	Datil, NM 87821
Vernon Inabnitt	9823 E. Luna Vista Road	Las Cruces, NM 88012-6263
Independent School District #2- Bill Green, Superintendent	P.O. Box 128	Quemado, NM 87829
James L. Guin Cattle Company- James L. Guin	P.O. Box 373	Magdalena, NM 87825
Nancy Jaramillo	P.O. Box 343	Socorro, NM 87801
Blaine Johnson	P.O. Box 331	Glenwood, NM 88039
Ms. Emily Johnson	P.O. Box 1335	Magdalena, NM 87825
Jeanne Johnson	P.O. Box 331	Glenwood, NM 88039-0331
James Johnson	P.O. Box 744	Datil, NM 87821
Leslie Johnson, Md	530 Harold Drive	Socorro, NM 87801-5401
Jon and Rebekka Johnston	HC 61, Box 1521	Datil, NM 87821
Richard Jordan	P.O. Box 83	Monticello, NM 87939
Ida and Jose Julian	806 Chaparral Drive	Socorro, NM 87801-5083
Janeen Jump	HC 61, Box 155	Glenwood, NM 88039
Raymond Keller	13 Ann Marie Drive	Morgantown, WV 26508
Wilson Kelly	P.O. Box 95	Glenwood, NM 88039-0095
Jeffrey Kerekes	43 Lyon Street	New Haven , CT 06511-4925
Charles Kesler	861A State Road 581	Lyden, NM 87582
Stanley King	P.O. Box 656	Pie Town, NM 87827
Georgia Klumker	HC 61, Box 155	Glenwood, NM 88039-9012
Kathy Knapp	P.O. Box 711	Pie Town, NM 87827
Casey Landrum	P.O. Box 351	Glenwood, NM 88039
Last Frontier Landowners Assoc.- David E. Dalbey, President	HC 61, Box 1539	Datil, NM 87821
John and Beverly Laudé	P.O.Box 451	Datil, NM 87821-0451
John Lee Jr., DVM	P.O. Box 113	Magdalena, NM 87825
Jim Leiker and Patricia Phelps	P.O. Box 1121	Magdalena, NM 87825

Fee Payment Not Submitted

List of Parties without Fee Payment-Addressees	Street Address or P.O. Box	City, State and Zip
Lion's Gate Water- William M. Turner, Trustee	610 Gold Avenue S.W., Suite 111	Albuquerque, NM 87102
Llama Deara Ranch-Hannah- Leigh Bull, Owner/Director	P.O. Box 305	Medanales, NM 87548
Darlene Lovato	HC 61, Box 1519	Datil, NM 87821
Low Chamisa Ranch- Norman M. Maisel, Owner/Manager	P.O. Box 271	Quemado, NM 87829
Margarete Loyd	HC 65, Box 56	Pie Town, NM 87827
John and Carolyn Macleigh	P.O. Box 568	Quemado, NM 87829
Tom Macnab	P.O. Box 85	Blue, AZ 85922
Magdalena Municipal Schools c/o Magdalena School Board	P.O. Box 24	Magdalena, NM 87825
Village of Magdalena - James A. Wolfe, Mayor	P.O. Box 145	Magdalena, NM 87825
Norma Marino-Baca	10 Sendero del Oro	Santa Fe, NM 87506
Virgil Maxwell and Wanda Maxwell	P.O. Box 127	Glenwood, NM 88039
Alma Mccarty	P.O. Box 213	Datil, NM 87821
Thomas R. & Karen A. Mccracken	7642 E. Highway 92	Hereford, AZ 85615
Sherry McGuire	305 Garfield Street	Socorro, NM 87801
James A. McKennon	413 Dorothy, N.E.	Albuquerque, NM 87123
Kimberly Meadows	3360 Aster Drive	Prescott, AZ 86305
Jorge Medina	14167 Hawthorne Blvd.	Hawthorne, CA 90250
Ricardo Medina	14171 Hawthorne Blvd.	Hawthorne, CA 90250
Beth A. Menczer & Joseph R. Vencill	P.O. Box 267	Glenwood, NM 88039
John and Kristina Miller	5061 West Albatross Place	Tucson, AZ 85742
A. Paul Mitchell	509 S. Main St.	Las Cruces, NM 88005
Chester and Sandra Moeller	P.O. Box 86	Datil, NM 87821-
Montosa Ranch -Dale Armstrong	5000 Edith Blvd., N.E.	Albuquerque, NM 87107
Bob Moore and Vicki Moore	HC 61, Box 349	Glenwood, NM 88039
Linda Mountain	229 Alcazar Street NE, Apt. B	Albuquerque, NM 87108
Warren Mowry	7617 Copper NE	Albuquerque, NM 87108
Gregory Mueller and Linda Mueller	HC 61, Box 1544	Datil, NM 87821
John Mullen	679 Hop Canyon Road	Magdalena, NM 87825
Kenneth and Gloria Mulligan	3784 Breckenridge Drive	El Paso, TX 79936
Cathleen Murphy	HC 61, Box 570	Glenwood, NM 88039
John Murphy	HC 61, Box 570	Glenwood, NM 88039
Lisa Navarro	P.O. Box 92	Glenwood, NM 88039
Carolyn Nelson	HC 61, Box 154	Glenwood, NM 88039
Mary Newkirk	P.O. Box 129	Glenwood, NM 88039
Bruce Newman	P.O. Box 25	Monticello, NM 87939
Daniel Nordquist and Debra Nordquist	HC 61, Box 407	Glenwood, NM 88039
Stephanie Padilla	P.O. Box 82	Glenwood, NM 88039
Sam Palahnuk	HC 32, Box 726	Quemado, NM 87829

Fee Payment Not Submitted

List of Parties without Fee Payment-Addressees	Street Address or P.O. Box	City, State and Zip
Gianna Palmer	P.O. Box 53	Glenwood, NM 88039
Lloyd Peeples	24 Bluebird Drive	Datil, NM 87821
Lester Peralta and Wendlyn Peralta	P.O. Box 128	Glenwood, NM 88039
Juanita Peralta	P.O. Box 644	Magdalena, NM 87825
Mavis Perdue	P.O. Box 47	Datil, NM 87821-0047
Karl Phaler	26 Rutter Ranch Road	Datil, NM 87821
Patricia Phelps	P.O. Box 1121	Magdalena, NM 87825
Lorenzo Pino	444 Eaton Ave, G3	Socorro, NM 87801
The Plateau Partnership-H. Jay Platt	P.O. Box 426	St. Johns, AZ 85936
Quemado Mutual Water and Sewer Works Association-Jerry Armstrong, President	P.O. Box 81	Quemado, NM 87829
Robert Rael	2622 Panorama Drive	Silver City, NM 88061
Rebecca Ann Ramzel	P.O. Box 171	San Antonio, NM 87832
Renée Rauber	HC 61, Box 154D	Glenwood, NM 88039
Linda Reach	117 Faulkner	Socorro, NM 87801
Dewey Rebbe	P.O. Box 211	Reserve, NM 87830
Village of Reserve, Fire Department-Donald R. Weaver, Fire Chief	P.O. Box 621	Reserve, NM 87830
Reserve Independent Schools-Cathy Sohrenssen, School Board President	P.O. Box 350	Reserve, NM 87830
Village of Reserve -Robert Garrison, Mayor	P.O. Box 587	Reserve, NM 87830
Rio Grande Restoration-Steve Harris, Executive Director	HCR 69, Box 3-C	Embudo, NM 87529
Rito Creek Ranch Trust-Kevin Sweazea, Trustee	HC 75, Box 64	Mountainair, NM 87036
William Roberts	P.O. Box 133	Glenwood, NM 88039
Robert Robinson	P.O. Box 129	Glenwood, NM 88039
Mary Roethle	P.O. Box 313	Glenwood, NM 88039
Stephen Rowe	HC 62, Box 654	Reserve, NM 87830
Thomas Rufenacht	P.O. Box 431	Magdalena, NM 87825-0431
Rufus Safford and Judith Safford	P.O. Box 334	Glenwood, NM 88039
Salado Soil and Water Conservation District-Mike McWhorter, Chairman	P.O. Box 136	Datil, NM 87821-0136
Cratie Sandlin	HC 61, Box 1411	Datil, NM 87821
Scott Sansom	P.O. Box 10	Datil, NM 87821
John and Carrie Sarnicky	HC 61, Box 39	Datil, NM 87821
Rudolfo Saucedo	10332 Oscura Street, N.W.	Albuquerque, NM 87114
Sandra Saulsberry-Silva	P.O. Box 628	Magdalena, NM 87825
Katherine Semones	P.O. Box 25	Monticello, NM 87939
Judyth Shamosh	P.O. Box 1285	Datil, NM 87825
Tropha Shea	P.O. Box 229	Datil, NM 87821
Greg and Pattie Sheehan	HCR 60, Box 44	Quemado, NM 87829
Fred and Jonille Shepherd	P.O. Box 653	Datil, NM 87821

Fee Payment Not Submitted

List of Parties without Fee Payment-Addressees	Street Address or P.O. Box	City, State and Zip
Shorties Pie Town, LLC- Ron Shorties, General Manager	P.O. Box 533	Pie Town, NM 87827
Sierra Soil & Water Conservation District-Willard Hall, Chairman	2101 South Broadway	T or C, NM 87901
Marvin Smith	P.O. Box 1954	Mesilla Park, NM 88047
Abigail Smoake	530 Harold Drive	Socorro, NM 87801
County of Socorro- Audrey Jaramillo, County Clerk	P.O. Box I	Socorro, NM 87801
Socorro County - Adren Robert Nance	P.O. Box I	Socorro, NM 87801
Socorro County Farm & Livestock Bureau- Dan Kloss, President	P.O. Box 40	San Antonio, NM 87832
Ginny Sonne	HC 62, Box 648-5	Reserve, NM 8783
Ben Spence	P.O. Box 2410	Edgewood, NM 87015
Charles and Karen Stevenson	3738 W. Palmaire Avenue	Phoenix, AZ 85051
Catherine Stewart	P.O. Box 338	Glenwood, NM 88039
Dan and Donna Stewart	P.O. Box 384	Cliff, NM 88028-0384
Sharon Stewart	P.O. Box 338	Glenwood, NM 88039
Pat Stidstone	408 Melody Lane	Socorro, NM 87801
Joann Strang	48-5196 Waipio Road	Honoka'a, HI 96727
Joann Strang	P.O. Box 831	Datil, NM 87821
Marc & Nan Taubman	P.O. Box 290	Datil, NM 87821
Tee Pee Ranch Landowners Assoc.- Terrill J. Kawcak, Officer	P.O. Box 92	Datil, NM 87821
Claudio Terrazas and Martha Terrazas	P.O. Box 504	Datil, NM 87821
Molly Thomas	HCR 60, Box 40	Quemado, NM 87829
James Travers	P.O. Box 859	Datil, NM 87821
Jehanara Tremayne	504 South Pershing Street	Truth or Consequences, NM
Representative Don Tripp	State Capitol Room 100	Santa Fe, NM 87501
Antonio Trujillo and Valentia Trujillo	P.O. Box 268	Magdalena, NM 87825
US Department of Agriculture Forest Service- Anna Jaramillo-Scarborough	333 Broadway, S.E.	Albuquerque, NM 87102
US Department of the Interior Bureau of Land Management-John Merino, Field Manager	901 South Highway 85	Socorro, NM 87801
US Department of the Interior-Fish and Wildlife Service-Paul Tashjian, Hydrologist	P.O. Box 1306	Albuquerque, NM 87103
Paul and Margaret Vander Maat	HC 61, Box 1537	Datil, NM 87821
Bernard Velasquez	40 Pinon Drive	Datil, NM 87821
Jeffrey S. And Lynn M. Venier	25412 S. 183rd Place	Queen Creek, AZ 85242
Barbara Versluis	Highway 60	Magdalena, NM 87825
Jeremy Walker	P.O. Box 981	Eager, AZ 85925
Herbert Wall	P.O. Box 518	Datil, NM 87821
Flint Wallace and Shirley Wallace	P.O. Box 282	Glenwood, NM 88039
Donald Weaver	P.O. Box 621	Reserve, NM 87830

Fee Payment Not Submitted

List of Parties without Fee Payment-Addressees	Street Address or P.O. Box	City, State and Zip
Billy Webb and Frankie Webb	P.O. Box 193	Glenwood, NM 88039
William and Betty Webster	20327 North 106th Avenue	Peoria, AZ 85382
Robbie West	P.O. Box 1611	Moriarty, NM 87035
Carl & Lora Whitney	P.O. Box 305	Datil, NM 87821
Henry Wilkins	P.O. Box 508	Quemado, NM 87829
James and Joan Williams, III	P.O. Box 571	Pie Town, NM 87827-0571
Debra Gail & Mark Zohar	Diskin 13 Street, Apt.#111	Jerusalem, Israel 96440

Return to Sender

Dismissed -Addressees - Docketing Order Returned to Sender NOTE: Asterisk (*) after name indicates paid fee in 09-096	Street Address or P.O. Box No.	City, State and Zip Code
Akincroft Ranch Rudy and Julie Akin	HC 65, Box 2	Pie Town, NM 87827
Bruce Allred	P.O. Box 152	Glenwood, NM 88039
Henry and Evelyn Bailey*	21 Berryhill Road	Los Lunas, NM 87031
Rita Boettcher	5101 Camellia Lane	Wausau, WI 54401
Cecelia Briley	Box 353	Datil, NM 87821
Toni Boyd Broaddus & Luther Broaddus III Revocable Trust Luther & Toni Broaddus*	P.O. Box 105	Magdalena, NM 87825
Joan Brock	P.O. Box 706	Datil, NM 87821
Gloria Brown	P.O. Box 278	Glenwood, NM 88039
Eileen Buchanan	P.O. Box 708	Reserve, NM 89943
Beverly Cassata	2715 E. Glenrosa Avenue	Phoenix, AZ 85016
Robert and Melinda Chandley	P.O. Box 788	Datil, NM 87821-0788
Allan C. And Katherine A. Check	P.O. Box 454	Dona Ana, NM 88032
Bob and Mary Clark*	P.O. Box 770	Datil, NM 87821
Kelly Collins	P.O. Box 1444	Socorro, NM 87801
Ronald Cook	P.O. Box 327	Glenwood, NM 88039
Abigail Coolahan, Glen Collahan and Shawnti Collahan	1005 N. Highway 60	Pie Town, NM 87827
Kenneth Cope*	P.O. Box 263	Datil, NM 87821-0263
Kendra Copelan	P.O. Box 38	Datil, NM 87821
Marion Crum	157 Racetrack Road	Arenas Valley, NM 88022-9713
Laura Darn	P.O. Box 378	Datil, NM 87821
Dr. Jeffrey Davis	P.O. Box 226	Datil, NM 87821
C. Wayne Donham	4001 W. Silver Springs Blvd. #603	Ocala, FL 36682
Karen Donn	P.O. Box 272	Glenwood, NM 88039-0272
John Dorsett and Laura Dorsett	P.O. Box 219	Quemado, NM 87829
Rex Duffet	409 W. Bentrup Street	Chandler, AZ 85225
Roger Duffy and Teresa Duffy	P.O. Box 66	Monticello, NM 87939
Alfred Dunzweiler	612 Pearlanna Drive	San Dimas, CA 91773
Frank and Christine Ellington	P.O. Box 553	Pearce, AZ 85625
David and Mary Elliott	P.O. Box 1869	Eagar, AZ 85925
John Fazio	P.O. Box 350	Datil, NM 87821
Scott Feiten	HC 61, Box 1412	Datil, NM 87821
Prof. Steven & Monica Ferry, MBA	151 Homestead Trail	Datil, NM 87821
Fuller Family Trust - Charles and Mary Fuller, Trustees	P.O. Box 529	Datil, NM 87821
Velma Garcia	P.O. Box 586	Reserve, NM 87830
Melanie Gasparich	P.O. Box 41	Cliff, NM 88028
Dan Gatlin	TRR 503	Reserve, NM 87830
Joseph Gauntt*	P.O. Box 502	Datil, NM 87821
Ghost Rose Ranch Lisa T. Olsen and James R. Jarrett	P.O. Box 220	Quemado, NM 87829
Lisa Giles	HC 61, Box 1504	Datil, NM 87821
Gary and Carol Gisler	3710 Upper Lake Circle	Granbury, TX 76049

