BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE APPLICATION BY CITY OF RIO RANCHO AND BOSQUE DEL SOL, LLC., FOR A PERMIT TO CHANGE PLACE AND PURPOSE OF USE AND CHANGE POINT OF DIVERSION FROM SURFACE WATER TO GROUNDWATER IN THE MIDDLE RIO GRANDE WATER BASIN IN THE STATE OF NEW MEXICO	)	HU Nos.: 17-015 & 17-016 OSE File Nos.: SD-08707 into RG-6745 et al. (RG-6745 et al. into SD-08707)-T

CITY OF RIO RANCHO'S AMENDED MOTION TO DISMISS OR FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO LIMIT ISSUES FOR HEARING

The City of Rio Rancho ("Rio Rancho" or the "City"), by and through its undersigned counsel, moves the Hearing Examiner for an order granting dismissal or summary judgment in favor of the City and dismissing the protests of Protestants Middle Rio Grande Conservancy District ("MRGCD"), Pueblo of Isleta ("Isleta"), Pueblo of Santa Ana ("Santa Ana"), Pueblo of Sandia ("Sandia"), Pueblo of San Felipe ("San Felipe"), WildEarth Guardians ("WEG"), and the United States Department of Interior ("DOI") (collectively "Protestants") to the City's Application, to the extent Protestants attempt to challenge the Application on grounds of impairment, public welfare, or the conservation of water; or, in the alternative, for an order limiting the issues to be properly considered in this matter. To the extent the protests are brought on any of these three bases, they represent an impermissible collateral attack on Rio Rancho's New Mexico Office of the State Engineer ("OSE") groundwater permit RG-6745 through RG-6745-S-34 ("Rio

Rancho Permit" or the "Permit").[1] This Amended Motion adds facts and arguments relevant to protestants who filed protests after republication of the Application.

The Rio Rancho Permit provides the City the right to divert up to 24,000 acre feet per year of groundwater, subject to the City's acquisition of valid, existing surface water rights from anywhere within the administratively defined Middle Rio Grande ("MRG"). The City's rights under the Rio Rancho Permit were granted in two separate proceedings: one in 1979 when the OSE approved the City's RG-6745, et al. permit and attendant right to divert 12,000 acre feet per year ("1979 Permit"); and one pursuant to a stipulated judgment wherein Rio Rancho received the right to divert an additional 12,000 acre feet per year ("2003 Judgment"). These rights are administered collectively as one permit—the Rio Rancho Permit. So long as Rio Rancho complies with the terms of the validly approved Permit, the City's implementation of the conditions of the Rio Rancho Permit and the exercise of its rights thereunder cannot constitute 1) an impairment to existing water rights, 2) contrary to water conservation, or 3) detrimental to the public welfare of the State. The validity or terms and conditions of the Rio Rancho Permit are not at issue in this proceeding, and the City does not seek to amend or modify the Permit. Rather, the Application at issue is for implementation of Permit conditions which were already found to ensure that exercise of the Permit inclusive of all conditions did not impair existing rights, and was not detrimental to the public welfare nor contrary to the conservation of water. Any challenge to the City's effort to implement the specific terms of its lawfully granted Permit, therefore, is not allowed in this proceeding.

[1] As this Motion seeks to dismiss, in part, the Protests, Protestants are assumed to oppose the Motion. Co-Applicant Bosque del Sol, LLC concurs in the Motion. The position of the Water Rights Division could not be ascertained prior to filing.

The exercise of the City's rights under its Rio Rancho Permit include the acquisition and transfer of valid, existing surface water rights from anywhere within the MRG, without limitation. The Application that is the subject of this proceeding is an implementation and exercise by the City of its rights under its Permit. Because the Rio Rancho Permit, and implementation of its collective terms, is premised on findings that the City's acquisition and transfer of valid existing surface water rights from anywhere within the MRG does not impair existing rights, and is not contrary to the conservation of water or detrimental to the public welfare, Protestants' current challenges to the Application are impermissible collateral attacks on settled issues. Accordingly, the protests should be dismissed, or summary judgment granted in favor of the City, to the extent the protests are premised on grounds of impairment, public welfare, or the conservation of water.[2] In the alternative, the Hearing Examiner should issue an order ruling that impairment, public welfare, and conservation of water are not in dispute and will not be considered at the hearing on the Application.

UNDISPUTED MATERIAL FACTS

1. On November 29, 1956, the State Engineer declared the Rio Grande Underground Water Basin ("Basin"). *See Order Declaring the Rio Grande Underground Water Basin*, S.E. Reynolds, Order No. 65, attached hereto as **Exhibit 1** ("1956 Order"). In the 1956 Order, the State Engineer recognized that the surface waters of the Rio Grande were fully appropriated and interconnected with underground water. *See id.* This Order adopted procedures for the appropriation of ground water within the Basin:

[2] While normally the validity of the water rights subject to the Application would be an issue, here, the validity of the rights the City seeks to transfer is also not an issue for re-litigation. The State Engineer determined that the water rights are valid in a prior permit issued after notice and hearing, as will be demonstrated in a later motion.

> Administrative procedures have been designed to provide for the fullest utilization of the abundant ground-water resources of the Rio Grande Basin that is possible without impairment of existing rights. Ground water appropriation will be permitted, provided that the immediate and potential effects on the flow of the Rio Grande are offset by the retirement of usage under existing surface rights. Thus, the availability of water to the remaining surface-water rights will be unchanged.

Memorandum: Declaration of the Rio Grande Underground Water Basin, S.E. Reynolds, 4-5, attached hereto as **Exhibit 2** ("1956 Memorandum"). Subsequently, all new appropriations of ground water or changes to existing ground water rights require a permit from the State Engineer, and any increased depletions to the surface flows are required to be offset by the retirement or transfer of existing surface water rights from within the Rio Grande Underground Water Basin. *See id.*

2. On July 13, 1979, Rio Rancho Estates, Inc., filed an Application for Permit No. RG-6745 thru RG-6745-S-19 et al., to appropriate ground water, attached hereto as **Exhibit 3** ("1979 Application"). The 1979 Application states, "Rio Rancho Estates, Inc. has acquired certain water rights and will acquire additional water rights or rights to water in the Rio Grande Underground Water Basin for retirement or dedication to offset effects that may occur on the Rio Grande as a result of pumping wells described in this application." *Id.*

3. Notice of the 1979 Application was duly published and the public had an opportunity to protest. *Id.* 2.

4. On October 26, 1979, the State Engineer approved the 1979 Application, and issued the 1979 Permit, Permit No. RG-6745 thru RG-6745-S-19 et al., authorizing the diversion of 12,000 acre feet per year. *Id.* The Conditions of Approval state in pertinent part, "With respect to any water right retired to offset the effects of diversion under this permit on the flow of the Rio Grande, the permittee shall file dedications of the right to exercise those rights, in a form satisfactory to the State Engineer." *Id.*

5. The 1979 Permit did not provide any geographical limitation regarding where the permittee could acquire surface water rights. *See id.*

6. On June 28, 1993, Rio Rancho Utilities Corporation, successor to Rio Rancho Estates, Inc.,[3] filed application No. RG-6745 through RG-6745-S-34 to increase its permitted appropriation from 12,000 acre feet per year, as granted by the 1979 Permit, to 24,000 acre feet per year ("1993 Application"). *See City of Rio Rancho v. Thomas C. Turney, P.E. et. al.*, Hearing No. 97-004, Judgment, 2 (filed Aug. 20, 2003) ("2003 Judgment"), attached hereto as **Exhibit 4**.

7. The 1993 Application stated, "Rio Rancho Utilities Corp. has acquired certain water rights and will acquire additional water rights or rights to water in the Rio Grande Underground Water Basin for retirement or dedication to offset effects that may occur as a result of pumping wells described in this application." *Id.* Finding of Fact ¶ 3.

8. Notice of the 1993 Application was duly published and timely protested by parties that included the Department of Interior and Sandia Pueblo. *See id.* 4.

9. The OSE approved the application and issued Permit No. RG-6745 thru RG-6745-S-34 to the City. *See id.*

10. The City appealed certain of the permit conditions imposed by the State Engineer. The United States, for itself and Sandia Pueblo, voluntarily was dismissed as a party to the appeal. After the remaining parties to the appeal participated in court-ordered mediation, the Thirteenth Judicial District Court entered the 2003 Judgment, granting the 1993 Application and approving findings of fact and conditions of approval that were agreed to in the mediation. *See id.* The 2003 Judgment approved negotiated pumping schedules and schedules to acquire surface water rights

[3] On August 21, 1996, the State Engineer accepted a Change of Ownership of Water Right filing for File No. RG-6745 through RG-67450-S-022, which changed the ownership from Rio Rancho Utilities Corporation to the City. *See* 2003 Judgment, Finding of Fact ¶ 6.

to offset the effect of the allowed groundwater diversions. *See id.* The 2003 Judgment was not appealed.

11. The 2003 Judgment found that "[t]he Applicant has demonstrated that it is preventing the waste of water and that it has a program in place to continue the prevention of waste." *Id.* Finding of Fact ¶ 21.

12. The 2003 Judgment found that "[t]he Applicant's water conservation goals promote the conservation of water within the State of New Mexico. *Id.* Finding of Fact ¶ 22.

13. The 2003 Judgement found that granting Rio Rancho's 1993 Application would benefit and promote the public health, safety, and welfare of the State. *Id.* Findings of Fact ¶¶ 25, 26, 27.

14. The drawdown limits in the 2003 Judgement ensured that groundwater diversions in the Middle Rio Grande Administrative Area ("MRGAA") do not impair existing water rights, were not contrary to the conservation of water within the State, and are not detrimental to the public welfare of the State of New Mexico. *Id.* Finding of Fact ¶ 34.

15. The 2003 Judgment found that:

> Since the declaration of the Rio Grande Underground Water Basin permittees of groundwater appropriations have been required to obtain valid water rights in an amount sufficient to offset the effects of their groundwater diversions on the surface flows of the Rio Grande stream system. This requirement protects the surface flows of the Rio Grande stream system from being depleted or reduced by groundwater diversions, thereby ***preventing impairment to existing water rights***.

Id. Finding of Fact ¶ 57 (emphasis added).

16. The 2003 Judgment found that "[o]ffsetting the effects of groundwater diversions on surface flows is critical to the conjunctive management of the water resources with the Rio Grande stream system and to ensure New Mexico's ability to meet its obligations under the Rio Grande Compact." *Id.* Finding of Fact ¶ 58.

17. The 2003 Judgement found that "[g]ranting of the Application, subject to conditions set forth below, would not impair existing water rights from the source, would not be contrary to conservation of water within the state and would not be detrimental to the public welfare of the state." *Id.* Finding of Fact ¶ 76.

18. The 2003 Judgement Conditions of Approval state:

> [1] The permittee shall file application(s) and obtain permit(s) from the State Engineer authorizing the transfer of an amount of valid consumptive use surface water rights equal to the amount of the groundwater diversions of 12,000 acre feet under this Permit less credit for return flows as approved by the State Engineer.
>
> [2] Under this Permit, the permittee shall acquire a minimum of 8,000 acre feet of consumptive use water rights during a fifty-five year planning period commencing in 2003.
>
> [3] Consumptive use water rights in the amount of 1,871.27 acre feet per annum already transferred to offset depletions to the Rio Grande under permittee's previous permit to divert 12,000 acre feet per annum are not included as part of the minimum 8,000 acre feet of water rights to be acquired during the planning period . . . .
>
> [4] The permittee's water right acquisition of a minimum of 8,000 acre feet of consumptive use during the fifty-five year planning period, when combined with credits approved for return-flow to the Rio Grande and/or for injection into the aquifer through a permitted groundwater storage and recovery project, is intended to equal the annual diversion of 12,000 acre feet of groundwater, subject to review at the end of the fifty-five year period.

Id. Conditions of Approval ¶ 3.

19. Under the 2003 Judgment Conditions of Approval, Rio Rancho is required to "acquire and transfer, or have acted upon by the State Engineer, 728 acre feet of additional consumptive use water rights, subject to adjustment by the State Engineer" for each accounting period. *Id.* ¶ 3.b.

20. Under the 2003 Judgment Conditions of Approval, Rio Rancho is required to offset "surface flow depletions to the Jemez River above the Zia Supply Canal point of diversion . . . through the transfer of Jemez River water rights within the first two accounting periods." *Id.* ¶ 3.d.

21. The 2003 Judgment (except with regards to the limitation to offsetting effects on the Jemez) did not provide any limitation to where existing surface water rights to be transferred to the City could be acquired. *Id.*

22. During the pendency of the 1993 Application, in September, 2000, the State Engineer adopted the Middle Rio Grande Administrative Area Guidelines for Review of Water Rights Applications ("Guidelines"). *See id.* Findings of Fact ¶ 36; Middle Rio Grande Administrative Area Guidelines for Review of Water Rights Applications, prepared by the Office of the New Mexico State Engineer (Sept. 13, 2000), attached hereto as **Exhibit 5**.

23. In the Introduction, the Guidelines state:

> Since the declaration of the Rio Grande Underground Water Basin, which includes the area now designated as the MRGAA, groundwater permittees have been required to obtain valid water rights in an amount sufficient to offset the effects of their diversions on the surface flows of the Rio Grande stream system. This requirement protects the surface flows of the Rio Grande stream system from being depleted or reduced by groundwater diversions.
>
> Offsetting the effects of groundwater diversions is critical to the conjunctive management of the water resources within the Rio Grande stream system.

Guidelines 2.

24. The Guidelines did not change the State Engineer policy, set forth in the 1956 Memorandum, of requiring groundwater permittees to acquire surface water rights to offset their diversions from anywhere within the MRG. Rather, going forward, the policy stated that "[a] permit to divert ground water shall be conditioned to limit the actual groundwater diversion to the valid consumptive use surface water rights held and designated for offset purposes by the permittee plus any State Engineer approved flow returned directly to the Rio Grande . . . ." *Id.* 4.

25. On December 29, 2016, Rio Rancho and Bosque Del Sol, LLC filed Application No. SD-08707 into RG-6745 *et al.* for a Permit to Change Point of Diversion, Place, and Purpose of Use from Surface to Groundwater within the Rio Grande Underground Water Basin of the State

of New Mexico ("Application"). *See* Application and Publication, attached hereto as **Exhibit 6**. In compliance with its Permit, Rio Rancho will retire surface water rights for purposes of offsetting effects on the MRG from the City's groundwater diversions. *See id.* No additional diversions or consumptive use is requested under the Application. The Application was republished to correct typographical errors in February, 2018. *See* February, 2018 Publication, attached hereto as **Exhibit 7**.

26. The Application does not seek to amend or modify the Rio Rancho Permit. *Id.*

27. MRGCD protested the Application, stating the Application is inconsistent with the public welfare of the State of New Mexico, is inconsistent with the conservation of water by the MRGCD, and will impair the MRGCD's water rights. *See* Protest, Tanya Scott to New Mexico Office of the State Engineer (Feb. 22, 2017, Feb. 9, 2018).

28. Isleta protested the Application, stating the Application is inconsistent with the public welfare of the State of New Mexico, is inconsistent with the conservation of water, and will impair Isleta's water rights. *See* Protest Letter, David C. Mielke to Tom Blaine (Feb. 24, 2017, Feb. 12, 2018).

29. Santa Ana protested the Application, stating that the Application is inconsistent with the public welfare of the State of New Mexico, is inconsistent with the conservation of water, and will impair Santa Ana's water rights. *See* Protest Letter, Veronique Richardson to Tom Blaine (Feb. 27, 2017, Feb. 12, 2018).

30. Sandia protested the Application, stating the Application is inconsistent with the public welfare of the State of New Mexico, is inconsistent with the conservation of water, and will impair Sandia's water rights. *See* Protest Letter, Malcolm Montoya to Tom Blaine (Feb. 24, 2017); Protest Letter, Gov. James Richard Bernal to Tom Blaine (Feb. 12, 2018).

31. San Felipe protested the Application, stating the Application is inconsistent with the public welfare of the State of New Mexico, is inconsistent with the conservation of water, and will impair existing water rights. *See* Protest Letter, Jane Marx to Tom Blaine (Feb. 12, 2018).

32. WEG protested the Application, stating the Application is inconsistent with the public welfare of the State of New Mexico and is inconsistent with the conservation of water. *See* Protest, Samantha Ruscavage-Barz to New Mexico Office of the State Engineer (Feb. 12, 2018).

33. The DOI protested the Application, stating the Application is inconsistent with the public welfare of the State of New Mexico, is inconsistent with the conservation of water, and will impair existing water rights. *See* Protest Letter, Jennifer Faler to Tom Blaine (Feb. 24, 2017).

LEGAL STANDARD

The Hearing Examiner has broad authority to manage these proceedings: "[A]n examiner appointed to hear any particular case shall have the power to regulate all proceedings before him and to perform acts and to take all measures necessary or proper for the efficient and orderly conduct of such hearing . . . ." NMSA 1978, § 72-2-12. This broad authority includes ruling on dispositive motions. *See* NMAC 19.25.2.13.A.3. Unless otherwise noted, the hearing must be consistent with the New Mexico Rules of Civil Procedure. *See* NMAC 19.25.2.16.A.

A motion to dismiss pursuant to Rule 1-012(B)(6) NMRA tests the legal sufficiency of a complaint. *See Thompson v. Montgomery & Andrews*, 1991-NMCA-086, ¶ 2, 112 N.M. 463. A motion to dismiss should be granted where it appears beyond doubt that a party can prove no set of facts which would entitle the party to relief. *See McCasland v. Prather*, 1978-NMCA-098, ¶ 4, 92 N.M. 192. The Hearing Examiner may consider certain documents outside the Application and the Protests, such as the 1979 Permit and the 2003 Judgment, and grant the motion to dismiss. *See Ruegsegger v. W. N.M. Univ. Bd. of Regents*, 2007-NMCA-030, ¶ 41, 141 N.M. 306 (in breach of

contract case, key documents "effectively merge into the pleadings and can be reviewed in deciding a motion to dismiss").

The Hearing Examiner may consider all exhibits and treat this motion as one for summary judgment on the issues of impairment, conservation, and public welfare. *See Sanchez v. Church of Scientology of Orange Cnty.*, 1993-NMSC-034, ¶ 16, 115 N.M. 660. Summary judgment is proper if "there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Rule 1-056(C) NMRA. The Undisputed Material Facts ("UMF") recited above demonstrate a grant of summary judgment in favor of Rio Rancho on the subject matter of this motion is appropriate.

ARGUMENT

The Hearing Examiner should dismiss or grant summary judgment on Protestants' protests to the extent the protests are an impermissible collateral attack on Rio Rancho's rights and obligations under the Rio Rancho Permit with respect to impairment of water rights, water conservation, or public welfare. There is no question the State Engineer had authority to require Rio Rancho to offset surface water rights as a condition to the Rio Rancho Permit, and to allow Rio Rancho to divert groundwater subject only to the conditions of the Permit. The 1979 Permit and 2003 Judgment are final agency determinations of Rio Rancho's rights and obligations under its Rio Rancho Permit, and establish that the City's subsequent implementation of the conditions of its Permit and the City's exercise of its rights under the Rio Rancho Permit do not impair to existing water rights, contrary to the conservation of water, or detrimental to the public welfare. The City does not seek to amend or modify its Permit; the current proceeding is an implementation and exercise of the City's prior, validly granted Permit. Protestants' challenge to that implementation and exercise is nothing other than an attack on the Permit itself. Accordingly,

Protestants' efforts to relitigate the terms and conditions of the Rio Rancho Permit on the grounds of impairment, public welfare, and conservation should be rejected. Moreover, if allowed to pursue such collateral attacks against Rio Rancho's Rio Rancho Permit, Protestants will impermissibly circumvent codified administrative procedures.

I. The pending Application complies with all conditions the State Engineer placed on the City's Permit, and are not subject to challenge in this proceeding.

The Rio Rancho Permit was issued and is premised on determinations that the appropriation of water under the Permit (inclusive of depletive effects on the Rio Grande and pursuant to the approved conditions for offsets) would not impair existing water rights, not be contrary to conservation of water, and not be detrimental to the public welfare of the state. The Rio Rancho Permit contains a number of conditions on the City's rights to divert and use groundwater. Relevant to this proceeding, the conditions require Rio Rancho to "file application(s) and obtain permit(s) from the State Engineer authorizing the transfer of an amount of valid consumptive use surface water rights equal to the amount of the groundwater diversions of 12,000 acre feet" and to "acquire a minimum of 8,000 acre feet of consumptive use water rights during a fifty-five year planning period commencing in 2003." UMF No. 18. There is no dispute the State Engineer has the power and jurisdiction to place conditions on ground water permits that require a permittee to acquire surface water rights in order to offset the permittee's groundwater diversions. *See City of Albuquerque v. S.E. Reynolds*, 1962-NMSC-173, ¶ 34, 71 N.M. 428 (holding the State Engineer, to ensure a permit did not cause impairment, had the authority to require "that surface rights be retired to the extent necessary to protect prior stream appropriators as a condition of the granting of an application to appropriate from the basin").

The City has the right to rely on its Permit which is a final agency action subject to prior adjudication. Rio Rancho's groundwater Permit is conditioned to protect existing surface water

rights by allowing Rio Rancho to transfer a specific amount of existing valid surface water rights from anywhere within the MRG. *See* UMF Nos. 15, 16, 17, 21. The Permit provides that as long as the rights to be transferred are valid, existing surface water rights, there will be no impairment, and such acquisition and transfer will not be contrary to the conservation of water or detrimental to the public welfare of the state. *See* UMF Nos. 15-17. Accordingly, the sole issue for determination in a subsequent application, such as this, to transfer water rights to satisfy this permit condition is whether the water rights at issue are in fact valid, existing surface water rights. *See* UMF Nos. 19, 20. A protest on any other ground should not be considered. The Rio Rancho Permit itself is not at issue in this proceeding. The instant Protests represent efforts to impose new and additional conditions on Rio Rancho's duly issued Permit. To allow these Protests to go forward represents an impermissible collateral attack on that Permit.

II. The Protestants have brought an impermissible collateral attack on the City's Rio Rancho Permit.

A collateral attack on a decision or judgment occurs when a party makes "an attempt to impeach the judgment by matters [outside of] the record, . . . [or] an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it." *Phoenix Funding, LLC v. Aurora Loan Servs., LLC*, 2017-NMSC-010, ¶ 32, 390 P.3d 174. Collateral attacks are, as a general rule, impermissible, although there are exceptions that do not apply here. *See id.* ¶¶ 36-38 (stating a collateral attack may be permissible in the case of fraud, accident, or mistake, or lack of jurisdiction). The collateral attack doctrine is equally applicable to administrative orders as to judicial judgments, and is an "eminently reasonable principle that parties may not use a collateral proceeding to end-run the procedural requirements governing appeals of administrative decisions." *United States v. Backlund*, 689 F.3d

986, 1000 (9th Cir. 2012); *see also* 73A C.J.S. Public Administrative Law and Procedure § 349 (collecting authorities).

