

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

CENTER FOR BIOLOGICAL DIVERSITY

Petitioner,

v.

ELIZABETH ANDERSON *in her official capacity*
as NEW MEXICO STATE ENGINEER

Respondents,

SANTA TERESA CAPITAL, LLC

Real Party in Interest.

EMERGENCY VERIFIED PETITION FOR WRIT OF MANDAMUS
AND REQUEST FOR STAY

Oral Argument Requested

CENTER FOR BIOLOGICAL DIVERSITY

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The Center for Biological Diversity (the “Center”) submits this Emergency Verified Petition for Writ of Mandamus and Request for Stay.

INTRODUCTION

This case of first impression concerns issues of great public importance—currently, the executive branch is flouting legislative authority and giving away millions of gallons of New Mexico’s precious freshwater resources in violation of clear statutory requirements and due process. The Office of the State Engineer (“OSE”) has granted an emergency authorization to a private corporation, Santa Teresa Capital (“STC”) to use New Mexico’s scarce freshwater resources to build a gas-powered data center in southern New Mexico known as “Project Jupiter.” By granting this emergency authorization, OSE has allowed water that was used for irrigation to now be used for industrial construction purposes, without first providing public notice and a hearing. This authorization violates state law, which imposes a non-discretionary duty on OSE to provide public notice and hold a hearing to hear protests before allowing a change in use of a water right. NMSA 1978, § 72-12-3 (1985) and NMSA 1978, § 72-12-7 (1985). The OSE has thus unlawfully bypassed statutory water protections and usurped legislative authority in violation of Article III, Section 1 of the New Mexico Constitution.

By abrogating its clear, non-discretionary statutory duty under NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7 and granting Santa Teresa Capital’s

(“STC’s”) emergency application for a new water use in drought-stricken southern New Mexico, OSE has given away tens of millions of gallons of precious freshwater resources without due process, harming Petitioner, other water rights holders, New Mexico’s water conservation efforts, and the public welfare of the state. Petitioner seeks a writ of mandamus to stop this harmful and illegal emergency authorization for a change of well location and water use.

PARTIES

Petitioner Center for Biological Diversity is a national nonprofit environmental organization that works through science, law, and policy to protect the lands, water, air, and climate that all living species need to survive. The Center is incorporated in California and headquartered in Tucson, Arizona. The Center has more than 123,000 members, including more than 1,800 members in New Mexico, and maintains offices across the United States, including in New Mexico.

The Center and its members include individuals with scientific, professional, educational, recreational, aesthetic, moral, and spiritual interests in the conservation of our environment, water and wildlife. The Center and its members are substantially and specifically affected by the threat the illegal authorization poses to New Mexico’s freshwater resources and the resulting harm to New Mexicans and to species, as well as by the threat posed to constitutional principles central to our democracy.

Center members visit and use the habitat of species around and downstream of the new well site for a broad range of reasons. The New Mexico Environmental Review Tool, administered by the New Mexico Department of Game and Fish, anticipates that the area within 2000 meters of the Project Jupiter construction site, which surrounds the newly drilled well to the east, south, and west, contains at least 17 animal species designated by Department of Game and Fish to be Species of Greatest Conservation Need. This list also includes multiple species designated as Threatened under New Mexico's Wildlife Conservation Act, such as the Peregrine Falcon and the Bell's Vireo; multiple species designated as Sensitive by the Bureau of Land Management and U.S. Fish and Wildlife Service, such as the Western Burrowing Owl and the Spotted Bat; and multiple species under watch regarding a potential Sensitive designation by the Bureau of Land Management, including the Black-Chinned Sparrow and the Black-Throated Gray Warbler. This area has also been identified as an important Plant Area by the New Mexico Rare Plant Conservation Strategy, and is likely home to the Sand Prickly-Pear, which New Mexico has listed as Endangered.¹

¹ The new well and water use also threaten multiple plant and animal species formally designated as Endangered under the federal Endangered Species Act—the Mexican Wolf, the Northern Aplomado Falcon, the Rio Grande Silvery Minnow, the Sneed Pincushion Cactus, the Prostrate Milkweed, and the Southwestern Willow Flycatcher—in addition to multiple other species designated as Proposed Endangered, Threatened or Proposed Threatened under the Act. Each of these

Based on publicly accessible data from OSE's Water Rights Database, the average annual use of this water right for the past 10 years has been 1,528 acre-feet per year.² Additionally, this right has historically been used for surface irrigation for sod farming. Surface irrigation use is typically limited to the approximately seven-month irrigation season and depletes groundwater only during that time. By contrast, the new use proposed—long-term industrial construction—will result in a much larger use of water, as well as year-round depletion, which will further diminish water flows. By continuously diverting and utilizing massive quantities of water not currently under beneficial use, the new well and water use adversely impacts at-risk species surrounding the well site and downstream of the well. This, in turn, harms the Center's New Mexico members, who suffer diminished opportunities to study and enjoy these species in their current habitats.

The Center and its members are also affected by a violation of basic constitutional principles concerning separation of powers and due process, allowing for the use of our precious freshwater resources without proper approval. Here, the State Engineer has wrongly applied New Mexico water law and issued an emergency authorization for a change of well location and water use without a hearing, in contravention of mandatory statutory duties outlined by the Legislature.

species occupy habitat ranges downstream of the proposed well site that will be harmed by increased depletion of the Rio Grande.

² See Center Protest, Attachment 1, p. 5.

In doing so, the executive branch has violated separation of powers principles, issuing an illegal decision that results in the Center's members having to live in a state with less and less fresh water—a resource that is precious to all New Mexicans. Consequently, this matter of great public importance harms the Center and its New Mexico members.

Respondent Office of the State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico. NMSA 1978, § 72-2-1 (1982).

Real Party in Interest Santa Teresa Capital, LLC submitted the permit application at issue here to change the point of diversion for its water right to support the new use of providing water to the Project Jupiter data center under construction in Doña Ana County.

ADMINISTRATIVE PROCEEDING

On October 21, 2025, Santa Teresa Capital, LLC applied to the State Engineer for a Permit to Change an Existing Water Right to change the point of diversion of an existing right to pump 2,400 acre-feet per year.³ STC attached a request for emergency authorization to begin using this water prior to the publication and hearing requirements of NMSA 1978, § 72-12-7. On October 23,

³ Santa Teresa Capital, LLC Application, Attachment 2, p. 1.

2025, the State Engineer granted the emergency authorization sought by STC.⁴ On November 21, 2025, STC published notice of its application in the Las Cruces Bulletin.

On January 9, 2026, the Center filed its notice of protest on the application with the State Engineer.⁵ On April 16, 2026, the State Engineer acknowledged receipt of the Center’s protest.⁶ The first public meter data for the new well became available in April 2026—since that time, STC has pumped over 103 million gallons of fresh water from the new well.⁷ As of the filing of this Emergency Petition, the State Engineer has yet to docket the Center’s protest for hearing.

RELIEF REQUESTED

This petition seeks a writ of mandamus directing the State Engineer and her office to apply the hearing requirements for a change of well location and water use authorization under NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7 to Santa Teresa Capital’s request to drill a new well to provide water for the construction of Project Jupiter. The Legislature has mandated that the State Engineer complete this process prior to diversion of water to a new well site or for new uses. Despite this legislative directive, the State Engineer has already granted

⁴ State Engineer Order, Attachment 3.

⁵ Center Protest, Attachment 1.

⁶ OSE Receipt of Protest, Attachment 4

⁷ Point of Diversion Summary, Attachment 5

drilling authorization, and water is already being diverted to the construction of the Project Jupiter data center, while the public has been deprived of the rights and process designed to protect water rights and the public welfare of the state. Therefore, the Court should stay the State Engineer's October 23, 2025, emergency drilling authorization permitting the use of water from a new well for the construction of Project Jupiter and direct the State Engineer to hold the statutorily required hearing prior to any further water diversion from the Applicant's water holdings for this purpose.

JURISDICTION

This Court has original jurisdiction over mandamus actions against state officers, boards, or commissions and the power to issue writs of mandamus “necessary or proper for the complete exercise of its jurisdiction.” N.M. Const. art. VI, § 3. For the reasons explained below, this Court has authority to issue mandamus to compel the State Engineer to apply the water code to Santa Teresa Capital, LLC's application. *See State ex ref. Egolf v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-018, ¶ 32.

The exercise of original jurisdiction in a mandamus proceeding is governed by a three-part test:

[The issue] presents a purely legal issue concerning the non-discretionary duty of a governmental official that (1) implicates fundamental constitutional questions of great public importance, (2) can be answered on the basis of virtually undisputed facts, and (3)

calls for an expeditious resolution that cannot be obtained through other channels such as a direct appeal.

State ex ref. Sandel v. N.M. Public Utility Comm'n, 1999-NMSC-019, ¶ 11 (citing *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 11, 120 N.M. 562).

This case meets these requirements. As a threshold matter, the issues present a non-discretionary legal duty that the OSE has violated by failing to hold a hearing and consider existing water rights before allowing a new well location and water use. NMSA 1978, § 72-12-7; *Brown v. Brown*, 1958-NMSC-113, ¶ 14, 65 N.M. 74 (“It is quite patent that the provisions of Section 75-11-7, *supra*, contemplate application, notice, hearing and approval prior to a change in well location. The language can bear no other interpretation.”).

To satisfy the first requirement of mandamus, this case concerns a matter of great public importance, as it concerns the use of our precious freshwater resources, water rights, and separation of powers. “Water is both a scarce and a vital resource in New Mexico, and its responsible management is crucially important to all New Mexicans.” *State Eng'r v. Diamond K Bar Ranch, LLC*, 2016-NMSC-036, ¶ 1. As “[o]ur entire state has only enough water to supply its most urgent needs[,]” “[w]ater conservation and preservation is of utmost importance. Its utilization for maximum benefits is a requirement second to none, not only for progress, but for survival.” *State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶ 34, 135 N.M. 375 (citation omitted).

Just as water is fundamental to our survival as a state, separation of powers is fundamental to our system of government. *See e.g., State ex rel. Clark*, 1995-NMSC-048, ¶ 31 (“The New Mexico Constitution vests the legislative power in the legislature, N.M. Const. art. IV, § 1, and the executive power in the governor and six other elected officials, *id.* art. V, § 1. The Constitution also explicitly provides for the separation of governmental powers.... This provision reflects a principle that is fundamental in the structure of the federal government and the governments of all fifty states.”). Separation of powers is so fundamental that it has given rise to the great public importance doctrine. *See e.g. New Energy Econ., Inc. v. Martinez*, 2011-NMSC-006, ¶ 13, 149 N.M. 207 (“Cases in which great public importance standing has been recognized involve clear threats to the essential nature of state government guaranteed to New Mexico citizens under their Constitution—a government in which the three distinct departments . . . legislative, executive, and judicial, remain within the bounds of their constitutional powers.”) (quotations omitted). In this matter, the State Engineer has violated separation of powers principles, abrogating a statute explicitly written by the Legislature to provide due process, protect water rights, ensure water conservation in the state, and safeguard the public welfare of the state. NMSA 1978, §§ 72-12-3(E), 72-12-3(F), and 72-12-7.

To satisfy the second prong, the State Engineer’s abrogation of statutory duty under NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7 can be determined based on undisputed facts. It is undisputed that on October 21, 2025, STC filed an application seeking to drill a new well to provide water for a new use – namely the construction of the massive new Project Jupiter data center.⁸ Further, it is undisputed that on October 23, 2025, the State Engineer granted the authorization sought by STC, without first providing for advertisement and hearing, as mandated under NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7. It is also undisputed that after STC published notice of its application in the Las Cruces Bulletin on November 21, 2025, the Center filed its notice of protest on the application with the State Engineer January 9, 2026 – within the timeframe specified in the notice. Finally, it is undisputed that even as the new well has been drilled and freshwater resources are continuously diverted for this new purpose, the State Engineer has yet to schedule a hearing to determine whether the new well and new use will not impair existing water rights, will not be contrary to the conservation of water within the state, or will be detrimental to the public welfare of the state, as required

⁸ Santa Teresa Capital, LLC Application, Attachment 2, p. 13-14. In its application, STC first describes the historic purpose of the well in question, namely “to irrigate a commercial sod farm.” Then, STC describes why the new well location is needed, namely “to irrigate a commercial sod farm” *and* “to provide construction water for a large-scale industrial project.”

by NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7. Based on these undisputed facts, Plaintiff seeks a determination that the State Engineer has violated the law.

Finally, to satisfy the third prong of mandamus, the issue presented requires expeditious resolution that cannot be obtained through the administrative process or a direct appeal. The State Engineer's abrogation of statute has denied Petitioner its statutory right to a hearing prior the change in use and drilling of a new well for an enormous quantity of ground water. The State Engineer has allowed water from a new well to be diverted to the construction of the Project Jupiter data center without following its non-discretionary duties under the law. At the time of this filing, the State Engineer has yet to even schedule an administrative hearing. Further, the State Engineer's improper and unconstitutional application of NMSA 1978, § 72-12-22 (1959) to STC's request to drill a new well has limited Petitioner's administrative process to a post-facto hearing at some unknown future date, and limited Petitioners judicial rights to only an action for damages. NMSA 1978, § 72-12-22(B).

ARGUMENT

I. The State Engineer has violated its non-discretionary duty to hold a hearing and determine whether the new well and water use are for or against the public interest.

Under NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7, the State Engineer must perform certain nondiscretionary duties before approving an

application for a change in location or use of a water right to ensure New Mexicans are provided with due process under the law. OSE has failed to perform these non-discretionary duties in the matter at hand.

a. New Mexico requires due process for the change in use or location of a water right.

When the owner of a water right wants to change the use of the water or the location of a well, the Legislature requires the owner to apply to the State Engineer and show that the proposed change will not impair existing rights and will not be contrary to the conservation of water within the state or detrimental to the public welfare of the state:

The owner of a water right may change the location of his well or change the use of the water, but only upon application to the state engineer and upon showing that the change will not impair existing rights and will not be contrary to the conservation of water within the state and will not be detrimental to the public welfare of the state.

NMSA 1978, § 72-12-7(A). The Applicant must satisfy this statute *prior* to the State Engineer allowing the change in use or new well. *Id.*

Additionally, the Legislature has provided the public substantial rights in this application process that the State Engineer must satisfy before acting on an application. In fact, the due process requirements for a change in use are the same as those for *new* water uses: “The application may be granted only after such advertisement and hearing as are prescribed in the case of original applications.” NMSA 1978, § 72-12-7(A).

The original application process, governed by NMSA 1978, § 72-12-3, requires the State Engineer to first publish notice of the application alerting the public about the proposed change. NMSA 1978, § 72-12-3(D). At that point, members of the public may file a protest on 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...

NMSA 1978, § 72-12-3(D). If any such objections or protests are filed within the proscribed timeline, the State Engineer has only two choices: it may either deny the application outright, or it may schedule a hearing prior to acting on the application:

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 the state engineer acts on the application, may order that a hearing be held.

NMSA 1978, § 72-12-3(F). State Engineer hearings are thorough. They are evidentiary. They are adversarial. At these hearings, “opportunity shall be afforded all parties to appear and present evidence and argument on all issues involved,” and parties “may have and be represented by counsel and may conduct cross-

examinations required for a full and true disclosure of the facts.” NMSA 1978, § 72-2-17(B)(1), (3) (1965). Here, the Center filed an objection, triggering these hearing requirements, but OSE did not follow the law.

b. STC’s application represents a change in use and location subject to NMSA 1978, § 72-12-7.

According to STC’s application, the new well is necessary to provide water for the construction of the Project Jupiter data center. This is, on its face, a new use of water, distinct from the Applicant’s historic use of water for sod irrigation.⁹ Further, in public interviews, the State Engineer has confirmed that providing water to the construction of Project Jupiter is a new use. In an interview with National Public Radio, New Mexico State Engineer Elizabeth Anderson said, “What’s happening with Project Jupiter is they’re just taking a water right that exists, and using it for something else, having a data center. And it’s not gonna be taking water away from farmers.”¹⁰ The article also mentions that Ms. Anderson stated that she “is confident the huge new customer will not over-pump groundwater.”¹¹

Taking a “water right that exists” and “using it for something else” is a change in use subject to full notice and hearing. NMSA 1978, § 72-12-7. For a

⁹ See note 8, *supra*.

¹⁰ National Public Radio Article, Attachment 6, p. 4.

¹¹ *Id.*

change in use, the Legislature has allowed no exception to this due process. Despite this clear legislative mandate, the State Engineer has allowed this change in use to happen prior to notice and hearing, and with only Ms. Anderson's assurance that Project Jupiter is "not gonna take water away from farmers" and "will not over-pump groundwater" in place of an official finding that the new use will not impair existing rights nor threaten the public welfare. These proclamations are insufficient, and do not waive the State Engineer's non-discretionary duty to ensure due process under NMSA 1978, § 72-12-7.

c. OSE's failure to conduct a hearing overlooks harms to the public welfare and existing water rights.

The "public welfare," as used in New Mexico water law, includes "certain core concepts that must be followed[,]" including "state obligations under interstate compacts[.]"¹² These compacts include the Rio Grande Compact and Groundwater Settlement Agreement, which apportions the Rio Grande's surface water between Colorado, Texas, and New Mexico.¹³ The Settlement places an enormous burden on the State of New Mexico and its taxpayers. New Mexico's requirements include decreasing total groundwater pumping in Doña Ana County by 18,200 acre-feet within ten years. This demand comes at a time when water

¹² Testimony of General Counsel for the Office of the State Engineer, Attachment 7, p. 6.

¹³ Ground Water Settlement Agreement, Attachment 8.

scarcity in the Rio Grande basins is dire. As surface waters have disappeared, the region has increasingly relied on groundwater pumping to meet its needs, even for senior water rights holders with priority dates.

The new well and water use enlarges historical metered diversions of a very junior 1970s water right. Groundwater pumping from Rio Grande tributary aquifers—as done by the new well—is legally recognized to deplete river flows. The new well and water use thus contribute to increased depletions from the Lower Rio Grande at a time when New Mexico is legally required to reduce depletions, and senior water rights holders in priority are exposed to having no water rights. In granting the new well and water use without a hearing, the State Engineer has overlooked these significant harms to existing water rights holders and the public welfare, in violation of NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7.

II. The State Engineer wrongly applied New Mexico water law, violating separation of powers principles and abrogating its non-discretionary duty under the law.

The State Engineer incorrectly approved the application for a change in well location and water use under NMSA 1978, § 72-12-22. This statutory provision provides a narrow basis for the State Engineer to approve a change in well location before meeting all due process requirements under NMSA 1978, § 72-12-7 when four specific criteria are met. As NMSA 1978, § 72-12-22 does not apply to changes in water use, and as the statute's criteria are not met in this instance, the

State Engineer has wrongly applied the law. In doing so, the State Engineer has violated the intent of the Legislature and abrogated its non-discretionary duty under NMSA 1978 §§ 72-12-3 and 72-12-7.

a. The State Engineer unlawfully issued approval without a hearing under the wrong statutory provision: NMSA 1978, § 72-12-22.

To avoid the hearing requirements of NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7, the State Engineer has invoked NMSA 1978, § 72-12-22. This statutory provision represents the single exception provided by the Legislature to the notice and hearing requirements associated with a change in well location. NMSA 1978, § 72-12-22 applies to “replacement wells” drilled within 100 feet of the well being replaced under emergency circumstances. The provision allows an applicant to drill a replacement well prior to publication and hearing and prior to a finding by the State Engineer that the new well will be protective of existing water rights, provided that:

- (1) the well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well; and
- (2) the appropriation is of the same amount of water allowed by his water right in the original well; and
- (3) an emergency situation exists in which the delay caused by application, publication and hearing would result in crop loss or other serious economic loss; and
- (4) he files application, or notifies the state engineer office of these facts and the location of the proposed replacement well by

registered letter, prior to drilling; provided that he shall file application for a permit within thirty days after drilling begins.

NMSA 1978, § 72-12-22.¹⁴ By wrongly applying this narrow exception to STC's application, the State Engineer expands the provision beyond all meaning and enlarges executive power beyond the bounds established by law.

b. NMSA 1978, § 72-12-22 does not authorize a change in use.

The State Engineer has wrongly applied NMSA 1978, § 72-12-22 in this matter, as the statute does *not* authorize a change in use prior to notice and hearing, only the drilling of a replacement well in a new location. Under the principles of statutory construction, “the first step...is to try to determine and give effect to the Legislature’s intent by analyzing the language of the statute.” *State v. Nick R.*, 2009-NMSC-050, ¶ 13, 147 N.M. 182 (quotations and citations omitted). Key to this goal is the principle of *inclusio unius est exclusio alterius*: “the inclusion of one thing is the exclusion of the other.” *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, ¶ 11, 85 N.M. 747. It follows from this principle that one is “not permitted to read into a statute language which is not there, particularly if it makes sense as written.” *Id.* (quotations and citation omitted). In passing NMSA 1978, § 72-12-22, the Legislature provided specifically for the expedited authorization of a

¹⁴ NMSA 1978, § 72-12-23 (1959) and NMSA 1978, § 72-12-24 (1959) allow, in similarly narrow circumstances, for an applicant to drill a well prior to publication and hearing, but *not* prior to a finding by the state engineer that the new well will be protective of existing water rights.

change in *location* of a well, not the change of *use*, under narrow circumstances. Moreover, the Legislature has explicitly outlined the stringent due process requirements that must precede any change of use at NMSA 1978, § 72-12-7. By incorrectly applying NMSA 1978, § 72-12-22's narrow exception to encompass the change in use sought here, the State Engineer has unlawfully expanded the statute and encroached on legislative authority.

c. Even if this authorization did not involve a change in use, NMSA 1978, § 72-12-22's emergency provision does not apply.

The State Engineer has also wrongly applied NMSA 1978, § 72-12-22 in this instance since one of the statute's required criteria—namely, the existence of an emergency—has not been met concerning the use of water to construct Project Jupiter.¹⁵

¹⁵ NMSA 1978, § 72-12-22 states:

A. The owner of a water right may drill and use a replacement well drilled within one hundred feet of the original well, prior to application to the state engineer, and the publication and hearing set out in Section 72-12-3 NMSA 1978, if:

- (1) the well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well; and
- (2) the appropriation is of the same amount of water allowed by his water right in the original well; and
- (3) an emergency situation exists in which the delay caused by application, publication and hearing would result in crop loss or other serious economic loss; and
- (4) he files application, or notifies the state engineer office of these facts and the location of the proposed replacement well by registered letter, prior to drilling; provided that he shall file application for a permit within thirty days after drilling begins.

NMSA 1978, § 72-12-22 provides an emergency exception to the notice and hearing requirements of NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7 to protect existing water users and uses, essentially to preserve the status quo. The intent of the emergency provision is to prevent loss from a circumstance that prevents the water right owner from exercising the water right in the manner they heretofore have been exercising it. It is designed to protect the owner when a well develops a problem and the owner can no longer do the activity s/he has been historically engaged in, and therefore faces imminent crop loss or other economic loss. In that circumstance, NMSA 1978, § 72-12-22 allows the owner to drill a replacement well to prevent the crop or other loss, and then at a later date—likely after the emergency has passed—satisfy the due process requirements for drilling a new well.

A 1959 opinion by Attorney General Frank Zinn highlights the history underlying NMSA 1978, § 72-12-22, consistent with this interpretation. Zinn writes that the problem of needing to drill a well prior to following the notice procedure set forth in NMSA 1978, § 72-12-7 “really arises only in cases of emergency. These emergencies generally occur in the midst of the growing season at which time there is an immediate need for instant action in order that the user can save his crops.... [o]bviously, the requirement for publication in cases of change of location of the well creates the problem. After publication of the notice,

the crops are past salvage.” Zinn continues, “We would suggest that legislation should be introduced to take care of this problem inasmuch as there seems to be a need for a speedy means of providing for an emergency replacement well.”¹⁶

Here, the claimed “emergency” is outside the scope of emergency contemplated by the statute. The emergency is not related to a prior existing use of the well nor to the rightsholder STC itself, but to a new customer that STC wishes to sell water to for a new use. STC seeks to develop its water right into a new use and exercise it in a way it has never previously been exercised. STC is not facing a situation that is preventing them from maintaining their status quo. Instead, STC is seeking to immediately – without due process – expand the nature of the use of the right to sell water to a new customer. That is not the “loss” as contemplated by the statute.¹⁷ By applying NMSA 1978, § 72-12-22 to a change in location without an

¹⁶ Attorney General Op. No. 59-05, Attachment 9.

¹⁷ Two points of clarity are necessary here: first, Petitioner would not challenge the application of the emergency exception to the drilling of the new well for the purposes of irrigating the sod farm alone. This historical use is one within the bounds of the emergency exception contemplated under NMSA 1978, § 71-12-22. However, here, STC did not apply for an emergency authorization to drill a new well to irrigate the sod farm alone—indeed, it is unclear whether emergency authorization would have been required for only this purpose—but rather to irrigate the farm *and* to provide construction water to Project Jupiter. Attachment 2, p. 13-14. Second, STC indicates that prior to submitting their application, they had already begun using their water right to supply water to the construction of Project Jupiter, in departure from their historic use of sod farm irrigation. *Id.* This represents an unlawful change of use in contravention of NMSA 1978, § 72-12-7, and is not a basis for emergency authorization under NMSA 1978, § 72-12-22.

emergency, the State Engineer has abrogated its non-discretionary duty to provide New Mexicans with due process under NMSA 1978, § 72-12-3 and NMSA 1978, § 72-12-7.

CONCLUSION

For all the foregoing reasons, Petitioner, the Center for Biological Diversity respectfully requests that this Court:

1. Grant its Petition for Writ of Mandamus;
2. Issue a stay of the State Engineer's October 23, 2025, emergency drilling authorization permitting the use of water from a new well for the construction of Project Jupiter;
3. Direct the State Engineer to hold the statutorily required hearing prior to any further water diversion from the Applicant's water holdings for this purpose; and
4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Colin Cox

Colin Cox

/s/ Gail Evans

Gail Evans

1025 ½ Lomas NW

Albuquerque, NM 87102

(832) 316-0580

ccox@biologicaldiversity.org

gevans@biologicaldiversity.org

*Attorneys for Center for Biological
Diversity*

STATEMENT OF COMPLIANCE

I, Colin Cox, am a Senior Attorney for the Center for Biological Diversity, Petitioner. I have read the petition and the statements contained in the petition are true and correct to the best of my knowledge, information, and belief. Further, the body of the petition contains five thousand three hundred ninety-three (5,393) words and the typeface used was Times New Roman.

/s/ Colin Cox
Colin Cox

ATTACHMENT 1



January 9, 2026

Office of the State Engineer
District 4
1680 Hickory Loop, Suite J,
Las Cruces, NM 88005

Hand-delivered in triplicate and submitted via fax and mail.

**Re: Protest of Application No. LRG-03150-POD50 by Santa Teresa Capital, LLC, OSE
File No. LRG-03150-E, for Permit to Change Point of Diversion within the Lower Rio
Grande Underground Water Basin of the State of New Mexico**

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STATE ENGINEER'S OFFICE
LAS CRUCES, NEW MEXICO

Dear District 4 Office,

The Center for Biological Diversity hereby protests the above-referenced application filed by Santa Teresa Capital, LLC to change the point of diversion within the Lower Rio Grande Underground Water Basin of the State of New Mexico by discontinuing the use of well LRG-03150-POD36 and drilling well LRG-03150-POD50 for the diversion of 2,400 acre-ft per annum for irrigation, municipal, industrial, commercial, and recreational purposes within 32,020.56 acres of land, owned by various entities (the "Application").

Granting the Application would increase depletions of the Rio Grande, place the state of New Mexico at greater risk of violating the Rio Grande Compact and related Groundwater Settlement Agreement, and imperil endangered and threatened species in the Rio Grande basin. The Application is therefore contrary to the conservation of water and detrimental to the public welfare of the state. With over 1550 members in New Mexico—including many members in Doña Ana County—who would be substantially and specifically harmed by this proposal, the Center for Biological Diversity has standing to file this protest. NMSA 1978, §72-12-3(D).