Return to Sender

Dismissed -Addressees - Docketing Order Returned to Sender NOTE: Asterisk (*) after name indicates paid fee in 09-096	Street Address or P.O. Box No.	City, State and Zip Code
Ronald Goecks*	P.O. Box 347	Datil, NM 87821
Frank Goetz and Irma Goetz	P.O. Box 174	Glenwood, NM 88039
Lonnie Guin, Jr.*	P.O. Box 336	Datil, NM 87821
Cheryl Hall	P.O. Box 38	Datil, NM 87821
Don Harold	P.O. Box 738	Datil, NM 87821
Theron Haslan	P.O. Box 919	Datil, NM 87821
Thomas Hayes	P.O. Box 145	Glenwood, NM 88039
George and Susan Herman	P.O. Box 332	Quemado, NM 87829
Henry Herman	P.O. Box 31820	Santa Fe, NM 87594
Timithy Holecek and Shelley Holecek	P.O. Box 793	Pie Town, NM 87827
Richard W. Holecek	105 Main Street	Pie Town, NM 87827
Daniel Howell	P.O. Box 740	Datil, NM 87821
Thomas Jenne	P.O. Box 1362	Cedar Crest, NM 87008
Ben Johnson	Box 305	Reserve, NM 87830
Lewis (Bill) Kelly	General Delivery	Glenwood, NM 88039
Janette Kelly	HC 61, Box 156	Glenwood, NM 88039
John Koerber and Mary Koerber	P.O. Box 45	Datil, NM 87821
Eric Krueger	P.O. Box 593	Reserve, NM 87830
Burton Krueger	HC 61, Box 1124	Datil, NM 87821
Larry Lapierre	P.O. Box 353	Datil, NM 87821
Bob Lee and Anah Lee*	P.O. Box 39	Datil, NM 87821
Cynthia Lee*	P.O. Box 3T	Pie Town, NM 87827
Donna Lee	5155 Doña Ana Road	Las Cruces, NM 88007
Luna Irrigation Ditch	7205 Winans Drive, N.E.	Albuquerque, NM 87109
Thomas and Mary Marinko	P.O. Box 684	Datil, NM 87821
Janis Marston	P.O. Box 233	Glenwood, NM 88039
Michael Martin	P.O. Box 305	Glenwood, NM 88039
P. Mayfield and Nancy McCloud	P.O. Box 800	Datil, NM 87821
C. William McCabe and Valerie McCabe	HC 61, Box 168A	Glenwood, NM 88039
Anne McDiarmid	P.O. Box 91	Datil, NM 87821-0091
Carol McKee	P.O. Box 705	Pie Town, NM 87827
Jeanne Mims	P.O. Box 283	Glenwood, NM 88039
Jim and Pat Mitchell	P.O. Box 53	Quemado, NM 87829
Keith Mosca	1018 E. Marigold Lane	Tempe, AZ 85281
Kristi Moya	P.O. Box 1867	Silver City, NM 88062
Bob Myers	HC 61, Box 1514	Datil, NM 87821
Todd A. Myers & Pamela J. Seymore	340 Midway Road	York Haven, PA 17370
Jim Nance	P.O. Box 1518	Magdalena, NM 87825
Steven Nestor	P.O. Box 37	Glenwood, NM 88039-0037
T. Otero	P.O. Box 1105	Magdalena, NM 87825
Catherine Packard	P.O. Box 552	Datil, NM 87821
Sebastian Parker	P.O. Box 105	Reserve, NM 87830

Return to Sender

Dismissed -Addressees - Docketing Order Returned to Sender NOTE: Asterisk (*) after name indicates paid fee in 09-096	Street Address or P.O. Box No.	City, State and Zip Code
Daryl Parks	P.O. Box 549	Quemado, NM 87829
Herbert Perkins	HC 61, Box 1505	Datil, NM 87821
Bob and Janene Prudler	P.O. Box 315	Quemado, NM 87829
Scott and Leissa Randolph	P.O. Box 757	Datil, NM 87821
Wolfgang and Monica Rempen	Rancho Alegre	Pie Town, NM 87827
Pamela Winfield Rosar	14 Scouts Drive	Datil, NM 87821
Robert Sanders	508 Hannah Place	Socorro, NM 87801
Ned Smith, Jr.	P.O. Box 196	Datil, NM 87821-0196
Ellen S. Soles*	2521 North Main Street	Flagstaff, AZ 86004
Jean A. and William K. Strickler	P.O. Box 1109	Magdalena, NM 87825-1109
Frank Stubbs*	708 Kentucky, S.E.	Albuquerque, NM 87108
Mark Svir	P.O. Box 470	Reserve, NM 87830
David Thompson and Linda Thompson	7927 East 3rd Street	Tucson, AZ 87510
Donna Todd*	P.O. Box 1126	Magdalena, NM 87825
René Trabu	P.O. Box 3L	Pie Town, NM 87827
Joe Trujillo	P.O. Box 3483	Santa Fe, NM 87504
Velvet Antler Elk Ranch, Inc. and Evelyn Carlisle Yates	P.O. Box 204	Datil, NM 87821
Harry Weber	P.O. Box 769	Datil, NM 87821
Joseph Wettach	P.O. Box 276	Westminster, VT 05158
Randell Whaley	247 Davenport Canyon Road	Datil, NM 87821
Dennis Wilder and Kelly Wilder	HC 61, Box 29	Datil, NM 87821
Lauren Witt	P.O. Box 38	Datil, NM 87821
Paul Womack	P.O. Box 611	Reserve, NM 87830
Larry Woodcum	P.O. Box 663	Datil, NM 87821
Herschel and Sharon Wright	P.O. Box 705	Datil, NM 87821
Sherman Yates	P.O. Box 25	Datil, NM 87821-0025

Parties Entitled to Notice

Fee Payment PAID - Addressee	Street Address or P.O. Box	City, State and Zip
Office of the State Engineer Administrative Litigation Unit Water Rights Division (WRD) c/o Maureen C. Dolan, Esq., c/o Felicity Strachan, Esq.	P.O. Box 25102	Santa Fe, NM 87504-5102
Martha C. Franks, Esq. (Co-Counsel for WRD)	P.O. Box 1983	Fort Collins,. CO 80522-1983
Montgomery & Andrews, P.A. c/o Jeffrey J. Wechsler, Esq. (Co-Counsel for Applicant)	325 Paso de Peralta	Santa Fe, NM 87501
Draper & Draper LLC c/o John Draper, Esq. (Co-Counsel for Applicant)	325 Paso de Peralta	Santa Fe, NM 87501
LEWIS ROCA ROTHGERBER CHRISTIE LLP c/o Jeffrey Albright, Esq. (Kokopelli Ranch, LLC)	201 Third Street, N.W., Suite 1950	Albuquerque, NM 87102
DOMENICI LAW FIRM, P.C. c/o Lorraine Hollingsworth, Esq. (Monticello Properties, Double Springs Ranch, Gila Mountain Ranches, John Hubert Richardson Revocable Trust, Richardson Family Farms)	320 Gold Ave., S.W., #1000	Albuquerque, NM 87102-3228
Arden Robert Nance, Esq. (Caton County Board of County Commissioners)	P.O. Box 507	Reserve, NM 87820
Coppler Law Firm, P.C. c/o John L. Appel, Esq. (City of Truth or Consequences)	645 Don Gaspar	Santa Fe, NM 87505
Tessa T. Davidson, Esq. (John & Helen A. Hand and The Hand Living Trust)	P.O. Box 2240	Corrales, NM 87048
Peter Thomas White, Esq. (Cuchillo Valley Community Ditch Association; Salomon Tafoya)	125 E. Palace Ave., #50	Santa Fe, NM 87501-2367
James C. Brockmann, Esq. (Last Chance Water Co.)	P.O. Box 2067	Santa Fe, NM 87504-2067
James M. Noble, Esq. (Phelps Dodge Corporation)	1999 Broadway, Suite 1800	Denver, CO 80202
Stephen G. Hughes, Esq. (New Mexico Commissioner of Public Lands)	P.O. Box 1148	Santa Fe, NM 87504-1148
A.J. Olsen, Esq. (Pecos Valley Artesian Conservancy District)	P.O. Box 1415	Roswell, NM 88202
Jill Smith, Esq. (Pueblo of Sandia)	481 Sandia Loop	Bernalillo, NM 87004
Karl E. Johnson, Esq. (Pueblo of Santa Ana)	7424 Fourth St., N.W.	Los Ranchos of Albuquerque, NM 87107-6628
Jane Marx, Esq. (Pueblo of Zuni, Pueblo of San Felipe)	2825 Candelaria Road NW	Albuquerque, New Mexico 87107
Samantha M. Ruscavage-Barz, Esq.(Wildearth Guardians)	516 Alto Street	Santa Fe, NM 87501
Wayne G. Chew, Esq.(Apache Ranch - Kenneth R. Brumit)	PO Box X	Albuquerque, NM 87103
NMISC, c/o Kim Bannerman, Esq.	P.O. Box 25102	Santa Fe, NM 87504-5102
University of New Mexico Richard Mertz, Associate University Counsel	1 University of New Mexico	Albuquerque, NM 87131-0001
SONOSKY, CHAMBERS, MIELKE & BROWNELL, LLP c/o David Mielke, Esq. (Pueblo of Isleta)	500 Marquette Avenue NW, Suite 660	Albuquerque, New Mexico 87102

◊ Groups must have attorney

Attachment C

Parties Entitled to Notice

Fee Payment PAID - Addressee	Street Address or P.O. Box	City, State and Zip
New Mexico Environmental Law Center c/o Douglas Meiklejohn, Esq., Jaimie Park, Esq., Jon Block, Esq., and Eric Jantz, Esq. (85 individuals includes 3 landowners associations)	1405 Luisa Street. Ste. 5	Santa Fe. NM 87505
Victor Anspach	HC 61, Box 15	Datil, NM 87821
Andres Aragon	HC62, Box 625-7	Datil, NM 87821
Barbara and Eddie Aragon	523 W. Reinken Ave.	Belen, NM 87002
Norlena Baca	P.O. Box 227	Magdalena, NM 87825
Frank Baker	P.O. Box 156	Datil, NM 87821-0156
John A. Barnitz	Box 768	Magdalena, NM 87825
Sandy Bartelsen	Wildwood Subdivision, Lot 40	Datil, NM 87821
Allen Bassler, M.D. and Wanda Bassler	P.O. Box 497	Datil, NM 87821
Ann Bauer	P.O. Box 248	Magdalena, NM 87825
Clark & Midge Bishop	20 Falcon Crest, HC 61 Box 3917	Datil, NM 87821
Susan L. Bolander	P.O. Box 805	Pie Town, NM 87827-0805
Frederick J. Bookland	P.O. Box 227	Magdalena, NM 87825
Theresa J. Bottomly	P.O. Box 1773	Socorro, NM 7801
Eric D. Bottomly	P.O. Box 937	Magdalena, NM 87825
Mary Annette Boulden	P.O. Box 528	Datil, NM 87821
Dorothy Brook	P.O. Box 1925	Socorro, NM 87801
Kat Brown	1380 Rio Rancho Blvd. #280	Rio Rancho, NM 87124
Baxter B. Brown & Sherry L. Fletcher	602 N. Broadway	T or C, NM 87901
Jack Brunacini and Janice Brunacini	P.O. Box 225	Magdalena, NM 87825
Robert Burdette	HC 61, Box 14	Datil, NM 87821
Ron & Mahona Burnett - Flying V. Ranch	P.O. Box 786	Datil , NM 87821
Jay B. Carroll	P.O. Box 574	Pie Town, NM 87827
Catron County Farm & Livestock c/o Anita Hand ◊	PO Box 546	Datil , NM 87821
Bernard N. Chancellor	6150 Glenview Dr. Apt. 141	North Richard Hills, TX 76180
James Cherry	805 Kelly Road	Magdalena, NM 97925
Joshua and Sarah Chong	112 Field Terrace	Lansdale, PA 19446
Coalition of the Six Middle Rio Grande Basin Pueblos◊	481 Sandia Loop Road	Bernalillo, NM 87004
Sandra Coker and Carol Coker	P.O. Box 2	Datil, NM 87821-0002
Cyndy and Charles Costanza	P.O. Box 81	Datil, NM 87821
Dean Crane	P.O. Box 83	Magdalena, NM 87825
Barbara Daitch, CPA	P.O. Box 31	Datil, NM 87821
David and Martha Dalbey	HC 61, Box 1526	Datil, NM 87821
Lloyd Daniels	15829 West 933 Road	Park Hill, OK 74451
Datil Volunteer Fire Department - Robert Bassett, Chief ◊	P.O. Box 102	Datil, NM 87821-0102
Hara Davis	P.O. Box 433	Cliff, NM 88028
Carroll Dezabelle	P.O. Box 968	Magdalena, NM 87825
Thomas Dolan	P.O. Box 653	Pie Town, NM 87827

◊ Groups must have attorney

Attachment C

Parties Entitled to Notice

Fee Payment PAID - Addressee	Street Address or P.O. Box	City, State and Zip
Patsy J. Douglas	300 Grant	Socorro, NM 87801
Rex E. Duffett	409 W. Bentrup St.	Chandler, AZ 85225
Monte Edwards	P.O. Box 301	Datil, NM 87821
Henry Edwards	P.O. Box 1000	Datil, NM 87821
Edmund Fahy	P.O. Box 1890	Magdalena, NM 87825
Elena Farr	P.O. Box 1000	Datil, NM 87821
Karen Farr	P.O. Box 1000	Datil, NM 87821
Sam Farr	P.O. Box 1000	Datil, NM 87821
Farr Cattle Co. - Roy T. Farr, President - Dana Farr-Edwards	P.O. Box 1000	Datil, NM 87821
Freddy and Yvonne Ferguson	P.O. Box 767	Datil, NM 87821
Lucy Fowles	P.O. Box 124	Datil, NM 87821
Nelson Garber	P.O. Box 774	Datil, NM 87821
Suzanne Garrigues	506 Greenwood Road	Baltimore, MD 21204
Connie Gibson	P.O. Box 83	Magdalena, NM 87825
O.R. and Sharon Gigante	15 Turquoise Trail	Datil, NM 87821
Fancher Gotesky	P.O. Box 616	Magdalena, NM 87825
Raymond and Linda Gray	HC 61, Box 1515	Datil, NM 87821
Green Gap's Ranch Landowners' Association, Inc. - Doug Mackenzie, President◊	HC 61, Box 3912	Datil, NM 87821
Randall Greenwood	P.O. Box 26	Aragon, NM 87820
Amber Guin and Bertie Guin	P.O. Box 417	Magdalena, NM 87825-0417
James Hall	P.O. Box 800	Magdalena, NM 87825
James M. Hall, M.D. and Linn Kennedy Hall	P.O. Box 740	Datil, NM 87821
John Hand	P.O. Box 159	Datil, NM 87821
John Hanrahan and Ruth Hanrahan	P.O. Box 730	Pie Town, NM 87827
Harriet Ranch, LLC Nicole Sanders, Louis Sanders, Michel Harriet III & Ruth Ann Harriet◊	P.O. Box 296	Datil, NM 87821
Mary Horn	4905 Haines Ave. N.E.	Albuquerque, NM 87110
Fred Hunger and Leslie Hunger	HC 61, Box 1528	Datil, NM 87821
Dallas Hurt	P.O. Box 143	Fairacres, NM 88033
Dennis Inman	P.O. Box 148	Quemado, NM 87829
J Bar K Enterprises d/b/a OK Feed & Supply - Douglas C. Jordan, President ◊	3701 E. Ft. Lowell Road	Tucson, AZ 85917
Karl and Ann Kohler	P.O. Box 1034	Magdalena, NM 87825
Magdalena Area Community Development Corporation - Lee Scholes, President◊	P.O. Box 970	Magdalena, NM 87825-0970
Linda Major	P.O. Box 206	Magdalena, NM 87825
Major Ranch Realty Randell Major	P.O. Box 244	Magdalena, NM 87825
Randell & Mary Lynn Major	P.O. Box 244	Magdalena, NM 87825
April Marlow	P.O. Box 358	Quemado, NM 87829
Connie May and Karl E. May	P.O. Box 138	Reserve, NM 87830
Gary L. McKennon	11112 Huerfano, N.E.	Albuquerque, NM 87123

◊ Groups must have attorney

Attachment C

Parties Entitled to Notice

Fee Payment PAID - Addressee	Street Address or P.O. Box	City, State and Zip
Middle Rio Grande Conservancy District ◊	P.O. Box 581	Albuquerque, NM 87103-0581
Lynn Daniel Montgomery	240 Camino De Las Huertas	Placitas, NM 87043
Monticello Canyon Association M. Jane Darland, President ◊	P.O. Box 84	Monticello, NM 87939
Monticello Community Ditch Assoc. - Claudia B. Jeffery ◊	P.O. Box 26	Monticello, NM 87939
Montosa Ranch - Dale Armstrong	P.O. Box 326	Magdalena, NM 87825
Janet Mooney	P.O. Box 86	Glenwood, NM 88039
Nick and Laurene Morales	6330 Roadrunner Loop	Rio Rancho, NM 87144
National Radio Astronomy Observatory c/o Robert L. Dickman & Mark M. McKinnon ◊	P.O. Box O	Socorro, NM 87801-0539
Navajo Nation - Bidtah N. Becker, Water Rights Unit◊	P.O. Drawer 2010	Window Rock, AZ 86515
New Mexico Farm & Livestock Bureau - Chad Smith◊	2220 North Telshor Blvd.	Las Cruces, NM 88011
Northern Catron County Ranchers Assoc. Roy F. Farr ◊	P.O. Box 1000	Datil, NM 87821
Jamie O'Gorman	P.O. Box 594	Datil, NM 87821
Opuntia, LLC - D.A. Hayes and Michael Donlan ◊	300A Lomita Street	Santa Fe, NM 87505
Peter H. Pache, Ph.D	P.O. Box 889	Datil, NM 87821
John Pemberton. Jr.	P.O. Box 395	Quemado, NM 87829
Georgianna Pena-Kues	3412 Calle Del Monte, N.E.	Albuquerque, NM 87106-1204
Darnell L. Pettis and Montana Pettis	P.O. Box 63	Magdalena, NM 87825
Pueblo of Acoma - Jason Johnson, Governor ◊	P.O. Box 309	Acoma, NM 87034
Paul Rawdon	P.O. Box 285	Grants, NM 87020
Karen Rhoads	P.O. Box 822	Cobb, CA 95426-0822
L. Randall Roberson	P.O. Box 217	Datil, NM 87821
David and Sara Robinson	HC 64 Box 700	Magdalena, NM 87825
Cordelia Rose	P.O. Box 281	Glenwood, NM 88039
Jim and Mary Ruff	1212 North Drive	Socorro, NM 87801
San Augustin Water Coalition (SAWC) - Linn Kennedy - Chairperson ◊	P.O. Box 613	Datil, NM 87821
San Miguel Ditch Association - Donald B. Lucero ◊	P.O. Box 3372	T or C, NM 87901
Floyd Sanders - Luera Ranch, LLC	P.O. Box 1144	Magdalena, NM 87825
Dr. Robert Sanders	P.O. Box 646	Datil, NM 87821