When an administrative agency has made a ruling with respect to an administrative permit, that ruling may not be collaterally attacked in a separate proceeding. In *Grand Canyon Trust v. Public Service Co. of New Mexico*, the plaintiffs brought suit against Public Service Company of New Mexico ("PNM"), alleging that PNM violated the Clean Air Act ("CAA") by failing to obtain a federal preconstruction permit. 283 F. Supp. 2d 1249, 1251 (D.N.M. 2003). In a prior administrative proceeding, however, the Environmental Protection Agency ("EPA") had determined that PNM did not need a permit. *Id.* at 1251–52. The EPA's decision was a final agency action, as it completed the EPA's decision-making process and determined PNM's legal rights and obligations. *Id.* at 1252–53. The court ruled that the plaintiffs could not collaterally attack EPA's decision in a subsequent lawsuit against PNM because it would circumvent the administrative appeals process:

> In creating the judicial-review provisions of the CAA, Congress determined that review of an EPA final action should be had only in the appropriate circuit court, rather than at the district court level . . . . This Court may not allow Plaintiffs to circumvent the limited review process established by Congress, by entertaining Plaintiffs' claim that PNM should have obtained [the] permits despite EPA's decision to the contrary.

Id. at 1253–54 (*citing, inter alia, Chemical Weapons Working Group, Inc. v. U.S. Dept. of the Army*, 111 F.3d 1485, 1492 (10th Cir. 1997) (plaintiffs' claim was an impermissible collateral attack on a permitting decision made by an agency; allowing such attack would permit circumvention of limited judicial review provisions of federal statute involved)). *Grand Canyon Trust* applied the rule that a final agency decision cannot be collaterally attacked in a separate proceeding.

Two cases from the Ninth Circuit demonstrate the reasoning and purpose behind the rule that a party to an administrative proceeding cannot subsequently bring a collateral attack on an agency determination. In *United States v. Lowry*, the Ninth Circuit held that collateral review of an agency action was not available to a party to the administrative action in a subsequent lawsuit. 512 F.3d 1194 (9th Cir. 2008). The defendant, ten years earlier, had applied for and been denied an Indian land allotment. *Id.* at 1196-97. *Lowry* held that because the defendant declined to exercise her right to seek direct judicial review of the agency decision, she could not collaterally attack it in a subsequent criminal proceeding. *Id.* at 1203.

Similarly, in *Tur v. Federal Aviation Administration*, the Federal Aviation Administration ("FAA") revoked the plaintiff's airman's certificate, a decision that was affirmed on appeal within the agency. 104 F.3d 290, 291 (9th Cir. 1997). The plaintiff then commenced an action for monetary damages and rescission of a settlement agreement he had entered into with the FAA. *Id.* The Ninth Circuit held plaintiff's claims were "inescapably intertwined" with the merits of the revocation order and thus could not be collaterally attacked, because if the plaintiff's suit was allowed to proceed, it would require reconsideration of all evidence, credibility determinations, and the ultimate findings made by the agency decision maker. *Id.* at 292.

The instant application for transfer of surface water right to Rio Rancho is made pursuant to Rio Rancho's Permit. *See* UMF No. 25. Here, Rio Rancho does not seek to increase its rights of diversion or consumptive use of groundwater or make any other modification or amendment to its Permit. *See* UMF No. 26. The sole and express reason for the transfer is to comply with the conditions of the Rio Rancho Permit. *See* UMF Nos. 18, 19, 21, 25. Protestants, some of whom were parties to the 2003 Judgment proceedings, *see* UMF No. 10, challenge the merits of the Rio Rancho Permit condition requiring Rio Rancho to obtain valid, existing surface water rights to

offset the effect of groundwater diversions. These collateral attacks, if permitted to proceed, amount to a new adjudication of determinations of Rio Rancho's rights and obligations under the Rio Rancho Permit. *See* UMF Nos. 4, 11-17.

Protestants' challenges to the City's Application are impermissible collateral attacks on Rio Rancho's Permit conditions established by the 1979 Permit and by the 2003 Judgment. *See Tur*, 104 F.3d at 292. This is not a matter in which the terms and conditions of the Rio Rancho Permit are at issue, as the City does not seek to amend or modify its Permit in this proceeding; it seeks only to have its separate Application processed in compliance with the terms and conditions of the Rio Rancho Permit. Therefore, this proceeding is "inescapably intertwined" with the two prior rulings—the 1979 Permit and the 2003 Judgment—that set the terms and conditions of the Rio Rancho Permit. *Tur*, 104 F.3d at 292. The Protestants seek to unravel those terms and conditions by challenging the Application on the basis that allowance of the transfer under the Rio Rancho Permit's terms is unlawful and impairs existing rights, is contrary to the conservation of water, or detrimental to the public welfare despite prior determinations on those issues.

There are codified appeal procedures for OSE final actions. *See* 19.27.5.16 NMAC; 19.25.2.33 NMAC. In creating judicial review provisions of State Engineer decisions, the New Mexico Legislature determined that only the district court should review a State Engineer final action and a district court's decision can ultimately be appealed further within certain time limits. The Hearing Examiner cannot allow Protestants to circumvent that codified review process authorized by the New Mexico legislature to change the conditions of a permit for which Rio Rancho has relied upon in exercising its rights under the permit for almost four decades. *See Grand Canyon Trust*, 283 F. Supp. 2d at 1252-53.

Protestants, however, seek to do just that by challenging the terms and conditions of the Rio Rancho Permit in this transfer application proceeding. Because the Protestants forwent protest and timely appeal of the 1979 Permit and 2003 Judgment, they cannot now challenge those decisions that allow Rio Rancho to obtain valid, existing surface water rights from within the Middle Rio Grande in order to offset depletions resulting from groundwater diversions. *See Phoenix Funding*, 2017-NMSC-010, ¶ 32; *Lowry*, 512 F.3d at 1203; *Chemical Weapons*, 111 F.3d at 1492; *Grand Canyon Trust*, 283 F. Supp. 2d at 1253-54. The 1979 Permit was a final agency action, and the 2003 Judgment was a final judgment of a district court. The proceedings were properly noticed, *see* UMF Nos. 3, 8, and the public, including Protestants, had the opportunity to participate and challenge the permit conditions proposed; indeed, certain of the Protestants (Sandia and the DOI) did participate in the proceedings on the 1993 Application. *See* UMF Nos. 8, 10. The 2003 Judgment was adjudicated on appeal to the District Court, and was not appealed further. *See* UMF No. 10. The 1979 Permit and 2003 Judgment completed the OSE decision making process, resulting in the Rio Rancho Permit, and determined Rio Rancho's legal rights and obligations, and thus are final actions that cannot be collaterally challenged in this proceeding. *See Grand Canyon Trust*, 283 F. Supp. 2d at 1252–53. A party cannot collaterally attack a decision they chose to forgo appealing, and the Protestants here had the opportunity to participate in the proceedings that resulted in the 1979 Permit, and the proceedings on the 1993 Application that was approved in the 2003 Judgment. Allowing them the opportunity to challenge the Rio Rancho Permit here by challenging a fundamental permit condition is impermissible.

Protestants may point to Attorney General Opinion No. 94-07 (Dec. 23, 1994) ("1994 A.G. Opinion") to argue their challenges to the Application are not impermissible collateral attacks on the Rio Rancho Permit. In that Opinion, the Attorney General opined that the State Engineer's

dedication and retirement practices were contrary to law as they did not provide for consideration of public welfare, water conservation, or impairment. Any reliance on the 1994 A.G. Opinion, however, is misplaced. The Application here is not one for a dedication and retirement; it is for a transfer of rights pursuant to requirements of the Rio Rancho Permit and the 2000 Guidelines. In approving the Rio Rancho Permit, the OSE fully considered public welfare, water conservation, and any potential impairment to existing water rights with regard to the transfer of valid, existing surface water rights in specified amounts sufficient to fully offset the effects of allowed groundwater diversions. Accordingly, these issues were fully considered and not open to relitigation here. While Protestants can raise issue regarding the validity of the rights proposed for transfer, they cannot now collaterally attack the prior determinations regarding how the City can offset those diversions as that determination was made in prior proceedings.

The Rio Rancho Permit directs the City comply with certain conditions, and the City's acts in compliance with the Permit 1) do not impair existing water rights; 2) are not contrary to water conservation; and 3) are not detrimental to the public welfare of the State. *See* UMF Nos. 15-21. The acquisition of offset surface water rights (so long as those are valid and existing) pursuant to the Rio Rancho Permit has already been adjudicated and found not to be detrimental to existing water rights, water conservation, or the public welfare; thus, the Protestants cannot challenge that finding on those grounds by challenging a subsequent surface water right transfer made pursuant to the Rio Rancho Permit.

Moreover, the conditions set forth in the Rio Rancho Permit are consistent with the OSE's 1956 Memorandum and 2000 Guidelines. The 1956 Memorandum declared surface water right acquisitions to offset the effects of groundwater withdraws were "designed to provide for the fullest utilization of the abundant ground-water resources of the Rio Grande Basin that is possible

without impairment of existing rights." *See* UMF No. 1 and Exh. 5, 4. The OSE found that this policy promoted conservation and was in the public's interest. *See id.* 5 ("This scheduled retirement of the use surface rights will allow municipalities and industries to appropriate ground-water without impairment of existing rights and *with the smallest possible disturbance to the agricultural economy of the valley.*"). The OSE placed no limitations on the acquisition of surface rights provided such surface rights were valid, existing rights. The State Engineer further developed and solidified this policy in its 2000 Guidelines. *See* UMF Nos. 23, 24. To allow a collateral attack on the Rio Rancho Permit now interferes with the plain terms of the Permit with final orders of the OSE issued pursuant to lawful well-established regulation and policy.

The Protestants challenges to the Application on the grounds of impairment, conservation, and public welfare are not arguments for why the Application should not be granted. They are impermissible collateral attacks on the Rio Rancho Permit, and should be rejected at this stage of the proceedings.

CONCLUSION

For the foregoing reasons, Rio Rancho requests the Hearing Examiner dismiss or grant summary judgment on the Protests to the extent they are premised on impairment of existing water rights, that the Application is contrary to the conservation of water, or that the Application is detrimental to the public welfare, because the Protests are impermissible collateral attacks on Rio Rancho's Rio Rancho Permit. Alternatively, Rio Rancho asks the Hearing Examiner to issue an order ruling that the issues of impairment of existing water rights, conservation of water, or detriment to the public welfare of the State are not in dispute and will not be considered at the hearing on the Application.

Respectfully submitted,

MODRALL SPERLING ROEHL HARRIS
& SISK, P.A.

By: _____

Maria O'Brien
Sarah M. Stevenson
Counsel for the City of Rio Rancho
P.O. Box 2168
Albuquerque, New Mexico 87103-2168
Telephone: (505) 848-1800
Fax: (505) 848-9710

BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE APPLICATION BY CITY OF RIO RANCHO AND BOSQUE DEL SOL, LLC., FOR A PERMIT TO CHANGE PLACE AND PURPOSE OF USE AND CHANGE POINT OF DIVERSION FROM SURFACE WATER TO GROUNDWATER IN THE MIDDLE RIO GRANDE WATER BASIN IN THE STATE OF NEW MEXICO	HU Nos.: 17-015 & 17-016 OSE File Nos.: SD-08707 into RG-6745 et al. (RG-6745 et al. into SD-08707)-T

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **City of Rio Rancho's Amended Motion to Dismiss or for Summary Judgment or, in the alternative, Motion to Limit Issues for Hearing** was sent by electronic mail to the following parties entitled to notice on the 19th day of March, 2018.

WATER RIGHTS DIVISION

Paul D. Bossert, Esq.
Administrative Litigation Unit
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6168; Fax (505) 476-7408
Paul.Bossert@state.nm.us
Attorney for the Water Rights Division

ABRAMOWITZ, FRANKS & OLSEN, LLC
C/O Brett J. Olsen
Post Office Box 1983
Fort Collins, CO 80522-1983
505-247-9011
bjo@naturalresourcelaw.net
Co- Counsel for Water Rights Division

CO-APPLICANT

Tessa T. Davidson
Davidson Law Firm, LLC
P.O. Box 2240
Corrales, NM 87048
(505) 792-3836
Ttd@tessadavidson.com
Attorney for Bosque Del Sol, LLC

PROTESTANT

Charles T. DuMars
Tanya L. Scott
Law & Resource Planning Associates, PC
Albuquerque Plaza
201 3rd Street NW, Suite 1750
Albuquerque, NM 87102
(505) 346-0998
ctd@lrpa-usa.com
tls@lrpa-usa.com
Attorneys for Protestant The Middle Rio Grande Conservancy District

David C. Mielke
Sonosky, Chambers, Sachse, Mielke & Brownell, LLP
500 Marquette Avenue, NW
Suite 660
Albuquerque, NM 87102
(505) 247 – 0147
dmielke@abqsonosky.com
Attorney for Pueblo of Isleta

Veronique Richardson
Barnhouse Keegan Solimon & West, LLP
7424 4th Street, NW
Los Ranchos de Albuquerque, NM 87107
(505) 842-6123
vrichardson@indiancountrylaw.com
Attorney for Pueblo of Santa Ana

Jessica Aberly
Aberly Law Firm
2222 Uptown Loop, N.E., #3209
Albuquerque, NM 87110
(505) 977-2273
aberlylaw@swcp.com
Attorney for Pueblo of Sandia

Samantha Ruscavage-Barz
WildEarth Guardians
516 Alto St.
Santa Fe, NM 87501
sruscavagebarz@wildearthguardians.org
Attorney for WildEarth Guardians

Joshua Mann, Esq.
United States Department of the Interior
Bureau of Reclamation
505 Marquette Ave., Suite 1800
Albuquerque, NM 87102
(505) 248-5623
joshua.mann@sol.doi.gov
Counsel for United States Department of the Interior, Bureau of Reclamation

Jane Marx, Attorney At Law, P.C.
Jane Marx
2825 Candelaria Rd. NW
Albuquerque, NM 87107
janemarx@earthlink.net
Attorney for Pueblo of San Felipe

MODRALL SPERLING ROEHL HARRIS & SISK, P.A.

Sarah M. Stevenson

FORTY-THIRD BIENNIAL REPORT

of the

STATE ENGINEER

of

NEW MEXICO

For the 45th and 46th Fiscal Years

July 1, 1956, to June 30, 1958

S. E. REYNOLDS
State Engineer
Santa Fe, New Mexico

in the river for many years, as the time required for the reduction to show up in the surface flow increases greatly as the distance of a well from the river is increased. Conversely, studies also show that if ground-water withdrawals are made over a period of time and then terminated, effects on the surface flows continue—slowly diminishing —for many years.

With these facts in mind, administrative procedures have been designed to provide for the fullest utilization of the valley's abundant ground-water resources that can be attained without impairment of existing rights. Appropriation of ground water is still permitted, provided that the immediate and potential effect on the flow of the river is offset by the retirement of usage under existing rights. In this way, the availability of water to the remaining surface-water rights will remain unchanged.

In compensating for ground-water appropriations, retirement of existing surface-water rights is scaled not to the size of the initial diversion but to the cumulative effect of such diversion on the river. For example, if a new well were to be constructed in the east mesa area of Albuquerque, 5 miles from the river, and if the appropriation were to be for 1,000 acre-feet of water a year for a use having 40 percent direct return flow to the river, the appropriator would not find it necessary to acquire and retire full equivalent surface rights at once. Rather, his schedule of surface-right retirement would be approximately as follows:

1st year	90 acre-feet
5th year	210 acre-feet
10th year	290 acre-feet
15th year	370 acre-feet
20th year	420 acre-feet
25th year	460 acre-feet
30th year	500 acre-feet

Later, additional retirements would be required so that at all times the total irrigation water retired would fully offset the effect of the ground-water withdrawals on the river.

The pro rata schedule of retirement of use now permitted under surface rights allows municipalities and industries to appropriate ground water without infringing upon existing rights and with the smallest possible disturbance to the agricultural economy of the valley. Also, total water usage in the valley can be materially increased for a number of decades by mining a portion of the vast amount of ground water which is in storage in the aquifers—the rate of usage

eventually stabilizing at approximately the present rate of consumption of both surface and ground water. Furthermore, this increased usage can be accomplished without damage to existing rights.

One of the most important aspects of declaring the Rio Grande Underground Water Basin is that it will encourage industrial development in the valley by providing procedures whereby industries can acquire valid and protected water rights upon which to base their investments.

Development of ground water to supplement existing surface-water rights also is permitted. Supplemental wells will take water from the ground-water reservoir at times when surface water is limited, and the ground-water reservoir will be recharged when the surface supply again becomes plentiful.

Changes in point of diversion, method of diversion (from surface water to ground water), place of use, and method of use (from agricultural to municipal or industrial) are all permitted, provided such changes do not impair other rights. Permits to appropriate up to 3 acre-feet per annum are granted for livestock and domestic purposes. In addition permits may be granted for use not to exceed 3 acre-feet of water for a definite period of not to exceed 1 year in prospecting, mining, or drilling operations, designed to discover or develop the natural mineral resources of the State.

The State Engineer order creating the Rio Grande Underground Water Basin is reproduced in its entirety below.

STATE OF NEW MEXICO)
) Order No. 65
OFFICE OF STATE ENGINEER)

ORDER DECLARING THE
RIO GRANDE UNDERGROUND WATER BASIN

WHEREAS, the waters of underground streams, channels, artesian basins, reservoirs, or lakes, having reasonably ascertainable boundaries, are public waters and are subject to appropriation for beneficial use, and

WHEREAS, all natural waters flowing in streams and water-courses, whether such be perennial or torrential, within the State of New Mexico, belong to the public and are subject to appropriation for beneficial use, and

WHEREAS, the State Engineer has determined from scientific investigation that an underground basin exists in the Rio Grande Valley, the area and boundaries of which basin are reasonably ascertainable, and

WHEREAS, the waters of said basin are interrelated with the flow of the Rio Grande Stream System, so that such underground waters are a substantial source of the flow of said stream system, and

WHEREAS, the waters of the Rio Grande Stream System are fully appropriated,

NOW, THEREFORE, IT IS HEREBY DECLARED that the lands described hereinafter comprise an underground water basin, to be known as the RIO GRANDE UNDERGROUND WATER BASIN, subject to the New Mexico statutes, and the rules and regulations of the State Engineer:

Beginning at a point where the New Mexico-Colorado State Line intersects Longitude 105° 30′ West; thence south along Longitude 105° 30′ West to its intersection with Latitude 36° 54′ North; thence west along Latitude 36° 54′ North to its intersection with Longitude 105° 33′ West; thence south along Longitude 105° 33′ West to its intersection with the Carson National Forest Boundary; thence south along the Carson National Forest Boundary to the southeast corner of Section 33, Township 30 North, Range 13 East; thence west along section line to the southeast corner of Section 32, Township 30 North, Range 13 East; thence south along section lines to the southeast corner of Section 20, Township 29 North, Range 13 East; thence southwest along the Carson National Forest Boundary to the northeast corner of Section 6, Township 28 North, Range 13 East; thence south along section lines to the southeast corner of Section 30, Township 28 North, Range 13 East; thence west along section line to the southwest corner of Section 30, Township 28 North, Range 13 East; thence south along range line to its intersection with the north boundary of the Arroyo Hondo Grant; thence northeast along the north boundary of the Arroyo Hondo Grant to the northeast corner of said Grant; thence south along the east boundary of the Arroyo Hondo Grant to its intersection with the Carson National Forest Boundary; thence south and east along the Carson National Forest Boundary to its intersection with Longitude 105° 30′ West; thence south along Longitude 105° 30′ West to its intersection with Latitude 36° 20′ North; thence west along Latitude 36° 20′ North to its intersection with the west boundary of the Cristobal De La Serna Grant; thence southwest along the west boundary of the Cristobal De La Serna Grant to its intersection with the north section line of Section 32, Township 24 North, Range 12 East; thence west along section lines to the southeast corner of Section 27, Township 24 North, Range 11 East; thence south along section line to the southeast corner of Section 34, Township 24 North, Range 11 East; thence west along township line to the southeast corner of Section 32, Township 24 North, Range 11 East; thence south along section line to the southeast corner of Section 5, Township 23 North, Range 11 East; thence west along section line to the southeast corner of Section 6, Township 23 North, Range 11 East; thence south along section line to the southeast corner of Section 7, Township 23 North, Range 11 East; thence west along section line to the southeast corner of Section 12, Township 23 North, Range 10 East; thence south along range line to its intersection with the north boundary of the Sebastian Martin Grant; thence west along the north boundary of the Sebastian Martin Grant to its intersection with Longitude 105° 56′ West; thence south along Longitude 105° 56′ West to its intersection with the north boundary of Township 21 North, Range 9 East; thence east along township line to the northeast corner of Section 1, Township 21 North, Range 9 East; thence south along range line to the northeast corner of Section 25, Township 21 North, Range 9 East; thence east along section lines to the intersection with the west boundary of the Nuestra Senora Del Rosario San Fernando Santiago Grant; thence south along the west boundary of the Nuestra Senora Del Rosario San Fernando Santiago Grant to the northeast corner of Section 4, Township 20 North, Range 10 East; thence south along section lines to the intersection with the north boundary of the Santo Domingo De Cundiyo Grant; thence northeast along the boundary of the Santo Domingo De Cundiyo Grant to the northeast corner of said Grant; thence south along the boundary of the Santo Domingo De Cundiyo Grant to the southeast corner of said Grant; thence northwest along the boundary of the Santo Domingo De Cundiyo Grant to its intersection with the east section line of Section 28, Township 20 North, Range 10 East; thence south along section lines to the southeast corner of Section 33, Township 19 North, Range 10 East; thence west along section line to the northeast corner of Section 5, Township 18 North, Range 10 East; thence south along section lines to the intersection with the north boundary of the Juan De Gabaldon Grant; thence south to a point being the intersection of the east section line of Section 5, Township 17 North, Range 10 East and the south boundary of the Juan De Gabaldon Grant; thence south along section lines to the northeast corner of the City of Santa Fe Grant; thence south along the east boundary of the City of Santa Fe Grant to the southeast corner of said Grant; thence west along the south boundary of the City of Santa Fe Grant to its intersection with the west boundary of Sebastian De Vargas Grant; thence south along the west boundary of the Sebastian De Vargas Grant to its intersection with the south boundary of Township 16 North, Range 9 East; thence west along township line to the southeast corner of Section 32, Township 16 North, Range 9 East; thence south along section lines to the southeast corner of Section 32, Township 15 North, Range 9 East; thence west along township line to the northeast corner of Section 4, Township 14 North, Range 6 East; thence south along section lines to the southeast corner of Section 16, Township 14 North, Range 6 East; thence west along section lines to the southwest corner of Section 18, Township 14 North, Range 6 East; thence south along range line to the southeast corner of Section 12, Township 13 North, Range 5 East; thence west along section line to its intersection with the north boundary of the Town of Tejon Grant; thence west along the north boundary of the Town of Tejon Grant to the northwest corner of said Grant; thence south along the west boundary of the Town of Tejon Grant to its intersection with the north boundary of the San Antonio De Las Huertas Grant; thence west along the north boundary of the San Antonio De Las Huertas Grant to the northwest corner of said Grant; thence south along the west boundary of the San Antonio De Las Huertas Grant to its intersection with the south boundary of Township 13 North, Range 5 East; thence west along township line to the northeast corner of Section 1, Township 12 North, Range 4 East; thence south along range line to the southeast corner of Section 36, Township 12 North, Range 4 East; thence west along township line to the northeast corner of Section 2, Township 11 North, Range 4 East; thence south along section lines to the intersection with the north boundary of the Elena Gallegos Grant; thence east along the north boundary of the Elena Gallegos Grant to the northeast corner of said Grant; thence south along the east boundary of the Elena Gallegos Grant to the southeast corner of said Grant; thence west along the south boundary of the Elena Gallegos Grant to its intersection with the east boundary of Township 11 North, Range 4 East; thence south along range line to its intersection with the boundary of Valencia and Torrance Counties; thence south along the boundary between Valencia and Torrance Counties to its intersection with the south boundary of the Lo De Padilla Grant; thence west along the south boundary of the Lo De Padilla Grant to the northeast corner of Section 29, Township 7 North, Range 4 East; thence south along section lines to the intersection with the northern boundary of the Tome Claim; thence west along the northern boundary of the Tome Claim