I. Legal Standard

The State Engineer must not grant applications that impair existing rights, are contrary to the conservation of water within the state or are detrimental to the public welfare of the state. NMSA 1978, § 72-12-3(E).

Further, "[a]ny 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." NMSA 1978, § 72-12-3(D).

According to Nat Chakeres, the General Counsel for the Office of the State Engineer, and Director of the Litigation and Adjudication Program, “Public Welfare [of the State]” as used in New Mexico water law, includes some “floors or some basic across the State core principles,... basically the statewide objectives [such as] Compact Compliance, compliance with the Endangered Species Act, compliance with Regional Water Settlements, and the most common of those are Indian Water Rights Settlements. They also include things like the Pecos Settlement, and hopefully coming up soon, the Lower Rio Grande Comprehensive Regional Settlement. Those, as well as Shortage Hearing Agreements under the State's Active Water Resource Management Program... We can't have Applications undermine any of those important State initiatives... Those statewide objectives are our determination of ... baseline principles of Public Welfare. They don't represent the entire universe of Public Welfare considerations, but they do represent core Public Welfare considerations that we need to make sure are not violated with any Application that comes in.”¹

II. Granting this application will exacerbate New Mexico's debt to Texas under the Rio Grande Compact.

The Rio Grande Compact apportions the Rio Grande's surface water between Colorado, Texas, and New Mexico. In 2013, Texas sued New Mexico for failure to meet our compact obligations. The United States joined the lawsuit on Texas' side, and together they alleged that New Mexico's groundwater pumping was taking surface water apportioned to Texas and impairing the Rio Grande Project. After almost a decade and a half of litigation and the U. S. Supreme Court's initial refusal to accept a settlement between the three states, all parties to the litigation including the U. S. Department of Justice and the New Mexico and Texas irrigation districts endorsed a comprehensive settlement submitted to the Court on August 29, 2025. New Mexico state officials' testimony presented September 12, November 18, and November 20, 2025, to the Water and Natural Resources Committee and the Water Subcommittee of the Legislative Finance Committee anticipated U.S. Supreme Court approval of the settlement and the four associated agreements in 2026.

This settlement places an enormous burden on the State of New Mexico and its taxpayers. Effective immediately after Court approval, the settlement requires detailed new annual accounting for compliance with a new Rio Grande Compact delivery obligation called the Effective El Paso Index. New Mexico's requirements include decreasing total groundwater pumping in Dona Ana County so that New Mexico is able to deliver Texas' share of Caballo Dam releases to the river gage at El Paso.²

New Mexico is required to use public funds to purchase and retire 9,100 acre-feet of actively used groundwater rights from willing sellers within five years and a total of 18,200 acre-feet within ten years.

¹ Testimony of Nat Chakeres, General Counsel for the Office of the State Engineer, NMISC No. 25-01(R), 10/16/25, Official Transcript, pp 543 – 545.

² *Groundwater Settlement Agreement* between United States and the State of New Mexico, executed 8/28/2025, awaiting entry by the court, available at <https://nm DOJ.gov/wp-content/uploads/Groundwater-Settlement-Agreement-w-appendices.pdf>

Unfortunately, that will still be insufficient to meet New Mexico's obligations under the Compact. Water scarcity in the Rio Grande basins is dire, and as surface waters have disappeared, the region has increasingly relied on groundwater pumping to meet its needs. Since 2003, the Elephant Butte Irrigation District ("EBID") farmers' adjudicated rights—with a senior 1903 priority date—for a full surface and groundwater water supply have been met with more groundwater than surface water. In 2025, the entire Caballo Dam release was less than the EBID senior demand. This year's forecast is worse.

In years when EBID's share of the Caballo Dam release is insufficient, EBID farmers have a senior 1903 water right to pump groundwater for a full supply. Essentially all other water uses in the Lower Rio Grande are supplied by groundwater under rights that are junior to 1903. The physical laws of hydrology, state water law, and the Rio Grande Compact and pending settlement will cause full EBID and municipal pumping to be incompatible with compliance with the Effective El Paso Index. Therefore, either the state will pay farmers to use much less or the state must administer rights by seniority in accordance with state water law. That administration will cut off all junior users in order to reduce EBID groundwater pumping, which will be required to comply with the Effective El Paso Index. Junior users — including several municipalities serving thousands of New Mexicans — will have to buy their water from EBID farmers in such years.

This application is associated with very junior 1970s water rights. This application seeks to enlarge historical metered diversions with a new well. Granting this application is detrimental to the public welfare of the state and will be costly to taxpayers. It is contrary to the conservation of water within the state because it seeks to increase uses from a very junior water right at a time when the Lower Rio Grande's public drinking water supply purveyors are exposed to having no water rights that are in priority.

Groundwater pumping from Rio Grande tributary aquifers is legally recognized to deplete river flows. Here, the proposed well will result in increased depletions from the Lower Rio Grande at a time when New Mexico is legally required to reduce depletions. The consequences for failure to reduce depletions are established by the pending settlement. They include large penalties that must be paid in wet water, with deadlines.

Granting this application will worsen the exposure and danger New Mexico residents of the Lower Rio Grande now face.

III. Rio Grande Compact and Groundwater Settlement Agreement violations are contrary to the conservation of water and detrimental to public welfare of the state.

New Mexico's compact violations substantially affect all New Mexicans, including the Center's New Mexico members. The New Mexico Legislature has spoken repeatedly on the great public importance of water conservation and of compliance with interstate compact. New Mexico law clearly states that "compliance with interstate water compacts is imperative...." NMSA 1978, § 72-2-9.1(A). Regarding a similar compact with Texas, the Pecos River Compact, the Legislature has found:

The legislature hereby finds and declares that this shortage of water and the state's obligation to Texas pursuant to the compact and the decree is a statewide problem affecting all the citizens of the state. The state is obligated under the terms of the decree to fulfill an obligation to repay Texas in water for any shortages of water owed to Texas by the state of New Mexico. 72-1-2.2(B).

The Legislature has further recognized the dangers of violating that compact:

The legislature hereby finds and declares that the state's obligations extend not only to Texas but also to the citizens of New Mexico and their future generations to ensure adequate water supply. If unfulfilled, the obligations of the state to Texas could cost the state millions of dollars in lost revenues, employment and economic productivity. 72-1-2.2(C).

While these findings were for the Pecos River compact, New Mexico's violations of the Rio Grande Compact are even more serious and more pressing. The legislature made these findings when the annual and total water debts to Texas under the Pecos River Compact were far lower than the current annual and total debts to Texas under the Rio Grande Compact.

As with the Pecos River, excessive depletion of the Rio Grande basin and the resulting violations of the Rio Grande Compact and Groundwater Settlement Agreement are "statewide problems affecting all citizens of the state." Failure to abide by these agreements "could cost the state millions of dollars in lost revenues, employment and economic productivity." This is undoubtedly detrimental to the public welfare of the state, and, as the legislature recognizes, will substantially harm all New Mexicans, including the Center's New Mexico members.

Failure to abide by these agreements has already resulted in years of expensive litigation with Texas. Continued failure will doubtless result in further litigation and ultimately the ceding of state authority over our waters to the U.S. Supreme Court.

IV. Granting this application will threaten endangered and at-risk species and their habitats.

The New Mexico Environmental Review Tool, administered by the New Mexico Department of Game and Fish, anticipates that the area within 2000 meters of Project Jupiter, the industrial project that surrounds the proposed well to the east, south, and west, contains at least 17 animal species designated by Department of Game and Fish to be Species of Greatest Conservation Need. This list also includes multiple species designated as Threatened under New Mexico's Wildlife Conservation Act, such as the Peregrine Falcon and the Bell's Vireo; multiple species designated as Sensitive by the Bureau of Land Management and U.S. Fish and Wildlife Service, such as the Western Burrowing Owl and the Spotted Bat; and multiple species under watch regarding a potential Sensitive designation by the Bureau of Land Management, including the Black-Chinned Sparrow and the Black-Throated Gray Warbler. This area has also been

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identified as an important Plant Area by the New Mexico Rare Plant Conservation Strategy,³ and is likely home to the Sand Prickly-Pear, which New Mexico has listed by endangered.⁴

The proposed well will also threaten multiple plant and animal species formally designated as Endangered under the federal Endangered Species Act—the Mexican Wolfe, the Northern Aplomado Falcon, the Rio Grande Silvery Minnow, the Sneed Pincushion Cactus, the Prostrate Milkweed, and the Southwestern Willow Flycatcher—in addition to multiple other species designated as Proposed Endangered, Threatened or Proposed Threatened under the Act.⁵ Each of these species occupy habitat ranges downstream of the proposed well site that will be harmed by increased depletion of the Rio Grande.

Given the extreme water scarcity in the area, the water use requested by the proposed well will impact the water supplies that sustain each of these at-risk plant and animal species, as well as their wider habitats. This poses particular harm to the Center for Biological Diversity and its New Mexican members. The Center is a national, non-profit conservation organization that works through science, law, and policy to protect imperiled wildlife and their habitat. The Center and its members include individuals with scientific, professional, educational, recreational, aesthetic, moral, and spiritual interests in these at-risk species, and who visit and use the habitat of these species for a broad range of reasons. By diverting and utilizing massive quantities of water not currently under beneficial use, the proposed well will adversely impact at-risk species surrounding the well site, as well as endangered species downstream of the well. This, in turn, will impact the ability of the Center and its members to study and enjoy these species in their current habitats.

V. The Application is invalid.

The Application is deficient for multiple reasons. First the proposed water right for construction of a large-scale industrial project is invalid because this right has not actually used 2,400 acre feet per year in any year since metering began. From publicly accessible data gathered in the following table, it appears that the average annual use of this water right for the past 10 years is 1,528 acre-feet per year. The highest ever use was in 2019, at 2,089 acre-feet. The use has declined over time – the average annual use for the past 5 years is only 1,222 acre-feet, half of the use anticipated in the Application.

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³ *N.M. Rare Plant Conservation Strategy*, Energy Mineral and Natl. Resources Dept., <https://www.emnrd.nm.gov/sfd/new-mexico-rare-plant-conservation-strategy/> (last visited Jan. 9, 2026).

⁴ *Opuntia arenaria* (Sand Prickly-Pear), N.M. Rare Plants (Jan. 9, 2026), <https://nmrareplants.unm.edu/node/122>.

⁵ *Screening Options for Ranges and Critical Habitats*, U.S. Env'tl Protection Agency, <https://experience.arcgis.com/experience/304f1a918dd44b008333dce7ce73d912> (last visited Jan. 9, 2026).

POD YTD Meter Amounts AF	2025	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	Drill Date	Casing size	Depth
LRG 03150 POD 36	42	15	122	257	309	34	111	73	67	209	45.6	NI	NI	NI
LRG 03150 POD S-2 (no written record on Water Rights database)												NI	NI	NI
LRG 03150 POD S-8 (kna LRG-3 150 POD 42)	0	0	0	0	0	0	0	3	67	177	185	NI	NI	NI
LRG 03150 POD S-13 (kna LRG-3150 POD 49)	0	0	0	0	0	0	0	0	0	0	0	1972	12.5	552
LRG 03150 POD S28 (kna LRG-3150 POD 45)	244	69	220	102	132	273	733	713	733	714	673	2010	12.5	524
LRG 03150 POD S-17	856	469	1339	764	1172	503	1245	1178	1066	977	913	2010	15.25	690
Totals	1142	553	1681	1123	1613	810	2089	1967	1933	2077	1816.6			

Second, the well that is supposedly being replaced, LRG-03150 POD36, reports much lower use than what would be possible from the proposed replacement. The average annual use of this well for the past 10 years is only 117 acre-feet, less than 5% of the 2,400 acre-feet discussed in the Application. The Application states that the replacement well will be drilled into the same underground bolson as POD36, but we are unable to verify this because the Application is incomplete and includes no information regarding the depth or diameter of POD36. Additionally, there are other blank sections in the application.

Finally, this right has historically been used for surface irrigation for sod farming. Surface irrigation use is typically limited to the approximately seven-month irrigation season, and depletes groundwater only during that time. Long-term industrial construction use, by contrast, will result in year-round depletion, which will increase further diminish water flows, threaten compact and settlement compliance, and imperil endangered and threatened species.

VI. Conclusion

For the reasons stated above, application LRG-03150-POD50 by Santa Teresa Capital, LLC must be denied. Because the application is contrary to water conservation and detrimental to public welfare of the state, and invalid on its face, and because the Center's members would be substantially and specifically affected, the Center files this protest and requests a hearing on the application.

Respectfully,

Colin Cox
Gail Evans
CENTER FOR BIOLOGICAL DIVERSITY
1025 ½ Lomas NW
Albuquerque, NM 87102
(832) 316-0580
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org

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ATTACHMENT 2



NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT

(Non 72-12-1) For fees, see State Engineer website: <http://www.ose.state.nm.us/>

(check applicable boxes):



File No. LRG 3150-E

Trn 792655 Tag 40C14

☐ Check here if regionalizing pursuant to NMSA 1978, §§ 62-20-1 through 62-20-7 (Attach Articles of Incorporation and plats)		
☐ Change Purpose of Use ☐ Ground water ☐ Surface Water ☐ Change Place of Use ☐ Groundwater ☐ Surface Water	☒ Change Point of Diversion (POD): From: ☒ Groundwater ☐ Surface Water To: ☒ Groundwater ☐ Surface Water	☐ Additional Groundwater Point of Diversion (POD) ☐ Additional Surface Water Point of Diversion (POD)
☐ Temporary Change, NMSA 1978, § 72-12-7(B) Requested Start Date: (Not to Exceed 3 ac-ft in One Year)		Requested End Date:
☐ Water Use Lease, NMSA 1978, §§ 72-6-1 to-7 Requested Start Date:		Requested End Date:
☐ Temporary Change (other) Requested Start Date:		Requested End Date:
☐ Accounting Period Start Date:		

1. APPLICANT(S) (Required) Note: water-right owner must be listed as an applicant.

Name: SANTA TERESA CAPITAL, LLC.	Name:
Contact or Agent: ☐ check here if Agent GILBERT G. MESA	Contact or Agent: ☐ check here if Agent
Mailing Address: 829 Rosinante Road	Mailing Address:
City: El Paso	City:
State: TX	State:
Zip Code: 79922	Zip Code:
Phone: 915-539-1800 ☐ Home ☒ Cell	Phone: ☐ Home ☐ Cell
Phone (Work):	Phone (Work):
E-mail (optional): gilmesa777@gmail.com	E-mail (optional):



2. CURRENT OSE FILE INFORMATION (Required)

OSE File No(s): LRG-03150-E	Priority Date (if known): 9/13/1971	Subfile/Cause No. (if applicable):
--------------------------------	--	------------------------------------

3. CURRENT PURPOSE OF USE AND AMOUNT OF WATER (Required)

☐ Domestic ☐ Livestock ☒ Irrigation ☒ Municipal ☒ Industrial ☒ Commercial ☒ Other Use (specify): <u>Recreational</u>	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. Diversions: <u>2,400</u> Consumptive Use: _____ Other (include units): _____
Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc): _____	

Application for Permit, Form wr-06, Rev 01/27/25

FOR OSE INTERNAL USE	File No.:	Trn. No.:	Receipt No.: <u>4-27296</u>
Trans Description (optional):			Sub-Basin:
Well Tag ID No. (if applicable): <u>40C14</u>	PCW/LOG Due Date:	PBU Due Date:	

4. COUNTY WHERE WATER RIGHT IS CURRENTLY USED (Required)

Dona Ana

COUNTY WHERE WATER RIGHT WILL BE MOVED (IF APPLICABLE)

5. ADDITIONAL STATEMENTS CONCERNING THE CURRENT WATER RIGHT

6. CURRENT or MOVE-FROM POINT(S) OF DIVERSION (POD) (Required)

"Present
producing
Aquifer":

☐ Surface POD OR ☒ Ground Water POD (Well) **Roswell Artesian Basin (check all that apply): ☐ Artesian ☐ Shallow ☐ "PPA"

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) & 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)

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

POD Number (if known):

X or Easting or
Longitude:

Y or Northing
or Latitude:

LRG-03150-POD 36

1,502,663

302,725

NE1/4 SE1/4 NW1/4 Sec 36 T28S R02E



NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions)

Additional point of diversion descriptions are attached: ☐ Yes ☒ No If yes, how many

Point of Diversion is on Land Owned by: PASEO DEL NORTE LLC (See attached easement information)

Other description relating point of diversion to common landmarks, streets, or other:

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 01/27/25

File Number:

Trn Number:

7. CURRENT or MOVE-FROM PLACE(S) OF USE (Required)

The land is legally described by (check all that apply):

☐ Public Land Survey System (PLSS) (quarters, section, township, range)	☐ Hydrographic Survey Report or Map
☐ Irrigation or Conservation District Map	☐ Subdivision
	☐ Grant

Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
Within 32,020.56 acres of land, as stated in the					
amended declarations, as shown on the attached					
maps					
Total Acres:					

Other description relating place of use to common landmarks, streets, or other:

Place of use is on land owned by (required).
If landowner differs from water right owner, written consent to sever the water right from the land temporarily.

Various

Are there other sources of water for these lands? No ☒ Yes ☐ describe by OSE file number:

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

****Note: Municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations and public utilities wishing to hold these water rights unused between ten and forty years, must file a Water Development Plan pursuant to 72-1-9 NMSA with this application. Check here if one is already on file.** ☐

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 01/27/25

File Number

Trn Number

8. MOVE-TO PURPOSE OF USE AND AMOUNT OF WATER

Check all that apply: ☐ Domestic ☐ Livestock ☒ Irrigation ☒ Municipal ☒ Industrial ☒ Commercial ☒ Other Use (specify): <u>Recreational</u> 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. 2,400 Diversion: _____ Consumptive Use: _____ Other (include units): _____
--	---

9. MOVE-TO POINT(S) OF DIVERSION (POD) (Complete this section ONLY if adding or replacing a POD)

Note: if there is known artesian conditions, contamination or high mineral content at the drilling location check box and attach form WD-09 to this form. ☐

☐ Surface POD OR ☒ Ground Water POD (Well) **Roswell Artesian Basin (check all that apply): ☐ Artesian ☐ Shallow ☐ "PPA"

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) & 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 (if known):	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
LRG-03150-POD50	1,502,653	302,673	NE1/4 SE1/4 NW1/4 Sec 36 T28S R02E
LRG-7279	1,500,545	487,453	SW1/4 NW1/4 NW1/4 Sec 13 T29S R02E
LRG-3150	1,520,564	308,005	NE1/4 SW1/4 SW1/4 Sec 13 T28S R02E
LRG-3150-S-2	1,507,032	307,777	NW1/4 SE1/4 NW1/4 Sec 30 T28S R03E

NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions)

Additional POD descriptions are attached: ☒ Yes ☐ No If yes, how many _____

Other description relating point(s) of diversion to common landmarks, streets, or other: _____

Point of Diversion is on Land Owned by: Various

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): 700	Outside diameter of well casing (inches): 16
Driller Name: RnM Water Solutions	Driller License Number: 1828
If replacing the current well, is the current well to be plugged? ☒ Yes ☐ No ☐ Not Applicable	
If No, state for what use it is retained: _____	

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 01/27/25

File Number: _____

Trn Number: _____

10. MOVE-TO PLACE(S) OF USE (Complete this section ONLY if adding or changing a place of use)

List each individually

The land is legally described by (check all that apply):

- ☐ Public Land Survey System (PLSS) (quarters, section, township, range)
- ☐ Irrigation or Conservation District Map
- ☐ Hydrographic Survey Report or Map
- ☐ Subdivision
- ☐ Grant

Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority

RECEIVED
OCT 21 2025
STATE ENGINEER OFFICE
LAS CRUCES

RECEIVED
OCT 21 2025
STATE ENGINEER OFFICE
LAS CRUCES

Total Acres:

Other description relating place of use to common landmarks, streets, or other:

--

Place of use is on land owned by (required):

Are there other sources of water for these lands? No ☐ Yes ☐ describe by OSE file number:

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

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 01/27/25

File Number:

Trn Number

11. ACEQUIA OR COMMUNITY DITCH REQUIREMENTS

☐ A. The water right is not within a Community Ditch or Acequia

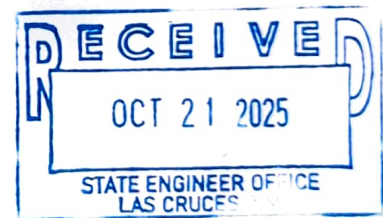
☐ B. The water right is within a Community Ditch or Acequia. If you checked box B you must:

- 1) Attach documentary evidence provided by commissioners of the Community Ditch or Acequia confirming applicant's compliance with any applicable requirement for the change adopted by the Community Ditch or Acequia or
- 2) Attach an affidavit from the commissioners of the Community Ditch or Acequia stating that no such requirement has been adopted by the relevant association bylaws.

This documentation is required pursuant to NMSA 1978 § 72-5-24.1.

12. ADDITIONAL STATEMENTS OR EXPLANATIONS

This application is filed in conjunction with an emergency request to drill and use the replacement well within 100' of the original well, under the authority of NMSA 72-12-22.



FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 01/27/25

File Number:

Trn Number:

ACKNOWLEDGEMENT

I, We (name of applicant(s)), GILBERT G. MESA for SANTA TERESA CAPITAL, LLC
Print Name(s)

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

Gilbert G. Mesa
Applicant Signature

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

_____, New Mexico State Engineer

By: _____
Signature

Print

Title: _____
Print

☐ Check here if a new well is to be drilled under this permit.



FOR OSE INTERNAL USE

Well Tag ID Issued? ☐ Yes ☐ No

Application for Permit, Form wr-06, Rev 01/27/25

File No.:

Trn No.:

Well ID Tag No.:



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) OR ☒ Move-To/New Point of Diversion(s)			b. Information on Attachment(s): Number of points of diversion involved in the application: <u>28</u> Total number of pages attached to the application: <u>3</u>		
☐ Surface Point of Diversion OR ☐ Well					
Name of ditch, acequia, or spring:					
Stream or water course:					
Tributary of:					
c. Location (Required): Required: Move to/New POD location coordinate(s) 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) 1/10 th 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	Well Depth (in feet) *Required on new wells	Casing outside diameter (in inches) *Required on new wells
POD Number: LRG-3150-S-3	X or Longitude 1,514,249	Y or Latitude 311,101	Other Location Description: SE1/4 NW1/4 SE1/4 Sec 20 T28S R03E		
POD Number: LRG-3150-S-4	X or Longitude 1,501,699	Y or Latitude 310,883	Other Location Description: NW1/4 SE1/4 SW1/4 Sec 24 T28S R02E		
POD Number: LRG-3150-S-6	X or Longitude 1,518,422	Y or Latitude 312,822	Other Location Description: SE1/4 SE1/4 NW1/4 Sec 21 T28S R03E		
POD Number: LRG-3150-S-11	X or Longitude 1,514,159	Y or Latitude 319,950	Other Location Description: NE1/4 NW1/4 NE1/4 Sec 17 T28S R03E		
POD Number: LRG-3150-S-12	X or Longitude 1,511,311	Y or Latitude 310,191	Other Location Description: SW1/4 SW1/4 SW1/4 Sec 20 T28S R03E		
POD Number: LRG-3150-S-13	X or Longitude 1,497,303	Y or Latitude 311,229	Other Location Description: SE1/4 NE1/4 SW1/4 Sec 23 T28S R02E		
POD Number: LRG-3150-S-14	X or Longitude 1,514,946	Y or Latitude 315,933	Other Location Description: NW1/4 SE1/4 SE1/4 Sec 17 T28S R03E		
POD Number: LRG-3150-S-15	X or Longitude 1,523,398	Y or Latitude 305,833	Other Location Description: SE1/4 NE1/4 SW1/4 Sec 27 T28S R03E		
POD Number: LRG-3150-S-16	X or Longitude 1,516,016	Y or Latitude 305,526	Other Location Description: NE1/4 SE1/4 SE1/4 Sec 29 T28S R03E		



FOR USE INTERNAL USE

Form WR-08 Version 07/16/2024
POD DESCRIPTIONS - ATTACHMENT 1

File Number:

Trn Number:

Trans Description (optional):



NEW MEXICO OFFICE OF THE STATE ENGINEER



ATTACHMENT 1 POINT OF DIVERSION DESCRIPTIONS

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Tributary of:					
c. Location (Required): Required: Move to/New POD location coordinate(s) 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) 1/10 th 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	Well Depth (in feet) *Required on new wells	Casing outside diameter (in inches) *Required on new wells
POD Number: LRG-3150-S-17	X or Longitude 1,503,459	Y or Latitude 299,619	Other Location Description: SW1/4 SW1/4 SE1/4 Sec 36 T28S R02E		
POD Number: LRG-3150-S-19	X or Longitude 1,517,196	Y or Latitude 308,638	Other Location Description: SE1/4 NW1/4 NW1/4 Sec 28 T28S R03E		
POD Number: LRG-3150-S-20	X or Longitude 1,525,201	Y or Latitude 304,493	Other Location Description: SE1/4 SW1/4 SE1/4 Sec 27 T28S R03E		
POD Number: LRG-3150-S-22	X or Longitude 1,527,513	Y or Latitude 303,912	Other Location Description: NE1/4 NW1/4 NW1/4 Sec 35 T28S R03E		
POD Number: LRG-3150-S-24	X or Longitude 1,501,621	Y or Latitude 316,013	Other Location Description: NW1/4 SE1/4 NE1/4 Sec 28 T28S R03E		
POD Number: LRG-3150-S-25	X or Longitude 1,499,400	Y or Latitude 317,247	Other Location Description: NW1/4 NE1/4 SE1/4 Sec 14 T28S R02E		
POD Number: LRG-3150-S-26	X or Longitude 1,506,097	Y or Latitude 312,481	Other Location Description: SW1/4 SW1/4 NW1/4 Sec 19 T28S R03E		
POD Number: LRG-3150-S-27	X or Longitude 1,512,245	Y or Latitude 314,095	Other Location Description: SW1/4 NE1/4 NW1/4 Sec 20 T28S R03E		
POD Number: LRG-3150-S-28 <u>3150</u>	X or Longitude 1,505,074	Y or Latitude 309,902	Other Location Description: SE1/4 SE1/4 SE1/4 Sec 24 T28S R02E		



FOR USE INTERNAL USE

Form WR-08 Version 07/16/2024

POD DESCRIPTIONS - ATTACHMENT 1

File Number:

Trn Number:

Trans Description (optional):



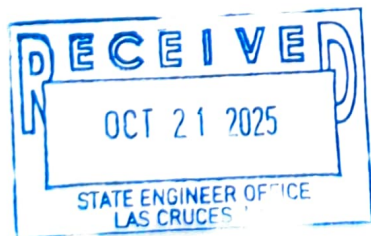
NEW MEXICO OFFICE OF THE STATE ENGINEER



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Tributary of:					
c. Location (Required): Required: Move to/New POD location coordinate(s) 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) 1/10 th 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	Well Depth (in feet) *Required on new wells	Casing outside diameter (in inches) *Required on new wells
POD Number: LRG-3150-S-31	X or Longitude 1,520,649	Y or Latitude 305,144	Other Location Description: NW1/4 SE1/4 SE 1/4 Sec 28 T28S R03E		
POD Number: LRG-3150-S-32	X or Longitude 1,510,962	Y or Latitude 310,604	Other Location Description: NW1/4 SW1/4 SW1/4 Sec 20 T28S R03E		
POD Number: LRG-3150 POD41	X or Longitude 1,505,736	Y or Latitude 286,985	Other Location Description: NW1/4 Sec 18 T29S R03E		
POD Number: LRG-3150 POD42	X or Longitude 1,502,922	Y or Latitude 307,623	Other Location Description: SW1/4 SW1/4 NE1/4 Sec 25 T28S R02E		
POD Number: LRG-3150 POD45	X or Longitude 1,504,958	Y or Latitude 309,848	Other Location Description: SE1/4 SE1/4 SE1/4 Sec 24 T28S R02E		
POD Number: LRG-3150 POD46	X or Longitude 31 ° 51' 44	Y or Latitude 106° 42' 44	Other Location Description: NW1/4 Sec 23 T28S R02E		
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:		