◊ Groups must have attorney

Attachment C

Parties Entitled to Notice

Fee Payment PAID - Addressee	Street Address or P.O. Box	City, State and Zip
Santo Domingo Tribe - Nelson Pacheco, Governor ◊	P.O. Box 99	Santo Domingo Pueblo, NM 87052
Rudy Saucedo	P.O. Box 2557	Las Cruces, NM 88004
Saulsberry Lazy V7 Ranch, LLC - Regor Saulsberry, PE	1031 Saulsberry Road	Datil, NM 87821
Mikel Schoonover	1244 Canter Road	Escondido, CA 92027-4449
Geraldine Schwabb	902 Cuba Rd.	Socorro, NM 87801
Scott A. and Samantha G. Seely	4520 Valley Road	Shermans Dale, PA 17090
Shortes XX Ranch - Ron Shortes, General Manager	P.O. Box 533	Pie Town, NM 87827
Robert and Elaine Smith	P.O. Box 287	Datil, NM 87821
Socorro Catron Farm Service Agency County Committee - John Hand, Chairman ◊	P.O. Box 709	Datil, NM 87821-0709
Socorro Soil & Water Conservation District - Larry Whitefield, Chairman ◊	103 Neel Avenue	Socorro, NM 87801
Sonntag Enterprises ◊	1003 Tomas Ct. , SW	Albuquerque, NM 87121
State of New Mexico Department of Game & Fish Brian Lang ◊	P.O. Box 25112	Santa Fe, NM 87504
Strand Enterprises - Lif C. Strand ◊	HC 32, Box 312	Quemado, NM 87829
Frank R. Stubbs, AJA, Architect	708 Kentucky SE	Albuquerque, NM 87108
Mark and Sue Sullivan	P.O. Box 607	Datil, NM 87821
Sally Taliaferro	P.O. Box 725	Datil, NM 87821
Torstenson Wildlife Center/Double H Ranch c/o Robert Fedoris/ Jack Salerno ◊	227 West Monroe Street	Chicago, IL 60606
Marjory Traynham	P.O. Box 375	Datil, NM 87821
Brett Traynor	P.O. Box 3	Monticello, NM 87939
Anthony Trennel	76 Piñon Hill Pl., N.E.	Albuquerque, NM 87122
Judith and Joe Truett	P.O. Box 211	Glenwood, NM 88039
US Department of the Interior Bureau of Indian Affairs - Southwest Regional Office ◊	1001 Indian School Road, NW	Albuquerque, NM 87104
USDA Office of General Counsel - U.S. Dept of Agriculture -Gila and Cibola National Forests ◊	P.O. Box 586	Albuquerque, NM 87103-0586
Charles A. Wagner and Charlene F. Wagner	P.O. Box 252	Magdalena, NM 87825
Walkabout Creek Ranch - George & Susan Howarth	HC 61, Box 35; Mangas Route	Datil, NM 87821
Teresa Winchester	P.O. Box 1287	Magdalena, NM 87825
Wolfy Financial, LLC - David Wolfswinkel, Manager ◊	3850 E. Baseline Road, Suite 123	Mesa, AZ 85206
Max Yeh	P.O. Box 156	Hillsboro, NM 88042
Pete Zamora	Box 565	Magdalena, NM 87825
Notice of Withdrawal of Protest 5-25-17 by US DOI BOR:		
US Department of the Interior Bureau of Reclamation - Jennifer Faler, P.E., Area Manager	555 Broadway Blvd., N.E., Ste. 100	Albuquerque, NM 87102-2352

◊ Groups must have attorney

Attachment C

BEFORE THE NEW MEXICO STATE ENGINEER

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

Hearing No. 17-005
OSE File No. RG-89943 POD 1 through POD 37

REPORT AND RECOMMENDATION GRANTING MOTIONS FOR SUMMARY JUDGMENT

This matter came before Uday V. Joshi, the State Engineer's Hearing Examiner following a Hearing held in Reserve, New Mexico on December 13, 2017, on two Motions for Summary Judgment filed in the above-captioned matter: (1) Motion for Summary Judgment and Memorandum in Support filed on September 26, 2017 (MSJ1) by Community Protestants; and (2) Motion for Summary Judgment and Memorandum in Support filed on October 16, 2017 (MSJ2) by Catron County Board of County Commissioners (Catron County).

At the hearing held on December 13, 2017, the Hearing Examiner heard argument from the following:

Movants: Douglas J. Miekeljohn, Esq., presented argument on behalf of Community Protestants in support of MSJ1. Pete V. Domenici Jr. Esq., (also in support of MSJ1) presented argument on behalf of Catron County in support of MSJ2.

Joinders in support of MSJ1: 1) Peter White, Esq., presented argument in support of Cuchillo Valley Community Ditch Protestants' Joinder to MSJ1; 2) Samantha Ruscavage-Barz, Esq., presented a brief argument in support of Wild Earth Guardians' Joinder to MSJ1; 3) Jessica Aberly, Esq., presented argument in support of Pueblos' (San Felipe, Santa Ana, Sandia, and Isleta) Joinder to MSJ1; 4) Tessa Davidson, Esq., presented oral argument in support of Hands' Joinder to MSJ1; 5) Jane Marx, Esq., argued in support of Navajo Nation's Joinder to MSJ1; and 6) Pete Domenici, Esq., presented argument in support of Catron County Board of County Commissioners' Joinder to MSJ1.

The following Parties appeared telephonically in support of MSJ1:[1] Simeon Herskovitz, Esq., presented a brief argument on behalf of San Augustin Water Coalition's Joinder to MSJ1;

[1] The Notice of Oral Argument issued on November 16, 2017 identified Reserve, New Mexico for the location of the December 13, 2017 Hearing. On December 9, 2017, the above-mentioned Joinders filed a Motion to Appear

EXHIBIT 4

Olivia Mitchell, Esq., represented New Mexico Farm and Livestock Bureau in support of its Joinder to MSJ1; Jonathan Roehl, Esq., represented Pecos Valley Artesian Conservancy District in support of its Joinder to MSJ1; and Jeffrey H. Albright, Esq., represented Kokopelli Ranch, LLC.

The following Parties appeared in support of MSJ2: Tessa Davidson, Esq., presented argument on Hands' Joinder to MSJ2;

Respondents: 1) Jeffrey J. Wechsler, Esq., and John B. Draper representing Applicant Augustin Plains Ranch, LLC. (APR), presented argument and their Response to MSJ1 and MSJ2; 2) L. Christopher Lindeen, Esq., representing the Water Rights Division (WRD), presented argument and its Response to MSJ1 and MSJ2.

Hearing/Oral Argument:

The Hearing Examiner permitted only the Movants and Respondents to provide Oral Argument in support of their respective positions. In brief, the arguments presented in support of MSJ1 and MSJ2 asserted the following: 1) the Corrected Application is incomplete; 2) the Corrected Application is no different than the previously dismissed application and should be denied on the principles of *res judicata*; 3) the Corrected Application is facially invalid and it does not provide a sufficient degree of specificity in order for it to be analyzed; 4) the Corrected Application is speculative and, therefore, contrary to sound public policy and is detrimental to the public welfare of the state.

BACKGROUND

Applicant Augustin Plains Ranch, LLC., (APR) filed its Corrected Application on July 14, 2014, and subsequently on December 23, 2014, and on April 28, 2016, amended or revised its 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.

This Corrected Application follows APR's previous Application that the State Engineer denied on March 30, 2012 (SE Denial). The District Court affirmed the denial on January 3, 2013 (Reynolds Order). The Reynolds Order followed the District Court's Memorandum Decision on Motion for Summary Judgment dated November 14, 2012 (Reynolds

---

Telephonically. As a result, the parties were provided a teleconference number to participate. The Hearing Examiner, however, given the situation, requested and all parties provided, an acknowledgment that appearing telephonically may compromise the clarity of the digital recording and any arguments made telephonically may not be audible and / or clear and that they would waive any resulting prejudice.

Memorandum). APR filed this Corrected Application to address the deficiencies and issues identified in the SE Denial and the Reynolds Memorandum. Having fully considered the matter and being fully briefed in the premises, the Hearing Examiner finds the following:

1) Beneficial Use is the basis, the measure and limit of a water right. NM Const. Art XVI, §3.

2) The jurisdiction of the State Engineer is invoked pursuant to Articles 2, 5 and 12 of Chapter 72 NMSA 1978.

3) The State Engineer has jurisdiction of the parties and the subject matter.

4) NMSA 1978, Section 72-12-7 (C) states, "[i]f 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 or, before he acts on the application, may order that a hearing be held."

5) On December 13, 2017, the State Engineer's Hearing Examiner conducted a hearing on MSJ1 and MSJ2.

DISMISSAL ON SUMMARY JUDGMENT CONFORMS WITH CHAPTER 72 AND 19.25.2 NMAC

6) APR asserts that the State Engineer is required to hold an evidentiary hearing pursuant to NMSA 1978, Sections 72-2-16 and 72-2-17.

7) As has been the practice of the State Engineer's Hearing Unit since its inception, dispositive motions such as Motions to Dismiss and Motions for Summary Judgment are consistently scheduled for hearing and decided in order to expedite the proceedings, determine whether genuine issues of material fact exist and whether an evidentiary hearing pursuant to NMSA 1978, Section 72-2-17 is required.

8) Briefing and oral argument in a hearing before the State Engineer's hearing examiner, following the filing of a Motion for Summary Judgment, provides litigants a full and fair opportunity to be heard on all issues raised in such a motion.

9) Action on a motion for summary judgment may result in the dismissal or denial of an application or protest, but only after all parties have been offered a full and fair opportunity for briefing and to present oral argument at a hearing.

10) The granting of a Motion for Summary Judgment and denial or dismissal of an application, after briefing and oral argument in a hearing before the State Engineer's hearing

examiner, satisfies the requirement of a hearing held before the State Engineer before an appeal may be taken to the district court under NMSA 1978, Section 72-2-16. The Court's decision in *Derringer v. Turney*, 2001-NMCA-075, is not to the contrary. In *Derringer* the Court held that the State Engineer was required to provide a requested post-decision hearing after granting a motion for summary judgment where the aggrieved party did not receive a hearing prior to the granting of the motion. Here, in contrast, the parties both in favor of the motion for summary judgment and those opposed participated in the hearing before the State Engineer's Hearing Examiner on December 13, 2017.

11) APR argues that the State Engineer must consider the full merits of its Corrected Application in an evidentiary hearing, including questions on the availability of water for appropriation and the potential impacts on other water rights. APR's argument is a misreading of NMSA 1978, Sections 72-2-16 and 72-2-17. APR's reading, if given credence, would compromise and unduly limit proceedings before the State Engineer, which are intended to follow the New Mexico Rules of Civil Procedure as far as possible, and to be judicially efficient. It would require an evidentiary hearing on technical issues of hydrology and other matters in cases when, as a matter of law and on undisputed material facts, an application should be denied or dismissed.

12) In this case, the Respondent does not present any genuine issues of disputed material fact and, therefore, the State Engineer may determine, as a matter of law, whether the movants are entitled to an order that dismisses or denies the application. This is in full compliance with the applicable Hearing Unit Rules and Regulations. *See* 19.25.2 NMAC; *See also* 19.25.2.6 NMAC ("The objective of this rule is to establish procedures that govern hearings before the state engineer and the hearings unit and to ensure the expeditious and orderly handling of all administrative and enforcement matters consistent with the requirements of due process.")

UNDISPUTED MATERIAL FACTS

13) APR filed its Corrected Application on July 14, 2014, December 23, 2014, and April 28, 2016.

14) The Corrected Application is for the appropriation of 54,000 acre-feet per annum of groundwater from 37 wells in the Rio Grande Underground Water Basin.

15) The Corrected Application identified the location of the 37 wells intended for the diversion of 54,000 afa.

16) The Corrected Application identified the purpose of use as municipal purposes and commercial sales.

17) The Corrected Application identified the place of use as "parts of Catron, Sierra, Socorro, Valencia, Bernalillo, Sandoval, and Santa Fe Counties."

18) APR requested to have the Corrected Application heard in two stages.

19) Stage 1 would "consist of an evaluation of the hydrological issues ... including the amount of water available for appropriation without impairing other water rights...."

20) Stage 2 would "consist of the finalization of the individual purposes of use, places of use, and amounts for each use...with additional detail regarding the types and places of use for the water...."

21) The Corrected Application, as filed, did not describe in detail the purposes, places of use or amounts of use of any individual users.

22) APR generally identified seven counties in which it proposed that water would be put to beneficial use but did not identify a specific county in which a contractual agreement had been reached for APR to serve as a water provider.

23) APR did not provide any detail on the delivery and use of water by any specific municipalities, or identify any existing contractual agreement for the delivery of water to any municipality or other commercial user.

THE WRD PROPERLY FOUND THE CORRECTED APPLICATION TO BE FACIALLY VALID AND COMPLETE

24) Movants assert that the Corrected Application is incomplete and that consideration of the Corrected Application is barred under the principles of *res judicata.*

25) NMSA 1978, Section 72-12-3 (A) requires that an applicant designate: 1) the underground water basin from which the water is to be appropriated; 2) the beneficial use to which the water will be applied; 3) the location of the proposed wells; 4) the owner of the lands on which the wells are to be situated; 5) the amount of water; 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.

26) The WRD applies the rules and regulations and statutes that govern applications filed with the Office of the State Engineer to determine whether an application is complete.

27) Here, the WRD deemed the Corrected Application complete because all

information required by NMSA 1978, §72-12-3 had been provided on the application form.

28) The Corrected Application is facially valid in that it meets the minimum requirements of the statute. *See* NMSA 1978, §72-12-3.

29) The WRD correctly determined that the Corrected Application is administratively complete for purposes of its acceptance for filing and public notice.

30) The determination by the WRD that an application is administratively complete does not include a determination of whether an application is speculative.

31) The WRD did not make a determination of whether the Corrected Application was speculative.

32) The Corrected Application is sufficiently different from the previous iteration so as not to be barred under the principle of *res judicata.*

33) Only the State Engineer may determine whether an application as filed is in conformance with New Mexico law.

THE NEW MEXICO CONSTITUTION, THE WATER CODE, AND THE LAW OF PRIOR APPROPRIATION AND BENEFICIAL USE GOVERN APPLICATIONS FOR PERMIT

34) "The unappropriated water of every natural stream, perennial or torrential within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriation shall give the better right". N.M. Const. Art XVI §2.

35) "Beneficial Use shall be the basis, the measure and the limit of the right to the use of water." N.M. Const. Art. XVI §3

36) "All natural waters flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use." NMSA 1978, § 72-1-1.

37) "The water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, are hereby declared to be public waters and to belong to the public and to be subject to appropriation for beneficial use." NMSA 1978, § 72-12-1.

38) Water rights in New Mexico are developed under the doctrine of prior appropriation. *Millheiser v. Long,* 1900-NMSC-012, ¶*3; Albuquerque Land & Irrig'n Co. v.*

Gutierrez, 1900-NMSC-017, ¶ 32; *Snow v. Abalos,* 1914-NMSC-022, ¶9.

39) Prior to the enactment of the New Mexico water code in 1907, the New Mexico Supreme Court declared speculation and monopoly to be contrary to the law of prior appropriation. *Millheiser v. Long,* 1900-NMSC-012, ¶¶31-32.

40) The 1907 water code did not supplant the common law of prior appropriation, but rather was merely declaratory of the law as it had already been established in New Mexico by judicial decisions. *Hagerman Irrig'n Co. v. McMurry,* 1911-NMSC-021, ¶4; *see also Yeo v. Tweedy,* 1929-NMSC-033, ¶8.

41) Provisions of both the New Mexico Constitution and the New Mexico water code reflect and incorporate basic principles of the law of prior appropriation.

42) The right of the public to appropriate the public waters of the State of New Mexico for beneficial use and priority of appropriation are key pillars of prior appropriation law in New Mexico.

43) In addition to New Mexico reported decisions, it is beneficial to look to Colorado case law, another western state whose administration of water rights is governed under the prior appropriation doctrine. *See, e.g., Albuquerque Land & Irrigation Co.*, 1900-NMSC-017, ¶ 31; *State ex rel. Reynolds v. South Springs Co.*, 1968-NMSC-023, ¶ 19-22; *State ex rel. Office of the State Engineer v. Lewis*, 2007-NMCA-008, ¶ 40

44) The evolution of Colorado's water doctrine concerning speculation may serve as guide for New Mexico to continue its development of the same. *See, e.g., Denver v. Northern Colorado Water Dist.*, 130 Colo. 375, 408, 276 P.2d 992, 1009 (1954); *Colorado River Water Conservation District v. Vidler Tunnel Water Co.*, 197 Colo. 413, 594 P. 2d 566, 568 (1979); *Vermillion Ranch Ltd., Partnership v. Raftopoulos Brothers*, 2013 Colo. 41, 34, 307 P.3d 1056, 1064 (2013)

45) The Colorado Courts and legislature have long wrestled with the challenge of how to evaluate the possible speculative nature of water rights applications, and have developed, based on principles of the prior appropriation doctrine, standards or elements to guide that evaluation under what is known as the 'anti-speculation doctrine'. *See* Aaron Pettis, *Conditional Water Rights and the Problem of Speculation,* 18 U. Denv. Water L. Rev. 312 (2015); *Vidler,* 594 P.2d 566*;* C.R.S. §§ 37-92-103(3)(a), 37-92-305(9)(b*); Vermillion,* 307 P.3d 1056*; Front Range Resources, LLC v. Colo. Groundwater Comm'n No.* 15-CV-30493 (Adams County

District Court) (May 26, 2016).

46) Colorado Law provides several standards or factors for the evaluation of whether a water right application is speculative, including the specific plan test and the can and will test. See C.R.S. §§ 37-92-103(3)(a), 37-92-305(9)(b). These standards can serve as guides for the evaluation of whether an Application for a new appropriation in New Mexico is speculative.