to its intersection with Longitude 106° 35′ West; thence south along Longitude 106° 35′ West to its intersection with the south boundary of the Tome Claim; thence west along the south boundary of the Tome Claim to its intersection with Longitude 106° 37′ West; thence south along Longitude 106° 37′ West to its intersection with Latitude 34° 20′ North; thence west along Latitude 34° 20′ North to its intersection with Longitude 106° 45′ West; thence south along Longitude 106° 45′ West to its intersection with the south boundary of Township 1 South, Range 2 East; thence west along township line to the northeast corner of Section 1, Township 2 South, Range 1 East; thence south along range line to its intersection with the north boundary of the Bosque Del Apache Migratory Waterfowl Refuge; thence east along the north boundary of the Bosque Del Apache Migratory Waterfowl Refuge to the northeast corner of said Refuge; thence southwest along the east and south boundary of the Bosque Del Apache Migratory Waterfowl Refuge to the intersection with the east boundary of the Pedro Armendariz Grant No. 33; thence southeast along the east boundary of the Pedro Armendariz Grant No. 33 to its intersection with Latitude 33° 40′ North; thence west along Latitude 33° 40′ North to its intersection with Longitude 106° 56′ West; thence south along Longitude 106° 56′ West to its intersection with Latitude 33° 35′ North; thence west along Latitude 33° 35′ North to its intersection with Longitude 107° 00′ West; thence south along Longitude 107° 00′ West to its intersection with the boundary of Socorro and Sierra Counties; thence west along the boundary between Socorro and Sierra Counties to the west bank of the Rio Grande; thence south along the west bank of the Rio Grande to its intersection with the east section line of Section 34, Township 13 South, Range 4 West; thence north along section lines to the southeast corner of Section 22, Township 13 South, Range 4 West; thence west along section lines to the southwest corner of Section 19, Township 13 South, Range 4 West; thence north along range line to the northwest corner of Section 6, Township 11 South, Range 4 West; thence east along township line to the southwest corner of Section 34, Township 10 South, Range 4 West; thence north along section lines to the northwest corner of Section 3, Township 9 South, Range 4 West; thence east along township line to the southwest corner of Section 31, Township 8 South, Range 3 West; thence north along range line to the northwest corner of Section 19, Township 8 South, Range 3 West; thence east along section lines to the northwest corner of Section 22, Township 8 South, Range 3 West; thence north along section lines to the northwest corner of Section 3, Township 8 South, Range 3 West; thence east along township line to the southwest corner of Section 36, Township 7 South, Range 3 West; thence north along section lines to the intersection with Latitude 33° 45′ North; thence east along Latitude 33° 45′ North to its intersection with Longitude 107° 00′ West; thence north along Longitude 107° 00′ West to its intersection with the north boundary of the Pedro Armendariz Grant No. 34; thence east along the north boundary of the Pedro Armendariz Grant No. 34 to its intersection with the west boundary of Township 5 South, Range 1 West; thence north along range line to its intersection with the south boundary of the Sevilleta Grant; thence west along the South boundary of the Sevilleta Grant to its intersection with Longitude 107° 00′ West; thence north along Longitude 107° 00′ West to the north boundary of the Sevilleta Grant; thence east along the north boundary of the Sevilleta Grant to the west boundary of Township 2 North, Range 1 West; thence north along range line to the southeast corner of Section 36, Township 6 North, Range 2 West; thence west along township line to the southwest corner of Section 34, Township 6 North, Range 2 West; thence north along section lines to the southwest corner of Section 34, Township 7 North, Range 2 West; thence west along township line to the southwest corner of Section 35, Township 7 North, Range 3 West; thence north along section line to its intersection with the boundary of the Antonio Sedillo Grant; thence north along the west boundary of the Antonio Sedillo Grant to the northwest corner of said Grant; thence east along the north boundary of the Antonio Sedillo Grant to its intersection with the west boundary of Township 9 North, Range 1 West; thence north along range line to its intersection with the south boundary of the Bernabe M. Montano Grant; thence east along the south boundary of the Bernabe M. Montano Grant to the southeast corner of said Grant; thence north along the east boundary of the Bernabe M. Montano Grant to its intersection with the north boundary of Township 11 North, Range 1 West; thence east along township line to the southwest corner of Section 31, Township 12 North, Range 1 East; thence north along range line to the northwest corner of Section 6, Township 12 North, Range 1 East; thence east along township line to its intersection with the west boundary of the Town of Alameda Grant; thence north along the west boundary of the Town of Alameda Grant to the northwest corner of said Grant; thence east along the north boundary of the Town of Alameda Grant to its intersection with the west boundary of Township 13 North, Range 2 East; thence north along range line to the northwest corner of Section 6, Township 13 North, Range 2 East; thence east along township line to the southwest corner of Section 31, Township 14 North, Range 3 East; thence north along range line to the northwest corner of Section 6, Township 14 North, Range 3 East; thence east along township line to the southwest corner of Section 31, Township 15 North, Range 5 East; thence north along range line to the northwest corner of Section 19, Township 16 North, Range 5 East; thence east along section lines to the intersection with the west boundary of the Pueblo Cochiti Grant; thence north along the west boundary of the Pueblo Cochiti Grant to the northwest corner of said Grant; thence east along the north boundary of the Pueblo Cochiti Grant to its intersection with the west boundary of Township 17 North, Range 6 East; thence north to the southwest corner of the Bandelier National Monument; thence north along the Santa Fe National Forest Boundary to its intersection with the west boundary of Township 19 North, Range 6 East; thence north along range line to its intersection with the Santa Fe National Forest Boundary; thence northeast along the Santa Fe National Forest Boundary to its intersection with Longitude 106° 15′ West; thence north along Longitude 106° 15′ West to its intersection with Latitude 36° 10′ North; thence west along Latitude 36° 10′ North to its intersection with the west boundary of the Juan Jose Lobato Grant; thence north along the west boundary of the Juan Jose Lobato Grant to its intersection with Latitude 36° 15′ North; thence east along Latitude 36° 15′ North to its intersection with Longitude 106° 15′ West; thence north along Longitude 106° 15′ West to its intersection with the north boundary of the Juan Jose Lobato Grant; thence east along the north boundary of the Juan Jose Lobato Grant to the northeast corner of said Grant; thence south along the east boundary of the Juan Jose Lobato Grant to its intersection with the north boundary of Township 24 North, Range 7 East; thence east along township line to its intersection with the east bank of the Rio Grande; thence north along the east bank of the Rio Grande to its intersection with the New Mexico-Colorado State Line;

thence east along the New Mexico-Colorado State Line to its intersection with Longitude 105° 30′ West being the point of beginning.

WITNESS my hand and the official seal of my office this 29th day of November, A. D., 1956.

/s/ S. E. Reynolds

S. E. Reynolds
State Engineer

GROUND-WATER INSTRUMENTS PROCESSED

During the biennial period a total of 17,099 instruments pertaining to ground water were processed by the Water Rights Division. A breakdown is shown on table 1.

The division continues to strive for increased efficiency in administration of water rights and related functions. The district supervisors have been authorized to process and approve applications for stock and domestic wells, applications for repair of existing wells, applications for water wells for oil-well drilling purposes, and applications to change location of wells in instances where the new well would be drilled within a radius of 200 feet from the old well. This practice expedites the processing of such instruments by eliminating the time formerly required for transmittal to and from the Santa Fe office. The certificate and license, the final instrument issued by the State Engineer to the permittee upon perfection of the water right, was revised and shortened, effecting an appreciable saving of time consumed in preparing, typing, and proofreading the instrument.

Altogether, 252 wells were inspected to insure that casing and cementing specifications were carried out in accordance with the rules and regulations of the State Engineer, and 289 wells were measured to determine the artesian head. Leakage tests were made on 36 artesian wells and pumping tests were made on four wells. Field inspections and land surveys were made in connection with the processing of applications. Technical investigations were made for reports in connection with litigation involving ground water. In reply to requests approximately 600 notarized letters of certification were issued attesting to the status of records pertaining to water rights.

A total of 110 protests were filed against 101 applications; 19 protests were subsequently withdrawn. Because they were similar in nature, several protests were combined for hearing by agreement of the interested parties. Seventeen hearings were held on 24 protests. No hearings were held on 29 other protests because of the protestants' or applicants' failure to act. Thirty-eight protested applications are still pending.

TABLE 1
GROUND-WATER INSTRUMENTS PROCESSED DURING 23RD BIENNIUM

Instrument	DISTRICT NO. 1				DISTRICT NO. 2									DISTRICT NO. 3							GRAND TOTAL
	Bluewater Basin	Estancia Basin	Rio Grande Basin	Misc. (Outside) Basins	District Total	Carlsbad Basin	Hondo Basin	Lea County Basin	Pecos Basin	Portales Basin	Roswell Basin	Misc. (Outside Basins) & Well Drillers Lic.	District Total	Animas Valley Basin	Hot Springs Basin	Mimbres Valley Basin	Playas Valley Basin	Virden Valley Basin	Misc. (Outside Basins)	District Total	
Declaration of Right	35	6	325	58	424	15	18	20	4	112	79	28	276	1	0	17	8	0	98	124	824
Appl. to Appropriate, Irrig., M & I	3	25	14	0	42	28	11	176	3	33	4	0	255	0	5	6	1	4	2	18	315
Appl. to Appropriate, Domestic & Stock	26	86	1794	0	1906	112	78	363	11	151	275	3	993	21	2	57	3	3	2	88	2987
Appl. for Water for Oil Well Drilling*	0	0	0	0	0	3	0	218	0	0	4	0	225	0	0	0	1	0	0	1	226
Appl. for Supplemental Well	2	1	88	0	91	13	2	19	0	48	44	0	126	14	1	23	1	0	0	39	256
Appl. to Repair or Deepen Well	7	7	27	0	41	10	2	60	1	69	109	0	251	9	2	38	8	0	0	57	349
Appl. to Change Loc. of Well	3	6	21	0	30	12	5	93	0	132	120	0	362	7	0	29	1	2	0	39	431
Appl. to Change Place of Use	2	0	3	0	5	1	2	29	0	5	85	0	122	4	3	25	0	0	0	32	159
Appl. to Change Loc. of Well & Place and/or Method of Use	12	1	10	0	23	9	0	26	0	9	68	0	112	4	0	17	1	0	0	22	157
Appl. to Combine	0	2	0	0	2	0	0	8	0	5	8	0	21	0	0	1	3	0	0	4	27
Appl. for Extension of Time	1	130	34	0	165	31	6	1061	0	220	123	0	1441	87	22	392	21	4	15	541	2147
Appl. to Drill for Oil (artesian basins)	0	0	0	0	0	2	0	0	0	0	195	0	197	0	0	0	0	0	0	0	197
Appl. for Drillers License (statewide)	0	0	0	0	0	0	0	0	0	0	0	166	166	0	0	0	0	0	0	0	166
Notice of Publication	15	28	133	4	180	56	17	303	3	134	291	0	804	29	9	101	675	6	20	840	1824
Change of Ownership	6	43	6	0	55	21	8	224	1	148	270	0	672	11	3	87	23	9	8	141	868
Well & Plugging Record	20	89	1378	21	1508	125	89	1034	12	285	756	22	2323	37	6	126	13	7	22	211	4042
Proof of Completion of Works	4	17	34	0	55	23	8	293	1	202	170	0	697	31	7	89	6	5	3	141	893
Proof of Beneficial Use	0	24	0	0	24	15	6	146	0	35	50	0	284	8	6	56	0	9	0	79	387
Certificate of Construction	0	3	0	0	3	5	0	9	0	71	50	0	135	11	0	19	1	0	0	31	169
Engineer's Authorization	0	20	0	0	20	17	7	178	9	35	94	0	340	9	8	76	0	11	0	104	464
Certificate & License	0	19	0	0	19	10	0	48	0	11	44	0	113	8	6	56	0	9	0	79	211
TOTALS	136	507	3867	83	4593	508	259	4308	45	1705	2871	219	9915	291	80	1215	766	69	170	2591	17099

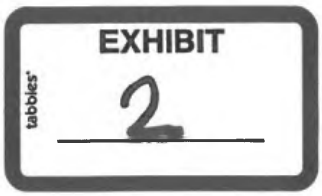
* Each permit limited to 3 acre-feet not to exceed one year.

M E M O R A N D U M

Subject: Declaration of the Rio Grande Underground Water Basin

An area along each side of the Rio Grande, extending from Elephant Butte Reservoir to the New Mexico-Colorado State line, has been declared by S. E. Reynolds, State Engineer, as the Rio Grande Underground Water Basin. The order declaring this basin was signed Thursday, November 29, 1956. A copy of the order and a map showing the basin boundaries are attached hereto.

The first laws regulating the appropriation and use of the public waters of the State applied to surface water only. For 25 years after the surface-water code of 1907 was adopted, no statutes controlled the appropriation of underground water. It ultimately became apparent that if the State's waters were to be apportioned equitably and their use regulated effectively, it would be necessary to broaden statutory controls to include the use of this underground water; consequently in 1931, the Legislature enacted the New Mexico Underground Water Law, under terms of which "the water of underground streams, channels, artesian basins, reservoirs, or lakes, having reasonably ascertainable boundaries, are hereby declared to be public waters and to belong to the public and to be subject to appropriation for beneficial use." Subsequent modification of this law provides that "all underground



waters of the State of New Mexico are hereby declared to be public waters and to belong to the public of the State of New Mexico and to be subject to appropriation for beneficial use within the State of New Mexico." The law specifies that no permit and license to appropriate underground waters shall be required except in basins declared by the State Engineer. The State Engineer defines and declares such basins whenever it becomes apparent that regulation is necessary 1) to prevent impairment of existing rights, 2) to insure beneficial use of water, and 3) to provide for an orderly development of ground-water reservoirs.

The President's Water Resources Policy Commission has classed the Rio Grande Valley as one of the ten major water-problem areas in the United States. "In the whole upper basin, man's adjustment to the water and land resources in precarious," the Commission stated in its initial report. "The streams of the region are subject to a more exact and comprehensive system of rationing - as embodied in interstate and international treaties - than in most other areas of the United States. Within each of the States (Colorado, New Mexico, Texas) the claims for both surface and underground waters exceed the supply. Any growth in urban or industrial use of water is at the sacrifice of other uses."

Until recently, the streams on the earth's surface and the aquifers beneath the river valleys were regarded as separate and independent sources of water. New Mexico recognized early that its surface supplies were limited and must be rationed, but little was known of the hydrology of ground water and its occurrence.

As surface supplies dwindled in relation to demand, users developed ground water to offset shortages and to supply new uses, not perceiving that in many instances ground and surface water are intimately interrelated parts of a single supply - that, in drilling wells for supplemental uses, they were merely changing method and place of diversion and that in instances when new uses were served the older established rights were correspondingly impaired.

For a number of years the State Engineer Office has been cognizant of the complex water problems that beset the State's largest and most populous river valley. The office has compiled and reviewed a bibliography of technical papers, including the H. A. Persons Water Planning Report for the City of Albuquerque, which describe the interrelationship of the surface and ground waters of the Rio Grande Valley.

In particular, officials have felt concern regarding the inadequacy of available water supplies to meet the potential water demands of growing municipalities and of expanding agricultural and industrial development. There are tens of thousands of acres within the boundaries of the declared basin which could be irrigated by ground water and private enterprise has seriously considered the irrigation of much of these lands - such ground-water development would materially decrease the already fully appropriated surface-water supply.

As defined in the Order, the boundaries of the Rio Grande Underground Water Basin enclose those valley lands on which wells of significantly large yields probably can be obtained - wells whose production would appreciably affect the flow of the Rio Grande within the next few decades.

The Order recognizes that the surface waters of the Rio Grande are fully appropriated, and that the surface and ground waters of the basin are intimately interrelated parts of a single supply. Under such circumstances any ground-water withdrawal results ultimately in an equivalent diminution of surface water flows. However, the full effect of the ground-water withdrawal is not reflected in the river for many years; also, surface flows are affected for many years after pumping may be ended. The effect of pumping on the river at any given time is directly proportioned to the amount of the withdrawal. The time at which an effect of a given percentage is reflected in surface flows is proportioned to the square of the distance of the well from the river.

The effects of ground-water withdrawals on surface water flows can be computed by a method described by Dr. C. V. Theis of the U. S. Geological Survey in 1941.

Administrative procedures have been designed to provide for the fullest utilization of the abundant ground-water resources of the Rio Grande Basin that is possible without impairment of existing rights. Ground water appropriation will be permitted, provided that the immediate and potential effects on the flow of the Rio Grande are offset by the retirement of usage

under existing surface rights. Thus the availability of water to the remaining surface-water rights will be unchanged. Following is an example that might apply to a well in the Albuquerque area on the east Mesa and 5 miles from the Rio Grande:

In order to appropriate 1000 acre-feet of water per annum for municipal use the cumulative amount of irrigation water retired under surface rights would be approximately as follows:

1st year	90 a.f.
5th year	210 a.f.
10th year	290 a.f.
15th year	370 a.f.
20th year	420 a.f.
25th year	460 a.f.
30th year	500 a.f.

Later, additional retirements will be required so that at all times the total irrigation water retired will fully offset the effects of the ground-water withdrawals on the river.

This scheduled retirement of use under surface rights will allow municipalities and industries to appropriate ground-water without impairment of existing rights and with the smallest possible disturbance to the agricultural economy of the valley. That is, the total water usage in the Valley can be materially increased for a number of decades by mining a portion of the vast amount of water in storage in the aquifers - the rate of usage eventually stabilizing at approximately the present rate of

consumption of both surface and ground water. The increased usage over the intervening decades can be accomplished without impairment of existing rights.

Development of ground water to supplement existing water rights will be permitted. Supplemental wells will take water from the ground-water reservoir at times when the surface-water supply is limited and the ground-water reservoir will be recharged when the surface water supply is plentiful. The average annual surface-water supply is adequate to permit this utilization of the ground-water reservoir without impairment of existing rights.

Changes of point of diversion, method of diversion (from surface water to ground water), place of use, and method of use (from agricultural to municipal or industrial) all will be permitted - provided such changes do not impair existing rights.

Permits to appropriate may be granted for watering livestock, for irrigation of not to exceed 1 acre of noncommercial trees, lawns or garden, or for household or other domestic use. In addition permits may be granted for use not to exceed 3 acre feet of the water in this basin for a definite period of not to exceed 1 year in prospecting, mining, or drilling operations, designed to discover or develop the natural mineral resources of the State of New Mexico.

Wells drilled within the boundaries of the Middle Rio Grande Conservancy District to provide supplemental water for irrigation of existing rights, or drilled within or without the District boundaries to serve new uses, the effects of which are offset by the drying up of water-right lands within the District, will constitute new points of diversion for the waters of the District. Accordingly applications for such new points of diversion must be filed with the State Engineer by the Middle Rio Grande Conservancy District.

Any person wishing to drill, deepen, repair, or clean one or more water wells, for compensation or otherwise, on his land or on other land situated within the Declared Basin, shall first obtain a water well drillers' license from the State Engineer. Application for such license shall state the applicant's name and address, his qualifications as a well driller, a description of his equipment, and the types of drilling operation for which license is sought. The application shall be accompanied by a performance bond in the penal sum of $5000, conditioned that the applicant will comply with the laws of the State and rules and regulations of the State Engineer.

In summary, the declaration of the Rio Grande Underground Water Basin will:

1) implement the protection of existing valid water rights in the Rio Grande Basin,
2) not restrict the exercise of existing ground-water rights,

3) permit the increase of beneficial use of water in the Rio Grande Valley over a number of decades, without impairing existing rights,

4) encourage industrial development in the Valley by providing for the acquisition of firm water rights, and

5) permit maximum utilization of the underground water reservoir.

Administration of the Rio Grande Underground Water Basin, Estancia Underground Water Basin, and the Bluewater Underground Water Basin will be conducted from an office to be established in Albuquerque. James L. Williams, recently transferred from the District II Office of the State Engineer in Roswell, will head the office in Albuquerque as soon as suitable space can be obtained.

Santa Fe, New Mexico
November 29, 1956.

26Oct 79

Revised August 1967

HC-82632...$60.00 total

IMPORTANT—READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

APPLICATION FOR PERMIT

STATE ENGINEER OFFICE
SANTA FE, N.M. 87501

To Appropriate the Underground Waters of the State of New Mexico
and to correct locations of existing wells.

Date Received July 13, 1979 File No. RG-6745 thru RG-6745-S-19 et al

1. Name of applicant Rio Rancho Estates, Inc.
   Mailing address 3900 Southern Blvd., S.E.
   City and State Rio Rancho, New Mexico

2. Source of water supply Ground Water, located in Rio Grande Underground Water Basin
   (artesian or shallow water aquifer) (name of underground basin)

3. The well is to be located in the ____ ¼ ____ ¼ ____ ¼, Section ____ Township ____
   Range ____ N.M.P.M., or Tract No. ____ of Map No. ____ of the ____ District,
   on land owned by Applicant
   SEE ITEM 7 BELOW

4. Description of well: name of driller ____
   Outside Diameter of casing See Below inches; Approximate depth to be drilled See Below feet;

5. Quantity of water to be appropriated and beneficially used 12,000 (Diversion) acre feet,
   (consumptive use, diversion)
   for Domestic, Commercial, Industrial, Housing, Subdivision purposes.

6. Acreage to be irrigated or place of use ____ acres.

Subdivision	Section	Township	Range	Acres	Owner
The Town of Alameda Grant West of the Rio Grande and surrounding areas in Sandoval County.					
Diversion of water under this application will vary from year to year, but will generally increase over time until diversion from all wells combined reaches 12,000 acre feet per annum.					

7. Additional statements or explanations Rio Rancho Estates, Inc. has acquired certain water rights and will acquire additional water rights or rights to water in the Rio Grande Underground Water Basin for retirement or dedication to offset effects that may occur on the Rio Grande as a result of pumping wells described in this application. In December of each year, Rio Rancho Estates, Inc. or its successors in title or name shall submit satisfactory evidence to the State Engineer of Ownership or control of water rights or rights to water adequate to offset the effect on the Rio Grande and its tributaries from pumping during the following year.

It is recognized that the State Engineer may impose reasonable conditions on this permit including the reservation of jurisdiction over this permit for purposes of a continuing accounting of water rights or rights to water necessary to prevent impairment of existing water rights.