FOR OSE INTERNAL USE

Form WR-08 Version 07/16/2024

POD DESCRIPTIONS - ATTACHMENT 1

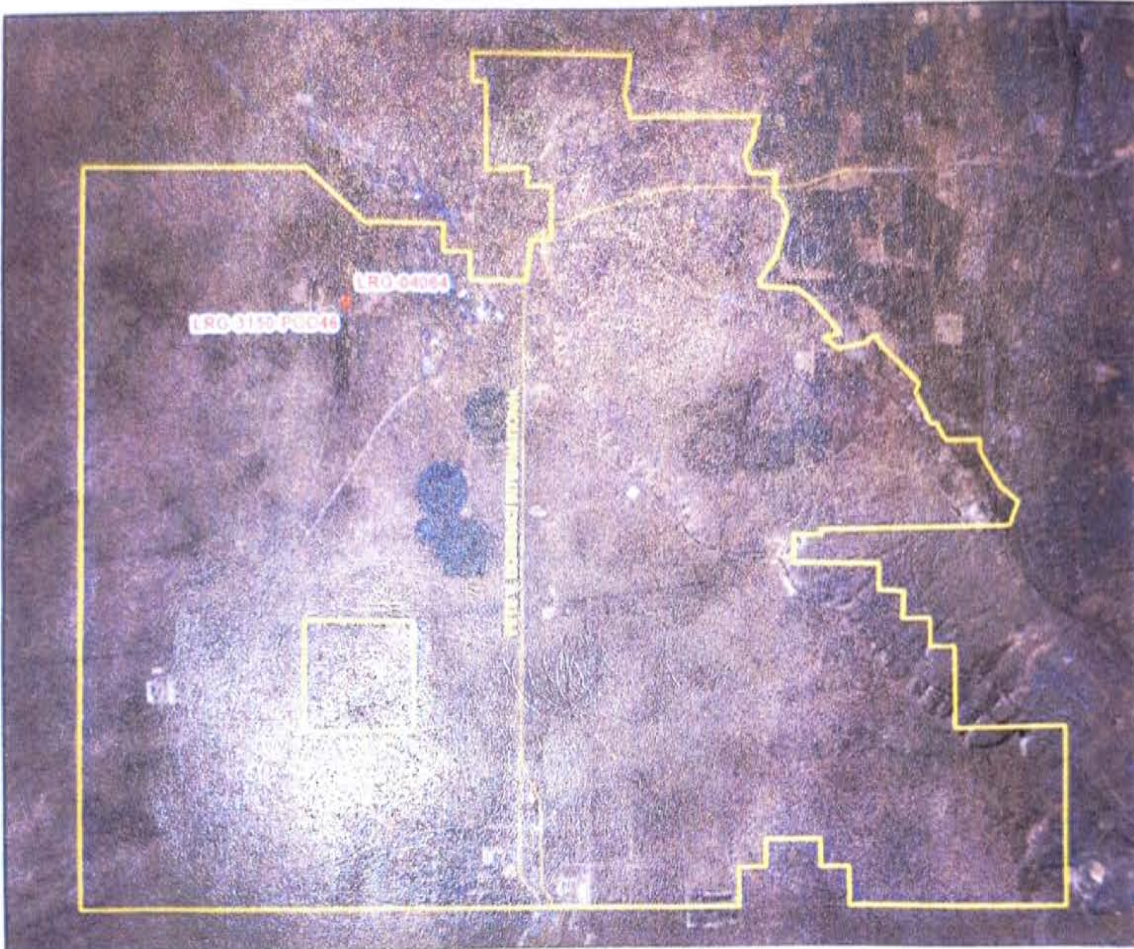
File Number:

Trn Number:

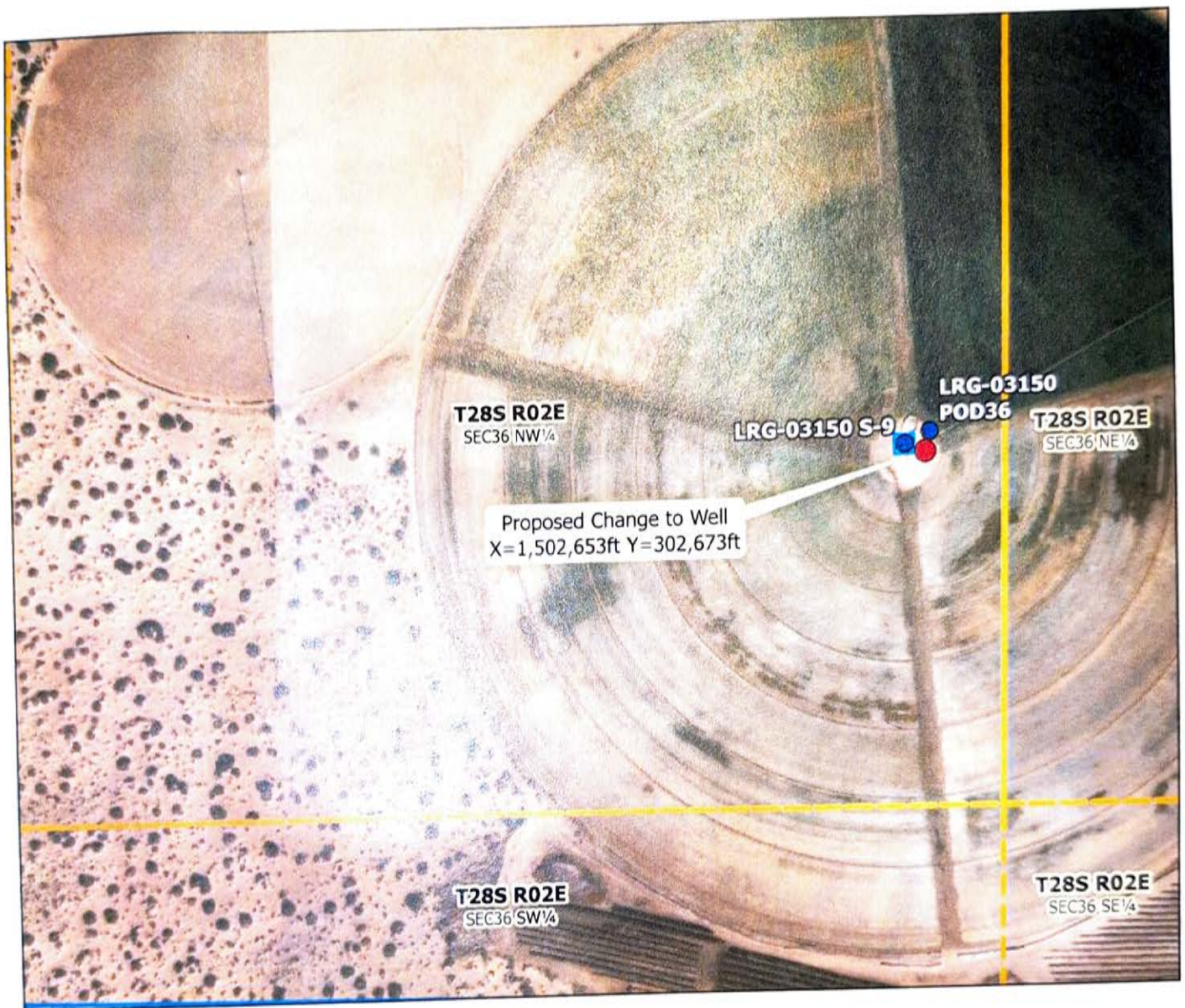
Trans Description (optional):

Place and Purpose of Use:

Irrigation, municipal, industrial, commercial, recreational, and related purposes within 32,020.56 acres of land, owned by various entities, as described in the Amended Declarations and as shown on maps on file with the State Engineer.



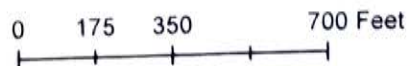
Location Map



LRG-03150-E

Application to Change Location of Well LRG-03150-POD36

- Point of Diversion
- Change-To Well
- County Parcel
- NM PLSS



October 21, 2025

State of New Mexico
Office of the State Engineer
1680 Hickory Loop, Suite J
Las Cruces, New Mexico 88005



Attn: Mr. JR Hennessey
Deputy District IV Supervisor

Re.: LRG-3150-E
NMSA 72-12-22 Replacement Well Within One Hundred Feet
Emergency Replacement of LRG-3150 POD36

Dear Mr. Hennessey:

Santa Teresa Capital, LLC, is the owner of groundwater rights recorded and on file with the Office of the State Engineer under file **LRG-3150-E**. These water rights are permitted for irrigation, municipal, industrial, commercial and recreational uses within land in Doña Ana County (as shown on maps on file with the Office of the State Engineer); and LRG-3150 POD36 is a permitted point of diversion for these water rights. In accordance with NMSA 72-12-22, **Santa Teresa Capital, LLC, respectfully requests emergency action from the Office of the State Engineer for permission to drill a replacement well for LRG-3150 POD 36.**

Santa Teresa Capital, LLC, requests this emergency action for the following reasons:

1. The existing well LRG-3150 POD 36 (fka LRG-3150 S-9) has historically been used for commercial purposes to irrigate a commercial sod farm, together with LRG-3150 S-2; S-8 (kna LRG-3150 POD 42); S-13 (kna LRG-3150 POD 49); S-28 (kna LRG-3150 POD 45); and S-17 (kna S-17 Repl.).
2. Production from Well LRG-3150 POD 36 has declined drastically and was recently taken out of service due to well screen and casing failure.
3. Wells LRG-3150 S-2 and LRG-3150 POD 42 have also failed and are currently out of service and beyond repair.
4. The remaining, functional Wells LRG-3150 S-17 Repl. and LRG-3150 POD 45 are currently being used for commercial purposes to irrigate a commercial sod farm and to provide construction water for a large-scale industrial project; the water requirement combined for these two uses cannot be sufficiently supplied from these two remaining, functional wells.
5. Without replacing Well LRG-3150 POD 36, the commercial sod farm will suffer serious economic loss due to reduced or eliminated turf production at the only

Mr. JR Hennessey
October 21, 2025
Page 2 of 2

- commercial sod production facility in the region. This would materially hurt regional parks and recreation facilities in Doña Ana and El Paso counties and in the cities of Las Cruces and El Paso, including at football, soccer, and baseball fields; and at public and private golf courses.
6. Without replacing Well LRG-3150 POD 36, the large-scale industrial project (which is a priority project for the State of New Mexico and Doña Ana County), will suffer serious economic loss due to delayed construction schedule and related impacts.
 7. The proposed replacement well will be drilled within 100-feet of the existing Well LRG-3150 POD 36.
 8. The proposed replacement well will be completed in the same underground bolson as the existing well.
 9. The proposed replacement well for Well LRG-3150 POD 36 will not increase the appropriation of water to an amount above the existing permitted water rights allowed in the existing well.

Thank you for your consideration of this emergency action request. If you require any additional information, please contact me at 915/539-1800.

Very truly yours,



Gilbert G. Mesa
Agent for Santa Teresa Capital, LLC

cc: Lane Gaddy, Managing Partner, Santa Teresa Capital, LLC



Hennessey, Joseph, OSE

From: Gilbert G. Mesa <gilmesa777@gmail.com>
Sent: Tuesday, October 21, 2025 11:31 AM
To: Hennessey, Joseph, OSE
Subject: [EXTERNAL] Easement document for well site LRG 3150-POD36
Attachments: 4.a. 1330941 (Well and Water Distribution Easement Agreement - 2013-12-23)v-pdf.pdf

You don't often get email from gilmesa777@gmail.com. [Learn why this is important](#)

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

JR,

Here's the complete easement document that includes the 100'x100' well easement for Well LRG-3150 POD36 (see page 78 of 79 of the attachment).

The new well will be drilled within the southeast quadrant of this well easement.

Please let me know if you have any questions.

Thank you.

-Gilbert

Gilbert G. Mesa
gilmesa777@gmail.com
(915) 539-1800 cell





COUNTY OF DONA ANA) EASEMENT
STATE OF NEW MEXICO) ss PAGES: 79

I Hereby Certify That This Instrument Was Filed for
Record On DEC 23, 2013 03:08:32 PM
And Was Duly Recorded as Instrument # 1330941
Of The Records Of Dona Ana County



Witness My Hand And Seal Of Office,
Lynn J. Ellins, County Clerk, Dona Ana, NM

Deputy

Renee Torres



8.

DATE
12/23/2013

WELL AND WATER DISTRIBUTION EASEMENT AGREEMENT

This Well and Water Distribution Easement Agreement ("Agreement") is made effective as of Dec. 23, 2013 by and among Paseo Del Norte, LLC, a New Mexico limited liability company ("PDN") and Santa Teresa Land, LLC, a New Mexico limited liability company ("STL") and Verde Realty Operating Partnership, L.P., a Delaware limited partnership f/k/a Verde Realty Master Limited Partnership ("VROP"), Verde Santa Teresa LLC, a Delaware limited liability company ("VST") and Verde Border Industrial Park LLC, a Delaware limited liability company ("VBI") with reference to the following facts and circumstances:

A. Contemporaneously with the execution of this Agreement, PDN and STL acquired the land described on Exhibit A ("PDN and STL Land") from VST and VBI, both of which are affiliates of VROP. VST, VBI and VROP are referred to herein collectively as the "Verde Parties" and individually as a "Verde Party".

B. In the deeds conveying the PDN Land to PDN, VST and VBI reserved and established easements on the PDN and STL Land for the benefit of themselves, VROP and their respective affiliates, successors and assigns (collectively, "Easement Holders") related to the wells included in New Mexico State Engineer File No. LRG-3150, *et al* ("Wells"), as more particularly described in those certain Special Warranty Deeds recorded 12/23, 2013 as Instrument Nos. 1330893, 1330894, 1330895, 1330896 and 1330897 records of Dona Ana County, New Mexico ("Reserved Easements").

C. The Reserved Easements are blanket easements. The parties desire to fix the locations of the Reserved Easements that are currently in use or are planned to be improved with easement improvements in the near future.

D. The parties also desire to provide a process for fixing the future locations of Reserved Easements on the PDN Land, from time to time, in a manner that will allow for both the reasonable and orderly development of the PDN Land and the exercise of the easement rights under the Reserved Easements.

NOW THEREFORE, the parties agree as follows:

1. Located Easements.

1.1 Well Site Easements. The parties hereby establish the location of the certain Reserved Easements for the maintenance, repair and replacement of existing Wells and related equipment and site improvements as described on Exhibits B1, B2 and B3 ("Well Site Easements"), together with rights of ingress and egress to and from the easement areas.

1.2 Utility Easements Easements. The parties hereby establish the location of certain Reserved Easements for the installation, maintenance, repair and replacement of

water distribution lines for the transmission of water from the Wells, either above ground or underground at the Easement Holder's election and the installation, maintenance, repair and replacement of electrical lines for electrical service to the well and water distribution equipment, either above ground or underground at the Easement Holder's election and shown as Private Utility Easements on that certain plat entitled BOUNDARY SURVEY PLAT OF TWO PRIVATE ROAD AND UTILITY EASEMENTS, AND FOUR PRIVATE UTILITY EASEMENTS LYING WITHIN SECTIONS 24, 25, 26 AND 35, T.28S., R.2E., N.M.P.M. AND ONE PRIVATE ROAD AND UTILITY EASEMENT LYING WITHIN SECTION 13, T.29S., R.2E., N.M.P.M. OF THE U.S.G.L.O. SURVEYS, SANTA TERESA INDUSTRIAL AREA, DONA ANA COUNTY, NEW MEXICO", recorded December 19, 2013, # 30639 Plat Book 23 page 555, a unrecorded copy of which is attached as Exhibit C. Plat # 5277

1.3 Road And Utility Easements. The parties hereby establish the location of certain Reserved Easements for the installation, maintenance, repair and replacement of electrical lines for electrical service to the well and water distribution equipment, either above ground or underground at the Easement Holder's election and for access and shown as Private Road and Utility Easements on that certain plat entitled BOUNDARY SURVEY PLAT OF TWO PRIVATE ROAD AND UTILITY EASEMENTS, AND FOUR PRIVATE UTILITY EASEMENTS LYING WITHIN SECTIONS 24, 25, 26 AND 35, T.28S., R.2E., N.M.P.M. AND ONE PRIVATE ROAD AND UTILITY EASEMENT LYING WITHIN SECTION 13, T.29S., R.2E., N.M.P.M. OF THE U.S.G.L.O. SURVEYS, SANTA TERESA INDUSTRIAL AREA, DONA ANA COUNTY, NEW MEXICO", recorded December 19, 2013, # 30639 Plat Book 23 page 555, a unrecorded copy of which is attached as Exhibit C. Plat # 5277

1.4 Access to Easement Areas. Easement Holders shall utilize then existing streets, roads or drives to access the easement areas for the Reserved Easements, including those described above or located in the future, to the extent available.

2. Procedures for Locating Easements in the Future. As the need arises for the relocation of the Wells from the locations described in New Mexico State Engineer File No. LRG-3150, et al, or for drilling supplemental Wells outside of any existing Well Site Easement, or for the installation or relocation of water distribution lines or electrical lines to serve any Wells, as they may have been relocated, the affected Easement Holder shall give written notice to PDN that it intends to exercise its Reserved Easement rights ("Easement Notice"). The Easement Notice shall include (i) a description of the planned easement improvements (e.g., well and well site improvements, well equipment, water distribution line and equipment and/or electrical line and equipment) and (ii) a description of its preferred fixed location for the subject easement. The Easement Holder shall provide such additional information as may be reasonably requested by PDN. If PDN objects to the fixed location of the subject easement as described in the Easement Notice, PDN shall deliver notice to the Easement Holder that sent the Easement Notice within twenty (20) days after the date of the Easement Notice ("Objection Notice") stating the reason for its objection and proposing an alternative location for the easement. If PDN fails to deliver



an Objection Notice to the Easement Holder issuing an Easement Notice within such 20-day period, PDN will be deemed to have consented to the easement location as described in the Easement Notice. Within ten (10) days after receipt of the Objection Notice, senior management personnel for the Easement Holder and PDN shall meet to address PDN's objections either in person or by telephone (or video conferencing) and the parties shall endeavor to agree on the location of the subject easement.

2.1 Criteria for Easement Locations. The parties agree that the following criteria shall be used to determine the appropriateness of an easement location and applied in the event of any disputes between the parties regarding the location or relocation of any easements subject to this Agreement.

2.1.1 Easements for Wells and Related Equipment and Site Improvements. Locations for Well Site Easements pursuant to the Reserved Easements for the installation, maintenance, repair and replacement of supplemental or replacement Wells, and related equipment and site improvements, shall be determined based on the following: (i) New Mexico Office of the State Engineer permitting considerations, (ii) availability of water, (iii) distribution needs and (iv) the relative costs of installation of the well and connecting water distribution lines, in a manner that takes into consideration, and seeks to minimize, known adverse impacts on existing improvements on the PDN Land and those improvements contemplated by any subdivision plat, site plan or master plan that have been approved for the PDN Land by the applicable governmental authority or submitted to the applicable governmental authority for approval (each, a "Development Plan") or adverse impact on future development of the PDN Land based on apparent restraints on development resulting from the location of the Well (e.g., location of a well adjacent to an existing road that would have to be significantly widened to accommodate any future development). If a Development Plan exists for the affected portion of the PDN Land, Well Sites shall be located in or adjacent to the set-back areas, common areas or utility easement areas shown on Development Plans, to the extent reasonably practicable and approved by the Office of the New Mexico State Engineer. All Well Site Easements shall have dimensions of at least 100 feet by 100 feet, unless otherwise agreed by the parties.

(a) Undeveloped Land with Existing Development Plan. If the affected portion of the PDN Land is undeveloped (i.e., unimproved) but a Development Plan exists for the affected portion of the PDN Land and the parties do not agree on the location within ten (10) days after the meeting described in Section 2, then the affected Easement Holder shall have the option of choosing the location of the Well Site Easement in accordance with the criteria set forth in Section 2.1.1 and the applicable Development Plan; provided that the location would not prohibit or significantly limit construction of buildings and other improvements on the affected parcel(s) in accordance with the Development Plan. In any event, the location of the Well Site Easement, whether determined by mutual agreement or chosen by the affected Easement Holder, shall be subject to PDN's rights under Section 3 below to relocate the easement, well, well site improvements and well equipment to accommodate future development of the PDN Land.



(b) Undeveloped Land with No Development Plan. If the affected portion of the PDN Land is undeveloped and no Development Plan exists for the affected portion of the PDN Land, the affected Easement Holder shall confer with PDN regarding any pending development plans (i.e., written development plans that are in process, but not yet finalized and ready for submittal to governmental authorities). Easement Holders agree to endeavor to accommodate pending development plans, provided that such pending development plans are sufficiently detailed to provide determinable locations of roads, utility easements and improvements. However, if no Development Plan exists for the affected portion of the PDN Land and PDN and the Easement Holder do not mutually agree on the location of the Well Site Easement within ten (10) days after the meeting described in Section 2, the Easement Holder shall have the option of choosing the location of the Well Site Easement in its reasonable discretion, subject to PDN's rights under Section 3 below to relocate the easement, well, well site improvements and well equipment to accommodate future development of the PDN Land.

(c) Developed Land. If the affected portion of the PDN Land is developed (i.e., improved) and PDN and effected Easement Holder fail to agree on the location of the Well Site Easement within ten (10) days after the meeting described in Section 2, then the affected Easement Holder shall have the option of choosing the easement location in accordance with Development Plan and the criteria set forth in Section 2.1.1, in its reasonable discretion, provided that the location would not interfere with the use and enjoyment of the buildings and other improvements located on the affected parcel(s) in any material respect. In any event, the location of the Well Site Easement, whether determined by mutual agreement or chosen by the affected Easement Holder, shall be subject to shall be subject to PDN's rights under Section 3 below to relocate the easement, well, well site improvements and well equipment to accommodate future development of the PDN Land.

2.1.2 Water Distribution Easements and Electrical Line Easements. Whether developed or undeveloped, if the affected portion of the PDN Land is subject to a Development Plan, then locations for Water Line Easements and Electrical Line Easements pursuant to the Reserved Easements for future water distribution lines and electrical lines shall be located along the road rights of way or parcel boundaries or in designated utility easements as shown on the Development Plan, to the extent reasonably possible. If the affected portion of the PDN Land is undeveloped and no Development Plan exists, the applicable Easement Holder shall confer with PDN regarding future development plans, but the Easement Holder shall have the option of choosing the easement locations in its reasonable discretion, subject to PDN's rights under Section 3 below to relocate the easements and the water distribution lines, electrical lines and related equipment therein to accommodate future development of the PDN Land. Water Line Easements and Electrical Line Easements not located in existing utility easements shall be a minimum of twenty (20) feet wide, unless otherwise agreed by the parties.



2.2 Amendment. The locations of Reserved Easements established pursuant to this Section 2 shall be included in an amendment to this Agreement executed by PDN and the Easement Holders, recorded in the official records of Doña Ana County, New Mexico. The affected Easement Holder(s) shall cause the amendment to be prepared and recorded, after execution by PDN and the Easement Holder(s), at the Easement Holder(s)' cost. Any such amendment shall be effective only to provide for the easement location(s) then being established and shall not limit or extinguish the blanket Reserved Easements.

3. Relocation of Easements and Facilities by PDN.

3.1 Relocation of Wells and Appurtenant Water Distribution and Electrical Lines. Subject to the terms and conditions of this Section 3, PDN shall have the right to relocate Wells, well site improvements, and appurtenant water distribution lines and electrical lines, and related equipment, to a location elsewhere on the PDN Land in order to accommodate development or redevelopment of the PDN Land provided that the following conditions ("Conditions") are satisfied: (i) water distribution is not interrupted, (ii) the design of any replacement well and appurtenances equals or exceeds that of the well it is replacing, (iii) any replacement well equals or exceeds the water production capacity of the well it is replacing, (iv) the water produced from any replacement well meets applicable New Mexico Environment Department and federal EPA standards, and is of a quality that is equal to or better than the quality of the water produced by the well it is replacing, (v) PDN pays all of the costs to design and drill the replacement well (including environmental review, if any), to purchase and install the well pump, water meters and other equipment, to relocate water distribution lines and related equipment, and to relocate electrical lines and appurtenant equipment, to remove abandoned water distribution lines and electrical lines, and to plug and abandon the Well, as applicable, (vi) PDN obtains a well relocation permit from the New Mexico Office of the State Engineer and all other governmental approvals required for the relocation (including plugging and abandonment of the existing Well), as well as, approvals required by any utility providers with an interest in the subject Well, water distribution lines or electrical lines and (vii) PDN pays the costs to prepare and record an amendment to this Agreement reflecting the relocated easements. Wells cannot be relocated without (i) the prior written consent of the Easement Holders, which consent shall not be unreasonably conditioned or withheld and (ii) the approval of the New Mexico Office of the State Engineer. Easement Holders agree that any aboveground water distribution lines or electric lines relocated by PDN in accordance with this Section 3 may be installed underground, at PDN's cost. Without limiting the foregoing, it is the parties' intent that PDN shall have the right to relocate a Well when all the Conditions have been satisfied (or waived as provided in Section 3.1.1 below) and the New Mexico Office of the State Engineer has approved the relocation, absent unforeseen events and circumstances not contemplated by this Agreement.

3.1.1 Waiver or Modification of Conditions; Notice of Relocation. PDN and the affected Easement Holder(s) may agree in writing, each in their sole discretion, to waive or modify any of the Conditions other than the Condition described in subsection



3(vi) above. If PDN desires to have a Well, and its appurtenant water distribution lines and electrical lines, relocated PDN shall give written notice to the affected Easement Holder(s) requesting consent to the relocation, together with a description of the proposed relocated well site and appurtenant water distribution and electrical lines and documentation substantiating its satisfaction of all of the Conditions not waived in writing by the parties or its plan for satisfaction of Conditions not yet satisfied ("Well Relocation Notice"). PDN shall provide such additional information as may be reasonably requested by the Easement Holder(s).

3.1.2 Notice: Meeting if Consent Denied. If the affected Easement Holder(s) do not deliver notice to PDN granting or denying consent to the requested relocation within twenty (20) days after the date of the Well Relocation Notice, the Easement Holder(s) shall be deemed to have denied consent. If an Easement Holder denies consent to the relocation of a Well (or is deemed to have denied consent), then such Easement Holder shall (i) explain to PDN the basis for its denial and provide PDN an opportunity to address the Easement Holder's concerns and (ii) within ten (10) days after such denial or deemed denial, senior management personnel for the Easement Holder(s) and PDN shall meet, either in person, by telephone or by video conferencing, to endeavor to come to an agreement concerning the relocation. If the parties mutually agree, the parties may participate in non-binding mediation regarding the requested relocation.

3.1.3 Relocation at PDN's Cost. If the affected Easement Holder(s) consent to the relocation of a Well, then the consenting Easement Holder(s) shall promptly undertake the relocation of the Well at PDN's cost (the drilling of the relocated Well and the installation of well site improvements and well equipment for the relocated Well, the plugging and abandonment of the existing Well, and all design work and permitting for the foregoing). Upon the abandonment and plugging of an existing Well in accordance with NMAC Section 19.27.4.30(C), (i) the plugged Well shall be property, and sole responsibility, of PDN or its successor in interest to the land on which the plugged Well is located and (ii) the affected Easement Holder(s) shall have no liability for the plugged Well from and after the date such Well is plugged other than any liability arising from the work performed by the Easement Holder(s) to plug the Well.

3.2 Relocation of Water Distribution or Electrical Lines Only. Subject to the terms and conditions of this Section 3, PDN shall have the right to relocate water distribution lines and electrical lines serving a Well to a location elsewhere on the PDN Land (including undergrounding such existing water distribution lines and electrical lines), without relocating the Well served by such water distribution lines or electrical lines, at PDN's sole cost, in order to accommodate development of the PDN Land provided that (i) water distribution is not interrupted and (ii) PDN has obtained all required approvals from applicable governmental authorities and any utility providers with an interest in the subject water distribution lines and electrical lines with the consent of the affected Easement Holder(s). The affected Easement Holder(s) shall not unreasonably condition or withhold consent for the relocation of any water distribution lines and electrical lines when these conditions have been satisfied, the parties' intent being that PDN shall have the right to relocate a water distribution lines and electrical lines upon



satisfaction of the conditions, absent unforeseen events and circumstances not contemplated by this Agreement.