GRANTING THIS APPLICATION WILL DEPRIVE THE PUBLIC OF ITS RIGHT TO APPROPRIATE WATER FOR BENEFICIAL USE

47) It is the long-standing policy of the State Engineer to encourage the beneficial use of water while protecting existing water rights.

48) The New Mexico Constitution and the New Mexico water code recognize the law of prior appropriation and the principle that the waters of the State of New Mexico belong to the public and are available for appropriation for beneficial use.

49) Granting the Corrected Application would allow APR to tie up, or otherwise make unavailable for appropriation by the public, 54,000 acre-feet of water without any proposed or intended application of water to beneficial use by the applicant itself. This would deprive the public of the opportunity under the law of prior appropriation and our water code and Constitution to appropriate that water for beneficial use.

50) In the Corrected Application, APR proposes a two-stage administrative hearing process for the State Engineer to consider the Corrected Application.

51) Upon completion of the proposed first stage, intended to allow APR to determine the amount of water available, APR proposes that "[t]he 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.".

52) APR further proposes that "places 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."

53) Administrative proceedings before the State Engineer are neither the time nor the place for Applicants to develop their intentions. Those intentions should be well-developed based on reasonable projections of future demand and clearly and specifically articulated in the application.

54) In one of the first cases to articulate what later came to be codified as the specific

plan test, the Colorado Supreme Court stated: "[o]ur constitution guarantees a right to appropriate, not a right to speculate. The right to appropriate is for use, not merely for profit. As we read our constitution and statutes, they give no one the right to preempt the development potential of water for the anticipated future use of others not in privity of contract, or in any agency relationship, with the developer regarding that use. To recognize conditional decrees grounded on no interest beyond a desire to obtain water for sale would as a practical matter discourage those who have need and use for the water from developing it. Moreover, such a rule would encourage those with vast monetary resources to monopolize, for personal profit rather than for beneficial use, whatever unappropriated water remains." *Vidler,* 594 P.2d 566, 568.

55) There are numerous parallels between NMSA 1978, Section 72-1-9 and the "specific plan" test in Colorado.

56) In New Mexico, "[m]unicipalities, counties, state universities and public utilities supplying water to municipalities or counties shall be allowed a water use planning period not to exceed forty years." NMSA 1978, Section 72-1-9.

57) APR is not one of the 72-1-9 entities listed above, does not have a vested interest in the lands or facilities proposed to be served by the requested appropriation, nor does it have an agency relationship with any of the entities listed in Section 72-1-9.

58) Similar to NMSA 1978, Section 72-1-9, the Colorado water code distinguishes public and private enterprises in its definition of "appropriation" and requirements with respect to each:

> "Appropriation" means the application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law; but no appropriation of water, either absolute or conditional, shall be held to occur when the proposed appropriation is based upon the speculative sale or transfer of the appropriative rights to persons not parties to the proposed appropriation, as evidenced by either of the following:
>
> (I) The purported appropriator of record does not have either a legally vested interest or a reasonable expectation of procuring such interest in the lands or facilities to be served by such appropriation, *unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation*
>
> (II) The purported appropriator of record does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a

specific quantity of water for specific beneficial uses."

C.R.S. 37-92-103(3)(a) (emphasis added).

59) Both New Mexico Law and Colorado Law, NMSA 1978, Section 72-1-9 and C.R.S. 37-92-103(3)(a)(II), respectively, require public entities to show that the proposed appropriation is consistent with its reasonably anticipated water requirements.

60) "Requiring adjusted, realistic estimates of future need in subsequent diligence proceedings is consistent with the purpose underlying both the anti-speculation doctrine and diligence requirement, i.e., preserving unappropriated water for future users having legitimate, documented needs." *Pagosa Area Water and Sanitation Dist v. Trout Unlimited*, 170 P.3d 307, 316 (2007).

61) That mandate in Colorado is implemented through the "specific plan" test. Pettis, *supra,* at 329.

62) The "specific plan" test creates a standard by which a public appropriator may be granted a conditional right to appropriate water if certain conditions are met.

63) The Court in *Vidler* held that an application for a conditional appropriation could be deemed to be speculative and conjectural when it is based on a hypothetical sale or transfer of water rights for a yet-to-be identified entity.

64) Conditional appropriations[2] in Colorado intended to serve municipal needs require a specific plan, and a showing "that the contracted-for amount is necessary for the entity's reasonably anticipated needs, based on substantiated projections of population growth." *Upper Yampa Water Conservancy Dist.,* 249. P.3d at 800.

65) More specifically, after codification of the anti-speculation principle articulated in *Vidler (C.R.S.* § 37-92-103(3)(a)), in order to defeat a claim of speculation, the applicant must put forth a specific plan to divert and control a specific quantity of water for specific beneficial uses, and demonstrate the non-speculative need for the amount of water claimed. *Vermillion*

[2] Under Colorado law, a conditional water right is defined as "a right to perfect a water right with a certain priority date upon the completion with reasonable diligence of the appropriation upon which such water right is to be based." C.R.S. § 37-92-103(6). "To establish a conditional water right, an applicant must show in general that a 'first step' toward the appropriation of a certain amount of water has been taken, that the applicant's intent to appropriate is not based upon the speculative sale or transfer of the appropriative rights, and that there is a substantial probability that the applicant can and will complete the appropriation with diligence." *City of Thornton v. Bijou Irrigation Company*, 926 P.2d 1, 31 (1996). The adjudication of a conditional water right in Colorado is roughly analogous to the approval by the State Engineer of an application for a permit to appropriate water for beneficial use under New Mexico law.

Ranch, 307 P. 3d 1056, ¶¶ 34, 35 *(quoting Upper Yampa Water Conservancy Dist.,* 249. P.3d at 800).

66) The Corrected Application expresses APR's intent to provide water for municipal purposes to the following municipalities and entities: Magdalena, Socorro, Belen, Los Lunas, Albuquerque Bernalillo County Water Utility Authority, and Rio Rancho, but it does not demonstrate the existence of a contractual agreement for the purchase or delivery of water with any of these municipalities or entities.

67) Attachment 2 Exhibit E to the Corrected Application suggests that the City of Rio Rancho may be interested in discussing water purchase in the event that APR is successful in its application.

68) The attachment evinces, at best, the City of Rio Rancho's possible future use of the applied-for water rights. These circumstances are comparable to those considered by the Colorado Supreme Court in *Vidler* ("Vidler has no firm contractual commitment from any municipality to use any of the water. Even the City of Golden has not committed itself beyond an option which it may choose not to exercise. The mere negotiations with other municipalities clearly do not rise to the level of definite commitment for use required to prove the intent here required.").

69) APR is not an entity covered under NMSA 1978, Section 72-1-9 and, therefore, does not benefit from a 40-year planning horizon to hold water unused for future growth and demand.

70) At the hearing held on December 13, 2017, APR averred that it is not required under New Mexico Law to have any contractual agreements in place for the purchase or delivery of water. This is a fundamental misapprehension of New Mexico law with respect to the evaluation of an application for a permit for a new appropriation of water, and raises the question of speculation.

71) APR does not identify how the 54,000 afa that it seeks to appropriate would be allocated to each of the municipalities identified in its application.

72) APR has shown neither: (1) a contractual agreement or an agency relationship with the municipalities identified in the Corrected Application, nor (2) a specific plan for the purchase and delivery of a specific amount of water for specific beneficial uses to meet the reasonably anticipated needs of those municipalities.

73) An application for a new appropriation of water of this size and nature for municipal purposes should, with specificity, identify for each municipality: reasonable, substantiated projections of future demand, and the respective quantities, purposes and places of use for each identified user.

74) Similar to the diligence required to put water to beneficial use to establish a water right under New Mexico law (*see* NMSA 1978, Sections 72-5-8, 72-5-14), the Colorado legislature has codified a diligence requirement for an approval of an application for a conditional water right in C.R.S. §37-92-305(9)(b).

75) Both New Mexico and Colorado require that a water right be perfected with diligence and within a reasonable time.

76) In *Vermillion*, the Court stated, that "an applicant bears the burden to demonstrate that: 1) it has taken a 'first step,' which includes an intent to appropriate the water and an overt act manifesting such intent; 2) its intent is not based on a speculative sale or transfer of the water to be appropriated; and 3) there is a substantial probability that the applicant "can and will" complete the appropriation with diligence and within a reasonable time." 307 P.2d 1056, ¶44.

77) APR has invested significant time and resources into the conceptual development of a project and pipeline for the delivery of water for municipal and commercial purposes, but that must be considered in light of the need to demonstrate a specific plan, the probability of implementation, the requirement that water be applied to a beneficial use within a reasonable time, and the reasonably anticipated needs of any municipal entities involved.

78) All APR has established is that it wants to appropriate and convey water to uncommitted municipalities or entities in unknown quantities.

79) Here, there is a striking absence of information, namely agreements with specific end-users for specific quantities and purposes that APR could rely upon to defeat a claim of speculation and show a substantial probability that it will complete the proposed appropriation with diligence by placing water to beneficial use within a reasonable period of time.

80) Approval of the Corrected Application would "encourage those with vast monetary resources to monopolize, for personal profit rather than for beneficial use, whatever unappropriated water remains." *Vidler,* 594 P.2d 566, 568

81) Approval of the Corrected Application would be contrary to long established principles of the law of prior appropriation embodied in our Constitution and water code.

82) In the absence of a specific plan to appropriate a specific quantity of water for specific identified beneficial uses, there is no showing of a non-speculative need, which is a requirement for the issuance of a permit under which a water right may be developed.

Therefore, the Hearing Examiner recommends that MSJ1 and MSJ2 be granted. All of the findings of fact and conclusions of law set out above collectively support the conclusion that APR's Corrected Application is speculative and should be denied. Hearing No. 17-005 should be dismissed and the Corrected Application (OSE File No. RG-89943 POD 1 through POD 37) should be denied as a matter of law.

DONE this 31st day of July, 2018.

Uday V. Joshi
Hearing Unit, Managing Attorney
Hearing Examiner

I ACCEPT AND ADOPT THE REPORT AND RECOMMENDATION OF THE HEARING EXAMINER THIS 31st DAY OF JULY, 2018.

Tom Blaine, P.E.
NEW MEXICO STATE ENGINEER

BEFORE THE NEW MEXICO STATE ENGINEER

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

CERTIFICATE OF SERVICE

I certify that a copy of the ***Report and Recommendation Granting Motions for Summary Judgment*** (Order) filed August 1, 2018, was served via certified mail/return receipt requested, on the 2nd day of August, 2018 to the parties listed below.

Irma E. Corral, Law Clerk
Hearing Unit Administrator

WATER RIGHTS DIVISION
Office of the State Engineer
Administrative Litigation Unit
c/o Maureen C. Dolan, Esq.
c/o Felicity Strachan, Esq.
c/o Christopher Lindeen
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-3824
Maureen.dolan@state.nm.us
Felicity.Strachan@state.nm.us
Christopher.lindeen@state.nm.us
Co-counsel for Water Rights Division

ABRAMOWITZ FRANKS & OLSEN
c/o Martha C. Franks, Esq.
P.O. Box 1983
Fort Collins, CO 80522-1983
(505) 247-9011
Marthacfranks@earthlink.net
Co-Counsel for Water Rights Division

APPLICANT
MONTGOMERY & ANDREWS, P.A.
c/o Jeffrey J. Wechsler, Esq.
325 Paso de Peralta
Santa Fe, NM 87501
505-982-3873
jwechsler@montand.com
Co-counsel for Applicant Augustin Plains Ranch, LLC

DRAPER & DRAPER LLC
c/o John Draper, Esq.
325 Paso de Peralta
Santa Fe, NM 87501
505-570-4590
John.draper@draperllc.com
Co-counsel for Applicant Augustin Plains Ranch, LLC

PROTESTANTS

NANCE PATO & STOUT, LLC
c/o Adren Robert Nance, Esq.
P.O. Box 507
Reserve, NM 87820
Attorney for Catron County Board of County Commissioners (co-counsel with Domenici Law Firm) & Socorro County Commission
575-838-0911
adren@npslawfirm.com

DOMENICI LAW FIRM, P.C.
c/o Pete Domenici, Esq.
c/o Lorraine Hollingsworth, Esq.
320 Gold Ave., S.W., #1000
Albuquerque, NM 87102-3228
505-883-6250
pdomenici@domenicilaw.com;
lhollingsworth@domenicilaw.com
Attorneys for: Monticello Properties, LLC; Double Springs Ranch, LLC; Gila Mountain Ranches, LLC; John Hubert Richardson Rev. Trust; Richardson Family Farms, LLC; Co-counsel with Adren R. Nance, Esq. for Catron County Board of Commissioners

LEWIS ROCA ROTHGERBER CHRISTIE LLP
c/o Jeffrey Albright, Esq.
201 Third Street, N.W., Suite 1950
Albuquerque, NM 87102
(505) 764-5435
JAlbright@lrrc.com
Attorney for Kokopelli Ranch, LLC

COPPLER LAW FIRM, P.C.
c/o John L. Appel, Esq.
645 Don Gaspar
Santa Fe, NM 87505-5656
505-988-5656
jappel@coppler.com
Attorney for City of Truth or Consequences

DAVIDSON LAW FIRM, LLC
c/o Tessa T. Davidson, Esq.
P.O. Box 2240
Corrales, NM 87048-2240
505-792-3636
ttd@tessadavidson.com
Attorney for John & Helen A. Hand and The Hand Living Trust

Peter Thomas White, Esq.
125 E. Palace Ave., #50
Santa Fe, NM 87501-2367
505-984-2690
Pwhite9098@aol.com
Attorney for Cuchillo Valley Community Ditch Association; Salomon Tafoya

STEIN & BROCKMANN P.A.
c/o James C. Brockmann, Esq.
P.O. Box 2067
Santa Fe, NM 87504-2067
505-983-3880
jcbrockmann@newmexicowaterlaw.com
Attorney for Last Chance Water Company

WAYNE G. CHEW P.C.
c/o Wayne G. Chew, Esq.
20 First Plaza Ctr. NW, Suite 517
Albuquerque, NM 87102
wgchew@wgchewlaw.com
505-842-6363
Attorney for Apache Ranch- Kenneth R. Brumit

HENNIGHAUSEN & OLSEN, L.L.P.
c/o Alvin F. Jones, Esq.
c/o Olivia R. Mitchell, Esq.
P.O. Box 1415
Roswell, NM 88202-1415
575-624-2463
ajones@h2olawyers.com;
omitchell@h2olawyers.com
Co-counsel for New Mexico Farm & Livestock Bureau and Catron County Farm & Livestock Bureau

HENNIGHAUSEN & OLSEN, L.L.P.
c/o A.J. Olsen, Esq.
c/o Jonathan E. Roehlk, Esq.
P.O. Box 1415
Roswell, NM 88202-1415
575-624-2463
ajolsen@h2olawyers.com;
jroehlk@h2olawyers.com
Co-counsel for Pecos Valley Artesian Conservancy District

Lisa Henne, Esq.
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148
(505) 827-5702
lhenne@slo.state.nm.us
Attorney for State of New Mexico Commissioner of Public Lands

Jane Marx, Esq.
2825 Candelaria Road NW
Albuquerque, New Mexico 87107
(505) 344-1176 (office)
(505) 453-5071 (cell)
janemarx@earthlink.net
Attorney for Pueblo of Zuni and Pueblo of San Felipe

ABERLY LAW FIRM
c/o Jessica R. Aberly, Esq.
2222 Uptown Loop, N.E., #3209
Albuquerque, NM 87110
(505) 977-2273
aberlylaw@swcp.com
Attorney for Pueblo of Sandia

University of New Mexico
c/o P.J. Hart, Office of University Counsel
1 University of New Mexico
MSC 05 3440
Albuquerque, NM 87131-0001
505-277-5035
PAHart@salud.unm.edu
Attorney for University of New Mexico

JOHNSON BARNHOUSE & KEEGAN, LLP
c/o Veronique Richardson, Esq.
c/o Karl E. Johnson, Esq.
7424 4th St., N.W.
Los Ranchos de Albuquerque, NM 87107-6628
505-842-6123
vrichardson@indiancountrylaw.com;
kjohnson@indiancountrylaw.com
Attorneys for Pueblo of Santa Ana

NAVAJO NATION DEPARTMENT OF JUSTICE
c/o M. Kathryn Hoover, Esq.
c/o Lisa Yellow Eagle, Esq.
Water Rights Unit
P.O. Drawer 2010
Window Rock, AZ 86515
928-871-7510
Email: khoover@nndoj.org;
Lyelloweagle@nndoj.org
Co-Counsel for Navajo Nation

Samantha M. Ruscavage-Barz, Esq.
516 Alto Street
Santa Fe, NM 87501
(505) 401-4180
sruscavagebarz@wildearthguardians.org
Attorney for Wildearth Guardians

ADVOCATES FOR COMMUNITY & ENVIRONMENT
c/o Simeon Herskovits, Esq.
c/o Iris Thornton, Esq.
P.O. Box 1075
El Prado, New Mexico 87529
(575) 758-7202
simeon@communityandenvironment.net

Christopher D. Shaw, Esq.
New Mexico Interstate Stream Commission
5550 San Antonio Drive, NE
Albuquerque, NM 87109-4127
505-383-4054
Email: chris.shaw@state.nm.us
Attorney for New Mexico Interstate Stream Commission

Co-Counsel for San Augustin Water Coalition (SAWC)
SONOSKY, CHAMBERS, MIELKE & BROWNELL, LLP
c/o David Mielke, Esq.
500 Marquette Avenue NW, Suite 660
Albuquerque, New Mexico 87102
(505) 247-0147
Dmielke@abqsonosky.com;
Sjones@abqsonosky.com
Attorney for Pueblo of Isleta