Existing Wells which will be used to divert the 12,000 acre feet:

NUMBER	SIZE	DEPTH	LOCATION	
RG-6745	12"	350'	X = 374,400'	Y = 1,537,500'
RG-6745-S	12"	815'	X = 374,600'	Y = 1,538,300'
RG-6745-S-2	12"	825'	X = 372,000'	Y = 1,542,600'
RG-6745-S-3	16"	900'	X = 372,300'	Y = 1,546,400'
RG-6745-S-4	16"	900'	X = 365,800'	Y = 1,552,300'
RG-6745-S-5	16"	900'	X = 374,600'	Y = 1,545,000'
RG-6745-S-6	18"	1197'	X = 364,000'	Y = 1,554,600'

Cont on back

I, Floyd W. Bailey, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

Rio Rancho Estates, Inc., Permittee,

By Floyd W. Bailey

Subscribed and sworn to before me this 13th day of July, A.D., 1979.

My commission expires February 26, 1983

Elizabeth F. Stapleton
Notary Public

STATE ENGINEER-ALBUQUERQUE, N. M.
RECEIVED
JUL 13 1979
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

STATE ENGINEER ALBUQUERQUE, N.M. FILE
79 SEP 5 P 3:25

EXHIBIT 3

426412

Number of this permit RG-6745 thru RG-6745-S-19 et al

ACTION OF STATE ENGINEER

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of _____ wells be complied with; and further subject to the following conditions: _____

SEE ATTACHMENT FOR CONDITIONS OF APPROVAL

Proof of completion of well shall be filed on or before October 15, 19 81

Proof of application of water to beneficial use shall be filed on or before October 15, 19 83

Witness my hand and seal this 26th day of October, A.D., 19 79

S. E. Reynolds, State Engineer

By: _____

D. R. Cooper, Engineer, Water Rights Bureau

7. Con't.

NUMBER	SIZE	DEPTH	LOCATION	
RG-6745-S-7	34"	1620'	X = 356,400'	Y = 1,555,300'

All existing wells are located within a raduis of 500' of above coordinate points.

Twelve proposed wells will also be used to divert the 12,000 Acre feet each approximately 1500' deep, with 16" casing to be numbered RG-6745-S-8 thru RG-6745-S-19 and located respectively as follows (all within a radius of 2,000' of the described point).

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of $5.00. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1–4—Fill out all blanks fully and accurately.

Sec. 5—Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 6—Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 7—If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe water right sought.

X = 355,900'	Y = 1,549,000'	X = 367,700'	Y = 1,539,700'
X = 351,500'	Y = 1,552,000'	X = 366,000'	Y = 1,544,600'
X = 352,100'	Y = 1,559,100'	X = 379,400'	Y = 1,555,500'
X = 357,400'	Y = 1,560,400'	X = 376,400'	Y = 1,551,200'
X = 361,000'	Y = 1,556,400'	X = 375,300'	Y = 1,558,600'
X = 360,800'	Y = 1,551,900'	X = 384,400'	Y = 1,557,300'

Description based on New Mexico Coordinate System, Central Zone, Town of Alameda Grant. All wells will be located on land owned by Rio Rancho Estates, Inc. The X and Y coordinates given above correctly show the actual location of existing wells RG-6745 through RG-6745

CONDITIONS OF APPROVAL FOR PERMIT NO. RG-6745 thru S-19 et al

1. Diversion of water under this permit from wells RG-6745 thru RG-6745-S-19 shall not exceed 12,000 acre feet per annum.

2. The amount of water diverted under this permit in any year shall be limited to the amount determined by the State Engineer on or before January 1 of that year to be the amount which may be diverted without causing the depletion of flow of the Rio Grande resulting from appropriations under this permit to exceed at any time the amounts now or hereafter available at appropriate times under permits to transfer water rights to the wells described in this permit, water made available to offset such depletions by the retirement of, or binding commitment to retire, existing water rights.

3. With respect to any water right retired to offset the effects of diversion under this permit on the flow of the Rio Grande, the permittee shall file dedications of the right to exercise those rights, in a form satisfactory to the State Engineer. The dedication shall be filed in the Office of the County Clerk in the County in which the water right is located and a certified copy of said dedication shall be filed in the Office of the State Engineer.

4. The total amount of water diverted from wells RG-6745 and RG-6745-S through S-19 shall be measured by the permittee with totalizing meters of a type and at locations approved by and installed in a manner acceptable to the State Engineer on or before the 10th day of each month for the preceding calendar month.

5. Consumptive use and return flow shall be measured or computed by the permittee by a method acceptable to the State Engineer. Records of consumptive use and return flow shall be submitted to the State Engineer on or before the 10th day of each month for the preceding calendar month.

6. Proof of Completion of Well for wells RG-6745 through RG-6745-S-19 shall be filed on or before October 15, 1981.

7. Proof of Application of Water to Beneficial Use shall be filed on or before October 15, 1983.

8. The State Engineer shall retain jurisdiction in this matter to implement provisions of conditions 2 and 3 above.

THIRTEENTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF SANDOVAL

RECEIVED
AUG 21 2003
Randall W. Childress, P.C.

FILED IN MY OFFICE
DISTRICT COURT CLERK
03 AUG 20 PM 3:36
THERESA VALENCIA
BY _____ DEPUTY
SANDOVAL COUNTY

No. D1329 CV 010779

CITY OF RIO RANCHO, a New Mexico Municipal Corporation,

Applicant-Appellant,

-vs-

THOMAS C. TURNEY, P.E., State Engineer-Appellee; VILLAGE OF CORRALES, Protestant-Appellee; UNITED STATES OF AMERICA, Department of the Interior, Bureau of Indian Affairs on behalf of Sandia Pueblo, Protestant-Appellee.

In the Matter of the Application Of the City of Rio Rancho for a Permit to Appropriate Water and Drill New Wells	))))	Hearing No. 97-004 RG-6745 through RG-6745-S-34

JUDGMENT

This appeal de novo from the decision and action of the State Engineer having been brought before the Court; the United States of America for itself and for the Pueblo of Sandia having moved with the concurrence of the remaining parties that it be dismissed as a party, and the Court having ordered its dismissal as a party, and the Court having referred the remaining parties and the action for mediation to the Hon. Gene E. Franchini, Justice of the Supreme Court of New Mexico, Retired, and the parties having as a result of such mediation agreed to the following findings of fact and conditions of approval, the judgment of the Court is therefore the following:

EXHIBIT
4
tabbies

FINDINGS Of FACT

1. This Court has jurisdiction of the subject matter of this appeal and of the parties to it;

2. The predecessor of the City of Rio Rancho, Rio Rancho Utilities Corporation, on June 28, 1993, filed application No. RG-6745 through RG-6745-S-34 for a permit to increase its permitted appropriation from 12,000 acre feet per year to 24,000 acre feet per year for municipal, industrial, commercial and housing subdivision in the Town of Alameda Grant west of the Rio Grande and surrounding areas in Sandoval County, New Mexico. The applicant proposed that water be diverted from the following permitted wells:

File No.	Location	
RG-6745	X = 374,400 feet	Y = 1,537,500 feet;
RG-6745-S	X = 374,600 feet	Y = 1,538,300 feet;
RG-6745-S-2	X = 372,000 feet	Y = 1,542,600 feet;
RG-6745-S-3	X = 372,300 feet	Y = 1,546,400 feet;
RG-6745-S-4	X = 365,800 feet	Y = 1,552,300 feet;
RG-6745-S-5	X = 374,600 feet	Y = 1,545,000 feet;
RG-6745-S-6	X = 364,000 feet	Y = 1,554,600 feet;
RG-6745-S-7	X = 356,400 feet	Y = 1,555,300 feet;
RG-6745-S-8	X = 355,900 feet	Y = 1,549,000 feet;
RG-6745-S-9	X = 351,500 feet	Y = 1,552,000 feet;
RG-6745-S-10	X = 352,100 feet	Y = 1,559,100 feet;
RG-6745-S-11	X = 357,400 feet	Y = 1,560,400 feet;
RG-6745-S-12	X = 361,000 feet	Y = 1,556,400 feet;
RG-6745-S-13	X = 335,100 feet	Y = 1,555,900 feet;
RG-6745-S-14	X = 367,700 feet	Y = 1,539,700 feet;
RG-6745-S-15	X = 371,250 feet	Y = 1,584,800 feet;
RG-6745-S-16	X = 376,600 feet	Y = 1,554,900 feet;
RG-6745-S-17	X = 376,400 feet	Y = 1,551,200 feet;
RG-6745-S-18	X = 375,300 feet	Y = 1,558,600 feet;
RG-6745-S-19	X = 384,400 feet	Y = 1,557,300 feet;

RG-6745-S-20	X = 403,900 feet	Y = 1,573,150 feet;
RG-6745-S-21	X = 397,850 feet	Y = 1,572,100 feet;
RG-6745-S-22	X = 343,400 feet	Y = 1,550,750 feet;

and from twelve proposed wells each to be drilled within a 2000 feet radius of the following described points:

File No.	Location	
RG-6745-S-23	X = 388,700 feet	Y = 1,589,900 feet;
RG-6745-S-24	X = 379,900 feet	Y = 1,574,200 feet;
RG-6745-S-25	X = 391,800 feet	Y = 1,564,000 feet;
RG-6745-S-26	X = 387,400 feet	Y = 1,555,900 feet;
RG-6745-S-27	X = 378,100 feet	Y = 1,566,100 feet;
RG-6745-S-28	X = 371,000 feet	Y = 1,563,800 feet;
RG-6745-S-29	X = 355,100 feet	Y = 1,565,000 feet;
RG-6745-S-30	X = 344,600 feet	Y = 1,562,500 feet;
RG-6745-S-31	X = 353,500 feet	Y = 1,548,800 feet;
RG-6745-S-32	X = 357,800 feet	Y = 1,543,300 feet;
RG-6745-S-33	X = 362,100 feet	Y = 1,537,100 feet;
RG-6745-S-34	X = 344,900 feet	Y = 1,541,000 feet,

Central Zone, NMCS., all located within the Town of Alameda Grant, and the service area of the Rio Rancho municipal water system.

3. The application states that "Rio Rancho Utilities Corp has acquired certain water rights and will acquire additional water rights or rights to water in the Rio Grande Underground Water Basin for retirement or dedication to offset effects that may occur as a result of pumping wells described in this application."

4. The application further states that "It is recognized that the State Engineer may impose reasonable conditions on the permit

including the reservation of jurisdiction over this permit for purposes of a continuing accounting of water rights or rights to water necessary to prevent impairment of existing water rights."

5. Notice of the Application was duly published and timely protested by the Village of Corrales and the Bureau of Indian Affairs, on behalf of Sandia Pueblo.

6. On August 21, 1996 the State Engineer accepted for filing a Change of Ownership of Water Right, File No. RG-6745 through RG-6745-S-22 changing ownership from Rio Rancho Utilities Corporation to City of Rio Rancho.

7. The Applicant has submitted a 40-Year Plan and Water Conservation Plan acceptable to the Water Rights Division (WRD) of the Office of the State Engineer.

8. Population projections provided by the Applicant in its 40-Year Plan shown that the City's population will continue to increase between the year 2000 and 2040. The City's projected population is as follows:

Year	Population
2000	51,250
2010	74,969
2020	95,603
2025	109,695
2030	123,785
2035	137,878
2040	151,970

These projections were prepared by the Middle Rio Grande Council of Governments (MRGCOG) and the University of New Mexico Bureau of Business and Economic Research (BBER).

9. The Appliant identified its total water demand through the year 2040 and intends to meet that water demand by conserving water and by diverting water from existing permitted wells, pre-basin wells, and the wells sought by the Application.

10. The Applicant estimates its total demand for the time period from the year 2000 through the year 2040 as follows:

Year	Demand (Acre-feet)
2000	11,069
2005	13,639
2010	15,855
2015	18,230
2020	20,607
2025	23,350
2030	26,094
2035	28,838
2040	31,593

11. The demand projections were made using standard engineering methods for population projections and include estimates of residential, commercial, industrial, public and municipal usage.

12. In 1994 the applicant's governing body adopted a resoultion supporting water conservation with a goal to reduce per capita

residential and commercial demand by 15%.

13. In 1999 the Applicant adopted a Water Conservation Action Plan.

14. In 1999 the Applicant funded its water conservation program with $100,000 and with $120,000 in the year 2000, exclusive of staff salaries and overhead. Funding is used by the Applicant to support the development and distribution of water conservation literature, public education programs, to retrofit residences with water saving toilets and a "water wise" demonstration garden.

15. The Applicant's water conservation efforts resulted in a decrease of six gallons in the daily per capita residential and commercial water consumption of 1998 and 1999.

16. The Applicant's daily per capita water usage between 1995 and 1999 decreased by 9%.

17. The Applicant's average unaccounted water usage of 8.60% of production for the years 1997-1999 is low and indicates low water leakage and good control on water system operations.

18. The American Water Works Association standard for an acceptable rate of unaccounted water is 10 to 15%.

19. The Applicant reasonably projects additional reduction in its water demand resulting from water conservation for each five year period from 2000 to 2040. The Applicant's adjusted water demand after reducing total demand by that amount of water saved through water conservation for the period 2000 through 2040 is as follows:

Year	Demand (Acre-feet)
2000	11,069
2005	13,537
2010	15,617
2015	17,820
2020	19,986
2025	22,474
2030	24,920
2035	27,324
2040	29,697

20. The applicant will reach the limit of its existing water rights between the years 2005 and 2007 and the combined limits of its existing and applied for water rights by the year 2033.

21. The Applicant has demonstrated that it is preventing the waste of water and that it has a program in place to continue the prevention of waste.

22. The Applicant's water conservation goals promote the conservation of water within the State of New Mexico.

23. The Applicant reasonably has demonstrated that it can place to beneficial use within 40 years its existing water rights and the 12,000 acre feet of new appropriations sought under the Application. The Applicant's water supply is derived entirely from wells. The city water supply infrastructure consists of wells, storage tanks, booster pump stations and transmission lines. The wells and storage tanks feed eight (8) elevation controlled pressure zones. Zones with surplus production can supply water to zones with inadequate production. The higher elevation zones are capable of meeting some of the water demand of the lower elevation zones, while the lower elevation zones are severely limited in their ability to meet demand in the higher elevation zones.

24. Rio Rancho is the fourth largest city in New Mexico. Its population is currently more than 51,000 person and credible projections indicate it will have a population of more than 151,000 by the year 2040.

25. The provision of water by the City's water utility pursuant to the Application for the use of its inhabitants, businesses and

industries has a beneficial effect upon the public welfare of the state.

26. The City's use of water for sanitary, domestic and firefighting purposes promotes the public health, safety and welfare of the state.

27. The City has an economic development program, the purpose of which is to provide affordable housing and employment to its inhabitants and the inhabitants of the surrounding areas. The economic development program requires the additional water sought in the Application, and the granting of a permit for additional water will not be detrimental to the public welfare of the state.

28. The Middle Rio Grande Administrative Area ("MRGAA") is the area extending roughly from North of Cochiti Pueblo to South of the confluence of the Rio Puerco along the Rio Grande and from ten (10) to twenty (20) miles to the east and west of the Rio Grande.

29. The surface waters of the Rio Grande have been considered fully appropriated since the Rio Grande Compact was consummated.

30. The Santa Fe formation aquifer and the shallow aquifer in

the MRGAA are hydrologically connected to the Rio Grande Surface water system.

31. Groundwater diversions from aquifers hydrologically connected to the Rio Grande affect the fully appropriated surface flow and eventually deplete the surface flow by the amount of the diversion.

32. Areas in the MRGAA are "Critical Management Areas" where (1) model-predicted water level declines, due to exercise of existing permits, exceed an average rate of 2.50 feet per year through the year 2040 or (2) the current observed rate of water level declines exceeds an average of 2.50 feet per year.

33. Areas in the MRGAA which do not meet the criteria for Critical Management Areas are Non-Critical Management areas. The model-predicted water level declines in Non-Critical Management Areas due to exercise of existing permits and the proposed permit should not exceed an average of 2.75 feet per year.

34. The drawdown limits set forth in the foregoing finding are deemed necessary by the State Engineer to ensure that groundwater diversions in the MRGAA do not impair existing water rights, are not contrary to the conservation of water within the State and

are not detrimental to the public welfare of the State of New Mexico.

35. Approximately 100% of groundwater diversions will eventually deplete the Rio Grande Stream System.

36. The criteria for Critical Management Areas applied above have been incorporated in the "Middle Rio Grande Administrative Area Guidelines for Review of Water Rights Applications" (Guidelines) developed during the pendency of the Application and adopted by the State Engineer on September 22, 2000. The Guidelines did not form a basis for the evaluation of the Application or the development of the Permit conditions imposed below. The Guidelines, however, reflect the Water Rights Division of the Office of State Engineer's ("WRD") current policy and practice for evaluating applications for permits for groundwater use in the MRGAA to ensure compliance with the Rio Grande Compact, to prevent impairment to existing rights, to limit the rate of decline of groundwater levels to extend the life of the aquifer, and to minimize land subsidence. The Guidelines therefore reflect the standards that the WRD may seek to apply in making recommendations on applications for transfers of water rights within the MRGAA, including applications filed by the permittee in compliance with this Permit or for other purposes. Permittee

shall have the right in any future proceeding to challenge the validity, applicability and lawful nature of the Guidelines, and no presumptions shall arise from the use thereof.

37. The area of hydrologic investigation for the Application is the Albuquerque Basin. The basin is generally described as the area bounded by the Rio Puerco drainage divide on the west, Cochiti Reservoir to the north, the Sandia and Manzano Mountains on the east and San Acacia to the South.

38. There are two closely interrelated aquifers underlying the Albuquerque Basin in the vicinity of Applicant's existing and proposed wells; the shallow aquifer assocuated witbh the flood plain alluvium of the Rio Grande valley, and the deeper ground water aquifer referred to as the Santa Fe Formation aquifer.

39. The Applicant's existing and proposed wells are located in the deeper aquifer.

40. The combined saturated thickness of the aquifers underlying the area in the vicinity of Applicant's wells, protestants' wells and nearby wells of other ownership is at least 2000 feet and may be as much as 8,000 feet thick.

41. The aquifers underlying the Albuquerque Basin constitute a complex groundwater flow system with interconnected surface water features and geohydrologic heterogeneities in both the horizontal and vertical directions.

42. Reasonable and conservative estimates of the future effects of granting new applications on groundwater levels in wells located in an aquifer are made by the use of analytical and numerical groundwater flow computer models.

43. For complex groundwater flow systems such as underlie the Albuquerque Basin, the estimated effects on groundwater levels made by a multi-layer, numerical groundwater flow model are more reliable than estimates calculated using analytical methods such as the Theis equation.

44. A multi-layer model was constructed by the Hydrology Bureau of the Office of the State Engineer (OSE Model) and subsequently modified by the Applicant. The modified model is referred to as the GRAM-modified OSE Model. The OSE and Gram-modified OSE models are identical with the exception that the GRAM-modified model does not represent the middle reach of the Jemez River as being in hydrologic connection with the aquifer. Both models are based on the U.S.G.S. MODFLOW code.

45. Based on available data, the modeling of the Jemez River in the OSE model is appropriate and properly takes into condieration the uncertainty of the data by following a conservative approach.

46. The OSE Model should be used to calculate impacts on the Jemez River.

47. To facilitate the analyses, the City's wells were grouped according to their geographic location, potential for mutual interference, and the degree to which there would be effects on water rights of other ownership. Annual diversion limits were developed as follows.

Total Diversion Limits From All Wells Combined

YEAR	Diversion Limits (acre-feet)
2001	11,935
2002	12,651
2003	13,410
2004	14,214
2005	15,067
2006	15,971
2007	16,929
2008	17,945
2009	19,022
2010	20,163
2011	21,373
2012	22,655
2013 and thereafter	24,020

48. Applicant's pumping schedule is as described in the following two tables.

Groups	Wells	Diversion Limits
1	RG-6745-S-14, RG-6745-S-33	2,800
2	RG-6745-S-8, RG-6745-S-31, RG-6745-S-5	2,000
3	RG-6745 RG-6745-S RG-6745-S-2, RG-6745-S-3, RG-6745-S-5	2,400
4	RG-6745-S-4, RG-6745-S-6	2,000
5	RG-6745-S-7, RG-6745-S-17, RG-6745-S-10, RG-6745-S-11	1,200
6	RG-6745-S-12, RG-6745-S-28	3,000
7	RG-6745-S-16, RG-6745-S-17, RG-6745-S-18	2,000
8	RG-6745-S-19*, RG-6745-S-25, RG-6745-S-26*	3,000
9	RG-6745-S-24, RG-6745-S-27	2,300
10	RG-6745-S-15, RG-6745-S-21	3,500
10	RG-6745-S-23	2,000
10	RG-6745-S-20	80
11	RG-6745-S-30	2,000
12	RG-6745-S-13, RG-6745-S-22, RG-6745-S-34	1,250
13	RG-6745-S-29	1,000

* Group 8 combined diversion from wells RG-6745-S-19 and RG-6745-S-26 shall not exceed 3,000 acre feet per annum.

Maximum Allowable Well-Group Diversions

Year	1	2	3	4	5	6	7	8	9	10	11	12	13
2001	2,000	2,000	1,700	1,400	1,800	1,900	1,800	4,600	3,900	2,710	600	2,000	600
2002	2,000	2,000	1,700	1,500	1,800	2,300	1,800	4,600	4,500	2,910	600	2,000	600
2003	2,400	2,400	1,700	1,500	1,800	2,300	1,800	4,800	4,500	3,210	600	2,000	600
2004	2,400	2,400	1,700	2,000	1,800	2,700	1,900	4,800	4,500	4,010	1,000	2,000	1,000
2005	2,400	3,000	1,700	2,000	2,000	2,700	1,900	5,000	4,500	4,610	1,000	2,100	1,000
2006	2,400	3,000	1,700	2,200	2,100	2,900	2,400	5,200	4,500	5,210	1,000	2,700	1,000
2007	2,400	3,000	2,000	2,500	2,100	2,900	2,400	5,200	4,500	6,200	1,200	2,900	1,000
2008	2,500	3,000	2,300	2,500	2,300	2,900	2,400	5,800	4,500	6,500	1,200	3,150	1,000
2009	2,600	3,000	2,300	2,800	2,300	2,900	2,900	6,000	4,500	7,100	1,200	3,150	1,000
2010	2,800	3,000	2,563	2,800	2,300	3,000	3,000	6,000	4,500	8,200	1,200	3,250	1,000

Year	1	2	3	4	5	6	7	8	9	10	11	12	13
2011	2,800	3,000	3,073	3,000	2,300	3,000	3,200	6,000	4,500	9,080	1,250	3,250	1,000
2012	2,800	3,000	3,120	3,000	2,300	3,000	4,000	6,000	4,500	9,080	2,000	3,250	1,000
2013 and thereafter	2,800	3,000	3,120	3,000	2,300	3,000	4,000	6,000	4,500	9,080	2,000	3,250	1,000

49. The Applicant concurred that if the application is approved, its diversions under the permit should be conditioned so that:

a. Resulting groundwater level decline rates in the MRGAA due to diversion of existing rights and the permit do not exceed an average rate of 2.75 feet per year over a forty-year period in Non-Critical Management Areas.

b. The proposed diversions combined with the exercise of existing water rights will not cause total water level declines in any Critical Management Area to exceed 250 feet from predevelopment conditions to the year 2040.

50. The pumping schedules contained in Finding 47 and 48 above are designed to stay within the limits contained in Finding 49.

51. Calculations using the OSE Model, with a diversion of 155,000 acre-feet per year by the City of Albuquerque, show that diversions by the Applicant under ten pumping scenarios conforming to the zonal and well yearly maximums proposed in the Applicant's pumping schedules would not cause groundwater level

declines in the Basin to exceed the limits set forth in Finding 49.