3.2.1 Notice; Meeting if Consent Denied. If PDN desires to relocate water distribution lines and/or electrical lines serving a Well, PDN shall give Easement Holders written notice requesting consent to the relocation together with a description of the proposed location of the relocated water distribution lines and/or electrical lines and copies of the required approvals for the relocation granted by the applicable governmental authorities and utility providers ("Line Relocation Notice"). PDN shall provide such additional information as may be reasonably requested by the Easement Holder(s). If the affected Easement Holder(s) do not deliver notice to PDN granting or denying consent to the requested relocation within twenty (20) days after the date of the Line Relocation Notice, the Easement Holder(s) shall be deemed to have denied consent. If an Easement Holder denies consent to the relocation of a water distribution line or electrical line (or is deemed to have denied consent), then such Easement Holder shall (i) explain to PDN the basis for its denial and provide PDN an opportunity to address the Easement Holder's concerns and (ii) within ten (10) days after such denial or deemed denial, senior management personnel for the Easement Holder(s) and PDN shall meet either in person or by telephone (or video conferencing), to endeavor to come to an agreement concerning the relocation. If the parties mutually agree, the parties may participate in non-binding mediation regarding the requested relocation.

3.2.2 Relocation at PDN's Cost. If the affected Easement Holder(s) consent to the relocation of a water distribution lines and/or electrical lines, then the consenting Easement Holder(s) shall promptly undertake the relocation at PDN's cost, including the removal of the existing water distribution lines and/or electrical lines.

3.3 Reimbursement of Costs. PDN shall reimburse Easement Holder(s) for such costs incurred under Sections 3.1.3 and 3.2.2 ("Relocation Costs") as the work progresses, within thirty (30) days after receipt of a request for reimbursement together with copies of contracts, invoices and other with documentation reasonably substantiating the amount of the amount of the reimbursement requested. Relocation Costs shall be billed to PDN at cost, without any mark-up for overhead or profit.

3.4 Amounts not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid.

3.5 Security. Without limiting the foregoing in any respect, Easement Holders may condition consent to any relocation described in Sections 3.1 or 3.2 above upon provision of adequate security for payment of the costs to be incurred by the Easement Holder to relocate the Well, plug and abandon the existing Well and relocate water distribution lines and/or electrical lines. Such security may be in the form of a payment bond, irrevocable letter of credit, or other form of security reasonably acceptable to the affected Easement Holder(s).

3.6 Amendment. When a Well is relocated in accordance with this Section 3 and the existing Well it is replacing is plugged and abandoned in accordance with the applicable legal



requirements, then the Well Site Easement may be abandoned. When the water distribution lines and electrical lines serving the plugged Well have been removed, then the affected Water Line Easement and Electrical Line Easement may be abandoned. The location and dimensions of the easements established pursuant to this Section 3 and the abandonment of easements pursuant to this Section 3 shall be included in an amendment to this Agreement executed by PDN and the affected Easement Holder, and recorded in the official records of Dona Ana County, New Mexico. PDN shall cause the amendment to be prepared and recorded at its cost.

3.7 Relocation Not Applicable to Monitoring Wells. PDN acknowledges and agrees that this Section 3 does not apply to any monitoring well, and electrical lines serving such wells, if any, maintained on the PDN Land by or under the control of the New Mexico Environment Department or any other governmental entity.

4. Insurance. The Verde Parties agree to maintain commercial general liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and in the annual aggregate, under any combination of primary and excess policies, and to provide PDN and, if requested by PDN, its lender(s) holding a mortgage lien or deed of trust on the PDN Land, with a certificate of insurance evidencing such coverage prior to entry onto any of the easement areas established under this Agreement. Such policies shall provide that the insurer will endeavor to give PDN thirty (30) days prior notice (10 days for non-payment of premiums) of the cancellation or the expiration and non-renewal of the insurance policy(ies).

5. Notice. All notices, demands or requests required or permitted to be made under this Agreement must be in writing and sent (a) by U.S. Mail, postage prepaid and by certified or registered mail, return receipt requested, (b) by Federal Express or other reputable independent overnight delivery service providing written evidence of delivery, (c) by hand delivery by a reputable independent courier providing written evidence of delivery, or (d) by e-mail transmission, provided that such notice is concurrently sent by one of the methods set forth in clauses (a) through (c) above, addressed as follows:

If to Verde Parties: c/o IDI
Attn. General Counsel
David Laibstain
1100 Peachtree Street, Suite 1100
Atlanta, GA 30309
Fax: (404) 479.4115
Email: dlaibstain@idi.com

If to PDN: Paseo Del Norte, LLC
c/o Blank Rome LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174-0208
Attn: Jeffrey N. Siegel, Esq.
E-Mail: jsiegel@blankrome.com



Such notices, demands or requests shall be deemed to have been given and delivered on the date of actual receipt thereof (or refusal of delivery). A party may change the address to which such notices, demands or requests shall be mailed hereunder by written notice of such new address mailed to the other party(ies) hereto in accordance with the provisions of this Paragraph. Notice given by legal counsel on behalf of any party shall be deemed to be given by such party.

6. Prior Easements. The PDN Land is also subject to the easements granted to VROP by that certain Correction Deed, Assignment of Easements and Grant of Access Easement dated May 20, 2005 and recorded June 16, 2005 as Reception No.19452, Book 617, Pages 225-227, records of Doña Ana County, New Mexico ("Prior Granted Easements"). An undivided fifty percent (50%) interest in the Prior Granted Easements was conveyed by VROP to Doña Ana County by Quitclaim Deed, Assignment of Easements and Grant of Access Easements recorded June 16, 2005, #19451, records of Doña Ana County, New Mexico, and conveyed by Doña Ana County to Camino Real Regional Utility Authority ("CRRUA") by Quitclaim Deed, Assignment of Easements and Grant of Access Easements to LRG-3150 Well Sites recorded February 1, 2012, #1202818, records of Doña Ana County, New Mexico. Nothing herein shall constitute a termination or modification of the Prior Granted Easements, which shall remain in effect, or the rights of CRRUA thereunder.

7. Assignment. This Agreement and the Reserved Easements may be assigned by any of the Easement Holders by a written assignment recorded in the records of Doña Ana County New Mexico ("Assignment"), which shall be effective as of the date the Assignment is recorded. Any such Assignment shall include the name and address of the assignee for the purposes of delivering and receiving notice under this Agreement. Further, if an Assignment affects less than all of the Wells, the Assignment shall reasonably identify the Wells affected by the Assignment.

8. Covenant Running With the Land. All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and inure to the benefit of the successors and assigns of the parties hereto.

9. Governing Law. The parties hereto agree that all matters of construction and interpretation with regard to this Agreement shall be governed by the laws of the State of New Mexico.

10. Counterparts. This Agreement may be executed in counterparts that together will be one instrument.

(signature page follows)



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

Verde Realty Operating Partnership, L.P.,
a Delaware limited partnership

By: *David Birdwell*
Name: David Birdwell
Title: Chief Operating Officer

Paseo Del Norte, LLC, a New Mexico limited
liability company

By: _____
Name: _____
Title: _____

Verde Santa Teresa LLC, a Delaware
limited liability company

By: Verde Realty Operating
Partnership, L.P., a Delaware limited
partnership, its sole member

By: *David Birdwell*
Name: David Birdwell
Title: Chief Operating Officer

Santa Teresa Land, LLC, a New Mexico limited
liability company

By: _____
Name: _____
Title: _____

Verde Border Industrial Park LLC, a
Delaware limited liability company

By: Verde Realty Operating
Partnership, L.P., a Delaware limited
partnership, its sole member

By: *David Birdwell*
Name: David Birdwell
Title: Chief Operating Officer



ACKNOWLEDGMENTS

STATE OF GeorgiaCOUNTY OF Fulton

This instrument was acknowledged before me this 19th day of December, 2013
by David R. Birdwell, the Chief Operating Officer of Verde Realty Operating Partnership, L.P.,
on behalf of said limited partnership.

Mona L. Hand
Notary Public

Mona L. Hand
Notary Public, Gwinnett County, Georgia
My Commission Expires Feb. 10, 2017

STATE OF GeorgiaCOUNTY OF Fulton

This instrument was acknowledged before me this 19th day of December, 2013
by David R. Birdwell, the Chief Operating Officer of Verde Realty Operating Partnership, L.P.,
the sole member of Verde Santa Teresa LLC, on behalf of said company.

Mona L. Hand
Notary Public

Mona L. Hand
Notary Public, Gwinnett County, Georgia
My Commission Expires Feb. 10, 2017

STATE OF GeorgiaCOUNTY OF Fulton

This instrument was acknowledged before me this 19th day of December, 2013
by David R. Birdwell, the Chief Operating Officer of Verde Realty Operating Partnership, L.P.,
the sole member of Verde Border Industrial Park LLC, on behalf of said company.

Mona L. Hand
Notary Public

Mona L. Hand
Notary Public, Gwinnett County, Georgia
My Commission Expires Feb. 10, 2017



STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 2013
by _____, the _____ of Paseo Del Norte, LLC, on behalf of said
company.

Notary Public

My Commission Expires: _____

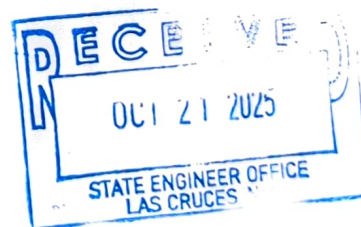
STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 2013
by _____, the _____ of Santa Teresa Land, LLC, on behalf of said
company.

Notary Public

My Commission Expires: _____



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

Verde Realty Operating Partnership, L.P.,
a Delaware limited partnership

By: _____
Name: David Birdwell
Title: Chief Operating Officer

Verde Santa Teresa LLC, a Delaware
limited liability company

By: Verde Realty Operating
Partnership, L.P., a Delaware limited
partnership, its sole member

By: _____
Name: David Birdwell
Title: Chief Operating Officer

Verde Border Industrial Park LLC, a
Delaware limited liability company

By: Verde Realty Operating
Partnership, L.P., a Delaware limited
partnership, its sole member

By: _____
Name: David Birdwell
Title: Chief Operating Officer

Paseo Del Norte, LLC, a New Mexico limited
liability company

By: _____
Name: CHRISTOPHER D. LYNCH
Title: PRESIDENT

Santa Teresa Land, LLC, a New Mexico limited
liability company

By: _____
Name: CHRISTOPHER D. LYNCH
Title: PRESIDENT



STATE OF New York
COUNTY OF New York

This instrument was acknowledged before me this 19 day of December, 2013
by Christopher Lyons, the President of Paseo Del Norte, LLC, on behalf of said
company.



Notary Public

MARJORIE A. ROSEN
Notary Public, State of New York
No. 4654195
Qualified in New York County
Commission Expires May 31, 2015

My Commission Expires: 5/31/15

STATE OF New York
COUNTY OF New York

This instrument was acknowledged before me this 19 day of December, 2013
by Christopher Lyons, the President of Santa Teresa Land, LLC, on behalf of said
company.



Notary Public

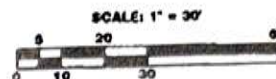
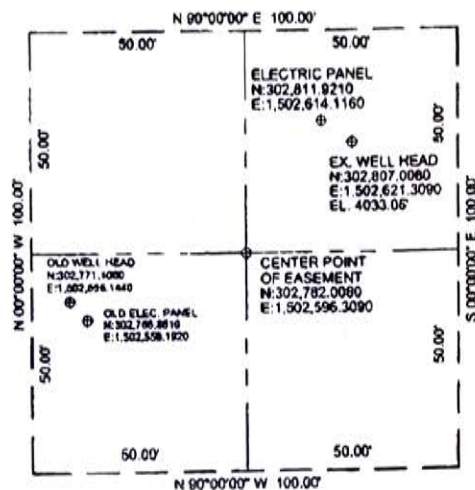
My Commission Expires: 5/31/15

MARJORIE A. ROSEN
Notary Public, State of New York
No. 4654195
Qualified in New York County
Commission Expires May 31, 2015



EXHIBIT B-3

PLAT OF SURVEY OF A 10,000 SQ. FT. WELL EASEMENT
 N.M.O.S.E. WELL NO. LRG-3160 P00 36
 LOCATED IN SECTION 36, T.28S., R.2E.,
 N.M.P.M. OF THE U.S.G.L.O. SURVEYS
 IN THE SANTA TERESA INDUSTRIAL PARK AREA,
 SANTA TERESA, DONA ANA COUNTY, NEW MEXICO
 AUGUST 06, 2013



NORTHING	EASTING	LATITUDE	LONGITUDE	DESCRIPTION
302,782.0080	1,502,596.3090	31°40'54.0\"N	108°41'37.7\"W	EASEMENT CENTER POINT
302,807.0080	1,502,621.3090	31°50'43.7\"N	108°41'37.6\"W	EXISTING WELL HEAD



SURVEYOR'S CERTIFICATION

I, ROXANNE C. NIMMER, A NEW MEXICO PROFESSIONAL SURVEYOR CERTIFY THAT I CONDUCTED AND AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT THIS SURVEY AND PLAT MEET MINIMUM STANDARDS FOR SURVEYING IN THE STATE OF NEW MEXICO.

ROXANNE C. NIMMER, PS 12600

8/06/13
DATE OF SURVEY

NOTES

- 1) BASIS OF BEARING : NM STATE PLANE COORDINATES, MODIFIED AS PER BOHANNON HUSTON INC. REPORT DATED 8/21/2007, REVISED 5/7/2009, BHI PROJECT NO. 070336.001.01 SRVABQ.
- 2) PURPOSE OF SURVEY: TO CREATE EASEMENT AROUND WELL SITE.
- 3) CONVERSION OF COORDINATES TO LAT/LONG PER CORPSCON SOFTWARE.
- 4) COORDINATES AS SHOWN IN NM STATE PLANE-CENTRAL ZONE (FEET, NAD83), AS PER NOTE 1. DISTANCES AS SHOWN IN GROUND. ELEVATIONS SHOWN IN FEET (NGVD 88).



DEL SUR
SURVEYING, LLC

HC 30, Box 81
9120 SNOW ROAD
MESILLA PARK, NM 88047
575.496.7042

DRAWING: 13010 W02 WELL SITE DWG / P00 36



BOUNDARY SURVEY PLAT OF TWO PRIVATE ROAD AND UTILITY EASEMENTS,
AND FOUR PRIVATE UTILITY EASEMENTS
LYING WITHIN SECTIONS 24, 25, 26 AND 35, T.28S., R.2E., N.M.P.M. AND
ONE PRIVATE ROAD AND UTILITY EASEMENT
LYING WITHIN SECTION 13, T.29S., R.2E., N.M.P.M. OF THE U.S.G.L.O. SURVEYS,
SANTA TERESA INDUSTRIAL AREA, DONA ANA COUNTY, NEW MEXICO
DECEMBER 06, 2013



CENTERLINE K

OCT 21 2025

STATE ENGINEER OFFICE
LAS CRUCES

[illegible][illegible]

12/06/13
CHIEF OF BUREAU



Dep. Sur.
Surveying, U.C.

ATTACHMENT 3

Elizabeth K. Anderson, P.E.
State Engineer



1680 Hickory Loop, Suite J
Las Cruces, New Mexico 88005-6598
Phone: (575) 524-6161
FAX: (575) 524-6160

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
District 4 Office

October 23, 2025

Santa Teresa Capital, LLC
Attn: Gilbert Mesa
829 Rosinante Road
El Paso, TX 79922

Re: Emergency Authorization
File No.: LRG-03150-E

Greetings:

In recognition of an emergency situation and pursuant to the authority of NMSA 1978 §72-12-22, the State Engineer authorizes the drilling and use of well LRG-03150-POD 50, subject to the attached Order.

Enclosed, please find the following:

- Meter report form, which must be properly completed and submitted to this office for well LRG-03150-POD 50
- Well identification tag, which must be firmly affixed by the well driller to well casing or cap with a steel band upon completion of drilling of well LRG-03150-POD 50
- Plugging record form, which must be properly completed and submitted to this office for the plugging of old well LRG-03150-POD 36.

You are required to email nm.driller@ose.nm.gov with the following information when the driller is enroute to the drilling site: OSE Permit number, POD number, physical address, drilling company and license number, and date/time driller is to be on site.

Please keep in mind that issuance of this Order does not obligate the State Engineer to approve your pending application and any aggrievement of the final permit will prohibit use of the well until the aggrievement hearing process is resolved.

Please call me at 575-888-3945 if you have any questions.

Sincerely,


J.R. Hennessey
Deputy District Manager
District IV WRAP

NEW MEXICO OFFICE OF THE STATE ENGINEER
Well Identification Tag - Do not remove

ID 40C14



<http://www.wells.ose.state.nm.us/40C14/>

BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE REQUEST
OF SANTA TERESA CAPITAL, LLC FOR
EMERGENCY AUTHORIZATION TO
DRILL AND USE REPLACEMENT
WELL LRG-03150-POD 50 IN THE LOWER
RIO GRANDE UNDERGROUND WATER
BASIN

)
)
)
) OSE File No.: LRG-03150-E
)
)
)
)

EMERGENCY AUTHORIZATION TO DRILL AND USE REPLACEMENT WELL

Pursuant to the request on October 21, 2025, seeking emergency authorization to commence drilling and use of replacement well LRG-03150-POD 50 prior to publication and hearing, and pursuant to the authority of NMSA 1978 § 72-12-22, the State Engineer finds the following:

- 1) The State Engineer has jurisdiction of the applicant and the subject matter.
- 2) On October 21, 2025, Santa Teresa Capital, LLC. filed proper application number LRG-03150-POD 50 for Permit to Change an Existing Water Right and accordingly filed with a request for emergency authorization to drill and use replacement well LRG-03150-POD 50 within 100 feet of existing well LRG-03150-POD 36. The request disclosed that an emergency situation exists in which the delay caused by publication and hearing would result in serious economic loss.
- 3) Records on file in this office identify the applicant as the owner of groundwater right exercised from the subject well.
- 4) The new well will be drilled into the same and only the same underground stream as the original well.
- 5) The appropriation will be the same amount of water allowed by the water right from the original well.

- 6) Preliminary investigation indicates that the replacement well will not result in depleting the Rio Grande greater than effects incurred historically by the original well.
- 7) Preliminary investigation indicates that the replacement well will not result in the impairment to other wells of other ownership in the area greater than effects incurred historically by the original well.
- 8) An emergency situation exists in which delays caused by publication and hearing may result in economic loss.

Therefore, emergency authorization to drill and use replacement well LRG-03150-POD 50 is approved subject to the following conditions:

- 1) The appropriation of water from replacement well LRG-03150-POD 50 shall be from the same underground source or stream as the original well and shall be limited to the same amount of water, place and purpose of use allowed by the water rights from the original well as permitted previously.
- 2) The new well shall be drilled by a well driller licensed in the State of New Mexico. The well driller shall file a complete well record and log with the Office of the State Engineer in Las Cruces, and with the Permittee, no later than 30 days after completion of the drilling project. Subsection N of 19.27.4.29 NMAC. It is the Permittee's responsibility to ensure that the well driller files the well record and log with the Office of the State Engineer. The well driller may obtain the well record and log form from any district office or from the Office of the State Engineer website.
- 3) Construction of a water well by anyone without a valid New Mexico Well Driller License is illegal, and the well owner shall bear the cost of plugging the well by a licensed New Mexico

well driller. This does not apply to driven wells, the casing of which does not exceed two and three-eighths outside diameter.

- 4) The exercise of this authorization shall not be to the detriment of valid existing water rights, shall not be contrary to conservation of water and shall not be detrimental to the public welfare of the state of New Mexico.
- 5) Replacement well LRG-03150-POD 50 shall be located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Township 28 South, Range 02 East NMPM, and more specifically at or near where Latitude and Longitude intersect at 31° 49' 52.9"N 106° 41' 37.0W (WGS84).
- 6) Replacement well LRG-03150-POD 50 shall be equipped with a totalizing meter of a type and at a location approved by and installed in a manner acceptable to the State Engineer. The permittee shall provide in writing the make, model, serial number, date of installation, initial reading, units, and dates of recalibration of each meter, and any replacement meter used to measure the diversion of water. No water shall be diverted from any well unless equipped with a functional totalizing meter.
- 7) Written records of the amount of water pumped from well LRG-03150-POD 50 and existing wells LRG-7279, LRG-3150, LRG-3150-S-2, LRG-3150-S-3, LRG-3150-S-4, LRG-3150-S-6, LRG-3150-S-11 through LRG-3150-S-17, LRG-3150-S-19, LRG-3150-S-20, LRG-3150-S-22, LRG-3150-S-24 through LRG-3150-S-28, LRG-3150-S-31, LRG-3150-S-32, , LRG-3150 POD41, LRG-3150 POD42, LRG-3150 POD45 and LRG-3150 POD46, if equipped and operational, shall be submitted in writing to the Office of the State Engineer in Las Cruces on or before the tenth day of each month for the preceding calendar month.
- 8) Well LRG-03150-POD 36 shall be plugged completely using the following method per Rules and Regulations Governing Well Driller Licensing, Construction, Repair and Plugging of

Wells; Subsection C of 19.27.4.30 NMAC unless an alternative plugging method is proposed by the well owner and approved by the State Engineer.

All pumping appurtenance shall be removed from the well prior to plugging. To plug a well, the entire well shall be filled from the bottom upwards to ground surface using a tremie pipe. The bottom of the tremie shall remain submerged in the sealant throughout the entire sealing process; other placement methods may be acceptable and approved by the State Engineer.

The well shall be plugged with an Office of the State Engineer approved sealant for use in the plugging of non-artesian wells.

The well driller shall cut the casing off at least four (4) feet below ground surface and fill the open hole with at least two (2) vertical feet of approved sealant.

Wells that do not encounter a water bearing stratum shall at a minimum be plugged by filling the well with drill cuttings or clean native fill to within 10 feet of land surface and by plugging the remaining 10 feet of the well to ground surface with a plug of the office of the state engineer approved sealant.

The driller must fill or cover any open annulus with sealant. Once the sealant has cured, the well driller or well owner may cover the seal with soil.

- 9) Pursuant to section 72-8-1 NMSA, the permittee shall allow the State Engineer and his representatives entry upon private property for the performance of their respective duties, including access to the ditch or acequia to measure flow and also to the well for meter reading and water level measurement.
- 10) The State Engineer supplied well identification tag shall be firmly affixed by the well driller to the well casing or cap with a steel band upon completion in accordance with Subsection M of

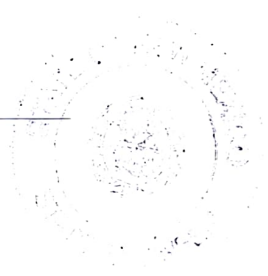
19.27.4.29 NMAC. The permit holder is responsible for maintaining the well identification tag.

- 11) You, the applicant, are required to email nm.driller@ose.nm.gov with the following information when the driller is enroute to the drilling site: OSE Permit number, POD number, physical address, drilling company and license number, and date/time driller is to be on site.
- 12) The issuance of this authorization does not obligate favorable consideration by the State Engineer on the pending application.
- 13) This authorization expires upon final action of the State Engineer.

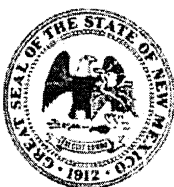
Dated this 23rd day of October A.D. 2025

Elizabeth K. Anderson, P.E.
State Engineer

By: 
J.R. Hennessey
Deputy District Manager
District IV WRAP



ATTACHMENT 4



NEW MEXICO OFFICE OF THE STATE ENGINEER

Elizabeth K. Anderson, P.E.
State Engineer

A. Nathaniel Chakeres
General Counsel

LITIGATION & ADJUDICATION PROGRAM

130 South Capitol
Santa Fe, New Mexico 87501

Mailing Address:
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Fax: (505) 827-3887

April 16, 2026

VIA CERTIFIED MAIL, SIGNATURE CONFIRMATION
7008 0500 0001 4526 8408

Santa Teresa Capital, LLC
c/o Gilbert G. Mesa
829 Rosinante Road
El Paso, TX 79922
gilmesa777@gmail.com

**Re: Application filed by Santa Teresa Capital, LLC; No. LRG-3150-POD50, OSE File
No. LRG-3150-E**

Greetings:

Enclosed are protests to the granting of the above-numbered application that have been filed with this office. The deadline to file protests was January 9, 2026.

The application has been forwarded to the Office of the State Engineer, Administrative Litigation Unit. Our office will file a Request to Docket Protested Application with the Office of the State Engineer's Hearing Unit. All parties will be notified by mail and/or email when a Docketing Order has been issued by the Hearing Unit and when a Pre-Hearing Scheduling Conference has been scheduled.

It is highly recommended that the applicant attempt to resolve the protestants' issues prior to the Pre-Hearing Scheduling Conference.

In the event the parties come to an agreement whereby the protests are withdrawn, please advise me by email at diana.luna@ose.nm.gov as soon as possible. If I may be of further assistance, please call me at (505) 372-9149.

Sincerely,



Diana M. Luna, Law Clerk
Administrative Litigation Unit

Enclosures

cc: Protestants (w/out enclosures)

PROTESTANTS

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(Protest received January 9, 2026)

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Blas Budlong
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Center for Biological Diversity
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c/o Gail Evans
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gevans@biologicaldiversity.org
(Protest received January 9, 2026)

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Melanie Martinez-Aguirre
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Catherine Cort
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Melissa Harcrow
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Abigail Minor
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(Protest received January 8, 2026)

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(Protest received January 9, 2026)

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Shelly Richard, Carl Richard and Sara White
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Samantha C. Rodriguez
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(Protest received January 9, 2026)

Janelle Sanchez
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Erik Yukl
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Orchard Properties LLC
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(Protest received January 9, 2026)

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Adrian Robles
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(Protest received January 9, 2026)

Kenneth Berba
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(Protest received January 12, 2026)

ATTACHMENT 5

Point of Diversion Summary

quarters are 1=NW 2=NE 3=SW 4=SE
quarters are smallest to largest

NAD83 UTM in meters

Well Tag	POD Nbr	Q64	Q16	Q4	Sec	Tws	Rng	X	Y	Map
40C14	LRG 03150 POD50									

* UTM location was derived from PLSS - see Help

Driller License:

Driller Company:

Driller Name:

Drill Start Date:

Drill Finish Date:

Plug Date:

Log File Date:

PCW Rcv Date:

Source:

Shallow

Pump Type:

Pipe Discharge Size:

Estimated Yield:

Casing Size:

Depth Well:

Depth Water:

Meter Information

Meter Number:	21501	Meter Make:	MCCROMETER
Meter Serial Number:	24-05925-08	Meter Multiplier:	100.0000
Number of Dials:	6	Meter Type:	Diversion
Unit of Measure:	Gallons	Reading Frequency:	Monthly

Meter Readings (in Acre-Feet)

Read Date	Year	Mtr Reading	Flag	Rdr	Comment	Mtr Amount	Online
2026-04-14	2026	498461.000	A	AK	INITIAL READING	0.000	
2026-04-20	2026	548803.000	A	AK	FLD CHK	15.449	
2026-05-31	2026	964128.000	A	MLE		127.459	
2026-06-30	2026	239283.000	R	MLE	Meter Rollover	84.442	
2026-07-31	2026	534670.000	A	MLE		90.651	

YTD Meter Amounts:

Year	Amount
2026	318.001

The data is furnished by the NMOSE/ISC and is accepted by the recipient with the expressed understanding that the OSE/ISC make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the data.