NEW MEXICO ENVIRONMENTAL LAW CENTER
c/o Douglas Meiklejohn, Esq.
c/o Jaimie Park, Esq.
c/o Jon Block, Esq.
c/o Eric Jantz, Esq.
1405 Luisa Street. Ste. 5
Santa Fe. NM 87505
(505) 989-9022
dmeiklejohn@nmelc.org
jpark@nmelc.org
Co-counsel for NMELC GROUP:
Manuel and Gladys Baca; Robert and Mona Bassett; Patti BearPaw; Sue Berry-Fox; (Babe) Ann Boulden; Donald and Joan Brooks; David and Terri Brown; Jack Bruton and Bruton Ranch, LLC; Lisa Burroughs and Thomas Betras, Jr.; Charles and Lucy Cloyes; Michael D. Codini, Jr.; Randy Coil; James and Janet Coleman; Thomas A. Cook; Wildwood Highlands Landowners Association; Randy Cox; Nancy Crowley; Tom Csurilla; Elk Ridge Pass Development Company, LLC; Top of the World Land Company, LLC; Roger and Dolores Daigger; Michael and Ann Danielson; Bryan and Beverly Dees; John and Eileen Dodds; Louise and Leonard Donahe; Patricia Eberhardt; Roy Farr; Paul and Rose Geasland; Gila Conservation Coalition Center for Biological Diversity and Gila Watershed Alliance; Mary Rakestraw Greiert; Michael Hasson; Don and Cheryl Hastings; Gary and Carol Hegg; Patricia Henry; Catherine Hill; Eric Hofstetter; Sandy How; M. Ian and Margaret Jenness; Amos Lafon; Marie Lee; Cleda Lenhardt; Rick and Patricia Lindsey; Victoria Linehan; Owen Lorentzen; Mike Loya; Sonia MacDonald; Robert and Susan MacKenzie; Douglas Marable; Thea Marshall; Sam and Kristin McCain; Jeff McGuire; Michael Mideke; Kenneth Mroczek and Janice Przylbyl Mroczek; Peter Naumnik; John Naumnik; Regina Naumnik; Robert Nelson; Veronika Nelson; Walter and Diane Olmstead; Dennis and Gertrude O'Toole; Karl Padgett, Max Padget & Leo Padgett; Barney and Patricia Padgett; Wanda Parker; Ray and Carol Pittman; John Preston and Patricia Murray Preston; Daniel Rael; Stephanie Randolph; Mary C. Ray; Kenneth Rowe; Kevin and Priscilla Ryan; Ray and Kathy Sansom; Christopher Scott Sansom; John and Betty Schaefer; Susan Schuhardt; Ann and Bill Schwebke; Janice Simmons; Jim Sonnenberg; Margaret and Roger Thompson; Gloria Weinrich; James Wetzig and Maureen M. MacArt; Donald and Margaret Wiltshire and Wildwood Landowners Association; Joseph and Janet Siomiak; Homestead Landowners' Association, Kristin Ekvall; Bette Dugie; Abbe Springs Homeowners Association; and Anne Sullivan.

Victor Anspach
HC 61, Box 15
Datil, NM 87821

Andres Aragon
HC62, Box 625-7
Datil, NM 87821

Frank Baker
P.O. Box 156
Datil, NM 87821-0156

Mary Annette Boulden
P.O. Box 528
Datil, NM 87821

Theresa J. Bottomly
P.O. Box 1773
Socorro, NM 7801

Allen Bassler, M.D.
Wanda Bassler
P.O. Box 497
Datil, NM 87821

Clark & Midge Bishop
20 Falcon Crest, HC 61 Box 3917
Datil, NM 87821

Dorothy Brook
P.O. Box 1925
Socorro, NM 87801

Baxter B. Brown & Sherry L. Fletcher
602 N. Broadway
T or C, NM 87901

Jack Brunacini and
Janice Brunacini
P.O. Box 225
Magdalena, NM 87825

James Cherry
805 Kelly Road
Magdalena, NM 97925

Dean Crane
P.O. Box 83
Magdalena, NM 87825

Barbara Daitch, CPA
P.O. Box 31
Datil, NM 87821

Sandra Coker
Carol Coker
P.O. Box 2
Datil, NM 87821-0002

David and Martha Dalbey
HC 61, Box 1526
Datil, NM 87821

Lloyd Daniels
15829 West 933 Road
Park Hill, OK 74451

Hara Davis
P.O. Box 433
Cliff, NM 88028

Thomas Dolan
P.O. Box 653
Pie Town, NM 87827

Monte Edwards
P.O. Box 301
Datil, NM 87821

Elena Farr
P.O. Box 1000
Datil, NM 87821

Henry Edwards
P.O. Box 1000
Datil, NM 87821

Karen Farr
P.O. Box 1000
Datil, NM 87821

Sam Farr
P.O. Box 1000
Datil, NM 87821

Farr Cattle Co.
Roy T. Farr, President
Dana Farr-EdwardsP.O. Box 1000
Datil, NM 87821

Freddy and Yvonne Ferguson
P.O. Box 767
Datil, NM 87821

Connie Gibson
P.O. Box 83
Magdalena, NM 87825

Lucy Fowles
P.O. Box 124
Datil, NM 87821

Nelson Garber
P.O. Box 774
Datil, NM 87821

O.R. and Sharon Gigante
15 Turquoise Trail
Datil, NM 87821

Suzanne Garrigues
506 Greenwood Road
Baltimore, MD 21204

Mary Horn
4905 Haines Ave. N.E.
Albuquerque, NM 87110

Fancher Gotesky
P.O. Box 616
Magdalena, NM 87825

Randall Greenwood
P.O. Box 26
Aragon, NM 87820

Raymond and Linda Gray
HC 61, Box 1515
Datil, NM 87821

Amber Guin
Bertie Guin
P.O. Box 417
Magdalena, NM 87825-0417

James Hall
P.O. Box 800
Magdalena, NM 87825

James M. Hall, M.D. and
Linn Kennedy Hall
P.O. Box 740
Datil, NM 87821

Dennis Inman
P.O. Box 148
Quemado, NM 87829

John Hanrahan and
Ruth Hanrahan
P.O. Box 730
Pie Town, NM 87827

John Hand
P.O. Box 159
Datil, NM 87821

Fred Hunger and
Leslie Hunger
HC 61, Box 1528
Datil, NM 87821

Dallas Hurt
P.O. Box 143
Fairacres, NM 88033

Gary L. McKennon
11112 Huerfano, N.E.
Albuquerque, NM 87123

Lynn Daniel Montgomery
240 Camino De Las Huertas
Placitas, NM 87043

Linda Major
P.O. Box 206
Magdalena, NM 87825

Randell & Mary Lynn Major
P.O. Box 244
Magdalena, NM 87825

Major Ranch Realty
Randell Major
P.O. Box 244
Magdalena, NM 87825

Karl and Ann Kohler
P.O. Box 1034
Magdalena, NM 87825

Montosa Ranch
Dale Armstrong
P.O. Box 326
Magdalena, NM 87825

Nick and Laurene Morales
6330 Roadrunner Loop
Rio Rancho, NM 87144

Janet Mooney
2003 Wolf Creek Pass
Lewisville, TX 75077-7546

Jamie O'Gorman
P.O. Box 594
Datil, NM 87821

Karen Rhoads
P.O. Box 822
Cobb, CA 95426-0822

Georgianna Pena-Kues
3412 Calle Del Monte, N.E.
Albuquerque, NM 87106-1204

L. Randall Roberson
P.O. Box 217
Datil, NM 87821

John Pemberton. Jr.
P.O. Box 395
Quemado, NM 87829

Rudy Saucedo
P.O. Box 2557
Las Cruces, NM 88004

Saulsberry Lazy V7 Ranch, LLC
Regor Saulsberry, PE
1031 Saulsberry Road
Datil, NM 87821

Estate of Paul Rawdon
c/o Barbara Rawdon
P.O. Box 285
Grants, NM 87020

Cordelia Rose
P.O. Box 281
Glenwood, NM 88039

Dr. Robert Sanders
P.O. Box 646
Datil, NM 87821

Mikel Schoonover
1244 Canter Road
Escondido, CA 92027-4449

Scott A. and Samantha G. Seely
4520 Valley Road
Shermans Dale, PA 17090

Shortes XX Ranch
Ron Shortes, General Manager
P.O. Box 533
Pie Town, NM 87827

Sally Taliaferro
P.O. Box 725
Datil, NM 87821

Robert and Elaine Smith
P.O. Box 287
Datil, NM 87821

Mark and Sue Sullivan
P.O. Box 607
Datil, NM 87821

Marjory Traynham
P.O. Box 375
Datil, NM 87821

Judith and Joe Truett
P.O. Box 211
Glenwood, NM 88039

Anthony Trennel
76 Piñon Hill Pl., N.E.
Albuquerque, NM 87122

Socorro Soil & Water Conservation District
103 Francisco de Avondo
Socorro, NM 87801
575-838-0078/

US Department of the Interior
Bureau of Indian Affairs
Southwest Regional Office
1001 Indian School Road, NW
Albuquerque, NM 87104

Brett Traynor
P.O. Box 3
Monticello, NM 87939

Pete Zamora
Box 565
Magdalena, NM 87825

Charles A. WagnerCharlene F. Wagner
P.O. Box 252
Magdalena, NM 87825

Walkabout Creek Ranch
George & Susan Howarth
HC 61, Box 35; Mangas Route
Datil, NM 87821

Max Yeh
Percha Animas Watershed Assoc.
P.O. Box 156
Hillsboro, NM 88042

Teresa Winchester
P.O. Box 1287
Magdalena, NM 87825

John A. Barnitz
Box 768
Magdalena, NM 87825

Barbara and Eddie Aragon
523 W. Reinken Ave.
Belen, NM 87002

Ann Bauer
P.O. Box 248
Magdalena, NM 87825

Kat Brown
1380 Rio Rancho Blvd. #280
Rio Rancho, NM 87124

Sandy Bartelsen
Wildwood Subdivision, Lot 40
Datil, NM 87821

Eric D. Bottomly
P.O. Box 2493
Corrales, NM 87048-2493

Joshua and Sarah Chong
112 Field Terrace
Lansdale, PA 19446

Frederick J. Bookland
P.O. Box 227
Magdalena, NM 87825

Patsy J. Douglas
300 Grant
Socorro, NM 87801

Jay B. Carroll
P.O. Box 574
Pie Town, NM 87827

Carroll Dezabelle
P.O. Box 968
Magdalena, NM 87825

Jim and Mary Ruff
1212 North Drive
Socorro, NM 87801

Cyndy and Charles Costanza
P.O. Box 81
Datil, NM 87821

Kristin Ekvall
1155 Innsbruck St.
Livermore, CA 94550

David P. Smith
Nancy H. Smith
P.O. Box 1114
Magdalena, NM 87825

Darnell L. Pettis
Montana Pettis
P.O. Box 63
Magdalena, NM 87825

David and Sara Robinson
HC 64 Box 700
Magdalena, NM 87825

Floyd Sanders
Luera Ranch, LLC
P.O. Box 1144
Magdalena, NM 87825

Connie May
Karl E. May
P.O. Box 138
Reserve, NM 87830

Ron & Mahona Burnett - Flying V. Ranch
P.O. Box 786
Datil , NM 87821

Ellen S. Soles
P.O. Box 420
Cliff, NM 88028

Geraldine Schwabb
902 Cuba Rd.
Socorro, NM 87801

AlbuquerqueJournal

Published in the Albuquerque Journal on Wednesday August 15, 2018

STATE OF NEW MEXICO CATRON COUNTY SEVENTH JUDICIAL DISTRICT COURT IN THE MATTER OF THE CORRECTED APPLICATION FILED BY AUGUSTIN PLAINS Hearing No. 17-005 RANCH, LLC., FOR PERMIT TO APPROPRIATE OSE File No. RG-89943 GROUNDWATER IN THE RIO GRANDE POD 1 through POD 37 UNDERGROUND WATER BASIN IN THE STATE OF NEW MEXICO Augustin Plains Ranch, LLC, Applicant/Appellant, v. Dist. Ct. No. _____ Tom Blaine, P.E., New Mexico State Engineer/Appellee, and Catron County Board of County Commissioners, Socorro County Commission, Kokopelli Ranch, LLC, John & Helen A. Hand and The Hand Living Trust, Last Chance Water Company, Monticello Properties, LLC, Double Springs Ranch, LLC, Gila Mountain Ranches, LLC, John Hubert Richardson Rev. Trust, Richardson Family Farms, LLC, City of Truth or Consequences, Cuchillo Valley Community Ditch Association, Salomon Tafoya, Apache Ranch Kenneth R. Brumit, New Mexico Farm & Livestock Bureau, Catron County Farm & Livestock Bureau, State of New Mexico Commissioner of Public Lands, Pueblo of Sandia, Pueblo of Santa Ana, Wildearth Guardians, Pecos Valley Artesian Conservancy District, Pueblo of Zuni, Pueblo of San Felipe, University of New Mexico, Navajo Nation, Advocates for Community & Environment, New Mexico Interstate Stream Commission, Pueblo of Isleta, Manuel and Gladys Baca, Robert and Mona Bassett, Patti BearPaw, Sue Berry-Fox, (Babe) Ann Boulden, Donald and Joan Brooks, David and Terri Brown, Jack Bruton and Bruton Ranch, LLC, Lisa Burroughs and Thomas Betras, Jr., Charles and Lucy Cloyes, Michael D. Codini, Jr., Randy Coil, James and Janet Coleman, Thomas A. Cook, Wildwood Highlands Landowners Association, Randy Cox, Nancy Crowley, Tom Csurilla, Elk Ridge Pass Development Company, LLC, Top of the World Land Company, LLC, Roger and Dolores Daigger, Michael and Ann Danielson, Bryan and Beverly Dees, John and Eileen Dodds, Louise and Leonard Donahe, Patricia Eberhardt, Roy Farr, Paul and Rose Geasland, Gila Conservation Coalition Center for Biological Diversity and Gila Watershed Alliance, Mary Rakestraw Greiert, Michael Hasson, Don and Cheryl Hastings, Gary and Carol Hegg, Patricia Henry, Catherine Hill, Eric Hofstetter, Sandy How, M. Ian and Margaret Jenness, Amos Lafon, Marie Lee, Cleda Lenhardt, Rick and Patricia Lindsey, Victoria Linehan, Owen Lorentzen, Mike Loya, Sonia MacDonald, Robert and Susan MacKenzie, Douglas Marable, Thea Marshall, Sam and Kristin McCain, Jeff McGuire, Michael Mideke, Kenneth Mroczek and Janice Przylbyl Mroczek, Peter Naumnik, John Naumnik, Regina Naumnik, Robert Nelson, Veronika Nelson, Walter and Diane Olmstead, Dennis and Gertrude O'Toole, Karl Padgett, Max Padget & Leo Padgett, Barnet and Patricia Padgett, Wanda Parker, Ray and Carol Pitman, John Preston and Patricia Murray Preston, Daniel Rael, Stephanie Randolph, Mary C. Ray, Kenneth Rowe, Kevin and Priscilla Ryan, Ray and Kathy Sansom, Christopher Scott Sansom, John and Betty Schaefer, Susan Schuhardt, Ann and Bill Schwebke, Janice Simmons, Jim Sonnenberg, Margaret and Roger Thompson, Gloria Weinrich, James Wetzig and Maureen M. MacArt, Donald and Margaret Wiltshire and Wildwood Landowners Association, Joseph and Janet Siomiak, Homestead Landowners' Association, Kristin Ekvall, Bette Dugie, Abbe Springs Homeowners Association, Anne Sullivan, Victor Anspach, Andres

EXHIBIT 5

Aragon, Frank Baker, Mary Annette Boulden, Theresa J. Bottomly, Allen Bassler, M.D., Clark & Midge Bishop, Dorothy Brook, Baxter B. Brown & Sherry L. Fletcher, Jack Brunacini and Janice Brunacini, James Cherry, Dean Crane, Barbara Daitch, CPA, Sandra Coker, Carol Coker, David and Martha Dalbey, Lloyd Daniels, Hara Davis, Thomas Dolan, Monte Edwards, Elena Farr, Henry Edwards, Karen Farr, Sam Farr, Farr Cattle Co., Roy T. Farr, Dana Farr-Edwards, Freddy and Yvonne Ferguson, Connie Gibson, Lucy Fowles, Nelson Garber, O.R. and Sharon Gigante, Suzanne Garrigues, Mary Horn, Fancher Gotesky, Randall Greenwood, Raymond and Linda Gray, Amber Guin, Bertie Guin, James Hall, James M. Hall, M.D. and Linn Kennedy Hall, Dennis Inman, John Hanrahan and Ruth Hanrahan, John Hand, Fred Hunger and Leslie Hunger, Dallas Hurt, Gary L. McKennon, Lynn Daniel Montgomery, Linda Major, Randell & Mary Lynn Major, Major Ranch Realty, Karl and Ann Kohler, Montosa Ranch, Dale Armstrong, Nick and Laurene Morales, Janet Mooney, Jamie O'Gorman, Karen Rhoads, Georgianna Pena-Kues, L. Randall Roberson, John Pemberton, Jr., Rudy Saucedo, Saulsberry Lazy V7 Ranch, LLC, Regor Saulsberry, PE, Estate of Paul Rawdon, c/o Barbara Rawdon, Cordelia Rose, Dr. Robert Sanders, Mikel Schoonover, Scott A. and Samantha G. Seely, Shortes XX Ranch, Ron Shortes Sally Taliaferro, Robert and Elaine Smith, Mark and Sue Sullivan, Marjory Traynham, Judith and Joe Truett, Anthony Trennel, Socorro Soil & Water Conservation District, U.S. Department of the Interior, Bureau of Indian Affairs, Southwest Regional Office, Brett Traynor, Pete Zamora, Charles A. Wagner, Charlene F. Wagner, Walkabout Creek Ranch, George & Susan Howarth, Max Yeh, Teresa Winchester, John A. Barnitz, Barbara and Eddie Aragon, Ann Bauer, Kat Brown, Sandy Bartelsen, Eric D. Bottomly, Joshua and Sarah Chong, Frederick J. Bookland, Patsy J. Douglas, Jay B. Carroll, Carroll Dezabelle, Jim and Mary Ruff, Cyndy and Charles Costanza, David P. Smith, Nancy H. Smith, Darnell L. Pettis, Montana Pettis, David and Sara Robinson, Floyd Sanders, Luera Ranch, LLC, Connie May, Karl E. May, Ron & Mahona Burnett Flying V. Ranch, Ellen S. Soles, Geraldine Schwabb Protestants/Appellees. NOTICE OF APPEAL DE NOVO FROM ORDER OF THE STATE ENGINEER Applicant/Appellant Augustin Plains Ranch, LLC, pursuant to NMSA 1978, Section 72-7-1, hereby appeals de novo from the Report and Recommendation Granting Motions for Summary Judgment accepted and adopted by the State Engineer on July 31, 2018, in the above-referenced New Mexico State Engineer proceeding, including, without limitation, denial of a full evidentiary hearing. Dated August 13, 2018 Respectfully submitted, MONTGOMERY & ANDREWS DRAPER & DRAPER Jeffrey J. Wechsler Kari E. Olson /s/ John B. Draper 325 Paseo de Peralta John B. Draper Santa Fe, NM 87501 325 Paseo de Peralta (505) 982-3873 Santa Fe, NM 87501 jwechsler@montand.com (505) 570-4591 kolson@montand.com john.draper@draperllc.com Attorneys for Applicant/ Appellant Augustin Plains Ranch, LLC CERTIFICATE OF SERVICE The undersigned hereby certifies this 13th day of August, 2018 that service of this Notice of Appeal De Novo from Order of the State Engineer is being accomplished in part by publication and in part by personal service pursuant to NMSA 1978 Section 72-7-1. /s/ John B. Draper

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**

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. Tippett, 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.