52. Groundwater declines in the Basin depend on the pumping schedule implemented by the Applicant.

53. Groundwater decline rates could exceed 2.75 feet per year over a forty-year period or 250 feet overall by 2040 if the Applicant implemented a pumping schedule which deviated from the well locations and zonal and well yearly maximums set forth in the Applicant's pumping schedules.

54. Although calculations performed using the OSE Model show that diversions under ten different pumping schedules which conform to the zonal and well yearly maximums set forth in the Applicant's pumping schedules would not result in groundwater decline rates which exceed 2.75 feet per year over a forty-year period or 250 feet overall by 2040, it is possible that other pumping schedules which conform to the Applicant's pumping schedules would result in groundwater decline rates which exceeds these limits.

55. Impacts on wells of other ownership from diversions by the Applicant depend on the pumping schedule implemented by the Applicant.

56. Calculations of impacts on nearby domestic, municipal and industrial wells of other ownership from diversions under the worst-case pumping schedule allowed by the Applicant's pumping schedule show the following:

a. Domestic wells near the Applicant's production wells should be able to sustain production for a forty-year duration given the range of estimated drawdown and the available water columns in the wells.

b. Municipal and industrial wells nearest to each of the Applicant's production wells should be able to sustain production for a forty-year duration given the range of estimated drawdown and the available water columns in the wells.

c. Domestic wells within the Village of Corrales should be able to sustain production for a forty-year duration given the range of estimated water level declines and the available water columns in the wells.

d. Community wells owned by the Village of Corrales which are completed in OSE Model layers 3 and 4 should be able to sustain production for a forty-year duration given the range of estimated water level declines and the available water columns in the wells.

e. Because of the failure of the United States and Sandia Pueblo to provide information respecting their wells, the parties do not have information about locations and depths of wells

within the Pueblo of Sandia, and were unable to determine the impacts of the Applicant's proposed diversions on such wells. WRD did calculate forty-year incremental and total drawdown in OSE Model layers I through 6 in the area of the Pueblo. WRD assumed domestic wells within the Pueblo of Sandia are completed in the first three layers of the OSE Model. Average simulated forty-year incremental and total drawdown in these wells under scenario 5 ranged from 1 to 3 feet and from 5 to 50 feet respectively. Simulated forty-year incremental and total drawdown in OSE Model layers 5 and 6, influenced by the deep regional municipal production zone, ranged from 3 to 38 feet and from 19 to 81 feet respectively.

57. Since declaration of the Rio Grande Underground Water Basin permittees of groundwater appropriations have been required to obtain valid water rights in an amount sufficient to offset the effects of their groundwater diversions on the surface flows of the Rio Grande stream system. This requirement protects the surface flows of the Rio Grande stream system from being depleted or reduced by groundwater diversions, thereby preventing impairment to existing water rights.

58. Offsetting the effects of groundwater diversions on surface flows is critical to the conjunctive management of the water

resources with the Rio Grande stream system and to ensure New Mexico's ability to meet its obligations under the Rio Grande Compact.

59. The year to year impact on the Rio Grande stream system and the Jemez River caused by the City of Rio Rancho's diversions depends on the pumping schedule implemented by the City, but eventually all groundwater diversions will impact the Rio Grande and the Jemez River in a combined amount equal to the amount of groundwater diversions.

60. The Applicant has not submitted a return flow plan acceptable to the State Engineer.

61. The Applicant should be required to submit a return flow plan acceptable to the State Engineer before it is allowed to use return flows to offset stream depletions caused by diversions if the Application is approved.

62. The percent of the Applicant's measured return flow attributable to its diversions in the most recent year for which complete data are available (1998) is 38%. For the purpose of determining the amount of water rights the Applicant must acquire to offset stream depletions caused by diversions under the

proposed permit, the measured return flows discharged directly or indirectly to the Rio Grande stream system pursuant to an approved return flow plan should be used.

63. The amount of water rights required to offset depletions to the Rio Grande stream system from groundwater diversions under the proposed permit depends, in part, on the amount of return flow the Applicant discharges directly or indirectly to the stream system in any given year.

64. The OSE Model should be used to calculate stream depletions caused by groundwater diversions under the existing and proposed permits for the purpose of determining the amount of the Applicant's offset right available for lease or other uses by the City of Rio Rancho.

65. It would not impair existing rights or be contrary to the conservation of water in New Mexico if valid consumptive use water rights held by the Applicant for the purpose of offsetting future depletions were leased or used for other purposes until surface water depletions are caused by groundwater diversions under the existing and proposed permits occur as determined by the OSE Model.

66. To the date of the filing of this appeal, the Applicant had obtained 1,871.27 acre-feet per annum of consumptive use rights for offset under its existing permit.

67. The water associated with OSE Permit No. 02997 into RG-6745 et al., approved January 7, 1997, in the amount of 20.16 acre-feet per annum is not permitted to fulfill offset requirements under the Applicant's existing permit, which is limited to 12,000 acre-feet per annum, but instead is permitted to divert an additional 20.16 acre-feet per annum and consumptively use 10.08 acre-feet per annum. The Applicant's total permitted water rights amount to 12,020.16 acre-feet per annum (12,000 + 20.16 = 12,020.16).

68. The water right associated with OSE Declaration No. RG-26259 is a diversion right in the amount of 2,419 acre-feet per annum which the Applicant is authorized to divert from its Well No. 9.

69. Impacts to the Rio Grande caused by diversions under Rio Rancho's existing permit and proposed permit will continue to occur even if diversions cease.

70. Diversions by the Applicant under the existing and proposed

permits will cause stream depletions from the Jemez River.

71. To prevent impairment to existing water rights on the Jemez River, the Applicant should be required to transfer a sufficient amount of water rights from the Jemez River to offset its depletions above the point of diversion for the Zia Supply Canal.

72. Existing water rights will not be impaired if Jemez River depletions below the point of diversion for the Zia Supply Canal are offset with water rights from the Rio Grande.

73. Monitoring would improve OSE Model predictions by providing data to improve the Model and would improve confidence in the Model predictions.

74. To ensure that groundwater level declines in the Basin as a result of diversions by the Applicant under the proposed permit do not exceed the limits set forth herein, groundwater levels in the Basin should be monitored in accordance with a plan designed to monitor the effects on the Basin of the Applicant's diversions under the proposed permit.

75. Actual monitoring and recording of groundwater level changes and then comparing those changes to computer estimated

groundwater level changes for the same time period would provide a method to determine whether estimated groundwater model effects for a future time period are accurate.

76. Granting of the Application, subject to conditions set forth below, would not impair existing water rights from the source, would not be contrary to conservation of water within the state and would not be detrimental to the public welfare of the state.

IT IS THEREFORE ORDERED that Application No. RG-6745 thru RG-6745-S-34 for permit to increase the permitted appropriation from 12,000 acre-feet per annum to 24,000 acre-feet per annum is approved, subject to conditions, as follows:

OSE File No.: RG-6745 through RG-6745-S-34

Date Applications Filed (Priority):

Application filed January 7, 1997, Pre-1907 for 20.16 acre-feet per annum;

Application filed July 13, 1979 for 12,000 acre-feet per annum;

Application filed June 28, 1993 for 12,000 acre-feet per annum

Purpose of Use: Domestic, commercial, industrial and housing subdivision

Source of Water: Rio Grande Underground Water Basin

Amount of Water: Not to exceed 24,020.16 acre-feet per annum, diversion

Place of Use: The Town of Alameda Grant west of the Rio Grande and surrounding areas in Sandoval County.

Well Nos. & Points of Diversion:

RG-6745	X=374.400	Y=1.537,500
RG-6745-S	X=374,600	Y=1,538,300
RG-6745-S-2	X=372,000	Y=1,542,600
RG-6745-S-3	X=372,300	Y=1,546,400
RG-6745-S-4	X=365,800	Y=1,552,300
RG-6745-S-5	X=374,600	Y=1,545,000
RG-6745-S-6	X=364,000	Y=1,554,600
RG-6745-S-7	X=356,400	Y=1,555,300
RG-6745-S-8	X=355,900	Y=1,549.000
RG-6745-S-9	X=351,500	Y=1,552,000
RG-6745-S-10	X=352,100	Y=1,559,100
RG-6745-S-11	X=357,400	Y=1,560,400
RG-6745-S-12	X=361,000	Y=1,556,400
RG-6745-S-13	X=335,100	Y-1,555,900
RG-6745-S-14	X=367,700	Y=1,539,700
RG-6745-S-15	X=371,250	Y=1,584,800
RG-6745-S-16	X=376,600	Y=1,554,900
RG-6745-S-17	X=376,400	Y=1,551,200
RG-6745-S-18	X=375,300	Y=1,558,600
RG-6745-S-19	X=384,400	Y=1,557,300
RG-6745-S-20	X=403,900	Y=1,573,150
RG-6745-S-21	X=397,850	Y=1,572,100
RG-6745-S-22	X=343,700	Y=1,550,750
RG-6745-S-23	X=388,700	Y=1,589,900
RG-6745-S-24	X=379,900	Y=1,574,200
RG-6745-S-25	X=391,800	Y=1,564,000
RG-6745-S-26	X=387,400	Y=1,555,900
RG-6745-S-27	X=378,100	Y=1,566,100
RG-6745-S-28	X=371,000	Y=1,563,800
RG-6745-S-29	X=355,100	Y=1,565,000
RG-6745-S-30	X=344,600	Y-1,562,500
RG-6745-S-31	X=353,500	Y=1,548,800
RG-6745-S-32	X=357,800	Y=1,543,300
RG-6745-S-33	X=362,100	Y=1,537,200
RG-6745-S-34	X=344,900	Y=1,541,000

Descriptions based on New Mexico Coordinate System, Central Zone.

CONDITIONS OF APPROVAL

1. Permit No. RG-6745 thru RG-6745-S-34 ("this Permit") shall not be exercised to the detriment of valid existing water rights or in a manner that is contrary to the conservation of water within the state or detrimental to the public welfare of the State of New Mexico.

The diversion of water from Pemiit No. RG-6745 through R-6745-S-22, approved October 26, 1979, and Permit No. 02997 into RG-6745 et al., approved August 2, 1997, shall be subject to those permits' original conditions of approval, except 1) depletions shall be calculated using the State Engineer's multilayer digital model for the Middle Rio Grande Administrative Area rather than the Glover-Balmer method; and 2) subject to requirements of Condition 16 of this Permit.

2. The permittee shall utilize the best reasonable technology available to ensure conservation of water to the maximum extent economically possible.

3. The permittee shall file application(s) and obtain permit(s) from the State Engineer authorizing the transfer of an amount of valid consumptive use surface water rights equal to the amount of the groundwater diversions of 12,000 acre feet under this Permit less credit for return flows as approved by the State Engineer. Under this Permit, the permittee shall acquire a

minimum of 8,000 acre feet of consumptive use water rights during a fifty-five year planning period commencing in 2003. Consumptive use water rights in the amount of 1,871.27 acre feet per annum already transferred to offset depletions to the Rio Grande under permittee's previous permit to divert 12,000 acre feet per annum are not included as part of the minimum 8,000 acre feet of water rights to be acquired during the planning period. With respect to transfers of surface water irrigation rights, the consumptive use amount is the Crop Irrigation Requirement. The permittee's water right acquisition of a minimum of 8,000 acre feet of consumptive use during the fifty-five year planning period, when combined with credits approved for return-flow to the Rio Grande and/or for injection into the aquifer through a permitted groundwater storage and recovery project, is intended to equal the annual diversion of 12,000 acre feet of groundwater, subject to review at the end of the fifty-five year period. Approved credits are those as provided by the State Engineer in approving permittee's Return Flow Plan and/or permitting Rio Rancho's groundwater storage and recovery project as provided at Conditions 16 and 17, respectively. The amount of water rights to be acquired under permittee's acquisition program is based on projections that permittee's return flows under Condition 16 will be approximately 38% of total diversions. If permittee's return flows, as provided for in Condition 16, increase to 40% or more

for two consecutive five-year accounting periods, the annual rate of acquisition may, upon request of permittee, be reduced proportionately. Such a request by the permittee shall not be unreasonably denied by the State Engineer.

The permittee shall implement a water rights acquisition program that is subject to the following provisions:

a. The fifty-five year planning period shall be divided into five-year accounting periods;

b. For each accounting period, the permittee shall acquire and transfer, or have acted upon by the State Engineer, 728 acre feet of additional consumptive use water rights, subject to adjustment by the State Engineer;

c. All water rights necessary to offset surface flow depletions to the Rio Grande and to the Jemez River below the Zia Supply Canal point of diversion on the Jemez River may be offset through the transfer of water rights from the Rio Grande or its tributaries;

d. all water rights necessary to offset surface flow depletions to the Jemez River above the Zia Supply Canal point of diversion shall be offset through the transfer of Jemez River water rights within the first two accounting periods; and

e. the transfer of consumptive water rights to replace return flows pursuant to Condition 16 shall be acquired within the fifty-five planning period.

If permittee does not meet the requirements of the acquisition program, then the permittee shall reduce its diversions by 3% on an annual basis, until it has obtained and transferred the requisite water rights. If at the end of the fifty-five year planning period permittee has not obtained permits from the State Engineer authorizing the transfers of valid consumptive use surface water rights equal to the amount of the groundwater diversions under this Permit less credit for return flows as approved by the State Engineer, permittee shall acquire and transfer additional water rights equal to the remainder of permittee's obligation within an additional ten year period of time following the end of the fifty-five year planning period.

4. In no event shall the total combined diversion of water under this Permit exceed the diversions shown in Table 1.

Table 1. Total Diversion Limit From All Wells Combined.

YEAR	Diversion Limits (acre-feet)
2001	11,935
2002	12,651
2003	13,410
2004	14,214
2005	15,067
2006	15,971
2007	16,929
2008	17,945
2009	19,022

YEAR	Diversion Limits (acre-feet)
2010	20,163
2011	21,373
2012	22,655
2013 and thereafter	24,020

5. For purposes of administering this Permit, wells shall be grouped and diversions limited as shown in Tables 2 and 3. Subject to the individual well diversion limits shown in Table 2, the permittee may divert the annual limit shown in Table 3 from any well or combination of wells within that group.

Table 2. Well Groups And Annual Well Diversion Limits.

Groups	Wells	Diversion Limits
1	RG-6745-S-14, RG-6745-S-33	2,800
2	RG-6745-S-8, RG-6745-S-31, RG-6745-S-5	2,000
3	RG-6745 RG-6745-S RG-6745-S-2, RG-6745-S-3, RG-6745-S-5	2,400
4	RG-6745-S-4, RG-6745-S-6	2,000
5	RG-6745-S-7, RG-6745-S-17, RG-6745-S-10, RG-6745-S-11	1,200
6	RG-6745-S-12, RG-6745-S-28	3,000
7	RG-6745-S-16, RG-6745-S-17, RG-6745-S-18[1]	2,000
8	RG-6745-S-19[1], RG-6745-S-25, RG-6745-S-26[2]	3,000
9	RG-6745-S-24, RG-6745-S-27	2,300

[1]Permitted location for well RG-6745-S-18 is within Group 10 rather than Group 7. Approval of this permit does not constitute authorization to change location of well RG-6745-S-18 or any other well.

[2]Group 8 combined diversion from wells RG-6745-S-19 and RG-6745-S-26 shall not exceed 3,000 acre feet per annum.

Groups	Wells	Diversion Limits
10	RG-6745-S-15, RG-6745-S-21	3,500
10	RG-6745-S-23	2,000
10	RG-6745-S-20	80
11	RG-6745-S-30	2,000
12	RG-6745-S-13, RG-6745-S-22, RG-6745-S-34	1,250
13	RG-6745-S-29	1,000

6. The annual diversions from each group shall not exceed the amounts shown in Table 3.

Table 3. Annual Group Diversion Limits (acre-feet)

Year	1	2	3	4	5	6	7	8	9	10	11	12	13
2001	2,000	2,000	1,700	1,400	1,800	1,900	1,800	4,600	3,900	2,710	600	2,000	600
2002	2,000	2,000	1,700	1,500	1,800	2,300	1,800	4,600	4,500	2,910	600	2,000	600
2003	2,400	2,400	1,700	1,500	1,800	2,300	1,800	4,800	4,500	3,210	600	2,000	600
2004	2,400	2,400	1,700	2,000	1,800	2,700	1,900	4,800	4,500	4,010	1,000	2,000	1,000
2005	2,400	3,000	1,700	2,000	2,000	2,700	1,900	5,000	4,500	4,610	1,000	2,100	1,000
2006	2,400	3,000	1,700	2,200	2,100	2,900	2,400	5,200	4,500	5,210	1,000	2,700	1,000
2007	2,400	3,000	2,000	2,500	2,100	2,900	2,400	5,200	4,500	6,200	1,200	2,900	1,000
2008	2,500	3,000	2,300	2,500	2,300	2,900	2,400	5,800	4,500	6,500	1,200	3,150	1,000
2009	2,600	3,000	2,300	2,800	2,300	2,900	2,900	6,000	4,500	7,100	1,200	3,150	1,000
2010	2,800	3,000	2,563	2,800	2,300	3,000	3,000	6,000	4,500	8,200	1,200	3,250	1,000
2011	2,800	3,000	3,073	3,000	2,300	3,000	3,200	6,000	4,500	9,080	1,250	3,250	1,000
2012	2,800	3,000	3,120	3,000	2,300	3,000	4,000	6,000	4,500	9,080	2,000	3,250	1,000
2013 and thereafter	2,800	3,000	3,120	3,000	2,300	3,000	4,000	6,000	4,500	9,080	2,000	3,250	1,000

7. In no event shall the permittee implement a pumping schedule that, when combined with the full exercise of existing water rights, causes groundwater declines to exceed an average rate of 2.75 feet per

year in any non-critical model cell of the OSE Model version, or total water level declines to exceed 250 feet in any model cell from predevelopment conditions to the year 2040.

8. All wells under this Permit shall be equipped with a totalizing meter, or meters, of a type and at a location(s) approved by and installed in a manner acceptable to the State Engineer. Records of the amount of water diverted monthly from each well during the preceding three calendar months shall be submitted in writing to the Office of the State Engineer on or before the 10th day of January, April, July and October of each year. No water shall be diverted from any well unless equipped with a functional totalizing meter. 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 to the Rio Grande.

9. Prior to any diversion of water greater than 12,020.16 acre-feet per annum, the permittee shall implement a well monitoring plan in accordance with the Hydrology Bureau's Memorandum, dated July 31, 2,000, attached to WRD Ex. 16 as Attachment 1, except that continuous recorders are not required. Monthly measurements as set forth in the memorandum are required. Reports of the well monitoring shall be submitted to the Office of the State Engineer on or before

the 10th day of January, April, July and October of each year. After five years, the Office of the State Engineer shall reevaluate the monitoring program and make such modifications to the well monitoring plan as are necessary, in consultation with the permittee. The well monitoring plan set forth in the Hydrology Bureau's Memorandum is hereby further modified to eliminate the requirement that permittee develop the Northern Monitor Well Nest and instead permittee shall be required to modify any one of its existing northern wells and convert such well into a monitoring system, in consultation with the Hydrology Bureau.

10. Proof of Completion of Well(s) shall be filed on or before May 15, 2004.

11. The permittee shall file Proof of Application of Water to Beneficial Use on or before May 15th of the 4th year after the permittee first puts water to beneficial use in an amount greater than 12,020.16 acre-feet per annum and shall file additional proofs on or before May 15th of every 4th year thereafter for additional amounts of water put to beneficial use. The permittee shall file an Application for Extension of Time when it fails to put water to beneficial use in accordance with Condition No. 4.

12. The State Engineer retains jurisdiction to administer the

conditions of this permit.

13. The State Engineer retains jurisdiction over the permit for the purposes of ensuring that exercise of the permit does not violate the foregoing conditions, is not detrimental to existing water rights, is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the State of New Mexico.

14. The State Engineer retains jurisdiction of this permit to evaluate the results of the well monitoring to ensure compliance with Condition of Approval No. 7. Based on the results of the well monitoring, the State Engineer may place additional conditions on this Permit, subject to the following:

a) the State Engineer shall not reduce the diversion limits set forth in Table 1;

b) calculations to adjust permitted pumping schedules shall not take into account the effects of the exercise of water rights with priority dates junior to June 28, 1993; and

c) the permittee's right to hearing and appeal.

15. The permittee has submitted an acceptable 40-Year Plan and Water Conservation Plan to the Office of the State Engineer. The permittee shall submit progress reports on its 40-year Plan and Water Conservation Plan on or before January 10, 2005 and every 5 years

thereafter.

16. The permittee shall submit a Return Flow Plan acceptable to the Office of the State Engineer, subject to the permittee's right to hearing and appeal, before any return flow is credited as an offset of diversions under this Permit. The Return Flow Plan, which shall include return flows from diversions under RG-6745 through RG-6745-S-22, RG-6745 through RG-6745-S-34, Permit No. 02997 into RG-6745 et al., and RG-26259, shall include:

a. a description of the water rights and related wells and facilities for these diversions;

b. a description of the water treatment facilities of the permittee, including location and type of water and wastewater treatment systems and the method of effluent disposal;

c. the location of meters measuring direct return flow to the Rio Grande;

d. the methods and calculations for determining water losses incidental to the return flow process;

e. the projected annual amount of monthly return flows as a percentage of total monthly diversions applicable to the Return Flow Plan for a five year period commencing in 2003;

f. to the extent that the permittee has transferred consumptive use water rights in excess of its calculated depletion for an accounting year, the permittee may apply, as approved by the state

engineer, the surplus of those rights, year to year, to offset depletions under Permit RG-6745 through 6745-S-22 approved October 26, 1979 and August 2, 1997; and

g. Unless otherwise approved by the State Engineer, permittee's reduction of return flows by 10% or more of the projected amount approved in the Return Flow Plan shall be replaced by an equal amount of consumptive use water rights transfers as provided in Condition 3. Flows returned directly to the Rio Grande shall be measured with a totalizing meter, or meters, of a type and at a location(s) approved by and installed in a manner acceptable to the State Engineer. Records of the total amount of flows returned directly to the Rio Grande shall be kept monthly for each location. Records of the flows from each location during the preceding three calendar months shall be submitted in writing to the State Engineer on or before the 10th day of January, April, July and October of each year. 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 return flow to the Rio Grande.

17. Rio Rancho's groundwater storage and recovery project, if approved by the State Engineer and implemented, may serve as the basis for Rio Rancho seeking the State Engineer's modification of the conditions set forth above.

Counsel for the State and permittee have prepared this judgment

for the Court's execution, and it settles all issues in the appeal of this case. Certain of the Findings of Fact and Conditions of Approval contained in the State Engineer's Findings and Conditions dated September 14, 2001, are inconsistent with this Judgment and the stipulated Conditions of Approval contained herein; therefore the State Engineer's Findings and Conditions dated September 14, 2001, have been replaced and have no force or effect.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

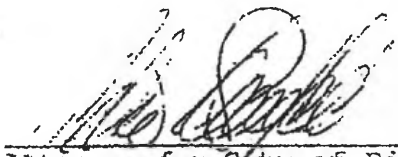
The State Engineer shall issue a permit to the City of Rio Rancho subject to the Conditions of Approval set forth herein, or, the State Engineer may elect to adopt this judgment as the permit and action of the State Engineer; in any event this judgment and the provisions of it, including but not limited to the conditions of approval, shall become final 30 days after entry of this judgment on the docket of the Court.