ATTACHMENT 6

HOURLY NEWS

WRVO
On Air Now
LISTEN LIVE

MY PLAYLIST

WRVO 89.9
PUBLIC MEDIA

♥ DONATE

NATIONAL

Worries over water as a giant data center moves into the New Mexico desert

JUNE 14, 2026 · 8:26 AM ET

HEARD ON WEEKEND EDITION SUNDAY

By John Burnett

▶ 7-Minute Listen

+ PLAYLIST

TRANSCRIPT

...



The building site for the Project Jupiter data center in Doña Ana County, New Mexico

STACK Infrastructure/Oracle

SANTA TERESA, N.M. – One of the largest data centers in the country is rising from the parched scrub desert of southern New Mexico. Most county officials are agog at the jobs and investment this high tech mega-project has promised to

bring. But many locals are asking: can chile and pecan farming co-exist with Project Jupiter?

The scale of the project befuddles the brain.

At 1,400 acres, it could swallow New York's Central Park. With two-and-a-half gigawatts of electricity, it could power more than half of New Mexico. And \$165 billion in investment capital—if developers reach that goal—could pick up the tab for 40 Artemis moon shots.

Yes, these clever comparisons were suggested by artificial intelligence—which is powered by data centers like Project Jupiter. But as they might say down in Doña Ana County: you can't water pecans with data.



HERE & NOW ANYTIME

Drought fears spur big fight over Utah data center

"I have a little plot of land out here, grow some pecans," says Eddie Estrada, a weekend farmer who works at the state capital. "I had 28 trees, but due to the water shortage many of them died."

Today, the lower Rio Grande is a river of sand most of the year. Blame a searing drought, low snowpack, and climate change. Estrada's water deliveries from the river have dried up, and he has to keep drilling his well deeper as the water table drops. Project Jupiter is six miles from his property near the New Mexico - Texas border. And he's well aware that data centers typically require large volumes of water to cool their server farms that run 24/7.

"Being that we're in a drought, and then to allow a project like this to use that much water," Estrada says, "the fear is that we're going to run out, not only for us that live here but the farmers."

Oracle and OpenAI

Project Jupiter's tenants will be global tech giants Oracle and OpenAI. What sets Jupiter apart from most of the 3,000 new data centers being planned or built in the US is its gargantuan size, the fact that it will generate its own electricity, and

its remote location— smack-dab in the Chihuahuan desert, says Ahmed Saeed, a data center expert at Georgia Institute of Technology.

"It's bizarre to me why that site was selected," Saeed says.



The Rio Grande is a river of sand most of the year in southern New Mexico. Here, kids fly kites in the dry riverbed in May.

John Burnett

Finding water in the Chihuahuan desert

To allay fears of being a water hog, Jupiter has purchased existing water rights from a sod farm, located just west of Sunland Park, New Mexico, for the millions of gallons needed to cool the acres of hard drives and routers. (Look for the sod farm's three irrigated green circles on this [Google Map](#))

New Mexico State Engineer Elizabeth Anderson—the state's official groundwater cop—says she is confident the huge new customer will not over-pump groundwater.

NATIONAL

Virginia's data center boom is raising West Virginia's electricity bills

"What's happening with Project Jupiter is they're just taking a water right that exists," she says, "and using it for something else, having a data center. And it's not gonna be taking water away from farmers."

And yet, no one is certain how much water the hyperscale data center will need because the numbers keep changing.

After a report in the *Santa Fe New Mexican* earlier this year that the project would need a million gallons a day, the developers changed course. Oracle announced a switch from water-intensive natural-gas turbines as their source of electricity to fuel cells, which use far less water and have lower emissions. Now, Oracle is saying the data center and fuel cell system together will use about 11 million gallons of non-potable water that will be recycled in closed-loop systems.

But lots of folks remain skeptical, chiefly because of the way the venture—the biggest in state history—was presented by the Doña Ana Board of County Commissioners.

"I, like so many of the constituents I represent, were very surprised to see that our county commission here in Doña Ana was taking a \$165 billion vote on a proposal that we knew about for less than a month," says State Rep. Micaela Lara Cadena (D-Las Cruces) who attended the rowdy public meeting last September.



State Rep. Micaela Lara Cadena, an outspoken opponent of Project Jupiter in the state legislature, says this is not the time to green-light a massive new water user in drought-stricken Dona Ana County

John Burnett

The commissioners were voting on whether to issue \$165 billion in industrial revenue bonds for Project Jupiter. Industrial revenue bonds are a common economic development tool that give a tax abatement to new industry but don't put the county into debt. The companies sell their own bonds and do their own financing.

Cadena says attendees asked the county commission to delay the vote by at least by a month.

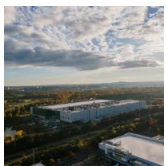
"Give us more time to get some answers to these really critical questions," she says. "They (Jupiter) said, 'If you don't vote 'yes' today we're going somewhere else.' And our county commission bowed to that pressure."

When four of the five commissioners voted yes, people in the audience erupted, angrily shouting, "Recall!" which can be heard on [this recording](#).

Today, nine months later, popular resistance to Project Jupiter seems to have grown. Susana Chaparro is the lone commissioner who voted "no." She's still seeking answers.

How much water will they actually use? How big will the permanent workforce be? Will the AI bubble burst and leave the county with a giant empty warehouse?

"Most of us got excited about this huge data center coming in with all this money that was going to be thrown around without really thinking: what is it going to look like in one year?" she says, over a plate of *tostadas compuestas* with red chile at her unofficial office, a booth at Nopalito Cafe in Las Cruces. "What is it gonna look like in three, five, 20, 30 years? I don't think that was thought out."



NATIONAL

Data centers are expensive, unpopular — and could be a tipping point in the midterms

Just then, a woman sitting in the booth behind us, who had overheard the interview, stands up and chimes in. She gives her name as Ruby Estrada and says she's an environmental consultant.

"This is a desert and not a lot of water comes our way," she says. "So the idea of a data center is just kind of wild, and it really makes me think that people are not

listening to the land itself."

A county desperate for economic development

Doña Ana County, in fact, needs investment, with low incomes, high unemployment, and one in four children experiencing poverty. What's more, the county has 40 informal settlements known as colonias along the border that need paved roads, sewers and public transportation.

Jupiter is promising to create hundreds of high tech jobs. And in lieu of paying property taxes—which would be in the billions—the developers have pledged \$360 million for schools and local infrastructure, \$50 million for an upgrade to the decrepit local water utility, and \$12 million annually to the county budget.

"We've never had that type of money here in Doña Ana County," says Manny Sanchez, chairman of the county commission. "And we've always tried to find these types of high-paying jobs for our residents."

He thinks the data center will be "transformative."



Davin Lopez, president of the local economic development alliance, points to the location of the hyper-scale data center near the New Mexico-Mexico border. "This is by far larger than anything we've ever seen," he says.

John Burnett

"This isn't by any means gonna completely, like, fund us for everything, Sanchez says. "But it's going to allow us to be able to start doing more for our residents in ways that we have never done before."

Davin Lopez, CEO of the Mesilla Valley Economic Development Alliance, is also giddy: "This is by far larger than anything we've ever seen." He says their computer program that measures economic impact only goes up to nine figures.

"We are actually upgrading our software that we subscribe to for impact analysis because it doesn't go up to the billions!" he says.

There's a new twist to the Project Jupiter saga.

Last month, the US Supreme Court approved a sweeping interstate water compact that will take away water rights along the lower Rio Grande. The settlement will require New Mexico to buy out current water users and retire 9,200 acres of irrigated farmland over the next decade. That is expected to leave more water in the Rio Grande for Texas, which brought the lawsuit.

The Center for Biological Diversity opposes Jupiter's plans to draw groundwater from the lower Rio Grande basin. The Tucson-based nonprofit has submitted a protest letter to the State Engineer's office, warning that the project puts New Mexico "at greater risk of violating the Rio Grande Compact."

The Center's Santa Fe-based attorney, Colin Cox, points out that the sod farm has not been using all of its allotted water rights—2,400 acre-feet per year. (An acre-foot is enough water to cover an acre of land a foot deep.)

"Will that water even be there" when Jupiter needs it? Cox asks, "or is it just water on paper?"

In a Project Jupiter fact sheet, developers contend that its total water use will remain "below historic levels" of the sod farm.

On a warm afternoon in early May, a father and his two sons were flying a kite on the dune-like riverbed of the Rio Grande—a stark snapshot of the ongoing drought.

Eusebio Ingol Blanco, a water resources engineer and assistant professor at New Mexico State University in Las Cruces, sits at a picnic table overlooking the once-wet river.

The Rio Grande is the major source of replenishment for the already overtaxed aquifer in the region.

"The river is dry there," he says, pointing to the sandy bottom. "For that reason, groundwater levels reduce—more than one or two feet per year."

Rep. Micaela Lara Cadena, the leading opponent of Project Jupiter in the Democrat-controlled New Mexico legislature, is not placated by assurances from the state engineer that there's enough groundwater for the data center.

"Water policymakers like me are figuring out how to retire farmland to give us a future," she says, "and then we're turning around and putting water to a new use—massive amounts of water in hyper-scaled AI data centers."



Edward Ogaz, president of the New Mexico Chile Association, says "everyone has a straw" in the aquifer in southern New Mexico, but he thinks the county needs Project Jupiter's investment and he's not worried that it will be a water hog.

John Burnett

In nearby Chamberino, New Mexico, located between Las Cruces and El Paso, Texas, it's planting season at Seco Spice, a wholesale chile company. Owner Edward Ogaz grows 500 acres of New Mexico green chiles, ancho, cayenne, habanero, and paprika and sells to outfits like Taco Bell and Trader Joe's. He is also president of the New Mexico Chile Association.

One morning last month, Ogaz walked along the furrows behind a machine pulled by a tractor that is jabbing scorpion peppers into the loamy earth. Ogaz, too, worries about the future of water he relies on to flood his fields.

"Everyone has a straw in the drink, being the basin that runs up and down this valley," he says. "If you don't have water, all you have is dirt."

But he believes Project Jupiter's promise that they won't use more water than the sod farm is allotted, and won't affect neighboring farmers.

"I've got to say it's not really going to affect us in the long run," Ogaz says. "And if they've done their permitting process, I think it works. I think it's good for Doña Ana County. I think it's a great economic boost."

Despite his support, he thinks the way the county hurriedly presented Project Jupiter to the public was "a fiasco," and if the data center's grand plans do not come to fruition, "then shame on us, shame on the state and the permitting people that allowed this to go through."

While the handwringing continues, construction races forward at the worksite two miles north of the Mexican border. Earthmovers and concrete trucks are building what looks like a small city. An Oracle official says if construction proceeds as planned, they expect to power up the computers by the end of this year.



ATTACHMENT 7

**STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION**

**IN THE MATTER OF
PROPOSED NEW RULE 19.25.16
NMAC – Regional Water Security Planning**

No. NMISC 25-01 (R)

**New Mexico Interstate Stream
Commission, Water Planning
Program,**

Movant.

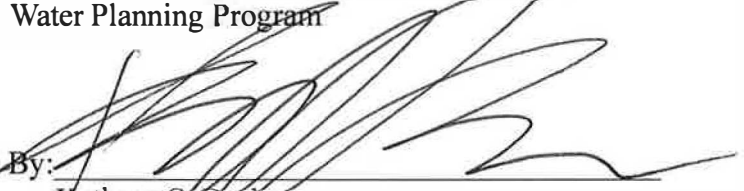
**NOTICE OF FILING OF WRITTEN DIRECT TESTIMONY
OF NATHANIAL CHAKERES**

The Water Planning Program (“Program”) of the New Mexico Interstate Commission hereby submits the attached Written Direct Testimony of Nathaniel Chakeres.

DATED this 1st day of October, 2025.

Respectfully submitted,

New Mexico Interstate Stream Commission,
Water Planning Program

By: 

Kathryn S. Becker
Assistant General Counsel
Office of General Counsel
407 Galisteo Street (87501)
P.O. Box 25102
Santa Fe, NM 87501-5102
kathryn.becker@ose.nm.gov

**STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION
IN THE MATTER OF
PROPOSED NEW RULE 19.25.16
NMAC – Regional Water Security Planning**

No. NMISC 25-01 (R)

**New Mexico Interstate Stream
Commission, Water Planning
Program,**

Movant.

WRITTEN DIRECT TESTIMONY OF NATHANIEL CHAKERES

I. INTRODUCTION and QUALIFICATIONS

My name is Nathaniel Chakeres and I go by Nat Chakeres. I serve two roles at the Office of the State Engineer, one as General Counsel to the State Engineer, and one as Director of the Litigation and Adjudication Program (LAP). I am providing my testimony in my capacity as Director of LAP. I have been in this position since January 2022. I previously worked as the deputy general counsel to the State Engineer, and prior to that, starting in 2018, I was an attorney for the New Mexico Interstate Stream Commission. Attached is my resume as Exhibit 28.

My testimony is focused upon the provisions in the Proposed Rule regarding public welfare, how those provisions carry out the requirements of the Water Security Planning Act with respect to public welfare, and how water planning intersects with the State Engineer's administration of water rights, particularly as it relates to public welfare.

II. HISTORY OF PUBLIC WELFARE IN THE NEW MEXICO WATER CODE

The concept of public welfare first arose in New Mexico's water code in the 1980s. At the time, the City of El Paso had applied to appropriate a large quantity of groundwater in New Mexico to export and use in Texas. New Mexico's State Engineer blocked the proposed transfer. El Paso sued, claiming that New Mexico's prohibition of the export of water was a violation of the dormant Commerce Clause (which prevents states from discriminating against other states in the regulation of commerce). El Paso prevailed in district court on its claim. The U.S. Supreme Court, meanwhile, decided a case involving a similar issue, *Sporhase v. Nebraska ex rel Douglas*. In that case, the Supreme Court affirmed that water was in fact an article of commerce subject to the dormant Commerce Clause. It stated, however, that statutory provisions allowing the denial of transfers that were contrary to conservation of water within the state or contrary to the public welfare of the state were not facially impermissible under the dormant Commerce Clause.

In response to the El Paso litigation and the *Sporhase* case, New Mexico passed laws that mimicked the allowable standards in a Nebraska statute. New Mexico also passed the first iteration of its water planning statute in 1987. The intent was for the water plans to inform the State Engineer as to what would be in the public welfare of the state.

The way that New Mexico chose to place considerations of public welfare into the Water Code is that it incorporated the concept into the State Engineer's decision-making on permit applications. Historically, a permit application to the State Engineer requires a demonstration that the application would not impair the water rights of others. Now, with these changes in the late 1980s, applicants also must show that their application will not be contrary to conservation of water within the state or contrary to the public welfare of the state. The dormant Commerce Clause prohibits in-state transfers from being treated substantially differently than transfers out of state, and so the provisions regarding conservation and public welfare were made to apply to all water rights permit applications.

Unlike how public welfare or similar concepts have been incorporated into the laws of some other states, public welfare in New Mexico only goes in one direction, as a singular basis for denial, but not a basis for approval, which I think of as a "one-way ratchet." That is, an application may be denied because it is contrary to the public welfare of the state, but just because an application is beneficial for the public welfare of the state, this does not mean it will be approved if it does not meet the other statutory criteria. This contrasts with a system where a state might require the state engineer to consider public welfare in deciding whether to grant an application. This second example is potentially more neutral and can weigh in either direction. In what I would call "two-way" public welfare jurisdictions, it's typical for statutes and regulations to provide many other required criteria for the regulating agency to consider in addition to "positively" affecting public welfare or the "public interest" as one Colorado statute explicitly states. In "one-way ratchet" states like New Mexico, there are not many published criteria for rejection.

Public Welfare is an extremely broad term. The State Engineer and NMOSE staff have expertise in water rights administration and management, engineering, hydrology, and related subjects, but there are other topics in which our staff do not have specialized expertise. For example, there are no economists on staff. While some staff have expertise in biology or environmental science, that is not the agency's core competency. Additionally, the State Engineer does not employ sociologists, nor do we have staff who are experts in cultural preservation or community health. Yet, all these areas might, in someone's view, constitute the public welfare of the state.

Prior to the Water Security Planning Act and the Proposed Rule, some of the earlier regional water planning groups did come up with statements regarding public welfare with respect to transfers of water rights. Some did not. Some of the difficulties with that process were that the prior regional plans did not have participation from all relevant entities and sectors. Nor was there

a systematic approach that would allow the State Engineer to review those public welfare statements as they relate to prospective permitting actions.

There is also the question of what is meant by the public welfare of the state. As the LAP Director, my approach is that there are some issues and areas that are of primarily local concern, and there are other issues that are so important that they implicate the public welfare of the entire state. That is a challenging line to draw, but the Water Code specifically references the public welfare of the state, and we must apply the statute as it is written.

For a long time, the NMOSE did not do in-depth analyses regarding public welfare as a matter of routine practice, in part because the NMOSE did not and does not have standards to apply, particularly in areas that are outside of our expertise. NMOSE has been in litigation from time to time where parties have sought to define public welfare and give NMOSE some standards. The Legislature has, at times, also taken up bills that have attempted to give NMOSE more standards regarding public welfare; however, none of them have passed.

More recently, the NMOSE has been clearer about applying consistent standards of public welfare to significant water rights applications. In one recent administrative case, *In the Matter of the Application by Tulla Resources Group*, HU-21-025, the State Engineer ruled that an application that would materially impact the state's ability to comply with interstate compacts is contrary to the public welfare of the state. I attach to my testimony the cover page from the *Tulla* case and the final conclusion regarding whether the proposed use and location of use would be detrimental to the public welfare of the state. Notably, the Hearing Officer concluded that the application should be denied, in part because compliance with the Compact is in the public welfare of the state and approval of the Application would adversely affect New Mexico's Compact obligations and benefits, which would be detrimental to the public welfare of the state. The State Engineer accepted and adopted the Hearing Officer's recommendation and denied the application. The NMOSE is increasingly consistently clear that New Mexico's compacts are the law of the land and compliance with the compacts is in the public welfare of the state.

In another case, *Augustin Plains Ranch*, the State Engineer argued in court that an application that is speculative and would therefore lock up significant amounts of water that would otherwise be available for others, is contrary to public welfare. These are useful standards that the NMOSE is applying, although they don't represent the universe of public welfare concepts that may be relevant to the administration of water rights. They might be thought of as the floor, and not the ceiling, when it comes to public welfare. Generally, in tandem with the ISC Staff and Director, the statewide objectives of both the ISC and are four-fold: compact compliance; compliance with federal statutes like the Endangered Species Act; comprehensive water settlements, including federally and state executed Indian Water Right Settlements; and Alternative Water Resource Management (AWRM). While not defined, public welfare of the state is contained within the statewide objectives and requires adherence to existing laws, both state and federal.

In my view, the communities and regions where water is used and relied upon have important insights into whether a prospective water rights application would be contrary to the public welfare of the state. Therefore, what the NMOSE is trying to do, and what the WSPA and the Proposed Rule try to foster, is to generate genuine input for the state engineer to consider when determining whether a water rights application would be contrary to the public welfare of the state, through the plans submitted to the Commission by Regional Councils, as provided in the Proposed Rule, Section 16.

III. SUMMARY OF PROVISIONS IN WSPA

Among other requirements, the WSPA requires the ISC to promulgate rules that establish:

- The procedure for a water planning entity to develop and provide notice to the ISC of issues and concerns relating to the public welfare of the water planning region, and
- The procedure for a regional water planning entity to consider public welfare values and the needs of future generations of New Mexicans. NMSA 1978, § 72-14A-4(C)(1)(c) & (e) (2023).

These two statutory provisions require the Commission to (1) give regional planning entities a procedure to articulate issues and concerns of public welfare for their region that they represent so that those issues can be heard and considered by State Engineer, and (2) establish a framework to ensure that the regional planning entities are not working contrary to the public welfare of the state. To summarize, the statute requires the Commission to provide a procedure for the State Engineer to hear what, if any, public welfare concerns are raised by the Regional Councils, and a process for the ISC to communicate to the Regional Councils how they themselves need to be conscious of the statewide objectives and compliance with state and federal laws so that Plans submitted to the Commission are approvable and do not conflict with the law or statewide objectives.

These functions are closely related to other provisions in the Act. Most significantly, the Act also requires the ISC to support regional planning entities by communicating “statewide objectives for regional water security plan development, including compliance with interstate compacts, the Endangered Species Act, and congressionally recognized tribal water settlement acts,” as well as “supporting the development of alternative administration through active water resource management” § 72-14A-4(C)(9)(b) & (c). In other words, the Act identifies as “statewide objectives” interstate compact compliance, ESA compliance, Indian Water Rights Settlements, and the development of alternative administration plans under framework of Active Water Resources Management. There is a link between these statewide objectives and baseline public welfare values for the state. If these objectives are not supported, that would be contrary to the public welfare of all New Mexicans. These objectives have been identified specifically in the WSPA because they are some of the core mechanisms by which New Mexico’s elected and appointed officials have sought to apportion the available waters of the state in a fair, legal, and practical manner, as well as, in some cases, the external legal constraints to which we are all subject. Finally,

the state has dedicated time and resources to making sure that the efforts of the state and the laws are followed, and it would not be in the Commission's interest to approve a plan submitted by a Regional Council that obviated such dedication and legally enforceable commitments.

IV. SUMMARY OF THE PROPOSED RULE

Here is a summary of the two sections corresponding to the two statutory directives relating to public welfare in the Water Security Planning Act.

A. Procedure for Councils to provide notice of issues and concerns relating to public welfare.

First, one of the critical components of the rules is the provision related to representation under Proposed Rule Section 12. It is critical that any statement regarding public welfare values comes from a process whereby all of the significant water use sectors are represented through the governing body of elected or appointed leadership of the Council. Likewise, the provisions regarding public input and engagement in Proposed Rule Section 13 are also critical to ensure that any Council statement regarding public welfare reflects robust public involvement.

It is not a requirement for every regional water plan to include a statement of issues and concerns related to the public welfare of the region. However, Proposed Rule Section 16 provides that they may do so if they choose to do so. If they choose to do so, the State Engineer, who is Secretary of the Interstate Stream Commission, must consider the issues and concerns raised by each Regional Council, as they relate to prospective permit applications, and make a determination as to whether they constitute something that would be detrimental to the public welfare of the state if not addressed. The State Engineer's reasoning for this decision must be made in writing.

I am aware that there have been comments raised about why the Proposed Rule gives the State Engineer the power to reject some of the issues or concerns as not constituting the public welfare of the state. Some of these commenters suggest that anything that is identified by the Regional Councils should be binding on the State Engineer. Making these statements binding is not the correct approach for the following reasons:

- First, each Regional Council only represents that region, and not the entire state. Issues of concern to their region may not be the same as issues of concern to another region – and in fact may be in direct conflict with the interests of another region. In my experience with groups developing regional policy preferences of and for water users, it is extremely easy for them to do two things: insist on getting more water from other regions and insist on having less of their water go to other regions. Obviously, NMOSE can't honor every region's preference to maximize its water supply at the expense of its neighbors.
- There may be issues that are important and significant to local communities but simply aren't so generally applicable as to affect the public welfare of the state as a whole. For example, I am aware of communities that would like to ban the use of water for cannabis

cultivation. Other communities might like to prioritize the use of water to preserve agriculture in their areas. Other communities might like to maximize the amount of water available for riparian habitats. Others may like to have water set aside for manufacturing or other economic activities. In general, statewide, the New Mexico Water Code does not prioritize one type of use over the other, and there is not anything (or “there is nothing”) in the WSPA that is intended to overcome that neutrality in state law.

- Finally, making Regional Council’s statements of issues and concerns binding on the State Engineer would have the effect of displacing the State Engineer from the role that is assigned to her by state law – to act on water rights applications by applying statutory criteria. Regional Councils play a critical role in developing water plans, but they are not themselves NMOSE or NMISC policymaking entities. They are not given the power under statute to act on water rights applications. The State Engineer is accountable to the governor and confirmed by the Senate and thus has political accountability commensurate with this duty.

B. Procedure for ensuring that planning councils consider public welfare values.

As stated previously, it is critical for regional planning entities to perform their voluntary planning role consistent with the public welfare of the state. The public welfare of the state is not something that has been fully defined; however, there are certain core concepts that must be followed in order to be consistent with the public welfare of the state. Those are the statewide objectives that are listed in the Proposed Rule Section 14(C): (1) state obligations under interstate compacts; (2) compliance with the Endangered Species Act; (3) implementation of water rights settlements, including local and federally executed Indian Water Rights settlements; and (4) the state’s existing administration plans under the Active Water Resources Management program.

All these objectives are necessary for the public welfare of the state. With respect to compacts and the ESA, they are founded in federal law and are not obligations that New Mexico can change. If New Mexico ignores or does not follow them, there can be external, federal preemption of New Mexico’s water rights administration, and all users are at risk of having their water rights preempted. As for the settlements (including Indian Water Rights Settlements) and the alternative administration plans, those represent decisions that have been made and ratified by the State of New Mexico regarding the division of available water among existing users. Those parties who sign on to these agreements and plans do so with the expectation that they will be honored by the commitments of the State and all other parties. With respect to the Indian Water Rights Settlements, New Mexico’s Nations, Tribes, and Pueblos settle significant claims in exchange for certainty, as well as significant investment in infrastructure. Thus, the parties to these settlements, including the State, have significant reliance interests in seeing these settlements honored and fully implemented. If Regional Councils were to disregard those settlements or make recommendations

that would undermine those settlements, that would harm New Mexico as a whole and jeopardize our ability to reach new settlements and would therefore be contrary to public welfare.

V. SUGGESTED CHANGES TO THE PROPOSED RULE BASED ON PUBLIC COMMENT

I have reviewed the public comments that were posted on the public comment portal of the ISC Rulemaking and Public Comment page from July 17 to September 27 and based on my review and reflection, I do have one further edit to make to the Proposed Rule and that is that the word “may” be replaced with the word “shall” in the Proposed Rule Section 16.A. I recommend this change based on the comment from the Water Security Tribal Advisory Council (WSTAC) that I find, while not essential, is beneficial to be clear that the state engineer shall, instead of may, consider issues of public welfare of a water planning region identified by a council if the state engineer determines that such regional issues are related to or may impact the public welfare of the state. This change still does not bind the state engineer’s determination, but it does give certainty to the level of review and is responsive to the request of WSTAC.

IV. CONCLUSION

Based on my longstanding involvement in these issues and my employment at the ISC and OSE and my participation in the passage of the WSPA, I recommend the Commission adopt the Proposed Rule as filed with the Commission on July 17, 2025, with the change recommended above.

BEFORE THE NEW MEXICO STATE ENGINEER

**IN THE MATTER OF THE APPLICATION
BY TULLA RESOURCES GROUP PTY
LTD AND SANTA TERESA CAPITAL,
LLC FOR A PERMIT TO CHANGE
POINTS OF DIVERSION AND PLACE
AND PURPOSE OF USE UNDER THE
WATER-USE LEASING ACT, NMSA 1978,
§§ 72-6-1 TO -7 WITHIN THE LOWER RIO
GRANDE UNDERGROUND WATER
BASIN IN THE STATE OF NEW MEXICO**

**Hearing No. 21-025 OSE
File No. LRG-3150-E into
LRG-17825**

REPORT AND RECOMMENDATION

THIS MATTER came before Sandra L. Skogen, the State Engineer's appointed Hearing Examiner, upon an evidentiary hearing held on August 7-10, 13-16, and 21-23, 2023, via videoconference originating from Santa Fe, New Mexico (Evidentiary Hearing). The parties appeared as follows: Tanya L. Scott, Esq. and Charles T. DuMars, Esq. represented Tulla Resources Group PTY LTD and Santa Teresa Capital, LLC; Samantha R. Barncastle, Esq. represented Elephant Butte Irrigation District; Seth R. Fullerton, Esq. represented Santa Teresa Land, LLC, Paseo del Norte, LLC, and Westpark I, LLC; Tessa T. Davidson, Esq. represented Turner Ranch Properties, LP; Charles de Saillan, Esq. and Mara Yarbrough, Esq. represented Hillsboro Pitchfork Ranch, LLC, Percha-Animas Watershed Association, Gila Resources Information Project, and the Rio Grande Chapter of the Sierra Club; John W. Utton, Esq. represented Camino Real Regional Utility Authority; Christopher D. Shaw, Esq. and Nicholas R. Rossi, Esq. represented the New Mexico Interstate Stream Commission; and L. Christopher Lindeen, Esq. and Gordon Lazar, Esq. represented the Water Rights Division.