EXHIBIT 6

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, Magdelena, 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
Hearing Examiner

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

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

STATE OF NEW MEXICO
COUNTY OF CATRON
SEVENTH JUDICIAL DISTRICT COURT

No. D-728-CV-2012-008
Judge: Reynolds

AUGUSTIN PLAINS RANCH, LLC,
Applicant/Appellant,

vs.

SCOTT A. VERHINES, P.E.,
New Mexico State Engineer/Appellee,

and

KOKOPELLI RANCH, LLC, *et al.*,
Protestants/Appellees.

MEMORANDUM DECISION ON MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on a motion for summary judgment filed by Protestants against Augustin Plains Ranch, LLC ("Applicant"). Pursuant to *Lion's Gate Water v. D'Antonio*, 2009-NMSC-57, ¶ 23, 147 N.M. 523, 226 P.3d 622, "a district court is limited to a de novo review of the issue before the State Engineer." *See* N.M. Const. art. XVI, § 5. The sole issue on appeal is whether the State Engineer was justified in denying Applicant's application for an underground water permit, without holding an evidentiary hearing.

I. STANDARD OF REVIEW

Under Rule 1-056, NMRA, "[s]ummary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Where reasonable minds will not differ as to an issue of material fact, the court may

properly grant summary judgment. All reasonable inferences are construed in favor of the non-moving party." *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 16, 141 N.M. 21, 150 P.3d 971 (citations omitted).

II. MATERIAL FACTS

The only facts under consideration in this appeal are two documents: Applicant's amended application (Exhibit "C" to Protestants' Memorandum in Support of Motion for Summary Judgment), and an e-mail modification of the amended application (Exhibit "D" to Protestants' Memorandum in Support of Motion for Summary Judgment), because Applicant argues that the amended application, as modified, supersedes the original application filed on October 12, 2007 (Exhibit "B" to Protestants' Memorandum in Support of Motion for Summary Judgment). It may reasonably be inferred that an amended application supplants an original application; therefore, the original application will not be analyzed.

If the amended application, as modified, violates New Mexico law, the motion should be granted, and the State Engineer's decision should be affirmed. Otherwise, the motion should be denied with a remand to the State Engineer to hold an evidentiary hearing on the application.

A. The Amended Application

On May 5, 2008, Applicant filed with the Office of State Engineer ("OSE") an Amended Application for Permit to Appropriate Underground Water, replacing an earlier application submitted to the OSE on October 12, 2007, collectively identified as Application RG-89943, to divert and use waters from the San Agustin Basin in Catron County, New Mexico. Paragraph 1 of the amended application, on an OSE application

form, asks for the applicant's name, contact information and address, which Applicant answered.

Paragraph 2 is entitled "Location of Wells." Applicant typed, "See Attachment A for description and location of proposed wells." Attachment A details locations of 37 proposed wells on Applicant's ranch in Catron County, New Mexico.

For Paragraph 3, "Well Information," Applicant typed, "See Attachment A," which lists the top depth of the wells (3000 feet), the casing diameter (20 inches), and the expected yield of each well (2000 gallons per minute). For the name of the well driller and driller license number, Applicant typed, "Not yet determined."

Paragraph 4 is entitled, "Quantity," for which Applicant typed "54,000" acre-feet per annum for both consumptive use and diversion amount.

Paragraph 5, "Purpose of Use," lists various purposes with blanks following each purpose: domestic, livestock, irrigation, municipal, industrial, commercial and "other (specify)." Applicant checked each blank and added other purposes of use in the line following "other": environmental, recreational, subdivision and related; replacement and augmentation. Applicant left blank Paragraph 5's last line, "Specific use: _____ _____."

On the first line below Paragraph 6's heading, "Place of Use," Applicant typed, "See Attachment B for place of use description," and left blank the spaces in the following lines:

_____acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres

Attachment B, "Places of Use," states that "the proposed places of use are: A. Within the exterior boundaries of Augustin Plains Ranch ("Ranch"), which is located in Catron County, New Mexico. The location of the Ranch is depicted on the attached boundary map as Exhibit 1 and further described as follows . . . ." Attachment B then provides a page and a half of legal description for the ranch. Following that legal description, Attachment B states other proposed places of use:

> B. 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.

A question at the bottom of Paragraph 6 asks, "Who is the owner of the land?" Applicant answered, "Augustin Plains Ranch, LLC."

The final paragraph of the OSE form, Paragraph 7, is entitled, "Additional Statements or Explanations," with blank lines provided for an applicant to complete. Applicant wrote:

> This Amended Application is an amendment of Application No. RG-89943 filed October 12, 2007. 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 in the Rio Grande Basin in New Mexico. Any impairment of existing rights, in the Gila-San Francisco Basin, the Rio Grande Basin, or any other basin, that would be caused by the pumping applied for, will be offset or replaced.

The statements in the completed form were then acknowledged as being true to the best of the knowledge and belief of the signatory, a legal representative of Applicant.

B. Modification to the Amended Application

On June 26, 2008, an attorney for Applicant sent to the OSE an e-mail, with a heading of "Modified Application" and with a subject line of "Augustin Plains Ranch Application – Irrigated Acreage on the Ranch." The substance of the e-mail reads as follows:

> Please accept the following as a modification of the Augustin Plains Ranch, LLC Amended Application for Permit to Appropriate Underground Water, filed May 5, 2008. With regard to the purpose and place of use, to the extent that the applied-for water will be used for irrigation on Augustin Ranch, the irrigation will be limited to 120 acres in each of the following quarter sections: [Thereafter follows a description of 37 quarter sections] . . . .
> More specifically, to the extent that the applied-for water will be used for irrigation on Augustin Ranch, the irrigation will be limited to 120 acres within a 1,290 foot radius of each of the 37 well locations listed on Attachment A to the Amended Application. The total acreage to be irrigated on the Ranch will be 4440 acres.

Modified Application (Exhibit D to Protestants' Memorandum in Support of Motion for Summary Judgment).

III. DISCUSSION

The right to use water in New Mexico is based upon the New Mexico Constitution, which expresses the water law of prior appropriation existing at the constitution's adoption a century ago: "Although '[t]he water in the public stream belongs to the public,' Snow v. Abalos, 18 N.M. 681, 693, 140 P. 1044, 1048 (1914), unappropriated water is 'subject to appropriation for beneficial use.' N.M. Const. art. XVI, § 2. Once appropriated, '[p]riority of appropriation shall give the better right.' N.M. Const. art. XVI, § 2." *State v. City of Las Vegas,* 2004-NMSC-009, ¶ 28, 135 N.M. 375, 89 P.3d 47.

Applicant seeks to establish a water right, "a process that takes a period of time." *Hanson v. Turney*, 2004-NMCA-069, ¶ 8, 136 N.M. 1, 94 P.3d 1, citing *State ex rel. Reynolds v. Mendenhall*, 68 N.M. 467, 473, 362 P.2d 998, 1002-03 (1961) (accepting that it may require years to commence an appropriation, drill a well, install equipment, and dig ditches, all as prerequisite to applying the water to a beneficial use), and *Millheiser v. Long*, 10 N.M. 99, 106-07, 61 P. 111, 114 (1900) (noting that the building of ditches, flumes, and other works are necessary to divert water and apply it to beneficial use).

A. Statutory Procedure for Obtaining a Groundwater Permit

Under New Mexico law, there is a statutory procedure for establishing the right to use water, beginning with obtaining a water permit for surface water pursuant to Chapter 72, Article 5, NMSA 1978, and for underground water pursuant to Chapter 72, Article 12, NMSA 1978. As stated in *Hanson v. Turney,* "A water permit is an inchoate right, and 'is the necessary first step' in obtaining a water right. See Green River Dev. Co. v. FMC Corp., 660 P.2d 339, 348-51 (Wyo. 1983). It is 'the authority to pursue a water right, a conditional but unfulfilled promise on the part of the state to allow the permittee to one day apply the state's water in a particular place and to a specific beneficial use under conditions where the rights of other appropriators will not be impaired.' Id. at 348." *Hanson v. Turney,* 2004-NMCA-069, ¶ 9.

After declaring that underground waters with reasonably ascertainable boundaries belong to the public and are available for beneficial use, which is the basis, the measure and the limit of the right to use underground waters (NMSA 1978, §§ 72-12-1, 2), the Legislature prescribes the method for obtaining an underground water permit in NMSA 1978, § 72-12-3 (2001). Subsection A of Section 72-12-3 requires applicants seeking to

appropriate underground water for beneficial use to designate the following in their applications:

(1) the particular underground stream, channel, artesian basin, reservoir or lake from which water will be appropriated;

(2) the beneficial use to which the water will be applied;

(3) the location of the proposed well;

(4) the name of the owner of the land on which the well will be located;

(5) the amount of water applied for;

(6) the place of the 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.

NMSA 1978, § 72-12-3(A) (2001).

No application can be accepted by the State Engineer unless all of the information required by Subsection A accompanies the application. Section 72-12-3(C). Upon the filing of an application, the State Engineer causes notice of the application to be published for three consecutive weeks in newspapers in the county where the well will be located and in each county where the water will be placed to beneficial use. Section 72-12-3(D). Objections may be filed within ten days of the last notice. *Id.* Subsection D then limits the persons who may object to the application:

> Any person, firm or corporation or other entity objecting that the granting of the application will impair the objector's water right shall have standing to file objections or protests. Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests; provided, however, that the state of New Mexico or any of its branches, agencies, departments,

> boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

NMSA 1978, § 72-12-3(D) (2001).

If no objections or protests are filed, the State Engineer is required "to grant the application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators from the source," if he finds that there are unappropriated waters or if the proposed appropriation would not impair existing water rights from the source, is not contrary to conservation of water within the state and is not detrimental to the public welfare of the state. Section 72-12-3(E).

The State Engineer has two options for applications that are opposed or if he is of the opinion that the permit should not be issued. "He may deny the application without a hearing or, before he acts on the application, may order that a hearing be held." Section 72-12-3(F).

If the State Engineer decides to grant an application, then the water user has "a reasonable time after an initial appropriation to put water to beneficial use, known as the doctrine of relation. State ex rel. Reynolds v. Mendenhall, 68 N.M. 467, 470-71, 362 P.2d 998, 1001 (1961); Hagerman Irrigation Co., 16 N.M. at 180, 113 P. at 824-25. 'If the application to beneficial use is made in proper time, it relates back and completes the appropriation as of the time when it was initiated.' Hagerman Irrigation Co., 16 N.M. at 180, 113 P. at 825." *State v. City of Las Vegas,* 2004-NMSC-009, ¶ 35, 135 N.M. 375, 89 P.3d 47. Thus, if the application in this case had been approved by the State Engineer, upon the actual appropriation of water to beneficial use, Applicant's priority date would have been the date of his original application.

B. State Engineer's Decision

After accepting Applicant's original and amended application, as modified, the State Engineer published notices in a number of counties. Over 900 protests were filed. An OSE hearing examiner considered motions to dismiss and held a hearing on those motions. *See* Scheduling Order (Exhibit "E" to Protestants' Memorandum in Support of Motion for Summary Judgment). He then entered an "Order Denying Application," approved by the State Engineer on March 20, 2012 (Exhibit "A" to Protestants' Memorandum in Support of Motion for Summary Judgment).

The hearing examiner's findings and recommendations comprise 26 paragraphs. The first four deal with the State Engineer's jurisdiction, the relief sought and the lack of a need for separate hearings on the various motions to dismiss. Paragraph 5 points to several of the requirements in Section 72-12-3(A) relevant to the hearing officer's decision: "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 by the hearing examiner)

After citing the State Engineer's statutory authority to deny a permit without a hearing (Paragraphs 6-7), in Paragraph 8 the hearing examiner finds the amended application to be facially invalid vis-à-vis the place of use and the beneficial use to which the water will be applied:

> 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 in the state or would not be detrimental to the public welfare of the state.

Order Denying Application, ¶ 8.

While finding later in his decision that it is unclear whether irrigation is contemplated only on the Ranch (Paragraph 20), in Paragraphs 9-10, the hearing examiner discusses the amount of water proposed to be used for irrigation, assuming it is all to be used on the Ranch. By dividing the 54,000 acre-feet of water per acre per year (afy) requested by Applicant by the number of acres to be irrigated on the Ranch (4,440), the hearing officer finds that the application calls for a crop irrigation requirement (CIR) of 12.16 afy, much more than the three afy usually recognized by the State Engineer in his administrative practice. Therefore, applying 12.16 afy "to any land within the Rio Grande Underground Water Basin would be contrary to sound public policy." Order Denying Application, ¶ 11.

Paragraphs 12 and 13 quote statements in the original application regarding potential uses for compact deliveries and for supporting municipalities. The hearing examiner notes that neither the Interstate Stream Commission, the only entity authorized to administer compact deliveries to the State of Texas, nor any municipality is a co-applicant. Order Denying Application, ¶¶ 13-16.

Stating that "an application is, by its nature, a request for final action," and that "[i]t is reasonable to expect that, upon filing an application, the Applicant is ready, willing and able to proceed to put water to beneficial use," the hearing examiner finds that "[t]he 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."

Order Denying Application, ¶¶ 17-19. The hearing examiner concludes it would be against sound public policy to consider an application that lacks specificity of purpose of the use of water, the actual end-user, specific identification of delivery points or methods of delivery. Order Denying Application, ¶¶ 21-22.

In its closing paragraphs, the Order Denying Application determines that the application is so vague and overbroad that it cannot be reasonably evaluated, contrary to public policy, that the application should not be considered, pursuant to NMSA 1978, § 72-5-7 (1985), that the application should be dismissed without prejudice to filing of subsequent applications, and that the hearing should be dismissed. Order Denying Application, ¶¶ 22-26.

IV. ANALYSIS

A. The State Engineer was required to deny the application if it violated New Mexico law.

The State Engineer has the authority to deny underground water permits without a hearing, NMSA 1978, § 72-12-3(F) (2001), a section in the groundwater permitting statutes which the State Engineer cites, albeit incorrectly, in his Order Denying Application, ¶ 6. Applicant argues that once the OSE accepted the application and published notice, the State Engineer could not reject the application without a hearing. Applicant's Response in Opposition to Motion for Summary Judgment, at 14-15. Section 72-12-3(C) provides that no application can be accepted by the State Engineer unless all of the information required by Subsection A accompanies the application. The OSE staff did determine that the form had been completed with all the information required, but it was within the State Engineer's authority, pursuant to Section 72-12-3(F), to deny the application without a hearing. The duties from the two subsections differ. The first

under Subsection C is an administrative task by OSE staffers to make sure an application is complete before proceeding to publication and submission to a hearing examiner for review. The hearing examiner then analyzes the substance of an application in light of New Mexico water law and the issues raised by protestants, if any.

If the acceptance by the OSE under Subsection C requires the hearing examiner under Subsection F to hold an evidentiary hearing, the statutory language in Subsection F allowing him to deny an application without a hearing would be negated. "[W]e must interpret the statute according to common sense and reason, Sandoval v. Rodriguez, 77 N.M. 160, 420 P.2d 308 (1966); give its words their usual and ordinary meaning unless a contrary intent is clearly indicated, State ex rel. Duran v. Anaya, 102 N.M. 609, 698 P.2d 882 (1985); give effect to every part of the statute, Weiland v. Vigil, 90 N.M. 148, 560 P.2d 939 (Ct. App.), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977); and construe it as a harmonious whole. General Motors Acceptance Corp. v. Anaya, 103 N.M. 72, 703 P.2d 169 (1985)." *Varoz v. New Mexico Bd. of Podiatry,* 104 N.M. 454, 456, 722 P.2d 1176 (S. Ct. 1986).