The parties shall bear their own costs.

Louis P. McDonald
District Judge

Prepared and Submitted:

Stacey Goodman
Special Assistant Attorney General,
Attorney for State Engineer



Attorney for City of Rio Rancho

Attorney for Village of Corrales

MIDDLE RIO GRANDE ADMINISTRATIVE AREA GUIDELINES FOR REVIEW OF WATER RIGHT APPLICATIONS

PREPARED BY

THE OFFICE OF THE NEW MEXICO STATE ENGINEER

FOR INTERNAL USE

THOMAS C. TURNEY

STATE ENGINEER

September 13, 2000

OFFICE OF THE STATE ENGINEER

MIDDLE RIO GRANDE ADMINISTRATIVE AREA GUIDELINES FOR REVIEW OF WATER RIGHTS APPLICATIONS

INTRODUCTION

In New Mexico, the surface waters of the Rio Grande have been considered fully appropriated since the Rio Grande Compact was consummated. Accordingly, the State Engineer does not allow new Rio Grande surface water appropriations. The aquifer consisting of Santa Fe Group and younger alluvial deposits is known to be hydrologically connected to the Rio Grande surface water system. Since groundwater diversions from aquifers hydrologically connected to the Rio Grande affect the fully appropriated surface flow, the state engineer conjunctively manages the water resources within the Rio Grande Basin to protect existing water rights and to ensure New Mexico's compliance with the Rio Grande Compact. The State Engineer hereby defines the Middle Rio Grande Administrative Area (MRGAA), as the area shown in Figure 1, which includes the areal extent of the alluvial aquifer known to be in hydrologic connection with the Rio Grande in the Middle Rio Grande basin.

These guidelines embody the Water Rights Division's current practice for evaluating pending and future applications for permits for groundwater use in the MRGAA, so as to ensure compliance with the Rio Grande Compact, to prevent impairment to existing rights, to limit the rate of decline of groundwater levels so that the life of the aquifer is extended, and to minimize land subsidence. The stream system

within the MRGAA is that stretch of the Rio Grande stream system between Cochiti Dam and San Acacia Dam, which includes the Rio Grande main stem, all tributaries to and aquifers underlying, irrigation canals and laterals within, and drains and wasteways within, that stretch of the Rio Grande.

Since the declaration of the Rio Grande Underground Water Basin, which includes the area now designated as the MRGAA, groundwater permittees have been required to obtain valid water rights in an amount sufficient to offset the effects of their diversions on the surface flows of the Rio Grande stream system. This requirement protects the surface flows of the Rio Grande stream system from being depleted or reduced by groundwater diversions.

Offsetting the effects of groundwater diversions is critical to the conjunctive management of the water resources within the Rio Grande stream system. Any existing permittee requiring surface water rights for offset purposes is confronted with finding a seller of valid surface water rights and obtaining a permit from the State Engineer to transfer the surface water rights. The transfer of surface water rights within the Rio Grande stream system is a complicated and often lengthy process due to the complex interrelationship between the surface and ground waters, the numerous existing appropriations to be protected, and the diversity of the numerous interests having standing to participate in the administrative process for an application for permit. Because a transfer application can be denied or approved and the decision appealed to the district court, the court of appeals and the state supreme court, the final decision may be far removed from the time the application was filed.

The public welfare of the state is promoted only if there is certainty that a permittee will be able to obtain and transfer all necessary valid surface water rights to prevent adverse effects upon the flow of the Rio Grande. Accordingly, the public welfare is best served by limiting actual groundwater diversions within the MRGAA to the amount of valid surface water rights transferred or otherwise held by the permittee, plus the amount of water the permittee returns directly to the river.

ADMINISTRATIVE GUIDELINES

1. WATER RIGHTS APPLICATIONS.

   a. Applications filed after the adoption date of these guidelines to appropriate water within the MRGAA, other than those permitted under NMSA 1978, Section 72-12-1 (1998), will be rejected.

   b. Pending water rights applications within the MRGAA, which have been filed prior to the adoption of these guidelines but not acted upon, will be evaluated using the applicable guidelines described in Paragraphs 2-15 below.

   c. Applications filed after the adoption date of these guidelines to change the place and purpose of use of surface water rights will be evaluated using the guidelines described in Paragraphs 2-15 below.

   d. The transfer of groundwater rights, and other adjustments to groundwater permits, will be processed on a case-by-case basis with due consideration of other applicable guidelines, including Paragraphs 7-15 below, and the policies, rules and regulations of the State Engineer.

   e. Groundwater diversion associated with permits approved before adoption of the MRGAA guidelines shall continue to be limited by the conditions set forth in the existing permit. If a permittee requests State Engineer action concerning a specific permit, then the MRGAA guidelines will be used, as deemed appropriate by the State Engineer, in acting on the request.

2. ABILITY TO ACQUIRE AND HOLD WATER RIGHTS.

Municipalities, counties, state universities, member owned community water systems, and public utilities supplying water to municipalities or counties shall be allowed a water use planning period not to exceed forty years. Water rights for municipalities, counties, state universities and public utilities supplying water to such municipalities or counties shall be based upon a water development plan the implementation of which shall not exceed a forty-year period from the date of the application for a change of place or purpose of use. A water development plan or for preservation of a municipal, county member owned community or state university water supply must be based upon reasonably projected additional needs within forty years.

3. PERMIT LIMIT ON ACTUAL DIVERSION.

A permit to divert ground water shall be conditioned to limit the actual groundwater diversion to the valid consumptive use surface water rights held and designated for offset purposes by the permittee plus any State Engineer approved flow returned directly to the Rio Grande (examples calculations shown in Figures 2 through 5). Consideration shall be given to established pre-basin groundwater rights previously incorporated into a permit. Approval of return flow can only be obtained by application and subsequent notice and publication. Permits may be conditioned to require a return flow plan showing the method of determination or measuring of the return flow as it is transported directly to the Rio Grande. Indirect return flow, or return flow to the aquifer, shall be considered in accordance with the policies, rules and regulations of the State Engineer, as appropriate.

4. VALID SURFACE RIGHTS.

Valid surface rights shall include:

a. surface water rights transferred to ground water under an existing State Engineer permit;

b. other valid water rights, including contracts for San Juan Project water, deemed acceptable to the State Engineer.

5. OFFSET REQUIREMENTS .

Valid consumptive use surface water rights as described in 4. above shall be obtained and designated by the permittee to offset the greater of either:

a. total well diversions less any flow returned directly to the Rio Grande on a yearly basis; or

b. the net surface water depletion associated with past and present use including consideration of residual effects of past diversions, on a time schedule approved by the State Engineer.

6. LEASE OF WATER RIGHTS.

Valid consumptive use water rights held by the permittee for the purpose of offsetting future depletions may be leased for other purposes as provided by Section 72-6-3 (NMSA), until necessary to offset the surface water depletions caused by the permitted groundwater diversion. The determination of the quantities of water available for lease shall be obtained using the 1999 interim state engineer MRGAA model and will include consideration of approved offset return flow directly returned to the Rio Grande (example shown in Figures 2 through 5).

7. MRGAA RESTRICTIONS.

Applications for well permits, other than those under Section 72-12-1 (NMSA), shall be evaluated using the interim MRGAA model to ensure resulting groundwater level decline rates do not exceed an average rate of 2.75 feet per year in non-critical areas (as defined below). Such applications may be approved unless:

- The state engineer finds that the granting of the application will impair existing water rights, be contrary to water conservation within the state, or be detrimental to the public welfare of the state; or
- The proposed appropriation combined with the exercise of existing water rights will cause total water level declines in any Critical Management Area model cell to exceed 250 feet from predevelopment conditions to the year 2040.

8. CRITICAL MANAGEMENT AREAS.

An area with excessive water level decline rates shall be closed to additional appropriations and shall be defined as a Critical Management Area (CMA). A CMA shall generally include areas in which the model-predicted water level declines, due to exercise of existing permits, exceed an average rate of 2.50 feet per year through the year 2040; and those areas in which the current observed rate of water level declines exceeds an average of 2.50 feet per year. The current CMA boundary is shown in Figure 6a and 6b. The state engineer will modify the boundaries of the CMA as deemed necessary to account for the effects of newly permitted groundwater diversions.

9. CRITICAL MANAGEMENT AREA RESTRICTIONS.

No applications will be accepted in a CMA except for applications to replace, repair, deepen, or supplement an original well or for wells under Section 72-12-1 (NMSA). The amount of water previously placed to beneficial use under an existing given permit will be the limit for any new permits to replace, repair, or deepen wells within the CMA. Supplemental well applications may be considered if the combined diversion from the supplemental well and primary well does not exceed the maximum amount of water previously placed to beneficial use from the primary well. No alternate points of diversion (i.e. additional or new wells) necessary to appropriate the maximum permitted amount of water will be permitted in the CMA. Owners of declared water rights within a CMA will not be granted any permits to increase their diversion beyond the amount of ground water already placed to beneficial use.

10. CALCULATION OF WATER LEVEL DECLINE RATES.

Decline rate calculations shall be made by simulating full production of proposed wells beginning in the year the application was filed, through the beginning of year 2040, unless the application includes a pumping schedule. If a schedule has been provided, simulations will be performed in accordance with the schedule. The proposed stresses and full exercise of existing permits will be assumed, including reasonable use of 72-12-1 wells, through the year 2040. Computed decline rates through the year 2040, from existing and proposed uses, shall be divided by the number of years used in the predictive scenario to obtain the average decline rate. If a pumping schedule has been provided then

the permit shall be conditioned to limit pumpages in accordance with the schedule. The interim model will be updated to include the new permits so that the cumulative effects are considered in the evaluation of subsequent applications. Any model cell which reaches a predicted average decline of 2.50 feet per year or more due to existing permits and subsequently approved applications, and all cells directly above and below that cell, will be designated as a CMA.

11. NON-CRITICAL AREAS.

'Non-critical' areas are defined as those areas that do not fall within any CMA.

12. SECTION 72-12-1 WELL RESTRICTIONS.

New wells within a CMA permitted under Section 72-12-1 (NMSA) shall be conditioned to require metering.

13. WATER LEVEL MONITORING.

Permits may be conditioned to require monitoring as deemed necessary by the state engineer.

14. OTHER CONSIDERATIONS.

The state engineer will deny any application if it is found that the granting of the application would be contrary to statute.

15. PERMIT CANCELLATION.

A permit approved to divert water will be conditioned to allow the State Engineer to cancel the permit if the conditions of approval are not met or if the actions of the permittee are not in accordance with the permit.

Adopted this 22nd day of Sept, 2000.

Thomas C. Turney
State Engineer

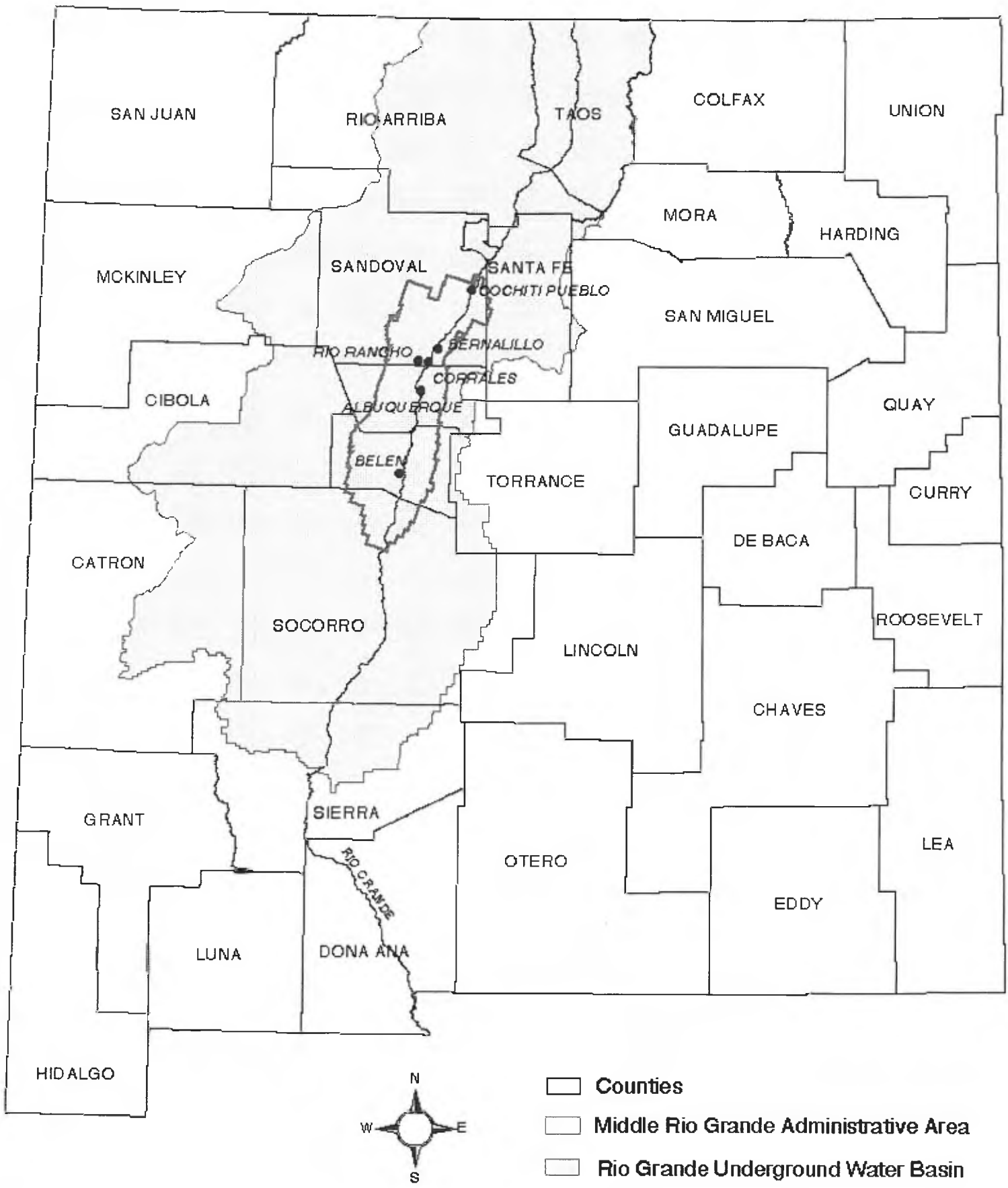


Figure 1. Rio Grande Basin and Middle Rio Grande Administrative Area.

Figure 2

Transfer of Surface Water Rights into Groundwater MRGAA
Depletion and Lease-back Sample Calculation
100 AF/yr CU Transfer, No Return Flow Associated with New Groundwater Use

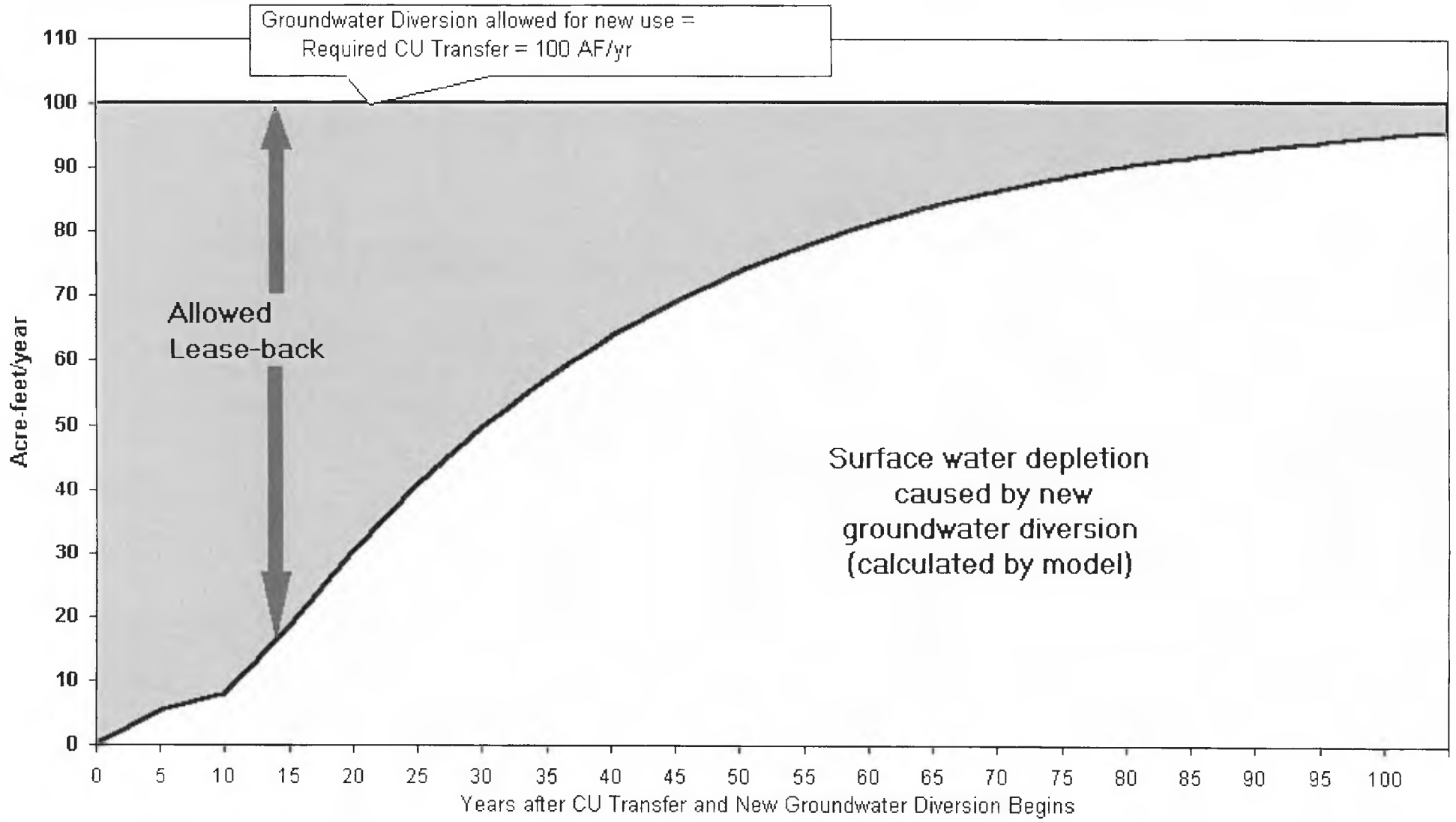
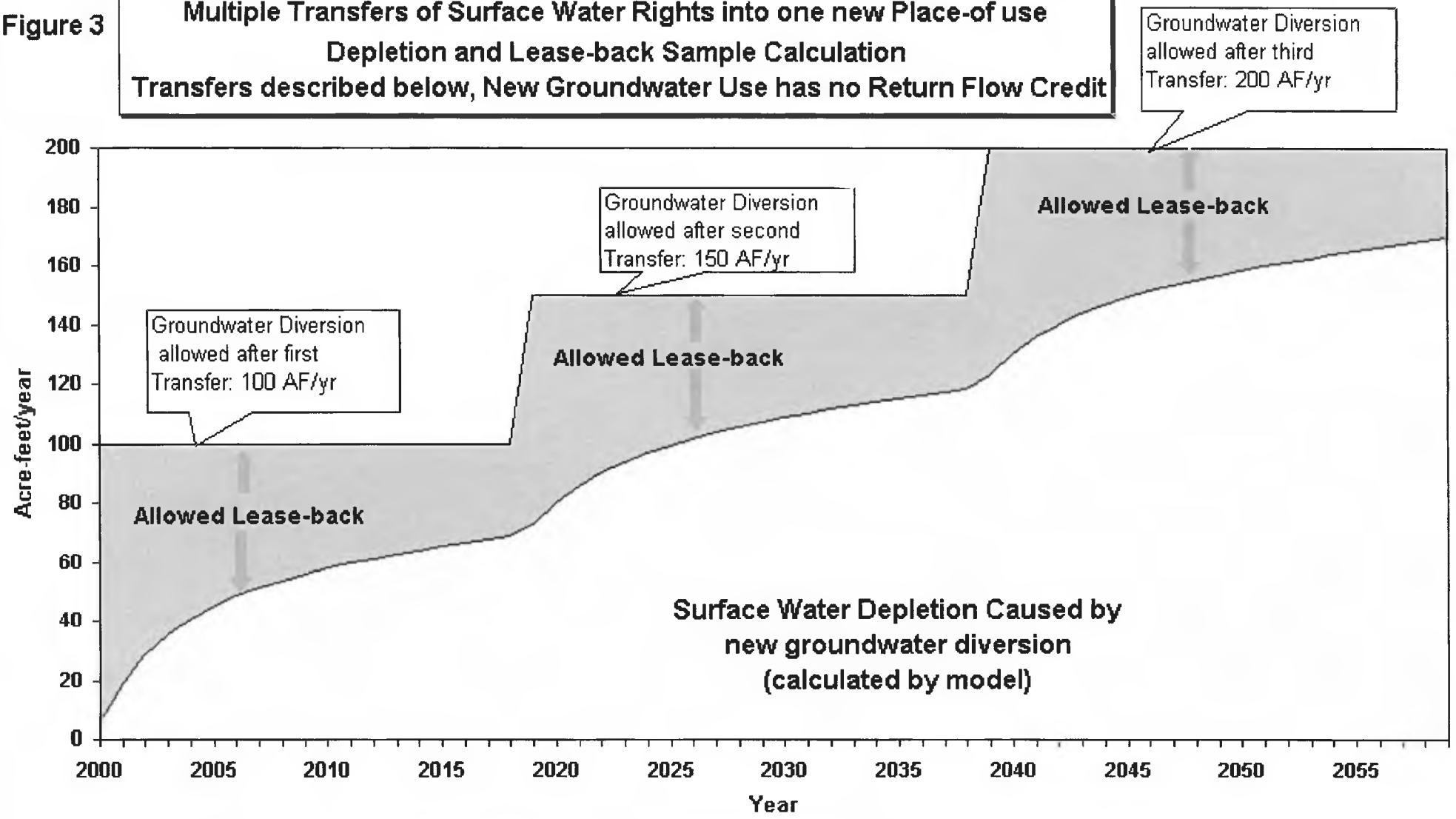


Figure 3

Multiple Transfers of Surface Water Rights into one new Place-of use
Depletion and Lease-back Sample Calculation
Transfers described below, New Groundwater Use has no Return Flow Credit



This figure illustrates surface water depletion and lease-back calculations for multiple transfers into one place-of-use.
In this case, the new use does not have any credited return flow to the Rio Grande.