The parties submitted Proposed Findings of Fact and Conclusions of Law and Post-Hearing Briefs on January 12, 2024, and Response Briefs on February 23, 2024.

F. WHETHER THE PROPOSED USE AND LOCATION OF USE WOULD BE DETRIMENTAL TO THE PUBLIC WELFARE OF THE STATE

45. “The state of New Mexico recognizes the importance of public welfare. . . in administering its public waters.” § 72-5-5.1.
46. Under WULA, Applicants are required to have reasonably shown that the proposed use and location of use of leased water will not be detrimental to the public welfare of the state. § 72-6-5(A)(2).
47. The Compact Clause of the United States Constitution permits states to enter into agreements among themselves with the consent of Congress. Art. I, §10, cl. 3.
48. Once Congress gives its consent, “a compact between States—like any other federal statute—becomes the law of the land.” *Texas v. New Mexico*, 583 U.S 407 at 412, 138 S. Ct. 954 (2018).
49. The Compact is codified in New Mexico as NMSA 1978, Section 72-15-23 (1939).
50. Compliance with the Compact is in the public welfare of the state.
51. Approval of the Application would adversely affect New Mexico’s Compact obligations and benefits, which would be detrimental to the public welfare of the state.
52. On balance, the proposed use and location of use of the leased water will be detrimental to the public welfare of the state within the meaning of Section 72-6-5(A)(2).

III. CONCLUSION

53. The Application should be denied.

THEREFORE, IT IS ORDERED that the Application be **denied**.

DONE this 15th day of August, 2025

Sandra L Skogen

Sandra L. Skogen
Hearing Examiner

I ACCEPT AND ADOPT THIS REPORT AND RECOMMENDATION AS THE ORDER
OF THE STATE ENGINEER THIS 19 DAY OF August, 2025.

E. K. Anderson
ELIZABETH K. ANDERSON, P.E.
NEW MEXICO STATE ENGINEER



ATTACHMENT 8

GROUNDWATER SETTLEMENT AGREEMENT

This Groundwater Settlement Agreement is entered into between the United States of America (“United States”) and the State of New Mexico (“New Mexico”) (collectively, “Parties”).

RECITALS

WHEREAS, the United States, through the Bureau of Reclamation (“Reclamation”), operates the Rio Grande Project (“Project”) in southern New Mexico and far west Texas. The Project delivers surface water to Elephant Butte Irrigation District (“EBID”) in New Mexico and El Paso County Water Improvement District No. 1 (“EPCWID”) in Texas;

WHEREAS, in 1906, the United States entered into a treaty with the Republic of Mexico for the annual delivery of 60,000 acre-feet of water to Mexico in years of full supply, with reductions in times of shortage. Convention Between the United States and Mexico Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, May 21, 1906, U.S.-Mex., 34 Stat. 2954;

WHEREAS, the Project was decreed a right to store, release, and divert water from the Rio Grande in the ongoing New Mexico Lower Rio Grande general stream adjudication;¹

WHEREAS, New Mexico administers water in the Lower Rio Grande under state law. Pursuant to New Mexico law, groundwater rights have been established by water users in the Rincon and Mesilla aquifers in the Lower Rio Grande below Elephant Butte Reservoir and Caballo Reservoir;

WHEREAS, the Rincon and Mesilla aquifers in the Lower Rio Grande are hydrologically connected to the Rio Grande. In general, groundwater pumping in the Rincon and Mesilla basins depletes surface flows;

WHEREAS, in the 1980s, Reclamation developed a methodology for allocating water between EBID and EPCWID that was based on the relationship between historical releases from Caballo Reservoir and diversions at Project headings during the period 1951-1978, commonly referred to as the D2 Period. This methodology uses a regression equation, known as the D2 Equation, which accounts for groundwater pumping in New Mexico below Caballo Reservoir during the D2 Period;

WHEREAS, on March 10, 2008, Reclamation, EBID, and EPCWID entered into an Operating Agreement for the Project that relies, in part, on the D2 Equation to allocate water between EBID and EPCWID;

¹ The order and decree on the Project right is the subject of an ongoing appeal to the New Mexico Court of Appeals by the State of New Mexico, the City of Las Cruces, the United States, and pre-1906 interests.

WHEREAS, since the D2 Period, groundwater pumping in the Lower Rio Grande in New Mexico has increased;

WHEREAS, in 1938, the States of Colorado, New Mexico, and Texas entered into the Rio Grande Compact, which “‘effect[ed] an equitable apportionment’” of the waters of the Rio Grande above Fort Quitman, Texas among the States of Colorado, New Mexico, and Texas. *Texas v. New Mexico*, 602 U.S. 943, 950 (2024);

WHEREAS, in 2013, Texas brought suit against New Mexico, in the action styled *Texas v. New Mexico*, No. 141, Orig. (“Original Action”), alleging that groundwater pumping in New Mexico was depriving it of its equitable share of the Rio Grande. New Mexico asserted counterclaims in which it alleged that Texas was receiving more than its equitable share of the Rio Grande. The United States intervened in the Original Action, alleging that New Mexico had violated the Compact, including by interfering with the Project by allowing excessive groundwater pumping in New Mexico. New Mexico, in turn, pleaded counterclaims against the United States alleging that the 2008 Operating Agreement deprived New Mexico of water apportioned under the Rio Grande Compact;

WHEREAS, the States of Texas, New Mexico, and Colorado have proposed to resolve Texas’s claims against New Mexico and New Mexico’s counterclaims against Texas in the Original Action through entry of a Consent Decree, in which those parties agree to New Mexico’s delivery obligations to Texas, measured at the El Paso gage near the Texas-New Mexico state line;

WHEREAS, the Parties are concurrently entering into an Operations Settlement Agreement along with EBID and EPCWID. The Operations Settlement Agreement sets forth certain agreed-upon modifications to Project Operations, as implemented through the 2008 Operating Agreement and an Operations Manual, along with certain other related agreements;

WHEREAS, the Parties share a common objective of ensuring that groundwater in the Lower Rio Grande is used efficiently and effectively and conserved to the extent possible for future use; and

WHEREAS, the Parties agree that this Groundwater Settlement Agreement, together with the Operations Settlement Agreement, is a fair and reasonable resolution of the United States’ claims against New Mexico and New Mexico’s counterclaims against the United States in the Original Action, and is in the public interest.

The terms of the Groundwater Settlement Agreement, including Exhibits A through E, which are incorporated herein, are set forth below.

AGREEMENT

THEREFORE, the Parties hereby agree as follows:

I. DEFINITIONS

- A. **Acre-foot:** The quantity of water required to cover an acre of land to the depth of one foot, equivalent to 43,560 cubic feet or 325,851 gallons.
- B. **Aquifer:** The Rincon and Mesilla aquifers in New Mexico that are hydrologically connected to the Rio Grande between the Caballo Reservoir outlet and the El Paso Gage.
- C. **Aquifer Storage Loss:** A reduction in the amount of groundwater held in the shallow alluvial part of the Aquifer associated with dropping groundwater levels and the draining of the uppermost part of the Aquifer, as further explained in Appendix E.
- D. **Bureau of Reclamation (Reclamation):** The United States Department of the Interior Bureau of Reclamation, the federal agency responsible for operating the Project.
- E. **CAB3:** The 3-year lagged moving average of the annual releases from Caballo Reservoir as measured at the Rio Grande Below Caballo Dam stream gage (USGS 08362500) (“Caballo Gage”).
- F. **Combined-Right Land:** For purposes of this Groundwater Settlement Agreement, Combined-Right Land shall be acreage within the Lower Rio Grande that is irrigated with a combined surface water and groundwater right pursuant to the Final Judgment in Stream System Issue No. 101 in *State of New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irrigation District, et al.*, Case No. D-307-CV-96-888 (“SSI 101”).
- G. **Compact:** The Rio Grande Compact, approved by Congress in the Act of May 31, 1939, ch. 155, 53 Stat. 785.
- H. **Consent Decree:** The Consent Decree, also known as the “EEPI Decree,” is the decree proposed by the States of Texas, New Mexico, and Colorado to resolve Texas’s claims against New Mexico and New Mexico’s counterclaims against Texas in the Original Action as among those parties. The Consent Decree was attached to the Compacting States’ Joint Motion for Entry of Consent Decree, which was filed on August 29, 2025.
- I. **Court:** The Supreme Court of the United States.
- J. **D2 Period:** The period from January 1, 1951, through December 31, 1978.

- K. **Decree of Dismissal:** The decree proposed by the United States and New Mexico to dismiss the claims of the United States in the Original Action with prejudice. A copy of the Decree of Dismissal is attached hereto as Appendix A.
- L. **Depletion Reduction:** New Mexico's commitment to reduce Depletions from groundwater in the Lower Rio Grande as described in this Groundwater Settlement Agreement.
- M. **Depletions:** Consumptive use of water in the Lower Rio Grande, excluding consumptive use from Imported Water.
- N. **Domestic Wells:** Groundwater wells drilled after the orders of the State Engineer declaring the Lower Rio Grande Underground Water Basin and permitted under NMSA 1978, § 72-12-1.1.
- O. **El Paso Gage:** The Rio Grande at El Paso, Texas stream gage (USGS 08364000).
- P. **Groundwater-Only Land:** Agricultural land in the Lower Rio Grande that is irrigated solely by groundwater pursuant to the Final Judgment in SSI 101 and has no right to receive surface water from the Project.
- Q. **Groundwater Settlement Agreement:** This agreement between New Mexico and the United States concerning the management of groundwater in New Mexico.
- R. **Imported Water:** Water brought into the Rio Grande Basin from another drainage basin or groundwater within the basin that is not hydrologically connected to the Rio Grande.
- S. **Inconclusive ASL:** The category of Aquifer Storage Loss when neither Potential ASL nor No ASL is determined in the Initial Evaluation in accordance with the methods set forth in Appendix E.
- T. **Indicator Wells:** Wells selected by the Parties for the purposes of monitoring the groundwater levels in the Aquifer as described in Appendix E.
- U. **Initial Evaluation:** A preliminary evaluation of potential Aquifer Storage Loss based on measured groundwater levels at the Indicator Wells conducted annually, as set forth in Appendix E.
- V. **Judicial Review:** Any proceeding in a court of any jurisdiction to examine or consider this Groundwater Settlement Agreement or any part thereof, to interpret the provisions of the Groundwater Settlement Agreement, to declare the rights and obligations under the Groundwater Settlement Agreement, to

enforce the provisions of the Groundwater Settlement Agreement, or for any other relief related to the Groundwater Settlement Agreement.

- W. **Lower Rio Grande:** The part of the Rio Grande Basin that is located between Caballo Reservoir and the New Mexico-Texas state line.
- X. **Lower Rio Grande Water Management Plan (LRG Plan):** A plan to be developed and adopted by New Mexico to manage and administer water in the Lower Rio Grande.
- Y. **No ASL:** The category of Aquifer Storage Loss when groundwater levels at four or more Indicator Wells in the Mesilla Valley either (1) rise by 2 feet or more or (2) rise or fall by less than 2 feet as determined in the Initial Evaluation in accordance with the methods set forth in Appendix E.
- Z. **Operations Settlement Agreement:** The agreement entered into by New Mexico, the United States, EBID, and EPCWID concurrently herewith regarding modifications to Project operations and related issues.
- AA. **Original Action:** The case filed in the Supreme Court of the United States styled *Texas v. New Mexico*, No. 141, Orig.
- BB. **Parties:** The Parties to this Groundwater Settlement Agreement are the United States and New Mexico.
- CC. **Permanently Retired Lands:** Agricultural lands associated with Permanently Retired Groundwater.
- DD. **Permanently Retire Groundwater:** To Permanently Retire Groundwater means to acquire water rights and permanently forgo any use of the groundwater component of the acquired rights to achieve Depletion Reduction.
- EE. **Project:** The Rio Grande Project, or Project, is the federal reclamation project, authorized in the Reclamation Act of June 17, 1902, 32 Stat. 390, and the Rio Grande Project Act of February 25, 1905, 33 Stat. 814, operated by the United States through the Bureau of Reclamation in coordination and cooperation with EBID and EPCWID.
- FF. **Project Viability in New Mexico:** The ability to continue to operate the Rio Grande Project for Project purposes in New Mexico. Considerations for Project Viability include, but are not limited to, the Project's ability to deliver surface water to EBID; the amount of acreage in production in EBID; and the ability to use groundwater within EBID and to supplement Project deliveries in times of drought.

GG. **Potential ASL:** The category of Aquifer Storage Loss when groundwater levels at four or more Indicator Wells in the Mesilla Valley fall by 2 feet or more as determined in the Initial Evaluation in accordance with the methods set forth in Appendix E.

HH. **Third-Party Implementing Contract:** The agreement entered into between EBID and the New Mexico Interstate Stream Commission, and approved by Reclamation (Contract No. 25-WC-40-1029), under the 1920 Miscellaneous Purposes Act, 41 Stat. 451, 43 U.S.C. § 521.

II. **Upper Valley Diversion Ratio (UVDR):** The UVDR is defined and will be calculated in accordance with the method set forth in Appendix D.

JJ. **UVDR3:** The UVDR3 is the 3-year lagged moving average of the UVDR as calculated in accordance with the method set forth in Appendix D.

II. GENERAL PROVISIONS

A. The Parties agree to resolve their dispute in the Original Action by means of this Groundwater Settlement Agreement, the Operations Settlement Agreement, and the Decree of Dismissal attached hereto as Appendix A.

B. The Parties shall implement the obligations and agreements in accordance with the schedule attached hereto as Appendix B.

C. Upon the Court's entry of the Decree of Dismissal, the Parties agree that the United States' claims against New Mexico and New Mexico's counterclaims asserted against the United States in the Original Action shall be dismissed with prejudice. These dismissed claims shall include all claims for Compact violations, Project interference, damages, declaratory relief, and injunctive relief asserted or which could have been asserted in the Original Action.

III. DEPLETION REDUCTION

New Mexico shall reduce Depletions in the Lower Rio Grande by 18,200 acre-feet per year within ten (10) years of the Effective Date. New Mexico shall meet its Depletion Reduction obligation as follows:

A. Depletion Reduction Schedule. New Mexico will Permanently Retire Groundwater to reduce Depletions by 18,200 acre-feet per year according to the following schedule:

1. Within five (5) years of the Effective Date, New Mexico shall Permanently Retire Groundwater to reduce Depletions by a minimum of 9,100 acre-feet per year.

2. Within ten (10) years of the Effective Date, New Mexico shall Permanently Retire Groundwater to reduce Depletions by a total of 18,200 acre-feet per year.
3. New Mexico's Depletion Reduction obligation shall be considered fully satisfied if it reduces 18,200 acre-feet per year of Depletions of groundwater as calculated in Section III.C, provided that New Mexico shall maintain the Depletion Reduction obligation as described in this Section III.

B. Eligible Water Rights for Depletion Reduction.

1. Groundwater rights originating from the Aquifer are eligible to meet the Depletion Reduction obligation whereas groundwater rights originating from outside the Aquifer are not eligible.
2. To be eligible for satisfaction of the Depletion Reduction obligation, irrigation groundwater rights must have been used on the lands to be Permanently Retired a minimum of 5 years out of every moving 10-year period since 2010. Irrigation groundwater rights that were enrolled in the State of New Mexico's Lower Rio Grande Groundwater Conservation Program shall be deemed to have been used during the period of enrollment.
3. To be eligible for satisfaction of the Depletion Reduction obligation, non-irrigation rights must have been used a minimum of 5 years out of every moving 10-year period since 2010.
4. To be eligible for satisfaction of the Depletion Reduction obligation, the groundwater rights must be in good standing with the New Mexico Office of the State Engineer.

C. Calculating Depletion Reductions.

1. New Mexico may Permanently Retire Groundwater from Groundwater-Only Lands to satisfy its Depletion Reduction obligation.
 - a. Each acre of Groundwater-Only Land that is Permanently Retired shall be deemed to reduce Depletions by 2.6 acre-feet per year.²
2. New Mexico may Permanently Retire Groundwater from Combined-Right Lands to satisfy its Depletion Reduction obligation.
 - a. Each acre of Combined-Right Land that is Permanently Retired shall be deemed to reduce Depletions by 1.97 acre-feet per year.

² This Groundwater Settlement Agreement uses a consumptive irrigation requirement ("CIR") of 2.6 acre-feet per year consistent with transfers to non-irrigation purposes of use in the SSI-101 Final Judgment.

- b. Appendix C shows the methodology used by the Parties to reach agreement on the amount of Depletion Reduction per acre on Combined-Right Lands. Appendix C is not enforceable as part of the Groundwater Settlement Agreement. As an example, if New Mexico were to meet its Depletion Reduction obligation solely by retiring groundwater on Combined-Right Lands, it would satisfy its obligation by Permanently Retiring Groundwater on 9,240 acres.
 - c. The surface water rights associated with Combined-Right Land may be used in accordance with the provisions in Section III.E of this Groundwater Settlement Agreement.
- 3. New Mexico may Permanently Retire Groundwater from non-irrigation groundwater rights to satisfy its Depletion Reduction obligation.
 - a. Depletion Reduction from non-irrigation groundwater rights shall be calculated as the reduction in consumptive use in acre-feet per year associated with the retirement of those rights.
 - b. New Mexico will use best available evidence to calculate the Depletions of groundwater associated with non-irrigation Permanently Retired Groundwater. Best available evidence consists of New Mexico Office of the State Engineer records or documentary evidence of beneficial use associated with the water right, including, but not limited to, historical aerial photography, records of historical diversions, or historical studies containing evidence regarding water use. Water diverted but not consumed does not qualify as Permanently Retired Groundwater for purposes of satisfying the Depletion Reduction obligation.

D. Additional Depletion Reduction.

New Mexico may Permanently Retire Groundwater in addition to the Depletion Reduction obligation under Section III.A if, in its sole discretion, it determines such retirement is needed to meet its Compact obligations, its obligations under this Groundwater Settlement Agreement, or other water management objectives.

E. Future Use of Surface Water from Permanently Retired Lands.

- 1. The surface water rights from Permanently Retired Lands may not be used on the lands from which they were acquired except for uses incidental to land ownership such as planting a cover crop or nuisance control.
- 2. New Mexico may continue to use surface water rights from Permanently Retired Lands for Project purposes such as irrigation on other lands within EBID, subject to EBID allotment, assessments, and EBID policy.

3. New Mexico may also use surface water rights from Permanently Retired Lands for miscellaneous purposes, such as aquifer recovery projects, replacement water, offsets, or allocation transfers, if such use is authorized by Reclamation and EBID, for example through a third-party implementing contract, and all terms and conditions of the third-party implementing contract are followed.

F. Future Use of Permanently Retired Lands.

1. Valid groundwater rights or combined surface and groundwater irrigation rights may be transferred onto Permanently Retired Lands, and exercised there, if the transfer results in no net increase in Depletions. Groundwater rights or combined surface and groundwater rights that are transferred must satisfy the eligibility requirements in Section III.B of this Groundwater Settlement Agreement.
2. Permanently Retired Lands may be served by a utility, mutual domestic, or other water provider for non-irrigation purposes, provided it results in no net increase in Depletions.
3. Nothing in this Groundwater Settlement Agreement prevents New Mexico from selling or otherwise disposing of Permanently Retired Lands that it may acquire, provided that if New Mexico sells or otherwise disposes of Permanently Retired Lands, New Mexico must make legally enforceable arrangements to ensure that water is not used on said lands except as provided in Sections III.E and F of this Groundwater Settlement Agreement.

G. Depletion Reduction Reporting.

Beginning after the Effective Date, New Mexico will prepare an annual report that details the previous year's Permanent Groundwater Retirement for the Depletion Reduction obligation. The annual report will document the groundwater rights that were retired during the previous year, the acreage and calculation of the Depletion Reduction based on the provisions in Section III.C of this Groundwater Settlement Agreement, the total groundwater rights retired since the Effective Date, and any use of the surface water rights associated with Permanently Retired Lands.

1. The annual report will be available as a draft for review and comment by Reclamation no later than the third Friday in February.
2. New Mexico will finalize the annual report no later than the first Friday in April.

3. After New Mexico has satisfied its Depletion Reduction obligation pursuant to Section III.A, no further annual reports will be required. However, New Mexico will include information in the Lower Rio Grande Water Master's Annual Report on the use of the surface water rights associated with Permanently Retired Lands, the continuing non-use of water on Permanently Retired Lands, maintenance of the Depletion Reduction obligation, and any proposed or approved transfers onto Permanently Retired Lands.

IV. ENFORCEABLE HYDROLOGIC CONDITIONS

A. UVDR3:

The following UVDR3 provisions shall apply following adoption of the LRG Plan:

1. New Mexico shall take all reasonable action to maintain UVDR3 above 0.79, while considering Project Viability.
2. The UVDR and UVDR3 shall be calculated annually in accordance with the method set forth in Appendix D. Reclamation shall perform the initial calculation and notify New Mexico of the calculation by no later than the third Friday in February. New Mexico shall have until the first Friday in April of each year to review and comment on the data and calculation.
3. If Reclamation and New Mexico do not agree on the UVDR and UVDR3 calculations by May 1 of each year, the UVDR3 for the period in dispute will be considered provisional, subject to the consultation process described in Section IV.A.5.
4. If UVDR3 is below 0.79, or the Parties do not agree on the UVDR or UVDR3 calculations, Reclamation may notify New Mexico that it is invoking the consultation process. Within three (3) months of the notice, the Parties shall initiate the consultation process identified below.
5. Consultation Process for UVDR3: If Reclamation notifies New Mexico that it is invoking the consultation process, the Parties shall consult as follows:
 - a. At a minimum, the consultation process shall include:
 - i. A review of the data and analysis to determine whether UVDR3 is below 0.79. If the Parties determine that UVDR3 is not below 0.79, or the Parties do not agree on whether UVDR3 is below 0.79, the consultation is concluded.
 - ii. If the Parties determine that UVDR3 is below 0.79, a review of groundwater levels and other information to assess the cause(s)

for UVDR3 falling below 0.79 and to discuss the actions New Mexico may take to bring the UVDR3 above 0.79, while also considering Project Viability in New Mexico.

- b. Subject to the Judicial Review provisions of Section VI, New Mexico shall have discretion to determine what water management actions are necessary and appropriate to bring UVDR3 above 0.79. If Reclamation does not agree with New Mexico on how to bring the UVDR3 above 0.79, the United States' sole remedy is to seek Judicial Review as contemplated in Section VI.A.2.
- c. Subject to the Judicial Review provisions of Section VI, nothing in this Groundwater Settlement Agreement shall be construed to limit the authority, discretion, or ability of New Mexico to administer water or Depletions. Even as the UVDR3 consultation is ongoing, New Mexico may administer water or Depletions as it deems appropriate or advisable to bring UVDR3 above 0.79.
- d. The consultation process shall be completed within six (6) months of receipt of the notice identified in Section IV.A.4.

B. Aquifer Storage Loss:

The following provisions on Aquifer Storage Loss shall apply three (3) years after the adoption of the LRG Plan:

- 1. New Mexico shall take all reasonable action to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet, while considering Project Viability.
- 2. Groundwater Monitoring at Indicator Wells. The Parties shall monitor annual changes in groundwater levels in the New Mexico portion of the Aquifer consistent with the methods and procedures identified in Appendix E.
 - a. The Parties will operate and maintain Indicator Wells to monitor and evaluate groundwater levels in the Aquifer.
 - b. The Parties will jointly fund the monitoring activities for the Indicator Wells as follows³:
 - i. The Parties will jointly fund annual measurements and regular operation and maintenance of the Indicator Wells and any

³ This Groundwater Settlement Agreement does not require Reclamation to obligate or transfer funds. The funding in Section IV.B.2.b will be available only after all applicable legal requirements are met, including but not limited to, the negotiation and execution of any necessary agreements, the appropriation of needed funding, and the completion of environmental compliance.

associated instrumentation following the methods identified in Appendix E.

- ii. If the Parties determine that a well needs to be improved or replaced for use as an Indicator Well, New Mexico will coordinate and fund these activities with up to fifty percent (50%) cost match from Reclamation.
 - c. Within six (6) months of the Effective Date, the Parties will consult and select the Indicator Wells using the methods identified in Appendix E.
 - d. The Indicator Wells must be equipped and operating with the required instrumentation identified in Appendix E within two (2) years of the Effective Date.
- 3. Initial Evaluation of Aquifer Storage Loss. The Parties will conduct an Initial Evaluation each year based on change in measured water levels at the Indicator Wells, following the method in Appendix E, to determine which category of Aquifer Storage Loss (ASL) applies for that year: (1) Potential ASL, (2) Inconclusive ASL, or (3) No ASL. The Parties will jointly prepare and finalize a summary memorandum of the Initial Evaluation by the first Friday in April.
- 4. Initiation of the Aquifer Storage Loss Consultation.
 - a. If the Initial Evaluation concludes that there is Potential ASL and CAB3 is greater than 400,000 acre-feet, the Parties will begin the consultation process for Aquifer Storage Loss as described in Section IV.B.5 and Appendix E.
 - b. If the Initial Evaluation concludes that there is No ASL, there shall be no consultation process.
 - c. Reclamation may provide notice that it is initiating the consultation process for Aquifer Storage Loss as described in Section IV.B.5 if:
 - i. The Initial Evaluation is Inconclusive ASL and CAB3 is greater than 400,000 acre-feet; or
 - ii. If there is any dispute related to the Initial Evaluation and CAB3 is greater than 400,000 acre-feet.
 - iii. Notice under this Section IV.B.4.c shall be timely if received within three (3) months of the summary memorandum identified in Section IV.B.3.

5. Aquifer Storage Loss Consultation. If the consultation process is initiated pursuant to Section IV.B.4, the Parties shall consult as follows and as further described in Appendix E:
- a. The Parties will conduct further analysis, as necessary, to determine whether Aquifer Storage Loss has occurred. If the Parties determine that Aquifer Storage Loss has occurred, the consultation shall proceed. If the Parties determine Aquifer Storage Loss has not occurred, or if the Parties do not agree that Aquifer Storage Loss has occurred, the consultation is concluded.
 - b. If the Parties determine Aquifer Storage Loss has occurred, New Mexico will consult with the United States to assess cause(s) of Aquifer Storage Loss and discuss actions that New Mexico may take to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet, while considering Project Viability in New Mexico.
 - c. The consultation process may include review of the following data sources:
 - i. Measured groundwater levels from Indicator Wells;
 - ii. Available measured groundwater levels from other wells;
 - iii. Metered flow data on Project releases, diversions, and drainage return flows;
 - iv. Streamflow in the Rio Grande (including the Caballo Gage, El Paso Gage, and gages in between); and
 - v. Metered and estimated groundwater pumping.
 - d. Subject to the Judicial Review provisions of Section VI, New Mexico shall have discretion to determine what actions are necessary and appropriate to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet. If the United States does not agree with New Mexico on how to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet, its sole remedy is to seek Judicial Review as contemplated in Section VI.A.3.
 - e. Subject to the Judicial Review provisions of Section VI, nothing in this Groundwater Settlement Agreement shall be construed to limit the authority, discretion, or ability of New Mexico to administer water or Depletions. Even as the Aquifer Storage Loss consultation is ongoing,

New Mexico may administer Depletions as it deems appropriate or advisable to achieve stable or gaining Aquifer levels.

- f. The Aquifer Storage Loss consultation shall be completed within six (6) months of initiation. Upon conclusion of the consultation, the Parties will jointly document the consultation and, if applicable, actions to be taken by New Mexico to achieve stable or gaining Aquifer levels.