Section 72-12-3(F) provides the statutory authority for the State Engineer to deny an application without a hearing, but the State Engineer also cites a surface water statute as his authority to deny an underground water application, NMSA 1978, § 72-5-7 (1985), which provides in pertinent part that 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." Order Denying Application, ¶ 7; *see also* Order Denying Application, ¶ 24.

At oral argument on appeal, counsel for the State Engineer referred to *City of Albuquerque v. Reynolds,* 71 N.M. 428, 437, 379 P.2d 73, 79 (1962) as support for the State Engineer's policy of applying a statute found only in one part of the water code to both surface and groundwater issues. *City of Albuquerque v. Reynolds* does provide support for this policy for substantive issues once a water right is secured, but it does not provide support for confusing the procedural processes to obtain surface and groundwater permits. As quoted in *Hydro Resources Corp. v. Gray*, 2007-NMSC-061, ¶ 21, 143 N.M. 142, 173 P.3d 749, "There does not exist one body of substantive law relating to appropriation of stream water and another body of law relating to appropriation of underground water. The legislature has provided somewhat different administrative procedure [sic] whereby appropriators' rights may be secured from the two sources but the substantive rights, when obtained, are identical." City of Albuquerque v. Reynolds, 71 N.M. 428, 437, 379 P.2d 73, 79 (1962)." Accordingly, the surface water statute governing administrative procedures has no bearing on the State Engineer's decision to deny the underground water application in this case.

Section 72-12-3(F) does not explain under what circumstances the State Engineer may deny an application. The State Engineer is an administrative officer whose office is created by statute, NMSA 1978, § 72-2-1 (1982), and whose authority is thereby "limited to the power and authority that is expressly granted and necessarily implied by statute." *In re Application of PNM Elec. Servs.,* 1998-NMSC-017, ¶ 10, 125 N.M. 302, 961 P.2d 147. If the application is facially invalid, that is, that on its face the application violates New Mexico law, the State Engineer had no authority to act other than to reject the application.

B. The application violates the underground water permitting statute and contradicts beneficial use as the basis of a water right and the public ownership of water, as declared in the New Mexico Constitution.

In reviewing the State Engineer's decision de novo, this Court has determined that the application had to be denied by the State Engineer for the following reasons: (1) the application fails 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.

In this de novo review, this Court will not examine the argument of Protestants (Memorandum in Support of Protestants' Motion for Summary Judgment, at 12-13) that the application violated statutory notice provisions, because that is a secondary issue that would only be addressed if the application passed the threshold issue of facial validity. See *Lion's Gate Water v. D'Antonio,* 2009-NMSC-057, 147 N.M. 523, 229 P.3d. 622.

In *Lion's Gate,* the Supreme Court held that the State Engineer was barred from considering secondary issues such as impairment and conservation of water if as a threshold issue he determined that there was no water available to appropriate. *Id.,* 2009-NMSC-057, ¶ 27 ("If the State Engineer makes a pre-hearing determination that water is unavailable for appropriation, secondary issues that must otherwise be considered before a permit to appropriate water can be granted become irrelevant, because the State Engineer is required to reject the application without reaching those issues.")

Likewise in this de novo appeal, the State Engineer's decision was based on the application itself rather than the secondary issue of potential protestants' rights to notice. Under Section 72-12-3(F), the State Engineer can deny an application regardless

of protests if he determines, as he did here, that the threshold issue of validity vis-à-vis New Mexico water law requires him to reject an application on its face.

1. The application fails to specify the beneficial purpose and the place of use of water, contrary to NMSA 1978, § 72-12-3(A)(2),(6) (2001).

The statutory provision outlining the requirements for an underground water permit application is NMSA 1978, § 72-12-3 (2001). Subsection (A)(2) requires an applicant to designate "the beneficial use to which the water will be applied." Applicant listed eleven uses in its amended application. Subsection (A)(6) requires an applicant to designate "the place of the use for which the water is desired." For its proposed places of use Applicant identified 37 quarter sections on its ranch and "[a]ny 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." Amended Application, Attachment B.

The State Engineer determined that the eleven proposed uses, in conjunction with the broad descriptions for place of use, were not sufficiently specific to allow the State Engineer to determine whether the application should be granted, because it was unclear where the water would be used and for what purpose. The State Engineer could not fulfill his statutory duty to evaluate "whether the proposed appropriation would impair existing rights or would not be contrary to the conservation of water in the state or would not be detrimental to the public welfare of the state." Order Denying Application, ¶ 8.

On appeal, Applicant argues that nothing in the regulations or statutes prohibits an applicant from identifying multiple beneficial uses. Applicant's Response in Opposition to Protestants' Motion for Summary Judgment, at 10-11. Applicant also argues that the seven counties and the watershed boundaries of the Rio Grande are definite enough to

provide "sufficient information to allow interested parties to identify the legal subdivision where the water will be put to use." Applicant's Response in Opposition to Protestants' Motion for Summary Judgment, at 12-13. Throughout its Response to Protestants' Motion for Summary Judgment, Applicant argues that the application should be treated as a court complaint and be given the benefit of the doubt as to specificity until the case is heard on its evidentiary merits.

Unlike civil complaints brought under the original jurisdiction of a district court, this matter arises from a statutory permitting procedure before the State Engineer, requiring analysis of the statute governing the granting of an underground water permit. There is a dispute as to whether the statute requires specificity, and if so, whether the amended application meets the statutory specificity requirement. It is not clear, however, from a plain reading of Sections 72-12-3(A)(2) and (6) what the Legislature intended in regard to the level of specificity mandated. Therefore, the Court "must resort to construction and interpretation to ascertain legislative intent." *Vaughn v. United Nuclear Corp.*, 98 N.M. 481, 485, 650 P.2d 3 (Ct. App. 1982).

As stated in *State v. Nick R.*, 2009-NMSC-050, ¶ 16, 147 N.M. 182, 218 P.3d 868, "The first step in any statutory construction is to try 'to determine and give effect to the Legislature's intent' by analyzing the language of the statute," quoting *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n,* 2009-NMSC-013, ¶ 9, 146 N.M. 24, 206 P.2d 3.

The language of Sections 72-12-3(A)(2) and (6) employ a singular noun for an application's required beneficial "use" and "place" of use. The singular does not mean, however, that the statute requires an applicant to seek only one use in only one place per

application. There is a rule of statutory construction that states, "Use of the singular number includes the plural, and use of the plural number includes the singular." NMSA 1978, § 12-2A-5(A) (1997), cited by *State v. McClendon,* 2001-NMSC-023, ¶ 16, 130 N.M. 551, 28 P.3d 1092.

Just because the underground water permitting statute may allow for designation of multiple uses and places of use does not mean that all or nearly all possible uses and huge areas of land for places of use can be stated in an application without being rejected for vagueness. There is no question that if no beneficial use or place of use was selected, then the application would have to be denied. In fact, it would have been rejected earlier by OSE staff pursuant to Section 72-12-3(C) as being incomplete. On the other end of the spectrum is when all of the choices for place of use are checked off and even more are added. By choosing all of the named options and including several more, there was no narrowing down or selection of use in the application itself, there was just an "all of the above" approach. As for place of use, designating "any" area within the seven-county Middle Rio Grande watershed opened up great uncertainty as to where Applicant's pipeline would go and where it would be actually used, because the word "any" is a general term rather than specific.

Under Applicant's view of the permit process, identifying the actual, specific use and actual, definite place of use would not be required until later in the process, which Applicant intimates would be developed through an evidentiary hearing, a hearing the State Engineer denied. If, however, an underground water permit application requires specificity, then the amended application failed to specify, that is, that it failed to particularize, Applicant's plans for actual beneficial use of water and the actual place of

use for the water, thereby making it impossible for the State Engineer to perform his statutory duty of determining whether to grant the application and issue a permit. *See Tri-State Generation & Transmission Ass'n v. D'Antonio,* 2011-NMCA-015, ¶¶ 12-13, 149 N.M. 394, 249 P.3d 932, *reversed on other grounds, Tri-State Generation & Transmission Ass'n v. D'Antonio,* No. 32,704, slip op. (N.M. S. Ct. Nov. 1, 2012) ("The . . . permitting . . . statutes . . . require the State Engineer to evaluate factors such as beneficial use, availability of unappropriated water, and impairment of existing rights. In order to evaluate beneficial use, the State Engineer must assess the quantity, place of use, and purpose to which water has actually been applied. See State ex rel. Martinez v. McDermett, 120 N.M. 327, 330, 901 P.2d 745, 748 (Ct. App. 1995).")

Other subsections of the statute can be read *in pari materia* with Subsection (A)(2) to determine whether "beneficial use" and "place of use" must be stated with specificity. *See State v. Gurule,* 2011-NMCA-042, ¶ 12, 149 N.M. 599, 252 P.3d 823 ("[A]s a rule of statutory construction, we read all provisions of a statute and all statutes in pari materia together in order to ascertain the legislative intent. Roth v. Thompson, 113 N.M. 331, 334, 825 P.2d 1241, 1244 (1992).")

That the underground water permitting statute calls for specificity of beneficial use and place of use is supported by Subsection (A)(1), which requires applicants to designate "the **particular** underground stream, channel, artesian basin, reservoir or lake from which water will be appropriated." NMSA 1978, § 72-12-3(A)(1) (2001) (emphasis added). Further, in Subsection D, in order to have standing, objectors to an application must prove that they "**will be** substantially and **specifically** affected by the granting of the application." NMSA 1978, § 72-12-3(D) (2001) (emphasis added). It would be

anomalous for an applicant to be allowed to give general statements of intent to appropriate water for beneficial use yet require specificity for objectors. That over 900 protests were filed in this case demonstrates the absurdity of this result, if Applicant's interpretation of the statute were allowed to stand. "We do not construe a statute in a manner that is contrary to the intent of the legislature or in a manner that would lead to absurd or unreasonable results. State v. Padilla, 1997-NMSC-22, P6, 123 N.M. 216, 937 P.2d 492; State v. Shafer, 102 N.M. 629, 637, 698 P.2d 902, 910 (stating that statutes must be construed according to the purpose for which they were enacted and not in a manner which leads to absurd or unreasonable results)." *State v. Romero*, 2002-NMCA-106, ¶ 8, 132 N.M. 745, 55 P.3d 441.

New Mexico courts have long considered specificity to be a statutory requirement for an underground water permit. *Hanson v. Turney, supra* ("A water permit is . . . 'the necessary first step' in obtaining a water right. . . to one day apply the state's water in a **particular place** and to a **specific beneficial use**.") (citations omitted); *Mathers v. Texaco, Inc.*, 77 N.M. 239, 248, 421 P.2d 771 (S. Ct. 1977) ("Here the applicant, Texaco, has **expressly specified the particular use** for which the water **is** to be appropriated and the **precise lands** to which the same **is** to be applied to accomplish the purpose of such use.") (emphasis added); *Cartwright v. Public Serv. Co.*, 66 N.M. 64, 110, 343 P.2d 654 (1959) (Federici, D.J., dissenting) ("The appropriator acquires only the right to take from the stream a given quantity of water for a **specified purpose**, Snow v. Abalos, 18 N.M. 681, 140 P. 1044, supra. Many times this Court has held that the priority of right is based upon the intent to take a **specified amount** of water for a **specified purpose** and he can

only acquire a perfected right to so much water as he applied to beneficial use.") (emphasis added)

Because Applicant 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. See *State ex rel. Reynolds v. Miranda,* 83 N.M. 443, 493 P.2d 409 (S. Ct. 1972), citing *Harkey v. Smith*, 31 N.M. 521, 247 P. 550 (1926), for the proposition that the intent, diversion and use of water must coincide for an effective appropriation.

The lack of specificity for beneficial use and place of use is also demonstrated by analysis of another portion of the application and the State Engineer's denial. The State Engineer denied the application based in part on his determination that applying 12.16 afy "to any land within the Rio Grande Underground Water Basin would be contrary to sound public policy." Order Denying Application, ¶ 11. Although the State Engineer stated that the usual CIR approved by the OSE is 3 afy, he did not state that no other applications that exceed that amount had been approved by the OSE. There is not enough information in the Order Denying Application for this Court to state with certainty that the amount applied to irrigation by Applicant would actually be 12.16 afy and that that amount would be, as a matter of law, excessive.

The State Engineer's difficulty in analyzing the application stems from the application's inherent ambiguity. The application is uncertain as to what amounts, if any, would be used for irrigation on Applicant's ranch because the application states its

purpose is to provide a pipeline for new and existing uses on the Rio Grande. That statement in Paragraph 7 of the application about a pipeline contradicts the modification to the amended application, which suggests that the 37 wells might provide irrigation to their respective 37 quarter sections, to the extent there would be any irrigation on the ranch resulting from the grant of a water permit. Because of the confusion between the application's stated pipeline purpose and the uncertain amounts to be used for irrigation on the ranch, the current application is invalid for lack of clarity.

The dismissal without prejudice allows Applicant to submit an application that meets the statutory requirement of specificity for beneficial use and place of use. But the application under review just outlines general potential uses and places of use; it does not describe what actually *is* to be the purpose and place of use. Rather than being the "first step" in obtaining a water right, the application demonstrates that Applicant is merely contemplating possible steps, like a player holding onto a chess piece before committing to a particular move. Under Applicant's theory, the statutory permit process is "inherently flexible," allowing a water user to make broad statements of use and place of use and lay claim to whatever amount of water a basin can bear, and then during the permit process that broad claim can be narrowed down by the State Engineer through evidentiary hearings. *See* Applicant's Response in Opposition to Motion for Summary Judgment, at 28.

Contrary to Applicant's theory, the history and purpose of the underground water permitting statute, NMSA 1978, § 72-12-3 (2001), underscore the requirement of an actual, specific plan to be outlined in an application. When interpreting statutes, "we seek to give effect to the Legislature's intent, and in determining intent we look to the

language used and consider the statute's history and background." *Lion's Gate Water v. D'Antonio,* 2009-NMSC-057, ¶ 23, 147 N.M. 523, 229 P.3d. 622 (citations omitted).

In *State ex rel. Reynolds v. Mendenhall,* 68 N.M. 467, 362 P.2d 988 (1961), the Supreme Court, faced with the question of the priority date of a well, explored the history of groundwater statutes in light of the doctrine of relation. "Long in his Treatise on the Law of Irrigation (2d Ed.) 126, describes the doctrine in these words: 'The rights of an appropriator of water do not become absolute until the appropriation is completed by the actual application of the water to the use designed; but where he had pursued the work of appropriation with due diligence, and brought it to completion within a reasonable time, as against other appropriators, his rights will relate back to the time of the commencement of the work . . . ." *State ex rel. Reynolds v. Mendenhall,* 68 N.M. at 470.

Mendenhall traces New Mexico's application of the doctrine of relation for surface water from the territorial cases of *Keeney v. Carillo,* 2 N.M. 480 (1883) (doctrine applied to waters of a spring, stream or cienega) and *Millheiser v. Long*, 10 N.M. 99, 61 P. 111 (1900) (applying the doctrine in "holding that a valid appropriation was accomplished when, after an intention had been formed, notice of such intent given, and the works constructed, water was diverted and put to beneficial use within a reasonable time"). *State ex rel. Reynolds v. Mendenhall,* 68 N.M. at 471.

Among other precedents, *Mendenhall* cites *Farmers' Dev. Co. v. Rayado Land & Irrigation Co.,* 28 N.M. 357, 213 P. 202 (1923), a case examining the common law of appropriation, the first territorial permitting statutes of 1905 that permissively replaced procedures for obtaining a water right under the common law of appropriation, and the

1907 territorial water code that mandated that permits replace the former common law rules of appropriation in securing a water right.

Mendenhall cites all these cases because the Supreme Court faced a problem as to how to determine the priority date for underground waters without clear statutory authority. The underground water statutes enacted first in 1927 and again in 1931 did not explicitly mention the doctrine of relation, whereas the 1907 water code covering surface waters did. After declaring that all surface waters belong to the public and are subject to appropriation for beneficial use, NMSA 1978, § 72-1-1 (1907), the Legislature explicitly declared that the doctrine of relation applied to appropriated surface waters: "All claims to the use of water initiated thereafter [after March 19, 1907] shall relate back to the date of the receipt of an application therefor in the office of the territorial or state engineer, subject to compliance with the provisions of this article, and the rules and regulations established thereunder." NMSA 1978, § 72-1-2 (1907).

The Supreme Court in *Mendenhall* held that the doctrine of relation was implicitly the law for underground waters because the general law of appropriation applies equally to surface and ground water. *State ex rel. Reynolds v. Mendenhall,* 68 N.M. at 472, citing *Yeo v. Tweedy,* 34 N.M. 611, 286 P. 970 (1929) and *Pecos Valley Artesian Conservancy Dist. v. Peters,* 52 N.M. 148, 193 P.2d 418 (1948).

With a statutory permit, an appropriator, whether for surface or underground waters, has a clearly defined priority date, which is the date the application was received by the State Engineer, a great innovation in western water law in the late 19th and early 20th centuries. Samuel C. Wiel, in his landmark work, **Water Rights in the Western States**, described how permitting statutes grew out of the pre-existing laws and were

generally declaratory thereof, but the statutes provided an advantage over the older law by providing certainty as to which person had the priority of time and therefore priority of right. *See* N.M. Const. art. XVI, § 2, "Priority of appropriation shall give the better right."