Transfer #1: year 2000; 100 AF/yr consumptive use
Transfer #2: year 2020; 50 AF/lyr consumptive use
Transfer #3: year 2040; 50 AF/yr consumptive use

Figure 4

Transfer of Surface Water Rights into Groundwater use MRGAA
Depletion and Lease-back Sample Calculation
100 AF/yr CU Transfer; 33.33% Return Flow Credit Associated with New Use

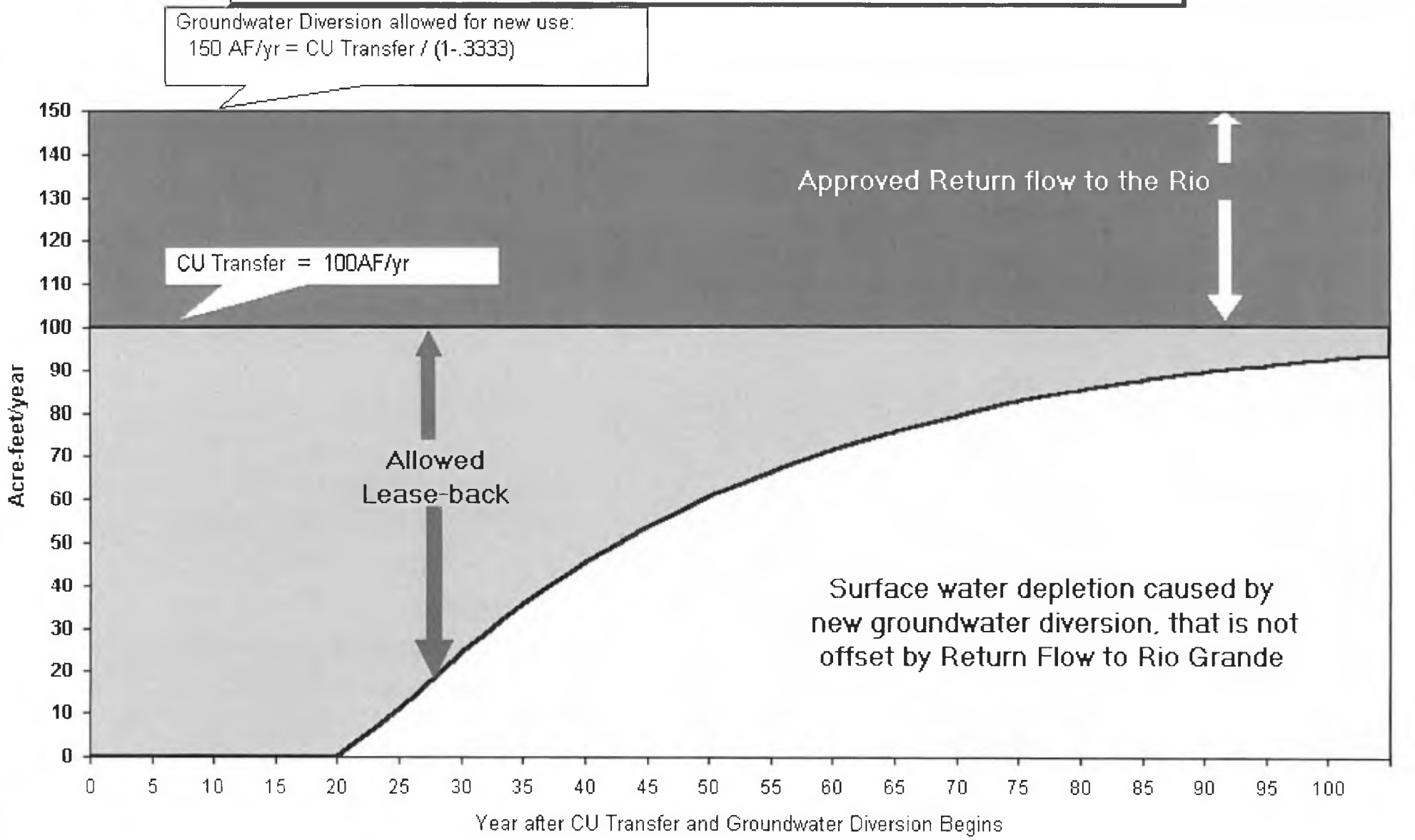
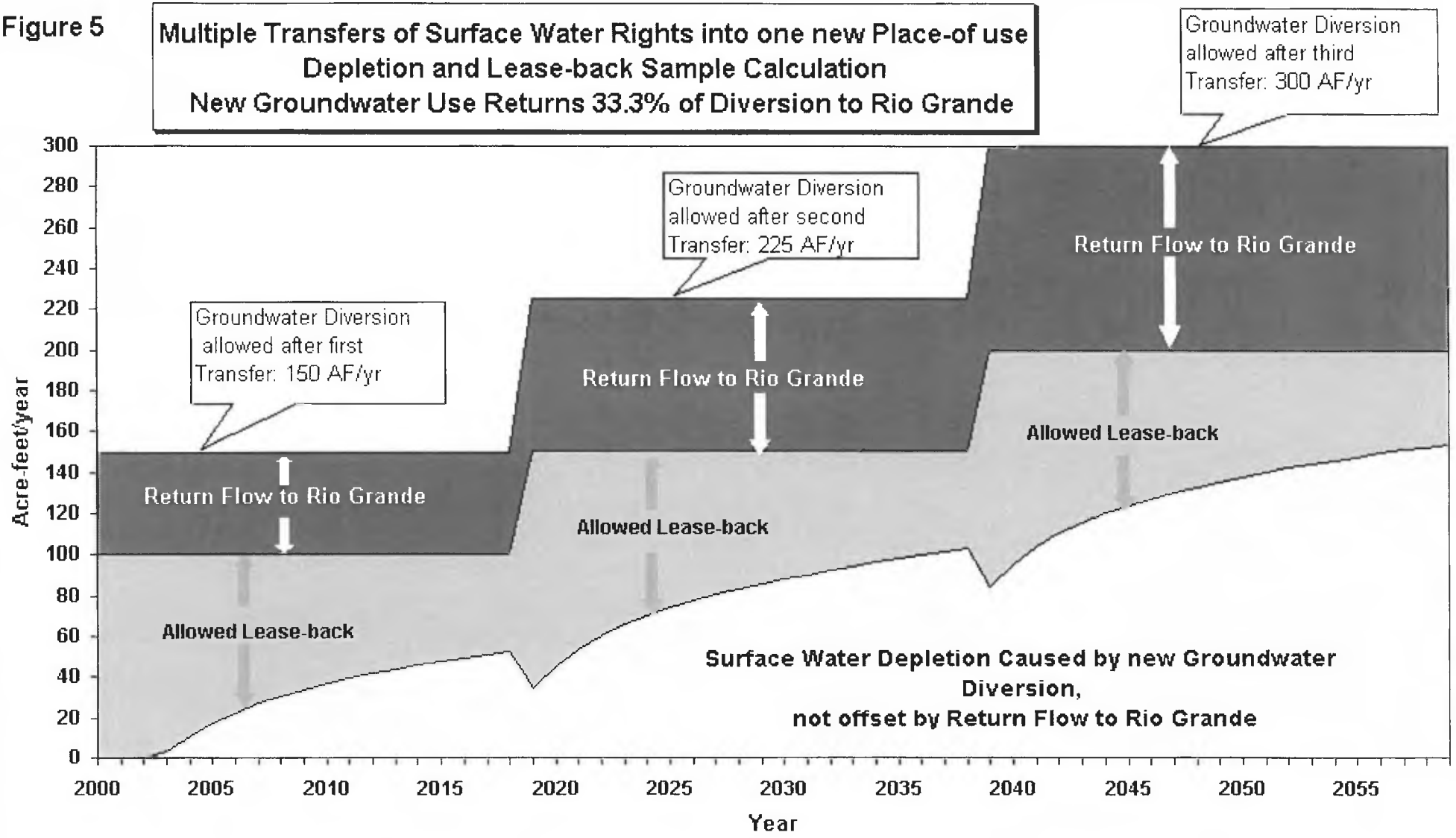


Figure 5



This figure illustrates surface water depletion and lease-back calculations for multiple transfers into one place-of-use.
In this case, the new use returns 33.33% of its diversion directly to the Rio Grande.

Transfer #1: year 2000; 100 AF/yr consumptive use
Transfer #2: year 2020; 50 AF/lyr consumptive use
Transfer #3: year 2040; 50 AF/yr consumptive use

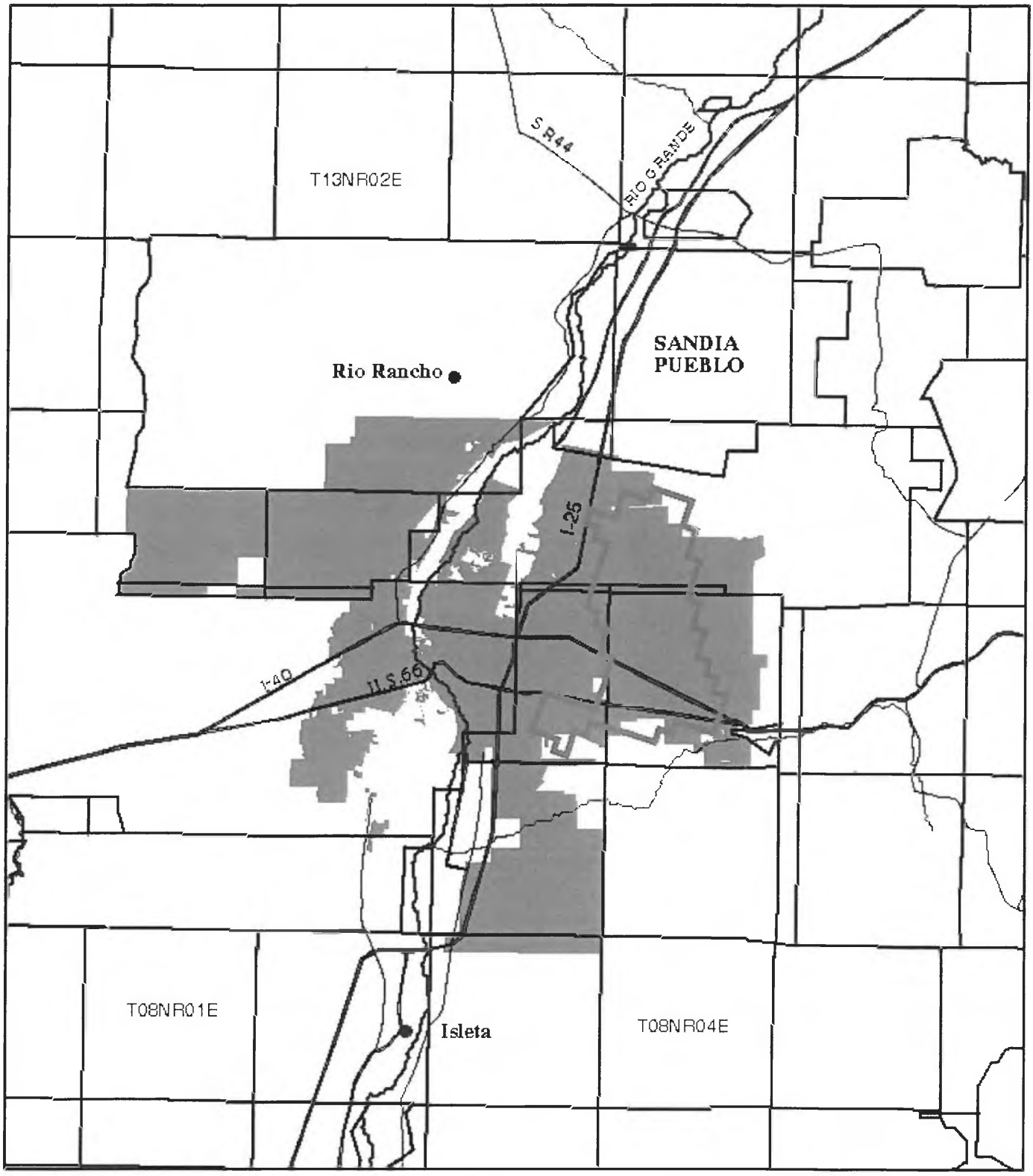


Figure 6a

Location of the Critical Management Area (CMA)

N

Legend

Critical Management Area

Albuquerque City boundary

0 1 2 3 Miles

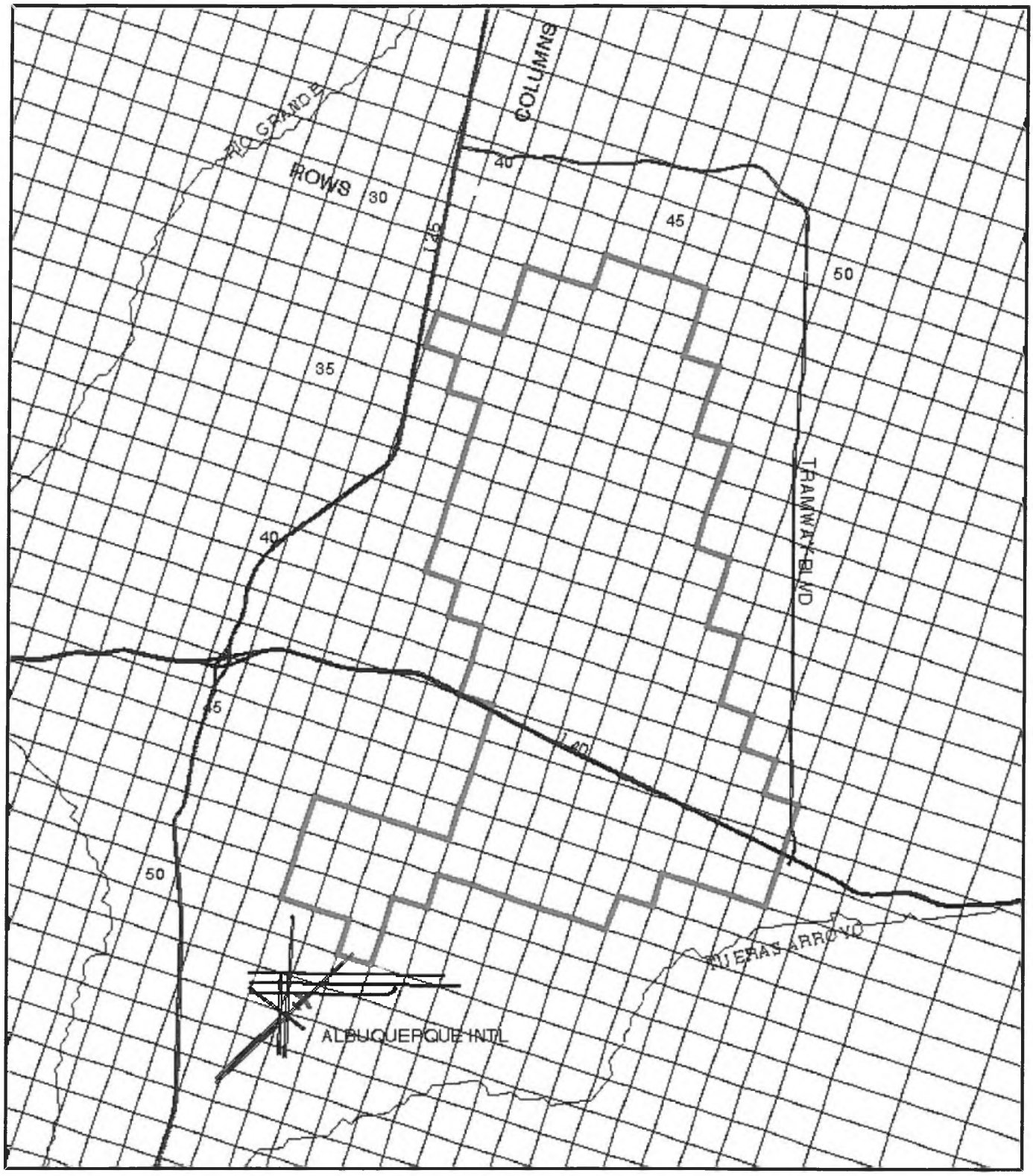


Figure 6b

Middle Rio Grande Administration Area
Location of the Critical Management Area (CMA)
and Model Grid

Legend

Critical Management Area

MRGAA Model Grid

N

1 0 1 2 Miles

MODRALL SPERLING

LAWYERS

Barbara C. Lucero, CP
Certified Paralegal
505.848.1865 Direct
505.848.1889 Fax
barbaral@modrall.com

December 29, 2016

HAND DELIVERED & FILED

Mr. Wayne Canon, District Supervisor
Office of the State Engineer – District 1
5550 San Antonio Dr. NE
Albuquerque, New Mexico 87109-4127

Re: Filing on Behalf of the City of Rio Rancho
OSE File No. RG-6745 et al.

STATE ENGINEER'S OFFICE
2016 DEC 29 AM 11:32

Dear Mr. Canon:

Maria O'Brien, Esq. represents the City of Rio Rancho and herewith files an *Application for Permit to Change an Existing Water Right for Non 72-12-1* and an *Application for Temporary Transfer* (both in triplicate) along with the combined filing fee of $250.00 regarding transfers of water rights from and to Bosque Del Sol c/o Tessa Davidson held under OSE File Nos. SD-08707 into RG-6745 et al. and (RG-6745 et al into SD-08707)-T.

Please combine the Notice of Publications for the transfer and leaseback and email it to me at barbaral@modrall.com. Send all other communication regarding this matter to Maria O'Brien at our address below. Please let me know me know if you have questions. Thank you for your assistance.

Very truly yours,

Barbara C. Lucero, CP
Paralegal

W2850397.DOCX
ENCLOSURES
c: Tessa Davidson, Esq.
Maria O'Brien, Esq.

Modrall Sperling
Roehl Harris & Sisk P.A.

500 Fourth Street NW
Suite 1000
Albuquerque,
New Mexico 87102

PO Box 2168
Albuquerque,
New Mexico 87103-2168

Tel: 505.848.1800
www.modrall.com

EXHIBIT
tabbies
6

File No.

NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT

(Non 72-12-1)

(check applicable boxes):

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

☑ Change Purpose of Use ☐ Groundwater ☑ 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: Requested End Date:
(Not to Exceed 3 ac-ft in One Year)

☐ Water Use Lease, NMSA 1978, §§ 72-6-1 to-7 Requested Start Date: Requested End Date:

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

Name: City of Rio Rancho	Name: Bosque Del Sol, LLC
Contact or Agent: check here if Agent ☐ Steve Gallegos, Interim Utilities Director	Contact or Agent: check here if Agent ☑ c/o Tessa Davidson, Esq., Davidson Law Firm, LLC
Mailing Address: 3200 Civic Center Circle NE	Mailing Address: P.O. Box 2240
City: Rio Rancho	City: Corrales
State: Zip Code: New Mexico 87144	State: Zip Code: New Mexico 87048
Phone: ☐ Home ☐ Cell Phone (Work): (505) 891-5016	Phone: ☐ Home ☐ Cell Phone (Work): (505) 792-3636
E-mail (optional):	E-mail (optional):

2018 DEC 20 AM 11:38 STATE ENGINEER OFFICE

2. CURRENT OSE FILE INFORMATION (Required)

OSE File No(s): SD-08707 into RG-6745 et al.	Priority Date (if known): 12/31/1851	Subfile/Cause No. (if applicable):

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

☐ Domestic ☐ Livestock ☑ Irrigation ☐ Municipal ☐ Industrial ☐ Commercial ☐ Other Use (specify): _____ Describe a specific use If applicable (i.e. sand & gravel washing, dairy etc): _____	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section Diversion: 714.285 Consumptive Use: 500.0 Other (include units): _____

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 3/07/16

File No.:	Trn. No.:	Receipt No.:
Trans Description (optional):		Sub-Basin:
PCW/LOG Due Date:	PBU Due Date:	

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

Socorro County

5. ADDITIONAL STATEMENTS CONCERNING THE CURRENT WATER RIGHT

Attachment A is a map showing the area from which the water rights appurtenant to 238.1 acres will be moved.

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

☑ **Surface POD** OR ☑ **Ground Water POD (Well)**

Name of ditch, acequia, or spring: Socorro Main Canal & Luis Lopez

Stream or water course: Rio Grande | 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
SP-1690-4	307,602.3 feet	1,185,295 feet	SW1/4NE1/4NE1/4, Section 1, Township 1 South, Range 1 West, NMPM
Supplemental Wells: RG-14999	1,449,582	1,105,225	
RG-14999-S	1,449,558	1,104,903	
RG-14999-S-2	1,452,747	1,103,451	
RG-14999-S-3	1,449,925	1,103,451	

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: MRGCD (surface diversion); Bosque Del Sol (supplemental groundwater wells)

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

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)
☐ 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, **and/or** Name of Hydrographic Survey, **and/or** Name of Irrigation or Conservation District, **and/or** Name and County of Subdivision **and/or** Grant	PLSS Section **and/or** Map No. **and/or** Lot No.	PLSS Township **and/or** Tract No. (Please list each tract individually) **and/or** Block No.	PLSS Range	Acres	Priority
Parts of Tracts 1B1, 1B2A	19, 20, 29, 30	3 North	1 East		12/31/1851
Part of Tract 1B2B	29, 30, 31, 32	3 North	1 East		12/31/1851
MRGCD Maps 164 & 165					
Part of Tract 3	31	3 North	1 East		12/31/1851
MRGCD Map 166					
			Total Acres:	238.1	

Other description relating place of use to common landmarks, streets, or other:
See attached Map of Move-From Area.

Place of use is on land owned by (required):
Bosque Del Sol, LLC

Are there other sources of water for these lands? No ☐ Yes ☑ describe by OSE file number: RG-14999 et al.

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

8. **MOVE-TO PURPOSE OF USE AND AMOUNT OF WATER** (Complete this section ONLY if the purpose of use is changing)

☑ Domestic ☐ Livestock ☑ Irrigation ☑ Municipal ☑ Industrial ☑ Commercial ☑ Other Use (specify): Housing subdivision and related purposes Describe a specific use If applicable (i.e. sand & gravel washing, dairy etc): _____	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section Diversion: _____ Consumptive Use: 500.0 Other (include units): _____

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

☐ **Surface POD OR** ☑ **Ground Water POD (Well)**

Name of ditch, acequia, or spring:

Stream or water course: | Tributary of:

If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. ☐ Check here if Attachment 2 is included in this application packet.

POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84).
District II (Roswell) & 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
RG-6745	374,400 Feet	1,537,500 Feet	
RG-6745-S	374,600 Feet	1,538,300 Feet	
RG-6745-S-2	372,000 Feet	1,542,600 Feet	
RG-6745-S-3	372,300 Feet	1,546,400 Feet	

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** 31 (35 wells total)

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

Point of Diversion is on Land Owned by: City of Rio Rancho

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): | Outside diameter of well casing (inches):

Driller Name: | Driller License Number:

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:

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, **and/or** Name of Hydrographic Survey, **and/or** Name of Irrigation or Conservation District, **and/or** Name and County of Subdivision **and/or** Grant	PLSS Section **and/or** Map No. **and/or** Lot No.	PLSS Township **and/or** Tract No (Please list each tract individually) **and/or** Block No.	PLSS Range	Acres	Priority
Within the municipal service area of the					
City of Rio Rancho as currently configured					
and as to be configured in the future.					
			Total Acres:		

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

STATE ENGINEER OFFICE
2014 DEC 29 AM 11:32

Place of use is on land owned by (required):
N/A. Municipal service are of the City of Rio Rancho

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.

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 made for the purpose of complying with Permit RG-6745 et al. which requires the City of Rio Rancho to offset the impact of groundwater pumping on the surface flows of the Rio Grande.

Companion Application for a 10-Year Lease of the water rights is filed simultaneously.

ACKNOWLEDGEMENT

We, the City of Rio Rancho, and co-applicant Bosque Del Sol, LLC affirm that the forgoing statements are true to the best of our knowledge and belief.