V. LOWER RIO GRANDE WATER MANAGEMENT PLAN

- A. New Mexico shall adopt an LRG Plan setting forth its plan to manage and administer water in the Lower Rio Grande within two (2) years of the Effective Date.
- B. New Mexico shall review the LRG Plan every five (5) years after adoption. As part of its review, New Mexico shall consult with the Rio Grande Compact Commission and Reclamation and shall submit a written report to the Rio Grande Compact Commission and Reclamation every five (5) years after the adoption of the LRG Plan.
- C. At a minimum, the LRG Plan shall include the following elements, but shall otherwise be within the sole discretion of New Mexico:
 1. Actions to satisfy and maintain the Depletion Reduction obligation in Section III.
 2. Actions from the New Mexico State Engineer closing the Lower Rio Grande Basin.
 3. Actions to keep UVDR3 above 0.79.
 4. Actions to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet.
 5. Actions to limit Depletions from Domestic Wells in the Lower Rio Grande, including actions to prevent or offset Depletions from future Domestic Wells.
 6. A description of district specific rules, State Engineer orders, or alternative administration plans approved by the State Engineer for the Lower Rio Grande.
- D. New Mexico shall not adopt or approve district specific rules, State Engineer orders, alternative administration plans, or other measures in the Lower Rio Grande that change the manner in which EBID members' surface, supplemental

groundwater rights, or the Project right held by the United States is administered in priority without the consent of the United States and EBID.

VI. JUDICIAL REVIEW OF THE GROUNDWATER SETTLEMENT AGREEMENT

A. Judicial Review of the Provisions in Section IV.

1. Judicial Review of the provisions contained in Section IV shall not be available until eight (8) years after the Effective Date.
2. The Parties must complete the mandatory consultation provisions in Section IV.A.5 before a lawsuit related to UVDR3 may be filed. A suit related to UVDR3 shall be limited to (1) a dispute over whether UVDR3 is below 0.79; or (2) challenges to the sufficiency of the actions New Mexico adopts to bring the UVDR3 above 0.79 within a reasonable amount of time.
3. The Parties must complete the mandatory consultation provisions in Section IV.B.5 before a lawsuit related to Aquifer Storage Loss may be filed. Any such lawsuit shall be limited to (1) a dispute over whether Aquifer Storage Loss has occurred when CAB3 is greater than 400,000 acre-feet; or (2) challenges to the sufficiency of the actions New Mexico adopts to achieve stable or gaining Aquifer levels within a reasonable amount of time when CAB3 is greater than 400,000 acre-feet.

B. Judicial Review of the Provisions in Section V. The obligation to adopt an LRG Plan in Section V of this Groundwater Settlement Agreement, with the minimum components described above, is subject to Judicial Review, but the specific provisions of the LRG Plan are left to the discretion of New Mexico and are not enforceable.

C. Venue for an action to enforce the terms of this Groundwater Settlement Agreement is proper if filed in the U.S. District Court for the District of New Mexico or the United States Court of Federal Claims, as applicable, except as set forth in Section IX.H, below.

D. This Section VI identifies all possible challenges to, or Judicial Review of, New Mexico actions contemplated or recognized by this Groundwater Settlement Agreement. Any other challenge to water management actions in New Mexico, other than the specific challenges set forth above in this Section VI, shall be subject to applicable state laws and regulations, including applicable laws and regulations regarding the exhaustion of administrative remedies.

VII. NOTICES

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given and delivered, if mailed certified postage prepaid or emailed:

If to New Mexico:

The Rio Grande Compact Commissioner
for New Mexico:

Elizabeth Anderson, P.E., State Engineer
New Mexico Office of the State Engineer
5550 San Antonio Dr. NE
Albuquerque, NM 87109-4127
elizabeth.anderson@ose.nm.gov

With a copy to:

The Rio Grande Compact Commission Legal
Advisor for New Mexico:

Chris Shaw, Deputy General Counsel
New Mexico Interstate Stream Commission
5550 San Antonio Dr. NE
Albuquerque, NM 87109-4127
chris.shaw@ose.nm.gov

If to the United States:

Regional Director
Upper Colorado Region
Attn: UC-4455
125 South State Street
Room 6107
Salt Lake City, Utah 84138-1102
jhearty@usbr.gov

With a copy to:

Area Manager
Albuquerque Area Office
Attn: ALB-107
555 Broadway NE, Suite 100
Albuquerque, NM 87102
mestradoalopez@usbr.gov

And to any other address or addresses as may be hereafter specified by notice given to the other Party by anyone desiring a change of address. In providing notice under

this Groundwater Settlement Agreement, days shall be calculated consistent with Rule 6(a) of the Federal Rules of Civil Procedure. Notice shall be deemed effective upon receipt.

VIII. EFFECTIVE DATE

This Groundwater Settlement Agreement will become effective upon entry of both the Decree of Dismissal and the Consent Decree in the Original Action. If, for any reason, the Court should decline to enter the Decree of Dismissal or decline to approve the Consent Decree in the form presented, the entire Groundwater Settlement Agreement shall be null and void and the terms of this Groundwater Settlement Agreement may not be used as evidence in any litigation between the Parties.

IX. MISCELLANEOUS PROVISIONS

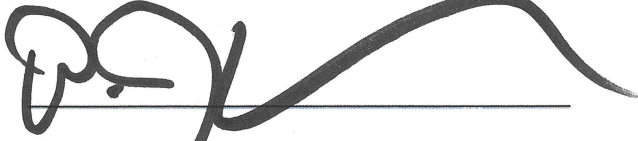
- A. Construction of the Groundwater Settlement Agreement and Appendices. To the extent a conflict exists between the language of this Groundwater Settlement Agreement and the Appendices or any ambiguity is created by the language of the Appendices, the language of the Groundwater Settlement Agreement controls.
- B. No Admission of Liability. This Groundwater Settlement Agreement is a compromise to avoid further litigation only. This Groundwater Settlement Agreement does not represent an admission by any Party to any fact, claim, or defense relating to any issue in this or any future litigation. This Groundwater Settlement Agreement has no precedential value and shall not be used as evidence of any precedent in any litigation.
- C. Integration. This Groundwater Settlement Agreement is a fully integrated agreement which sets forth the entire agreement and understanding of the Parties concerning the subject matter of this Groundwater Settlement Agreement. Accordingly, this Groundwater Settlement Agreement supersedes and controls over all prior written and oral communications between the Parties concerning the subject matter of this Groundwater Settlement Agreement.
- D. Modification of the Groundwater Settlement Agreement. The Groundwater Settlement Agreement and any of its Appendices may not be waived, rescinded, canceled, terminated, supplemented, amended, or modified in any manner without the prior written consent of both Parties.
- E. Binding Effect. This Groundwater Settlement Agreement shall apply to and be binding on the Parties and their present, past and future members, officers, agents, representatives, employees, insurers, heirs, successors, and assigns.
- F. Authority to Sign. The undersigned representatives of the Parties certify that they are fully authorized by their respective Party to execute this Groundwater

Settlement Agreement on behalf of the Party and related entities for which they sign, and that they are authorized to bind such Parties to the terms stated herein.

- G. Anti-Deficiency Act. No provision in this Groundwater Settlement Agreement shall be interpreted as or constitute a commitment or requirement that the United States Department of the Interior, Reclamation, or their offices or officials obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.
- H. No Third-Party Rights. Nothing in this Groundwater Settlement Agreement is intended or shall be construed to create rights in, or authorize any cause of action by, anyone not a Party to this Groundwater Settlement Agreement, except EBID has the right to file suit regarding New Mexico's Depletion Reduction obligation established in Section III, above, as set forth in the Operations Settlement Agreement.
- I. Jointly Drafted Agreement. This Groundwater Settlement Agreement shall be considered a jointly drafted contract and shall not be construed against any Party as the drafter.
- J. Attorney's Fees and Costs. The Parties agree to separately bear their own costs and attorney's fees arising from these proceedings and the negotiation and execution of this Groundwater Settlement Agreement.
- K. Counterparts. This Groundwater Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument, and photographic copies of such signed counterparts may be used in lieu of the original.

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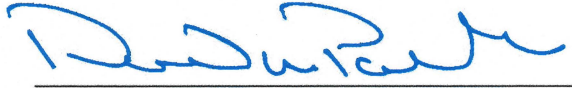
FOR THE UNITED STATES OF AMERICA:



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Dated: _____

8/28/25

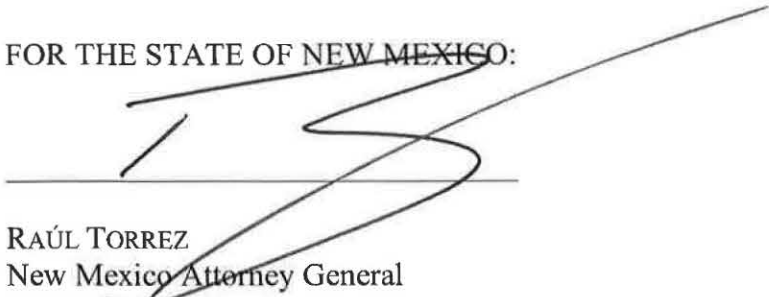


David M. Palumbo
Acting Commissioner
Bureau of Reclamation
U.S. Department of the Interior

Dated: _____

8-27-2025

FOR THE STATE OF NEW MEXICO:



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JOHN B. DRAPER
CORINNE E. ATTON
Special Assistant Attorneys General
Draper & Draper LLC

Dated: 8/26/25

In the Supreme Court of the United States

No. 141, Original

STATE OF TEXAS, PLAINTIFF

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO, DEFENDANTS

UNITED STATES OF AMERICA, INTERVENOR

DECREE OF DISMISSAL

This cause, having come to be heard on the Report of the Special Master appointed by this Court on the United States' and New Mexico's joint motion to dismiss the United States' claims, **IT IS HEREBY ORDERED THAT:**

The United States' claims in this case are hereby dismissed with prejudice.

GROUNDWATER SETTLEMENT AGREEMENT - APPENDIX A

Appendix B

Deadlines for Groundwater Settlement Agreement

This Appendix summarizes the deadlines set forth in the Groundwater Settlement Agreement (GSA). To the extent that any deadline or date in this Appendix B is inconsistent with the Groundwater Settlement Agreement, the terms of the Groundwater Settlement Agreement shall control.

Reference in the GSA	Deadline	Description
Depletion Reduction		
III.A.1	Within 5 years of the Effective Date	New Mexico shall Permanently Retire Groundwater to reduce Depletions by a minimum of 9,100 acre-feet per year
III.A.2	Within 10 years of the Effective Date	New Mexico shall Permanently Retire Groundwater to reduce Depletions by a total of 18,200 acre-feet per year
UVDR3		
IV.A	Following adoption of the LRG Plan	UVDR3 provisions contained in Section IV.A shall apply
IV.A.2	3 rd Friday in February each year	Reclamation shall perform the initial calculation of UVDR and UVDR3 and notify New Mexico of the calculation
IV.A.2	1 st Friday in April each year	Deadline for New Mexico to review and comment on the data and calculation of the UVDR and UVDR3
IV.A.3	May 1 st of each year	Deadline for the United States and New Mexico to agree on the annual UVDR and UVDR3 calculations. If the Parties do not agree, the UVDR3 for the period in dispute will be considered provisional, subject to the consultation process described in Section IV.A.5
IV.A.4	Within 3 months of the United States giving notice that it is initiating the UVDR3 consultation process	Parties to initiate the UVDR3 consultation process
IV.A.5.d	Within 6 months of receipt of notice identified in Section IV.A.4	UVDR3 consultation process shall be completed

Reference in the GSA	Deadline	Description
Aquifer Storage Loss		
IV.B	3 years after adoption of the LRG Plan	The Aquifer Storage Loss provisions contained in Section IV.B shall apply
IV.B.2.c	Within 6 months of the Effective Date	Parties must consult and select Indicator Wells
IV.B.2.d	Within 2 years of the Effective Date	Indicator Wells must be equipped and operating with the required instrumentation
IV.B.3	1 st Friday in April each year	Parties to jointly prepare and finalize a summary memorandum of the Initial Evaluation of Aquifer Storage Loss
IV.B.5.f	Within 6 months of initiation	Aquifer Storage Loss consultation shall be completed
LRG Plan		
V.A	Within 2 years of the Effective Date	New Mexico shall adopt an LRG Plan setting forth its plan to manage and administer water in the Lower Rio Grande
V.B	Every 5 years after adoption of the LRG Plan	New Mexico shall review the LRG Plan and submit a written report on the LRG Plan to the Rio Grande Compact Commission and Reclamation
Judicial Review		
VI.A.1	8 years after the Effective Date	Judicial Review available for the provisions contained in Section IV

Technical Memorandum: Method for Determining Consumptive Use on Irrigated Acreage in the Lower Rio Grande, New Mexico

To: New Mexico, Interstate Stream Commission

Date: August 13, 2025

From: Dave M. Romero and Steven E. Silver, Balleau Groundwater, Inc.

Introduction

This Technical Memorandum proposes a method to quantify water consumed by irrigation on farm tracts in the Lower Rio Grande (LRG) Basin in New Mexico. The approach is based on a method of partitioning the components of consumptive use (CU) from eeMETRIC OpenET data (OpenET, 2025). More specifically, this memo: (1) describes the technical methodology used to partition the components of CU, (2) verifies this technical methodology by comparing results to a canal and farm budget methodology, and (3) applies the methodology on a subset of lands within the LRG to quantify an average per acre consumptive use of groundwater.

Description of Technical Methodology

OpenET provides satellite-based estimates of the amount of water that transfers from the land surface to the atmosphere through the process of evapotranspiration (ET). The method¹ is ideal because it provides readily available monthly estimates of ET dating back to the year 2000. Herein we describe a methodology using OpenET to quantify consumptive use on lands in the LRG Basin in New Mexico. The approach is described in a series of steps that can be reproduced with basic GIS software such as ArcGIS.

1. **Step 1** – Determine the area for which ET information is sought. Access the publicly available OpenET data servers to download the results of the ET analysis for that area. The ET information retrieved will be total CU of water, which includes two components: CU derived from precipitation and CU derived from applied water (irrigation).
2. **Step 2** – Adjust the OpenET data for local-scale factors. OpenET uses weather station measurements and other data across the U.S. that are processed into regional-scale gridded datasets that generally range in dimension from 1 x 1 km² to 4 x 4 km². Whenever possible, it is a prudent approach to enhance the OpenET analysis when local-scale ET information is available.² Allen (2019) produced a METRIC³ ET analysis in the LRG with an enhanced algorithm that refines canopy/shading effects specific to the LRG.

¹ see <https://etdata.org/methodologies/>

² The developers of OpenET “...encourage users to rely upon their knowledge of local conditions in applying the ensemble ET value, or selecting a single model or subset of models for use in their application.” (<https://etdata.org/known-issues/>, Item 8).

³ Mapping Evapotranspiration at high Resolution with Internalized Calibration model (METRIC).



Accordingly, we scaled the OpenET METRIC analysis to fit an analysis completed by Allen (2019) for year 2013. The overall result was an increase to the OpenET analysis of about 10 percent.

3. **Step 3** – Of interest is water consumed by irrigation, so it is necessary to isolate the CU associated with irrigation by subtracting the effective precipitation from CU to derive CU of applied water (CUaw). In the example herein, we estimated effective precipitation based on (USDA and others, 1962). We note that OpenET is in the process of developing estimates of effective precipitation so the information for this step will soon be available from the OpenET servers for review.
4. **Step 4** – Separate the CU from the irrigation water into two components: consumptive use of applied surface water (CUasw) and consumptive use of applied groundwater (CUagw). A straightforward approach to quantifying CUasw is to partition New Mexico's surface-water into the portion of the Elephant Butte Irrigation District (EBID) allotment that is consumed.⁴ Then, any remaining CU (quantified in Step 3) is attributed to CUagw and soil moisture.

We note that in steps 3 and 4 above, we designate the terminology CU of applied water (irrigation) is equal to the sum of CU of applied surface water and CU of applied groundwater, or

$$\text{CUaw} = \text{CUasw} + \text{CUagw}. \quad (1)$$

Verification of Technical Methodology

To verify the methodology described above, we applied Steps 1 through 4 to the irrigated areas of the New Mexico portion of the LRG, or within EBID, and compared the results to the canal and farm budget developed by Spronk (2020). **Figure 1** shows the comparison from 2000 through 2017.

The stacked areas in **Figure 1** represent the monthly surface water (blue) and groundwater + soil moisture (green) portions of the CU from years 2000 through 2023 as derived from the OpenET methodology. The top of the stack (blue + green) is the total CU of applied water (irrigation). For qualitative comparison, **Figure 1** also shows lines representing the LRG Canal and Farm Budget (CFB) developed by (Spronk, 2020) from the years 2000 to 2017. The red line is CU of applied surface water, and the dashed green line is total CU of total applied water so that subtracting the red line from the dashed green line would isolate the CU of groundwater.

⁴ We note that if all the EBID allotment is equal to the delivered water to individual farms, then this consumed portion would be equal to the allotment times the estimated on-farm irrigation efficiency. In the next section of this document, we clarify that we use a factor of 0.70.

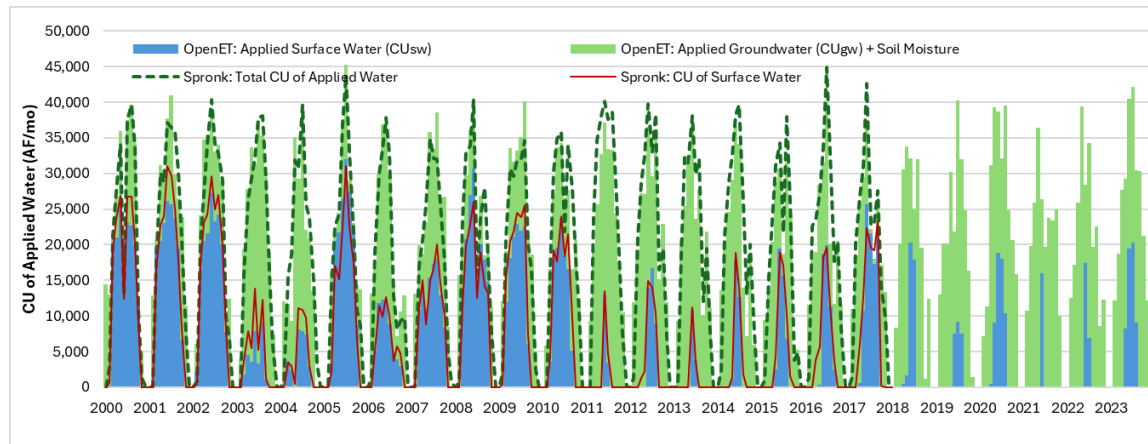


Figure 1. Open ET and CFB irrigation components compared.

CFB = Canal and Farm Budget
(Spronk, 2020)

CUasw is CU of applied surface water
CUagw is CU of applied groundwater

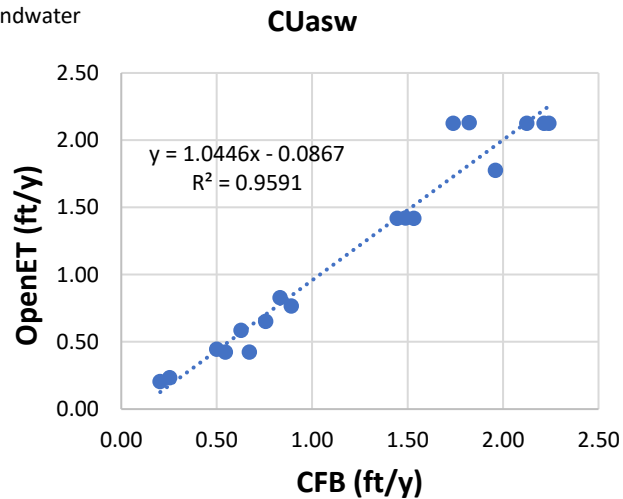


Figure 2. Year-by-year comparison of OpenET and CFB in years 2000 through 2017 (CUasw).

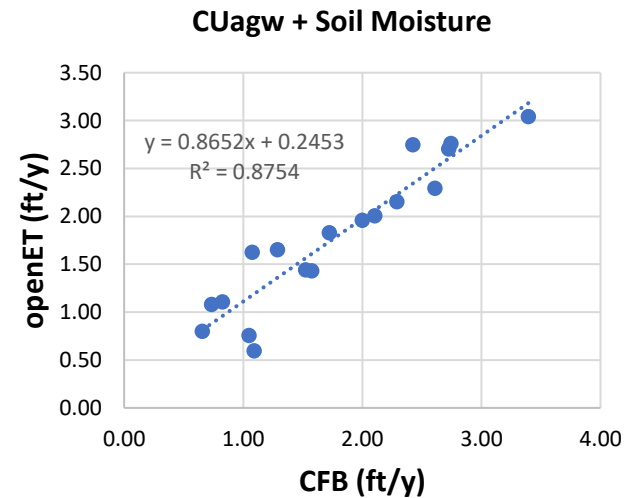


Figure 3. Year-by-year comparison of OpenET and CFB in years 2000 through 2017 (CUagw + soil moisture).

More quantitative comparisons of year-by-year (2000 through 2017) consumptive use of applied water between the CFB and OpenET methodologies are shown in **Figure 2** for CUasw and **Figure 3** for CUagw with soil moisture. For surface water, the 18-year correlation of year-to-year values has $R^2 = 0.96$ compared to $R^2 = 0.88$ for groundwater with soil moisture.

In addition to the year-by-year comparison above, a comparison of the average consumptive use of applied water from 2000 through 2017 is of interest (Table 1). The total CUaw (CUasw and CUagw with soil moisture) is 2.98 ft/yr calculated with the CFB and 2.96 ft/yr calculated with OpenET.

Table 1. 18-year average CU of applied water (all lands in EBID).

Method	Average CU of Applied Water (2000 - 2017)		Total (ft/yr)
	Surface Water (ft/yr)	Groundwater + Soil Moisture (ft/yr)	
CFB	1.21	1.77	2.98
OpenET	1.18	1.78	2.96

The OpenET approach implemented herein and the CFB (Spronk, 2020) are similar, even though there is a general difference between the two approaches. Namely, Spronk (2020) developed a comprehensive farm water budget that considers water releases, conveyance efficiency, on-farm efficiency and irrigation water partitioning with root zone soil moisture and water demands that build from a daily water accounting methodology (Davids Engineering, 2019). The OpenET approach generalizes the farm water budget by partitioning the consumptive use on LRG farms into two parts (CUasw and CUagw with soil moisture). We note that Spronk uses an on-farm efficiency of 0.75. For the OpenET methodology, we use a factor of 0.70, which, as described in Footnote 4, is on-farm efficiency assuming all the EBID allotment gets delivered to individual farm tracts. However, the general alignment between the OpenET methodology and the more comprehensive canal and farm budget methodology verifies that the OpenET method is reasonable for purposes of determining the consumptive use of groundwater in the LRG.

Application of Technical Methodology

We applied the OpenET methodology to two regions of land in EBID. The first is 6,191 acres of land entered into the Groundwater Conservation Program (GCP) implemented by the New Mexico Interstate Stream Commission (ISC). The second region is all irrigated lands in EBID.

For the 6,191 acres of land currently active in the GCP, we applied the OpenET methodology for the purpose of estimating an average annual consumptive use of applied groundwater for use by New Mexico. The result, 1.97 ac-ft/acre/year, is shown in **Figure 4**. A small portion of these lands are irrigated by groundwater only.

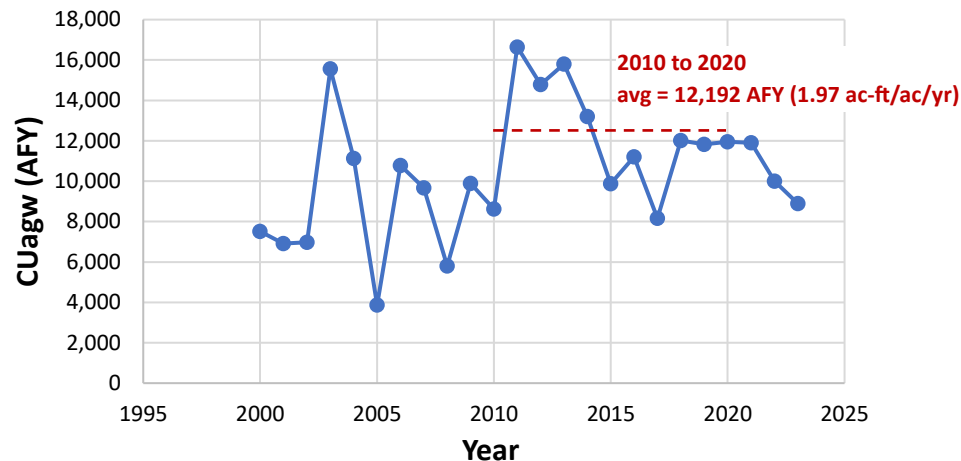


Figure 4. OpenET groundwater irrigation CU estimate on 6,191 acres in the GCP (including soil moisture). The average CUagw in the 11 years from 2010 through 2020 is 12,192 AFY, which translates to an average of 1.97 ft/yr. (Although not shown on Figure 4, the total average CUaw over the same 11-year period is 2.73 ft/yr implying CUasw is 0.76 ft/yr.)

To estimate the average annual consumptive use of applied groundwater for all lands in EBID, we applied the OpenET methodology and then describe a comparison with the 6,191 acres of land in the GWP. The resulting OpenET calculation for all EBID lands is shown in Figure 5.

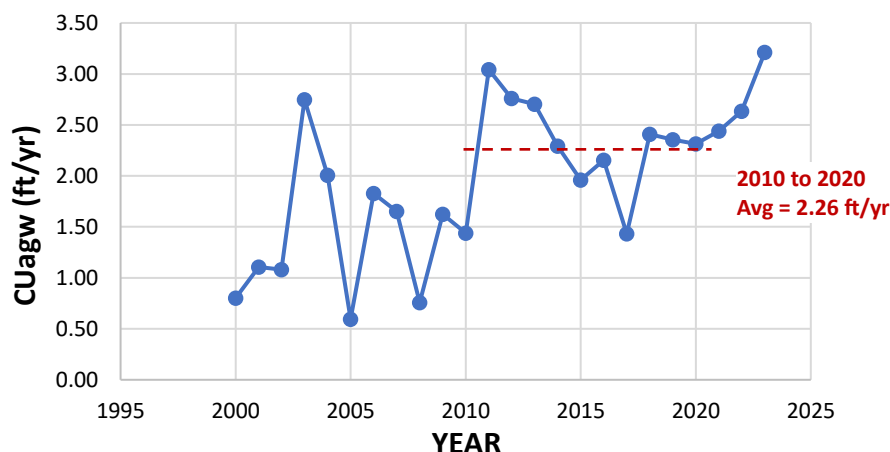


Figure 5. OpenET groundwater irrigation CU estimate on all lands in the NM portion of the LRG (including soil moisture).

The calculation of CUagw in **Figure 5** is based on dividing the total CUagw by the annual observed irrigated acreage estimated by Intera (2019) from years 2000 to 2018 and from the OpenET data for years post 2018. For the post 2018 lands, we added tracts deemed historically irrigable by Intera that had at least 12 inches of applied water in a single year.

The average CUagw on **Figure 5** from 2010 to 2020 is 2.26 ft/yr. On irrigated lands that entered the GWP (**Figure 4**), we calculated 1.97 ft/yr over the same time period. Accordingly, the average CUagw on land tracts that entered the GWP consume 87.2% ($1.97/2.26$) of the average of water consumed by all irrigation lands during the 11-year period from 2010 through 2020. Assuming some of the higher water consumption crops in the LRG did not enter the GWP, then less water consumption by the lands that did enter is expected, and compatible with the finding herein.

For interest, we also compared the average consumptive use of applied water between OpenET and the CFB for the period from 2010 through 2020 for all lands in EBID. The result is shown in Table 2.

Table 2. 11-year average CU of applied water (all lands in EBID).

Method	Average CU of Applied Water (2010 - 2020)		Total (ft/yr)
	Surface Water (ft/yr)	Groundwater + Soil Moisture (ft/yr)	
CFB	0.81	2.33	3.14
OpenET	0.67	2.26	2.93

Note on Soil moisture: The analysis herein estimates consumptive use of applied groundwater (irrigation) with inclusion of soil moisture. Groundwater is pumped and applied to the land when surface water, effective precipitation and residual soil moisture do not produce enough supply for the crop. Under a general concept that groundwater was applied to the irrigated land because soil moisture from other sources was predominantly consumed by the crop, then the residual soil moisture will tend to be associated with applied groundwater that is consumed, particularly during dry periods with less precipitation and less surface-water supply.