A permitting statute would "fix the procedure whereby a certain definite time might be established as the date at which title should accrue by relation." Wiel, **Water Rights in the Western States**, §§ 368-69, pp. 398-99 (3d. ed. 1911). As Wiel noted in Section 368, both the old law and the new permitting statutes did not countenance anyone acting "the dog in the manger," a reference to Aesop's fable of a dog that blocks cattle from feeding, even though the dog itself has no appetite for hay. Wiel wrote, "Many attempted to secure monopoly of waters by merely posting notices or making a pretense at building canals, ditches, etc., and tried by this means to hold a right to the water against later comers who *bona fide* sought to construct the necessary works for its use." *Id.*, § 368. See also *Cartwright v. Public Serv. Co.*, 66 N.M. at 110 (Federici, D. J., dissenting), referencing state policy prohibiting "the dog in the manger" tactics, quoting with approval *Harkey v. Smith,* 31 N.M. 521, 531, 247 P. 550 (1926) ("[N]o dog in the manger' policy can be allowed in this state. [U]nless these waters can be and are beneficially used by plaintiffs, the defendants or others may use the same.")

If its application had been approved, Applicant would have had a priority date of October 12, 2007, the date of the original application's receipt by the OSE, after Applicant had applied the waters to beneficial use. In the meantime, however, while Applicant was deciding exactly how and where to apply the waters approved, Applicant would have had tentative priority over anyone else who after October 12, 2007 wanted to

use the same waters or waters hydrologically related thereto. For many years, Applicant would have been the dog in a very big manger, an entire underground water basin.

To place the size of Applicant's claim in perspective, this Court takes judicial notice of a New Mexico appellate decision describing the Pecos River settlement agreement among the Carlsbad Irrigation District, the State of New Mexico, the United States and other entities. This major settlement agreement, described in *State ex rel. Office of State Engineer v. Lewis,* 2007-NMCA-008, ¶¶ 44-45, 141 N.M. 1, 150 P.3d 375, "judicially establishes the maximum allowable annual diversion and storage rights of the United States and the CID, and the CID's right to deliver water for the members of the CID," in the amount of 50,000 afy. Applicant's claim over water, in the amount of 54,000 afy, is larger than the maximum water supply available for the Carlsbad Irrigation District's many users. This illustration from one watershed demonstrates the enormous potential available for Applicant to monopolize the waters that would have otherwise been available to other users wishing to apply the underground waters of the San Agustin Basin to beneficial use.

In reviewing the application in light of the permitting statute's language, context, history and purpose, there is no genuine issue of material fact as to the application's invalidity regarding purpose and place of use. As admitted by Applicant, "[h]ow and whether Augustin will be able to put water to beneficial use is an issue that cannot be determined from the Application alone." Applicant's Response in Opposition to Motion for Summary Judgment, at 25. With no details for all of the required elements of a water permit, the State Engineer could not perform his statutory duties under NMSA 1978, § 72-12-3(E) (2001) of determining whether the proposed appropriation would impair

existing rights, be contrary to the conservation of water, or be detrimental to the public welfare. As a matter of law, the State Engineer could not allow an applicant to hold up other uses of water under the doctrine of relation, when the applicant broadly claims a huge amount of water for any use and generalizes as its place of use "any area" in seven counties in the Middle Rio Grande Basin, covering many thousands of square miles.

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.

The State Engineer relied in part on "sound public policy" as grounds for summarily denying Applicant's permit application. Order Denying Application, ¶¶ 21-23. Applicant argues that "the State Engineer lacks authority to deny an application that otherwise meets the statutory requirements on the basis of public policy." Applicant's Response in Opposition to Motion for Summary Judgment, at 17-18. A sound public policy at the heart of this case is the prior appropriation doctrine. *See Hydro Resources Corp. v. Gray*, 2007-NMSC-061, ¶ 17 ("New Mexico follows the doctrine of prior appropriation.") *See also, Walker v. United States*, 2007-NMSC-038, 142 N.M. 45, 162 P.3d 882 (discussing distinctions between the prior appropriation doctrine of the arid West and the riparian rights doctrine found primarily in the wetter East).

At the founding of this state, the people of New Mexico elevated the prior appropriation doctrine to constitutional status. N.M. Const. art. XVI, §§ 2, 3. Two fundamental elements of the prior appropriation doctrine are that the waters in the State of New Mexico belong to the public and that beneficial use is the basis, the measure and the limit of the right to the use of water. *Id.* Both of these elements of the prior appropriation doctrine are undermined if Applicant's theory of securing water rights is allowed to stand.

Beneficial use is the basis, the foundation, for the establishment of rights to the use of water in New Mexico, "a fundamental principle in prior appropriation." *State ex rel. Martinez v. City of Las Vegas,* 2004-NMSC-009, ¶ 33, 135 N.M. 375, 89 P.3d 47. In reaffirming the principle of beneficial use that had been undercut by the expansion of the pueblo rights doctrine in *Cartwright v. Public Serv. Co.*, 66 N.M. 64, 343 P.2d 654 (1959), the Supreme Court in 2004 reiterated that "[t]he principle of beneficial use is based on 'imperative necessity,' Hagerman Irrigation Co. v. McMurry, 16 N.M. 172, 181, 113 P. 823, 825 (1911), and '**aims fundamentally at definiteness and certainty**.' Crider, 78 N.M. at 315, 431 P.2d at 48 (quotation marks and quoted authority omitted)." (emphasis added) Thus, not only does the underground water permitting statute require specificity, the constitutional mandate of beneficial use as the basis of a water right requires specificity of the actual place and use of water, along with all the other definite elements required to create a water right.

Applicant's plan for the use of 54,000 afy reveals no definiteness or certainty other than the purpose of the application being the creation of a pipeline served by 37 wells, with the actual uses to be figured out later. Under this plan, diversion would supplant beneficial use as the fundamental principle of water use in New Mexico. One would only have to apply for a permit to divert a given quantity of water, no matter how large, and that person would then have a prior claim to the water over anyone else who actually had a specific plan for the water's beneficial use.

Over a century ago, that plan was attempted when some irrigators diverted the entire flow of the Hondo River but failed to apply it to beneficial use before other irrigators had beneficially used the waters in the stream. The Territorial Supreme Court

in *Millheiser v. Long*, 10 N.M. 99, 104, 61 P. 111, 114 (1900) reversed a district court's determination of the parties' rights "according to priority of diversion, rather than priority of appropriation to a beneficial use." "Diversion," the Supreme Court noted, "is still but an element of that appropriation, and not equivalent to it." *Id.* From that day to the present, it has been the law in New Mexico that diversion alone is not beneficial use. See *State of New Mexico ex rel. Turney v. United States of America et al. and Baca* (Subfile Defendant), No. 30,824, slip. op. at 15-16 (N.M. Ct. App. October 24, 2012), citing *State ex rel. Martinez v. McDermett*, 120 N.M. 327, 331, 901 P.2d 745, 749 (Ct. App. 1995) for the proposition that "diversion alone is not beneficial use."

Applicant seeks to become the purveyor of water via pipeline to users along the Rio Grande. Admittedly, there is stress on the existing uses of water in New Mexico, and if diversion alone were the requirement for establishing priority of the use of water, Applicant's plan as stated in his amended application might suffice: "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 in the Rio Grande Basin in New Mexico." Beneficial use, however, is still the basis for a water right, not diversion. Therefore, the application is invalid as a matter of law.

Even if there was such a radical shift from beneficial use to diversion as the basis for a water right, a proposition, like the pueblo rights doctrine, "as antithetical to the doctrine of prior appropriation as day is to night," *Cartwright*, 66 N.M. at 110, 343 P.2d at 686 (Federici, D.J., dissenting), quoted in *State v. City of Las Vegas,* 2004-NMSC-009, ¶ 38, a major pipeline project such as envisioned by Applicant to "reduce the current

stress on the water supply in the Rio Grande Basin" would effectively transfer the ownership of much of the waters in the San Agustin Basin to a private entity. Via its pipeline, Applicant would be the middleman conveying a large amount of the state's waters to beneficial users, and perhaps to the state itself for Rio Grande compact deliveries, if those uses were first approved by Applicant and then ratified by the OSE.

But the public, not private entrepreneurs, own the water of this state. There is ample appellate authority emphasizing the public's ownership of New Mexico's waters. As quoted in the *Cartwright* dissent, "This Court said as late as 1947, in the case of State ex rel. State Game Commission v. Red River Valley Company, 51 N.M. 207, 224, 182 P.2d 421, 432: '. . . It is all yet public water until it is beneficially applied to the purposes for which its presence affords a potential use.'" *Cartwright*, 66 N.M. at 110. *See also The Albuquerque Land and Irrigation Co. v. Gutierrez,* 10 N.M. 177, 61 P. 357 (1900) (rejecting the riparian doctrine and holding that there is no private ownership of public streams in New Mexico); *Tri-State Generation & Transmission Ass'n v. D'Antonio,* No. 32,704, slip op. at 12 (N.M. S. Ct. Nov. 1, 2012) ("[W]ater belongs to the state which authorizes its use. The use may be acquired but there is no ownership in the corpus of the water. . . . **The state as owner of water has the right to prescribe how it may be used** . . . . The public waters of this state are owned by the state as trustee for the people.") (citations omitted) (emphasis added)

Under its diversion plan for the 37 wells on its ranch, Applicant, rather than the state initially, would have the right to prescribe which entities and projects would be allocated a share in the 54,000 afy that could be pumped from the underground basin, with the final approval, of course, by the State Engineer, over the years as those projects

were conceived and given detail. The plan, if the application had been approved, would have removed the unappropriated waters in the San Agustin Basin from their character as public water, as described in *Red River Valley, supra,* prior to its being "beneficially applied;" the underground waters' potential use would be enough to create Applicant's claim of prior rights by a proposal for diversion alone, leaving the details of actual use for the future and under the direction of Applicant, who would thereby be a co-approver with the State Engineer for determining the beneficial uses for the underground waters.

This plan is reminiscent of that of Nathan Boyd at the turn of the last century for a dam and diversion of practically all of the waters in the Rio Grande flowing through the Mesilla and El Paso Valleys to be then sold to the local irrigators, a plan that was ultimately frustrated on technical grounds by the New Mexico territorial courts and the U.S. Supreme Court. *See United States v. Rio Grande Dam & Irrigation Co.,* 13 N.M. 386, 85 P.393 (1906), *affirmed by Rio Grande Dam & Irrigation Co. v. United States,* 215 U.S. 266, 54 L. Ed. 190, 30 S. Ct. 97 (1909); *see generally,* Phillips, Hall & Black, **Reining in the Rio Grande**, pp. 88-92 (2011).

In its Sur-Reply, Applicant likens its application to that of the Interstate Stream Commission (ISC) for a change of use/place of use for the waters of the Ute Reservoir, also known as Ute Lake, which application is attached as Exhibit A to Applicant's Sur-Reply. Both applications seek to transport a large quantity of water through pipelines and both claim all possible uses of water for their ultimate users, but that is where the comparison ends.

The ISC, a state entity created by statute in 1935, is governed by Chapter 72, Article 14 of the New Mexico Code Annotated. Among its duties are the duties "to

develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of this state, interstate or otherwise." NMSA 1978, § 72-14-3 (1935). The ISC is also empowered to sell, lease and otherwise dispose of its waters from its water projects. *See* NMSA 1978, § 72-14-26 (1955). In 1950, the ISC became the state representative of the Canadian River Compact with the states of Texas and Oklahoma. In 1951, the New Mexico Legislature ratified the Canadian River Compact, opening the way for the ISC to impound the waters of the Canadian River below the Conchas Dam for conservation storage in Ute Reservoir of up to 200,000 acre-feet for subsequent release for multiple beneficial uses to satisfy future needs of the people of New Mexico. *See* NMSA 1978, § 72-15-2 (1951); *Oklahoma v. New Mexico*, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991).

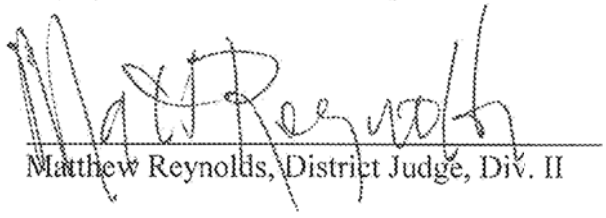
After many decades of preparation and obtaining funding, the ISC's Ute pipeline project is nearing completion, as evidenced by its application for change of use/place of use granted in 2010. In the meantime, Ute Reservoir has served a beneficial use, among others, as a state park owned by the ISC: "The New Mexico interstate stream commission owns this lake. . . ." 18.17.3.21(P) NMAC.

Without ruling on the validity of the ISC's application, which is not an issue before this Court, it is clear that Applicant is not the owner of the waters deep below its ranch in the San Agustin Basin and that Applicant has not already applied its waters to beneficial use as the ISC has, yet Applicant seeks to obtain incidents of ownership over the underground water basin by deciding who can use the waters and at what cost. Applicant attempts to privatize the powers of the ISC without any of the responsibilities of this public entity serving the owner of this state's waters, the New Mexico public.

If Applicant's plan for a major diversion project were approved, the people of New Mexico would thereby receive a benefit, according to Applicant, of a steady water supply that could accommodate many existing and new uses along the Rio Grande at a time when there is growing stress on this precious resource. But Applicant's offer would come at a heavy price, that price being the relinquishment of the public's constitutionally guaranteed ownership of the state's waters. Under de novo review, this Court finds that, as a matter of law, the application violates the sound policy of public ownership in the waters of this state as declared in the New Mexico Constitution.

V. CONCLUSION

There are no genuine issues of material fact, and Protestants are entitled to judgment as a matter of law. The State Engineer's Order Denying Application is affirmed. Counsel for the State Engineer shall prepare the order reflecting this decision.



Matthew Reynolds, District Judge, Div. II

STATE OF NEW MEXICO
COUNTY OF CATRON
SEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
FILED
JAN - 3 2013 3:45 p.m.
COURT CLERK
BY _____ DEPUTY

AUGUSTIN PLAINS RANCH, LLC

Applicant/Appellant,

v.

SCOTT A. VERHINES, P.E.,

New Mexico State Engineer/Appellee,

and

KOKOPELLI RANCH, LLC, et al.,

Protestants/Appellees.

No. D-728-CV-2012-00008

ORDER ON PROTESTANTS' MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Court by Protestants having filed a Motion for Summary Judgment ("Motion") against Applicant Augustin Plains Ranch, LLC on July 26, 2012.

After reviewing the Motion and briefs, hearing the arguments of counsel, and being advised in the premises, the Court FINDS that:

The Court has jurisdiction over the appeal, and the Motion should be granted for the reasons set forth in the Court's Memorandum Decision on Motion for Summary Judgment filed November 14, 2012.

IT IS THEREFORE ORDERED that Protestants' Motion for Summary Judgment is granted and the State Engineer's denial of the Augustin Plains Ranch application is affirmed.

EXHIBIT
8

HONORABLE MATTHEW G. REYNOLDS
District Judge, 7th Judicial District Court, Division II

SUBMITTED:

Jonathan E. Sperber
Attorney for Appellee New Mexico State Engineer

APPROVED AS TO FORM:

Approved electronically December 20, 2012

/s/

John B. Draper
Jeffrey J. Wechsler
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, NM 87504-2307
(505) 982-3873; (505) 982-4289 Fax
Attorneys for Applicant-Appellant

Approved electronically December 22, 2012

/s/

Peter Thomas White
Sena Plaza, Suite 50
125 East Palace Avenue
Santa Fe, NM 87504
(505) 984-2690; (505) 216-0021 Fax
Attorney for Cuchilla Valley Community Ditch Association

Approved electronically December 20, 2012

/s/

R. Bruce Frederick
Jon Block
Eric Jantz
Douglas Meiklejohn, Esq.
New Mexico Environmental Law Center
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
(505) 989-9022

Attorneys for Abbe Springs Ranches Homeowners'Ass'n; Manuel M. & Gladys E. Baca; Robert & Mona Bassett; Patti BearPaw; Liza Burroughs &Thomas Betras, Jr.; Bruton Ranch, LLC; Jack B. Bruton; Ann Boulden; Don Brooks & Joan N. Brooks; David & Terri Brown; Charles F. & Lucy G. Cloyes; Michael D. Codini Jr.; Randy Coil; James B. Coleman; Janet K. Coleman; Thomas A. Cook; Randy E. Cox; Nancy Crowley;Tom Csurilla (Elk Ridge Pass Development Company); Roger W. Daigger; Dolores Jeanne Sanchez Daigger; Michael & Ann Danielson; Bryan & Beverly Dees; John F. & Eileen K. Dodds; Louise & Leonard Donahe; Patricia Eberhardt; Roy T. Farr; Paul & Rose Geasland; Gila Conservation Coalition; Michael D. Hasson; Donald W. Hastings; Cheryl L. Hastings; Gary D. Hegg & Carol Hegg; Patricia J. Henry; Catherine Hill; Eric Hofstetter & Sandy How; Homestead Landowners Assoc., Inc.; M. Ian Jenness ;Amos Lafon; Marie Lee; Ricky & Patty Lindsey; Victoria A. Linehan; Owen Lorentzen; Michael R. Loya; Maureen M. MacArt; Sonia Macdonald; Robert & Suzan Mackenzie; Douglas Marable; Thea Marshall; Sam & Kristen McCain; Jeff McGuire; Michael Mideke; Dr. Kenneth F. Mroczek & Janice Przybyl; Peter John & Regina M. Naumnik;Robert Nelson; Dennis A. & Gertrude L. O'Toole; Walter C. & Diane D. Olmstead; Max Padget, , Karl Padget; Barney & Patricia Padgett; Wanda Parker; Ray C. & Carol W. Pittman; Patricia A. Murray Preston & John H. Preston; Daniel J. Rael; Stephanie Randolph; Mary C. Ray; Kenneth L. Rowe; Kevin & Priscilla L. Ryan; Christopher Scott Sansom; Ray and Kathy Sansom; John F. & Betty L. Schaefer; Susan Schuhardt; Bill & Anne Schwebke; Janice T. Simmons; Jim Sonnenberg; Anne Sullivan;; Margaret Thompson; Roger Thompson; Gloria Weinrich; James L. Wetzig and Wildwood Highlands Landowners' Assoc., and ; Donald & Margaret Wiltshire