Observation

OpenET, in conjunction with a localized scaling factor developed by New Mexico (Allen, 2019), results in an estimate of irrigation water consumptive use in the LRG in NM that reasonably aligns with a comprehensive Spronk (2020) canal and farm budget (CFB) analysis. This indicates that OpenET is reasonable for estimating consumption of irrigation water use in the LRG to assess reductions in consumptive use associated with groundwater conservation. This Technical Memorandum documents the methodology used by New Mexico to quantify groundwater consumed by irrigated farm tracts in the Lower Rio Grande, New Mexico.

References

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[Intera] Jordan, D, 2019, Analysis of Irrigated Lands in the Rio Grande Valley from Caballo Reservoir in New Mexico to Fort Quitman, Texas: Texas v. New Mexico and Colorado, No. 141, Orig., U.S. Supreme Court.

OpenET, 2025, OpenET eeMETRIC Monthly Evapotranspiration v2.0:

https://developers.google.com/earth-engine/datasets/catalog/OpenET_EEMETRIC_CONUS_GRIDMET_MONTHLY_v2_0#citations

[Spronk] Expert Report of Gregory K. Sullivan, P.E. and Heidi M. Welsh: prepared for State of New Mexico, report dated (Revised July 15, 2020).

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Groundwater Settlement Agreement – Appendix D

Definition and Calculation of UVDR

The Upper Valley Diversion Ratio (UVDR) is a measure of Rio Grande Project (Project) delivery performance. UVDR is calculated using Equation 1:

$$UVDR = \frac{\left(\begin{array}{l} \text{Total Project Diversions above El Paso Gage} \\ + \text{Total Flow at the El Paso Gage} \\ + \text{Texas Mesilla DCMI Pumping in Excess of D2} \end{array} \right) - (\text{El Paso Carriage})}{\text{Project Release}} \quad (1)$$

Total Project Diversions above the El Paso Gage is the sum of measured diversions at all Project diversion points above the Rio Grande at El Paso stream gage (El Paso Gage) during a given calendar year in units of acre-feet. Total Project Diversions above the El Paso Gage includes all measured Project diversions above the El Paso Gage regardless of how those diversions are accounted for in Project accounting. Current Project diversion points above the El Paso Gage include:

- Arrey Canal
- Percha Lateral
- Leasburg Canal
- Clark and California Wasteways
- Del Rio Lateral
- Eastside Canal
- Westside Canal
- EBID River Pumps

Project diversions to canals and laterals are measured at metering stations located near the headings of each canal.¹ Metering stations are operated and maintained by EBID and EPCWID and reported to Reclamation. Project diversions by EBID river pumps are measured by flow meters operated and maintained by EBID and reported to Reclamation. Total Project Diversions above the El Paso Gage will be calculated based on the record of measured diversions jointly maintained by Reclamation, EBID, and EPCWID. If additional Project Diversion sites are established upstream of the El Paso Gage, diversions from those sites will be included in the UVDR calculation.

Total Flow at the El Paso Gage is the total measured streamflow at the El Paso Gage during a given calendar year in units of acre-feet. The El Paso Gage is operated and maintained by the U.S. Section of the International Boundary and Water Commission (US-IBWC). Total Flow at the El Paso Gage will be based on the streamflow record jointly developed with the US-IBWC using streamflow measurements made by Reclamation, EBID, EPCWID, and US-IBWC.

¹ Measured Project diversions exclude excess water diverted at canal headings and returned to the river above canal metering stations for sluicing or other purposes as part of normal operations.

Texas Mesilla DCMI Pumping in Excess of D2 is the total volume of groundwater pumping for domestic, commercial, municipal, and industrial (DCMI²) uses in the Texas Mesilla³ during a given calendar year in units of acre-feet minus the average annual DCMI groundwater pumping in the Texas Mesilla during the period 1951-1978 (D2 Period). The total volume of water of DCMI groundwater pumping includes pumping from municipal or utility wells, including the Canutillo Well Field, and from individual domestic wells, mutual domestic wells, and private commercial and industrial wells. DCMI groundwater pumping is either metered by individual well owners and reported to Texas, or estimated by Texas. New Mexico will obtain DCMI groundwater pumping from Texas for each year and provided it to Reclamation for use in calculating the UVDR. The average annual groundwater pumping during the D2 Period is 17,721 acre-feet.

El Paso Carriage is the volume of water intentionally diverted at Project diversion points in excess of normal operations during a given calendar year that is returned to the Rio Grande for subsequent diversion at downstream diversion points, in units of acre-feet. During the D2 Period, Reclamation determined that in dry years Project canals in the Rincon and Mesilla Valleys were more efficient than the river channel. During these periods, a portion of the water released from Caballo Dam for delivery to EPCWID and Mexico was diverted at Percha, Leasburg, and Mesilla Dams, conveyed through Project canals, and returned to the Rio Grande. This practice of diverting water in excess of normal operational diversions is referred to as El Paso Carriage. El Paso Carriage does not include sluicing at canal headings or operational spills (also referred to as operational waste) from Project canals under normal operations.

El Paso Carriage occurred in 17 out of 28 years during the D2 Period. El Paso Carriage has not occurred since the D2 Period. If El Paso Carriage occurs in the future, the volume of El Paso Carriage will be subtracted in calculating the UVDR as shown in Equation 1. Operational spills that occur under normal operations will not be considered in calculation of the UVDR.

Project Release is the total volume of water released from Caballo Dam in a given calendar year as measured at the Rio Grande below Caballo Dam stream gage (Caballo Gage) in units of acre-feet, excluding water spilled from Caballo Dam or released for flood control purposes. The Caballo Gage is operated and maintained by Reclamation. Project Release will be based on the daily flow record maintained by Reclamation.

Calculation of UVDR and UVDR3

The UVDR for each year will be calculated using Equation (1) and the datasets described above for that calendar year.

The UVDR3 will be calculated for each year using Equation (1) using the three-year total of each of the datasets described above in the numerator and in the denominator. The UVDR3 for year Y will be calculated based on the three-year sums over years Y, Y-1, and Y-2.

² DCMI groundwater pumping means pumping for domestic, commercial, municipal, and industrial uses and generally refers to all pumping that is not for irrigation use.

³ Texas Mesilla is the portion of the Mesilla Valley in Texas.

Consultation Process

If UVDR3 is below 0.79, or the Parties do not agree on the UVDR or UVDR3 calculations, then Reclamation may invoke the consultation process.

If the Parties do not agree on the UVDR or UVDR3 calculation, consultation will include review and evaluation of the data and calculations.

If UVDR3 is below 0.79, consultation will include review and analysis of relevant data and information to assess the cause(s) of UVDR3 falling below 0.79 and discussion of potential actions that New Mexico may take to bring the UVDR3 above 0.79. Relevant data and information include, but are not limited to:

- Surface water supply and distribution data, including metered Project flow data;
- Measured groundwater levels;
- Metered and estimated groundwater pumping;
- Projections of surface water supply;
- Measured climate data, including precipitation and temperature;
- Measured or estimated evapotranspiration; and
- Data and information pertaining to implementation of New Mexico's LRG Plan.

If UVDR falls below 0.79 in a year in which the Caballo Release was less than 200,000 AF, the Parties will consider whether the calculated UVDR reflects aquifer conditions or whether it reflects other factors, such as high evaporative loss or the timing and duration of Project releases. In considering potential actions that New Mexico may take to bring the UVDR3 above 0.79, the Parties will consider recent conditions as well as longer term trends and will consider Project Viability in New Mexico.

Upon conclusion of consultation, the Parties will prepare and finalize a joint memorandum summarizing the consultation. The memorandum will summarize the data, methods, and analyses used in the consultation; the Parties' final determination or disagreement regarding the calculations of UVDR and UVDR3; and the Parties' assessment of the cause(s) UVDR3 falling below 0.79 and any actions identified to bring UVDR3 above 0.79, if applicable.

Modification and Amendment

The Parties may modify or amend the data, methods, and procedures described in this appendix upon written consent of Reclamation and the New Mexico State Engineer, provided that any modification or amendment is consistent with the Groundwater Settlement Agreement.

Groundwater Settlement Agreement – Appendix E

Aquifer Storage Appendix

This appendix describes the data, methods, and procedures by which the United States, through the Bureau of Reclamation (Reclamation), and the State of New Mexico (collectively, Parties) will monitor annual changes in groundwater levels in the Aquifer and assess Aquifer Storage Loss for the purposes of the Groundwater Settlement Agreement.

1. Monitoring of Groundwater Levels

1.1 Selection of Indicator Wells

The parties will select Indicator Wells based on well location and screened interval. Indicator Wells must be distributed throughout the Aquifer, with one Indicator Well located in each of six subareas (Figure 1): Rincon Valley, Mesilla Valley - North of Las Cruces, Mesilla Valley - Las Cruces Area, Mesilla Valley - Mesquite Area, Mesilla Valley - South of Mesquite and West of the Rio Grande, and Mesilla Valley - South of Mesquite and East of the Rio Grande. Indicator Wells must be located within the boundary of the Elephant Butte Irrigation District (EBID), and with no known hydrologic flow barrier between the Indicator Well and the Rio Grande or nearby Rio Grande Project (Project) drains. Indicator Wells must be screened in the shallow portion of the Aquifer, with the screened interval below the current groundwater level and bottom of the screened interval no deeper than 125 feet below the land surface.

Candidate wells are listed in Table 1 and shown in Figure 1. The Parties may select Indicator Wells from the list of candidate wells in Table 1, may select other existing monitoring wells, may establish new monitoring wells, or a combination thereof.

Table 1: Candidate Wells

Subarea	Candidate Wells
Rincon Valley	NMISC RIN-02R NMISC RIN-03R
Mesilla Valley – North of Las Cruces	NMISC MES-17R NMISC MES-19R NMISC MES-20R NMISC MES-26R
Mesilla Valley – Las Cruces Area	USGS LC-3B / LC-3C NMISC MES-44R NMISC MES-45R NMISC MES-47R
Mesilla Valley – Mesquite Area	USGS M-4B / M-4C NMISC MES-13R NMISC MES-14R

	NMISC MES-46R
Mesilla Valley – South of Mesquite, West of Rio Grande	NMISC MES-09R NMISC MES-10R NMISC MES-25R
Mesilla Valley – South of Mesquite, East of Rio Grande	NMISC MES-03R NMISC MES-05R NMISC MES-06R

Upon selection of Indicator Wells, the Parties will jointly document well construction information and existing measured groundwater levels for each Indicator well, including but not limited to:

- Well location, including narrative description and geographic coordinates
- Elevation of ground surface at well head
- Elevation at top of well casing (measuring point)
- Drill date
- Well depth
- Well screen interval
- Drill log and well development data, if available
- Original depth to water, if available
- Measured groundwater levels (full available period of record)

1.2 Operation and Maintenance of Indicator Wells

The Parties will operate and maintain Indicator Wells to monitor groundwater levels in the Aquifer. Indicator Wells and associated instrumentation will be operated and maintained consistent with standard practices as described in the Groundwater Technical Procedures of the U.S. Geological Survey (USGS Techniques and Methods 1-A1, Cunningham and Schalk 2011).

The Parties will conduct at least one manual groundwater level measurement at each Indicator Well between January 1 and January 31 of each year. In addition, the Parties will equip each Indicator Well with an automated water level logger or comparable device to measure and record groundwater levels daily or more frequently. All groundwater level measurements, whether manual or automated, will be carried out consistent with the Groundwater Technical Procedures of the USGS.

The Parties will equip each Indicator Well with a telemetry system. Each telemetry system will transmit automated water level measurements to a central database in near real-time. The Parties will provide access to the central database through the internet.

1.3 Consultation Regarding Groundwater Monitoring

In the event that either Party identifies a potential issue with an Indicator Well or with a manual groundwater level measurement from an Indicator Well, the Parties will consult to assess the

issue and determine appropriate actions to resolve the issue. Consultation may include review of measured groundwater levels, field logs, and records of any repair, rehabilitation, modification, or other activity at the subject Indicator Well; comparison of measured groundwater levels at the subject Indicator Well with available measured groundwater levels at other monitoring wells in the vicinity; or additional analysis as needed to determine whether an issue has occurred and to identify appropriate action(s) to resolve the issue.

Potential issues with an Indicator Well include clogging by debris, corrosion, fouling, or sediment; groundwater levels falling below the bottom of the well screen such that the groundwater level cannot be accurately measured; or other conditions that impact the Indicator Well's ability to accurately monitor groundwater levels. Actions to resolve such issues may include repairing, rehabilitating, or replacing the affected Indicator Well. If the Parties determine that an Indicator Well must be replaced, replacement may be achieved by selecting an existing monitoring well or by establishing a new monitoring well. A replacement Indicator Well must be in the same subarea as the Indicator Well being replaced (see Figure 1) and must meet the location and depth requirements described in Section 1.1, above.

Potential issues with a groundwater level measurement include erroneous or improper measurement, measurement with an uncalibrated instrument, transcription error, or other errors that result in an inaccurate measurement. Actions to resolve such issues may include correcting the erroneous measurement based on other available data, using an alternative measurement from the affected Indicator Well, or using an alternative measurement from another suitable well in the vicinity of the affected Indicator Well.

Upon resolving an issue with an Indicator Well or groundwater level measurement, the Parties will jointly prepare a summary memorandum documenting the issue and how the issue was resolved.

2. Initial Evaluation of Aquifer Storage Loss

The Parties will conduct an Initial Evaluation of Aquifer Storage Loss (Initial Evaluation) each year based on change in measured groundwater levels at the five Indicator Wells in the Mesilla Valley. The Initial Evaluation will determine which of the following categories of Aquifer Storage Loss (ASL) applies for that year: (1) Potential ASL, (2) Inconclusive ASL, or (3) No ASL.

The Initial Evaluation will include four steps as described below in Sections 2.1-2.4.

2.1 Review of Measured Groundwater Levels

The Parties will review measured groundwater levels for each Indicator Well for the current year and three prior years, including manual and automated measurements and associated field logs, to assess potential inconsistencies, errors, or other issues with measured groundwater levels. Review will include an assessment of whether the groundwater level at any Indicator Well has

fallen below the bottom of the well screen. Review may include comparison of measured groundwater levels at Indicator Wells to available measured groundwater levels from other monitoring wells in the vicinity.

If either Party identifies a potential inconsistency, error, or other issue with an Indicator Well or measured groundwater level, the Parties will consult as described in Section 1.3, above.

2.2 Calculate Change in Groundwater Levels

The Parties will calculate the change in measured groundwater level at each Indicator Well in the Mesilla Valley over the three most recent calendar years. The three-year change in groundwater level will be calculated from the manual groundwater level measurements conducted per Section 1.2, above, including any correction to the manual groundwater level measurement applied per Section 1.3, above. The groundwater level measurement for each year will be the measurement taken in January of the following year. For example, the calculated three-year change in groundwater level for 2025 is the difference between the manual groundwater level measurements from January 2026 and January 2023.

The calculated three-year change in groundwater level at each Indicator Well will be interpreted as follows:

- If the measured groundwater level at a given Indicator Well falls by 2 feet or more over the three-year period, this will be interpreted as a decrease in Aquifer storage in the vicinity of that well.
- If the measured groundwater level at a given Indicator Well rises by 2 feet or more over the three-year period, this will be interpreted as a gain in Aquifer storage the vicinity of that well.
- If the measured groundwater level at a given Indicator Well changes by less than 2 feet over the three-year period, this will be interpreted as Aquifer stability (no change in Aquifer storage) in the vicinity of that well.

2.3 Assess Potential Aquifer Storage Loss and CAB3

The Parties will evaluate the change in measured groundwater levels at the Indicator Wells in the Mesilla Valley to determine which of three categories of Aquifer Storage Loss (ASL) applies for the current year:

- Potential ASL: If groundwater levels at four or more Mesilla Valley Indicator Wells exhibit a decrease in Aquifer storage, then the Initial Evaluation will conclude that Aquifer Storage Loss has potentially occurred.
- No ASL: If groundwater levels at four or more Mesilla Valley Indicator Wells exhibit Aquifer stability or a gain in Aquifer storage, then the Initial Evaluation will conclude that Aquifer Storage Loss has not occurred.
- Inconclusive ASL: Otherwise, the Initial Evaluation will be deemed inconclusive.

The Parties will calculate the three-year average of the annual release from Caballo Reservoir (CAB3) for three most recent calendar years based on the daily flow record for the Rio Grande Below Caballo Dam stream gage (Caballo Gage; USGS 08362500). For example, CAB3 for 2025 is the average of the annual releases from Caballo Reservoir in acre-feet, as measured at the Caballo Gage, for calendar years 2023, 2024, and 2025.

2.4 Document the Initial Evaluation and Conclusion

The Parties will prepare and finalize a joint summary memorandum of the Initial Evaluation. The summary memorandum will briefly summarize the review of measured groundwater levels, including any potential issues identified during the review (Section 2.1); the calculated three-year change in groundwater level at each Indicator Well, including the measured groundwater levels at the start and end of the three-year period and the interpretation of each calculated change (Section 2.2); and the assessment of Aquifer Storage Loss and calculated CAB3 (Section 2.3).

3.0 Consultation

If the Initial Evaluation concludes that there is Potential ASL and CAB3 is greater than 400,000 acre-feet, the Parties will begin the consultation process for Aquifer Storage Loss. Reclamation may also initiate the consultation process if the Initial Evaluation results in Inconclusive ASL and CAB3 is greater than 400,000 acre-feet, or if there is any dispute related to the Initial Evaluation and CAB3 is greater than 400,000 acre-feet. If the Initial Evaluation concludes that there is No ASL, there will be no consultation process.

The consultation process consists of two stages. The objective of the first stage is to determine whether Aquifer Storage Loss has occurred when CAB3 is greater than 400,000 acre-feet. The objectives of the second stage are to assess the cause(s) of current Aquifer Storage Loss and to discuss actions that New Mexico may take to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet, while considering Project Viability in New Mexico.

3.1 Stage 1: Determine Aquifer Storage Loss

Consultation to determine Aquifer Storage Loss (Stage 1) will consist of further analysis, as needed, to determine whether Aquifer Storage Loss has occurred. Stage 1 may involve review and analysis of measured groundwater levels at Indicator Wells, including manual and automated measurements; available measured groundwater levels at other monitoring wells in the Aquifer; and any additional available information related to groundwater levels or Aquifer storage over the period of interest. If the Parties agree based on the Initial Evaluation that Aquifer Storage Loss has occurred when CAB3 is greater than 400,000 acre-feet, the Parties will conclude Stage 1 and proceed to Stage 2 (Section 3.2). If following further analysis the Parties do not agree that Aquifer Storage Loss has occurred, the consultation is concluded.

3.2 Stage 2: Assess Causes and Discuss Actions

If Stage 1 determines that Aquifer Storage Loss has occurred when CAB3 is greater than 400,000 acre-feet, the Parties will proceed with consultation to assess the cause(s) of Aquifer Storage Loss and discuss actions that New Mexico may take to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet (Stage 2). Stage 2 may involve review and evaluation of the following data sources:

- Measured groundwater levels from Indicator Wells;
- Available measured groundwater levels from other wells;
- Metered flow data on Project releases, diversions, and drainage return flows;
- Metered streamflow in the Rio Grande, including metered flows at the Caballo Gage, El Paso Gage, and gages in between;
- Metered and estimated groundwater pumping, including pumping for irrigation and for domestic, commercial, municipal, and industrial (DCMI) uses; and
- Other data, information, or analyses related to groundwater levels and storage in the Aquifer.

In discussing actions, the Parties will consider recent conditions as well as longer term trends and will consider Project Viability in New Mexico.

3.3 Document the Consultation

Upon conclusion of consultation, the Parties will prepare and finalize a joint memorandum summarizing the consultation. The memorandum will summarize the data, methods, and analyses used in the consultation; the Parties' final determination or disagreement regarding whether Aquifer Storage Loss occurred when CAB3 was greater than 400,000 acre-feet; and the Parties' assessment of the cause(s) of Aquifer Storage Loss and any actions that New Mexico may take to achieve stable or gaining Aquifer conditions when CAB3 is greater than 400,000 acre-feet, if applicable.

Modification and Amendment

The Parties may modify or amend the data, methods, and procedures described in this appendix upon written consent of Reclamation and the New Mexico State Engineer, provided that any modification or amendment is consistent with the Groundwater Settlement Agreement.

References

Cunningham, W.L., and Schalk, C.W., comps., 2011, Groundwater technical procedures of the U.S. Geological Survey: U.S. Geological Survey Techniques and Methods 1–A1, 151 p.

Figure 1 - Aquifer Storage Loss Candidate Wells

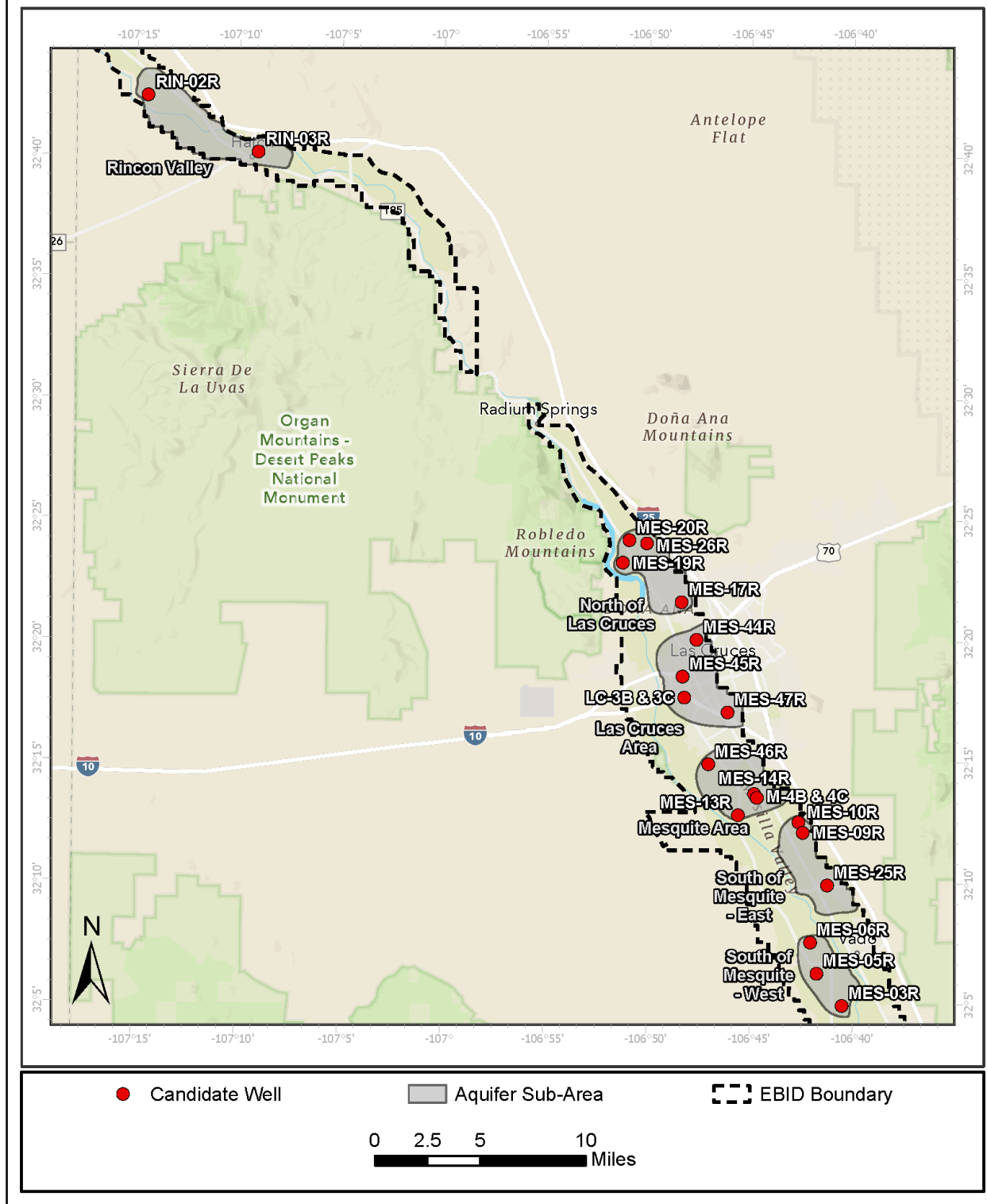


Figure 1: Map of Aquifer Subareas and Candidate Wells.

ATTACHMENT 9

Attorney General Opinions and Advisory Letters

Opinion No. 59-05

Collection: Attorney General Opinions and Advisory Letters

Date: 01/26/1959

File Number: 1959 Op. Att'y Gen. No. 59-05

Citations - New Mexico Appellate Reports

State ex rel. Bliss v. Dority - cited by 154 documents

Opinion No. 59-05

January 26, 1959

BY: FRANK B. ZINN, Attorney General

TO: S. E. Reynolds State Engineer P. O. Box 1079 Santa Fe, New Mexico

Authority of State Engineer to authorize drilling of a replacement well without notice within 200 feet of original well.

OPINION

{*10} Your letter seeking my opinion asked the following question:

Can the State Engineer allow a replacement well to be drilled within 200 feet of the original well without following the notice procedure as set forth in Section 7, N.M.S.A., 1953?

In my opinion the answer to your question is as follows:

No, Section 75-11-7 must be followed whenever there is any change in location of a well which comes within the jurisdiction of the State Engineer.

The opinion I have rendered is based upon the following analysis of applicable law.

By way of preface, we would call attention to the fact that Article 11 of Chapter 75 of the 1953 Compilation sets up a comprehensive system for the control of underground waters in New Mexico. State ex rel. Bliss v. Douth, 55 N.M. 12, 225 P. 2d 1007. In this case it further provided that the statute provides the exclusive method of acquiring rights from the underground sources named in the statute.

It is assumed, as indicated in your request, that the problem really arises only in cases of emergency. These emergencies generally occur in the midst of the growing season at which time there is an immediate need for instant action in order that the user can save his crops.

Section 75-11-7, N.M.S.A., 1953, reads as follows:

"The owner of a water right may change the location of his well or change the use of the water, but only upon application to the state engineer and upon showing that such change or changes will not impair existing rights and to be granted only after such advertisement and hearing as are prescribed in the case of original applications.

When the owner of a water right makes application or applications for a temporary change of not to exceed one year for not more than three acre-feet of water at a different location, or to a different use, or both, the state engineer shall make an investigation, and, if such change does not permanently impair any vested rights of others, he shall make an order authorizing the change. If he shall find that the change sought might impair such rights, he shall order advertisement and hearing in other cases."

Obviously, the requirement for publication in cases of change of location of the well creates the problem. After publication of the notice, the crops are past sale. The second paragraph of the law with reference to temporary change of location is not helpful because the change proposed really is not temporary but amounts to replacing of the well which was lost.

It is our understanding that in the past the State Engineer has allowed emergency replacement wells to be drilled within 200 feet of the original well which became defunct, and this has been done without notice by publication, the evident reasoning being that such replacement well within this 200 foot area is not a change of location {*11} and therefore no notice is required to be published. (State Engineer Order # 47, October 29, 1954)

We find no authority in the statutes for emergency replacement wells. In view of this fact, it seems that under the present posture of the underground water law the replacement well would in fact be a change of location and can only be accomplished by following the statutory procedure set forth in Section 75-11-7. We particularly call attention to the case of "In the Matter of the Application of M. T. Brown and C. V. Hoke, Protested by Chester E. Barnett, File P-795 v. M. T. Brown et al., No. 6435, N.M. , 332 P. 2d 475," which holds that Section 75-11-7 must be followed prior to a change of location of a well.

We would suggest that legislation should be introduced to take care of this problem inasmuch as there seems to be a need for a speedy means of providing emergency replacement well.

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