City of Rio Rancho, a New Mexico Municipal Corporation

By: _____
Steve Gallegos, Interim Utilities Director

Bosque Del Sol, LLC, a New Mexico Limited Liability Company

By: _____
Tessa Davidson, its legal agent

STATE ENGINEER OFFICE
2016 DEC 29 AM 11:32

ACTION OF THE STATE ENGINEER

This application is:

☐ approved ☐ partially approved ☐ denied

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

Witness my hand and seal this _____ day of _____ 20 _____ , for the State Engineer,

_____, State Engineer

By: _____ _____
Signature Print

Title: _____
Print

FOR OSE INTERNAL USE Application for Permit, Form wr-06

File Number:	Trn Number:

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:	**b. Information on Attachment(s):**
☐ Move-From Point of Diversion(s) ☒ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

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

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-4	X or Longitude: 365,800 Feet	Y or Latitude: 1,552,300 Feet	Other Location Description:
POD Number: RG-6745-S-5	X or Longitude: 374,600 Feet	Y or Latitude: 1,545,000 Feet	Other Location Description:
POD Number: RG-6745-S-6	X or Longitude: 364,000 Feet	Y or Latitude: 1,554,600 Feet	Other Location Description:
POD Number: RG-6745-S-7	X or Longitude: 356,400 Feet	Y or Latitude: 1,555,300 Feet	Other Location Description:
POD Number: RG-6745-S-8	X or Longitude: 355,900 Feet	Y or Latitude: 1,549,000 Feet	Other Location Description:
POD Number: RG-6745-S-9	X or Longitude: 351,500 Feet	Y or Latitude: 1,552,000 Feet	Other Location Description:
POD Number: RG-6745-S-10	X or Longitude: 352,100 Feet	Y or Latitude: 1,559,100 Feet	Other Location Description:
POD Number: RG-6745-S-11	X or Longitude: 357,400 Feet	Y or Latitude: 1,560,400 Feet	Other Location Description:
POD Number: RG-6745-S-12	X or Longitude: 361,000 Feet	Y or Latitude: 1,556,400 Feet	Other Location Description:

STATE ENGINEERS OFFICE
2016 DEC 29 AM 11:32

FOR OSE INTERNAL USE

Form wr-08
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

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:	**b. Information on Attachment(s):**
☐ Move-From Point of Diversion(s) ☒ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

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

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-13	X or Longitude: 335,100 Feet	Y or Latitude: 1,555,900 Feet	Other Location Description:
POD Number: RG-6745-S-14	X or Longitude: 367,700 Feet	Y or Latitude: 1,539,700 Feet	Other Location Description:
POD Number: RG-6745-S-15	X or Longitude: 371,250 Feet	Y or Latitude: 1,584,800 Feet	Other Location Description:
POD Number: RG-6745-S-16	X or Longitude: 376,600 Feet	Y or Latitude: 1,554,900 Feet	Other Location Description:
POD Number: RG-6745-S-17	X or Longitude: 376,400 Feet	Y or Latitude: 1,551,200 Feet	Other Location Description:
POD Number: RG-6745-S-18	X or Longitude: 375,300 Feet	Y or Latitude: 1,558,600 Feet	Other Location Description:
POD Number: RG-6745-S-19	X or Longitude: 384,400 Feet	Y or Latitude: 1,557,300 Feet	Other Location Description:
POD Number: RG-6745-S-20	X or Longitude: 403,900 Feet	Y or Latitude: 1,573,150 Feet	Other Location Description:
POD Number: RG-6745-S-21	X or Longitude: 397,850 Feet	Y or Latitude: 1,572,100 Feet	Other Location Description:

STATE ENGINEER OFFICE
2016 DEC 29 AM 11 32

FOR OSE INTERNAL USE

Form wr-08
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

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:	b. Information on Attachment(s):
☐ Move-From Point of Diversion(s) ☒ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

☐ **Surface Point of Diversion** OR ☒ **Well**

Name of ditch, acequia, or spring:	
Stream or water course:	
Tributary of:	

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-22	X or Longitude: 343,400 Feet	Y or Latitude: 1,550,750 Feet	Other Location Description:
POD Number: RG-6745-S-23	X or Longitude: 388,700 Feet	Y or Latitude: 1,589,900 Feet	Other Location Description:
POD Number: RG-6745-S-24	X or Longitude: 379,900 Feet	Y or Latitude: 1,574,200 Feet	Other Location Description:
POD Number: RG-6745-S-25	X or Longitude: 391,800 Feet	Y or Latitude: 1,564,000 Feet	Other Location Description:
POD Number: RG-6745-S-26	X or Longitude: 387,400 Feet	Y or Latitude: 1,555,900 Feet	Other Location Description:
POD Number: RG-6745-S-27	X or Longitude: 378,100 Feet	Y or Latitude: 1,566,100 Feet	Other Location Description:
POD Number: RG-6745-S-28	X or Longitude: 371,000 Feet	Y or Latitude: 1,563,800 Feet	Other Location Description:
POD Number: RG-6745-S-29	X or Longitude: 355,100 Feet	Y or Latitude: 1,565,000 Feet	Other Location Description:
POD Number: RG-6745-S-30	X or Longitude: 344,600 Feet	Y or Latitude: 1,562,500 Feet	Other Location Description:

STATE ENGINEER OFFICE
2019 DEC 29 AM 11:32

FOR OSE INTERNAL USE

Form wr-08
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

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:	**b. Information on Attachment(s):**
☐ Move-From Point of Diversion(s) ☒ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

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

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-31	X or Longitude 353,500 Feet	Y or Latitude 1,548,800 Feet	Other Location Description:
POD Number: RG-6745-S-32	X or Longitude 357,800 Feet	Y or Latitude 1,543,300 Feet	Other Location Description:
POD Number: RG-6745-S-33	X or Longitude 362,100 Feet	Y or Latitude 1,537,100 Feet	Other Location Description:
POD Number: RG-6745-S-34	X or Longitude 344,900 Feet	Y or Latitude 1,541,000 Feet	Other Location Description:
POD Number:	X or Longitude	Y or Latitude	Other Location Description: All located within the Town of Alameda Grant,
POD Number:	X or Longitude	Y or Latitude	Other Location Description: NMCS, within the Service area of the City of
POD Number:	X or Longitude	Y or Latitude	Other Location Description: Rancho municipal water system.
POD Number:	X or Longitude	Y or Latitude	Other Location Description: Well coordinates are described in N.M.C.S,
POD Number:	X or Longitude	Y or Latitude	Other Location Description: Central Zone, NAD 27 (Feet).

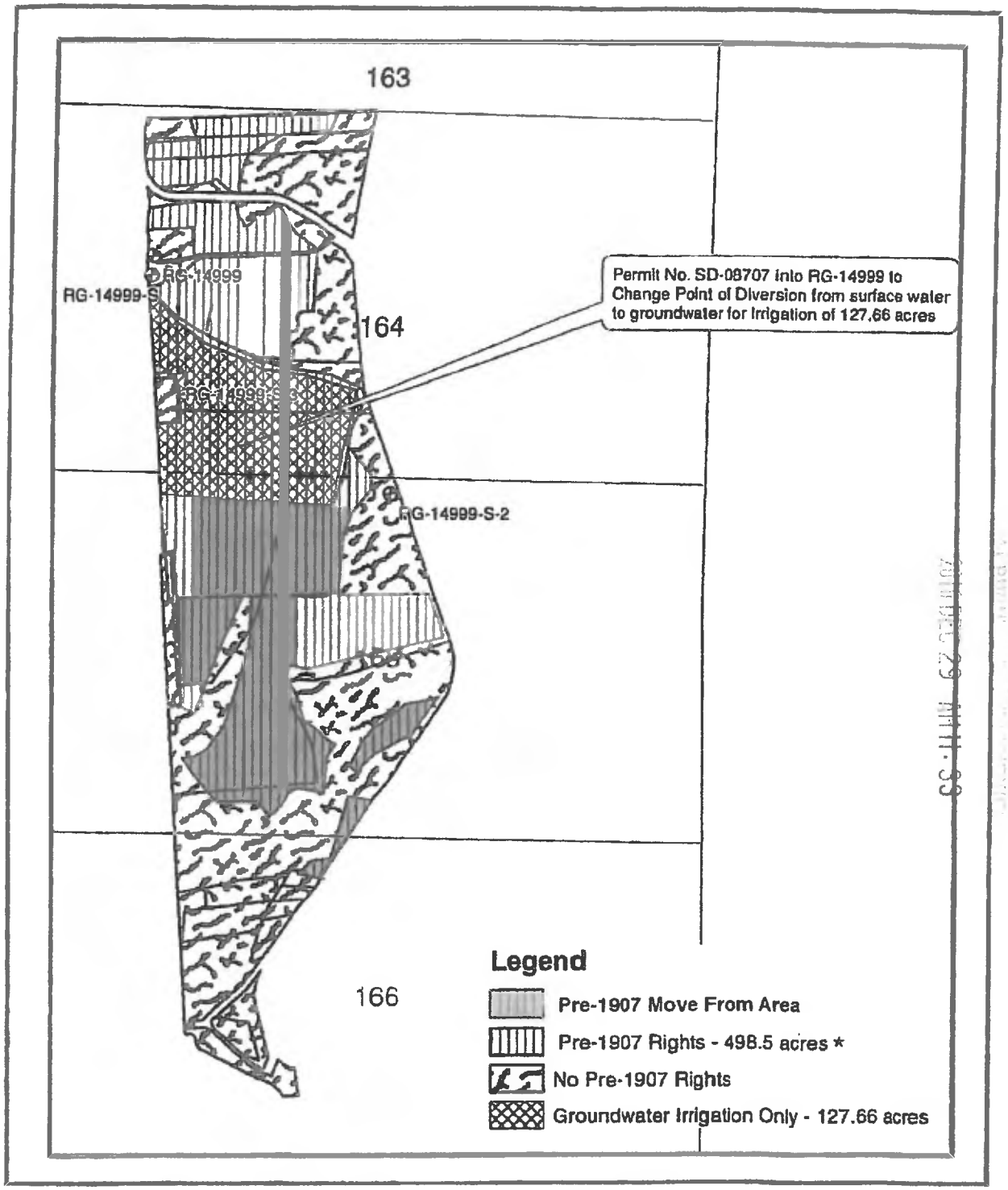
STATE ENGINEER'S OFFICE
2019 DEC 23 AM 11:32

FOR OSE INTERNAL USE

Form wr-08
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

Map of Move-From Area



*498.5 acres were recognized as having valid water rights with an 1851 priority date under Permit No. SD-08707 into RG-14999 as set forth in the attached Conditions of Approval, condition No. 5.

MEMORANDUM
Office of the State Engineer
Water Rights – District 1

Conditions of Approval

1. This application SD-08707 into RG-14999 is approved as follows:

Permittee: T-Squared Farms, LLC

Permit No. SD-08707 into RG-14999

Priority: December 31, 1851 Luis Lopez Ditch

Source: Surface Water to Groundwater

Point of Diversion:

Move From: Surface: San Acacia Diversion Dam (SP-1690-4) of the MRGCD, located in the SW1/4 NE1/4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, also located at a point where X=307,602.3 feet and Y=1,185,295 feet, New Mexico State Plane Coordinate System, Central Zone, NAD 27, Socorro County, New Mexico.

Move To:

Well No.	X*	Y*
RG 14999	1,449,582 feet	1,105,225 feet
RG 14999-S	1,449,558 feet	1,104,903 feet
RG 14999-S2	1,452,747 feet	1,103,451 feet
RG 14999-S3	1,449,925 feet	1,103,451 feet

NMSPCS, NAD 83, Central Zone, and are all located within the Town of Socorro Grant, Socorro County, New Mexico

Purpose of Use: Irrigation

Place of Use: 127.66 acres of land described as part of tracts, 1A1, 1A2, 6, and 7, on MRGCD Map No. 164; and part of tract 1B1 on MRGCD Map No. 165, Socorro County, New Mexico. See Attachment 1.

Amount of Water: 382.98 acre-feet per annum farm delivery requirement
268.086 acre-feet per annum consumptive irrigation requirement

2. The diversion of water from wells RG-14999, RG-14999-S, RG-14999-S-2, and RG-14999-S-3 under this permit shall not exceed 382.98 acre-feet per annum for the irrigation of the 127.06 acres described above. No surface water shall be diverted for the irrigation of said 127.06 acres.

3. Wells RG-14999, RG-14999-S, RG-14999-S-2, and RG-14999-S-3 shall be equipped with a totalizing meter, or meters, of a type and at a location(s) 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 meter reading, units, and dates of recalibration of each meter and any replacement meter(s) used to determine the diversion of water. No water shall be diverted from any well not equipped with a functional totalizing meter(s).

4. Records of the total amount of water diverted from Wells RG-14999, RG-14999-S, RG-14999-S-2, and RG-14999-S-3, shall be submitted by the permittee to the District 1 Office of the State Engineer via mail, e-mail, or facsimile on or before the 10th day of January, April, July, and October for the three preceding calendar months. The permittee shall submit a one-time photograph of the installed meter, clearly showing the face of the meter, to the Office of the State Engineer.

5. The Office of the State Engineer recognizes State Engineer File No. SD-08707 with a priority date of December 31, 1851 for surface water with a point of diversion on the Luis Lopez Ditch used for irrigation of 498.5 acres of land described as part of tracts 2, 4A, 4B 1A1, 1A2, 6, and 7, all on MRGCD Map 164; and part of Tracts 1B1, 1B2A, and 1B2B on MRGCD Map 165; and part of tract 3 on MRGCD Map No. 166, Socorro County shown on Attachment 1.

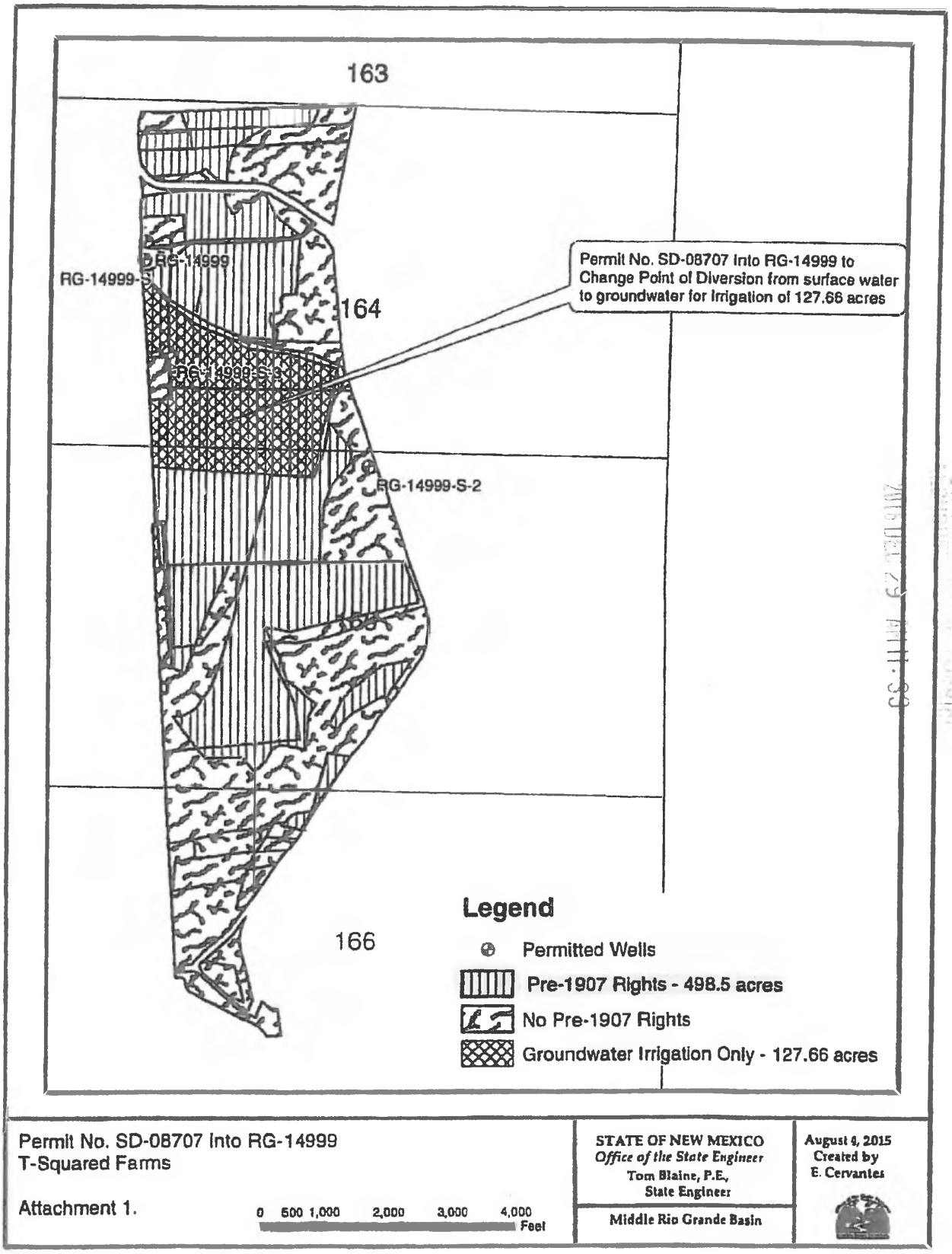
6. The permittee shall utilize the highest and best technology available to ensure conservation of water to the maximum extent practical.

7. The State Engineer retains jurisdiction over this permit.

Witness my hand and seal this 29th day of September 2015.

Tom Blaine, P.E.
State Engineer

Gary Stansifer
Middle Rio Grande Water Master



Permit No. SD-08707 Into RG-14999
T-Squared Farms

Attachment 1.

0 500 1,000 2,000 3,000 4,000 Feet

STATE OF NEW MEXICO
Office of the State Engineer
Tom Blaine, P.E.,
State Engineer

Middle Rio Grande Basin

August 4, 2015
Created by
E. Cervantes

DAVIDSON LAW FIRM, LLC

TESSA T. DAVIDSON

STREET: 4206 CORRALES RD.
MAIL: P.O. BOX 2240
CORRALES, NM 87048
PH: 505-792-3636
EMAIL: TTD@TESSADAVIDSON.COM

December 12, 2016

Wayne Cannon, District Supervisor
Office of the State Engineer – District I
5550 San Antonio Dr. NE
Albuquerque, New Mexico 87109-4127

Re: Application for Permit to Change an Existing Water Right for non-72-12-1 (Points of Diversion, Place and Purpose of Use) from Surface to Ground Water, filed by the City of Rio Rancho and Bosque Del Sol, LLC

Dear Mr. Cannon:

This firm represents Bosque Del Sol, LLC, the owner of the declared water rights under File No. SD-08707 and the co-applicant listed in the above referenced matter. It is our opinion that the *Luis Lopez Ditch* located at the move-from point of diversion is not an active acequia. To the contrary, the Middle Rio Grande Conservancy District assumed operations and maintenance responsibilities for this acequia. Consequently, NMSA 1978 §72-5.24.1 (2007 Supp.) does not apply to the above referenced application.

Sincerely yours,

DAVIDSON LAW FIRM, LLC

By: _____
Tessa T. Davidson

File No.

NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT

(Non 72-12-1)

(check applicable boxes):

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

☒ Change Purpose of Use ☒ Groundwater ☐ 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: Upon approval		Requested End Date: 10 years from the approval date

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

Name: City of Rio Rancho, a New Mexico Municipal Corporation	Name: Bosque Del Sol, LLC
Contact or Agent: check here if Agent ☐ Steve Gallegos, Interim Utilities Director	Contact or Agent: check here if Agent ☒ c/o Tessa Davidson, Esq., Davidson Law Firm, LLC
Mailing Address: 3200 Civic Center Circle NE	Mailing Address: P.O. Box 2240
City: Rio Rancho	City: Corrales
State: New Mexico Zip Code: 87144	State: New Mexico Zip Code: 87048
Phone: ☐ Home ☐ Cell Phone (Work): (505) 891-5016	Phone: ☐ Home ☐ Cell Phone (Work): (505) 792-3636
E-mail (optional):	E-mail (optional):

2. CURRENT OSE FILE INFORMATION (Required)

OSE File No(s): (RG-6745 et al. into SD-08707)-T	Priority Date (if known): Pre-1907	Subfile/Cause No. (if applicable):

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

☒ Domestic ☐ Livestock ☒ Irrigation ☒ Municipal ☒ Industrial ☒ Commercial ☒ Other Use (specify): Housing subdivision and related purposes	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section Diversion: Consumptive Use: 500.0 Other (include units):

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 9/26/12

File No.:	Trn. No.:	Receipt No.:
Trans Description (optional):		Sub-Basin:
PCW/LOG Due Date:	PBU Due Date:	

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

Sandoval

5. ADDITIONAL STATEMENTS CONCERNING THE CURRENT WATER RIGHT

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

☐ Surface POD OR ☒ Ground Water POD (Well)

Name of ditch, acequia, or spring:

Stream or water course: | Tributary of:

If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. ☐ Check here if Attachment 2 is included in this application packet.

POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84).
District II (Roswell) & 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
RG-6745	374,400 Feet	1,537,500 Feet	
RG-6745-S	374,600 Feet	1,538,300 Feet	
RG-6745-S-2	372,000 Feet	1,542,600 Feet	
RG-6745-S-3	372,300 Feet	1,546,400 Feet	
RG-6745-S-4	365,800 Feet	1,552,300 Feet	

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** 31 (35 wells total)

Point of Diversion is on Land Owned by: City of Rio Rancho

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

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)
☐ 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, **and/or** Name of Hydrographic Survey, **and/or** Name of Irrigation or Conservation District, **and/or** Name and County of Subdivision **and/or** Grant	PLSS Section **and/or** Map No. **and/or** Lot No.	PLSS Township **and/or** Tract No. (Please list each tract individually) **and/or** Block No.	PLSS Range	Acres	Priority
Within the municipal service area of the					
City of Rio Rancho as currently configured					
and as to be configured in the future.					
			Total Acres:		

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

Place of use is on land owned by (required):
N/A. Municipal service area of the City of Rio Rancho

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

STATE ENGINEER'S OFFICE
2016 DEC 29 AM 11:33

8. MOVE-TO PURPOSE OF USE AND AMOUNT OF WATER (Complete this section ONLY if the purpose of use is changing)

☐ Domestic ☐ Livestock ☒ Irrigation ☐ Municipal ☐ Industrial ☐ Commercial ☐ Other Use (specify):	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section Diversion: 714.285 Consumptive Use: 500.0 Other (include units):

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

☒ **Surface POD** OR ☐ **Ground Water POD (Well)**

Name of ditch, acequia, or spring: San Juan Ditch

Stream or water course: Rio Grande | 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
SP-1690-4	307,602.3 feet	1,185,295 feet	SW1/4NE1/4NE1/4, Section 1, Township 1 South, Range 1 West, NMPM
Supplemental Wells:			
RG-14999	1,449,582	1,105,225	
~~RG-14999-S~~	~~1,449,558~~	~~1,104,903~~	
RG-14999-S-2	1,452,747	1,103,451	
RG-14999-S-3	1,449,925	1,103,451	

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: MRGCD (surface diversion); Bosque Del Sol (supplemental groundwater wells)

Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.

Approximate depth of well (feet): | Outside diameter of well casing (inches):

Driller Name: | Driller License Number:

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

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, **and/or** Name of Hydrographic Survey, **and/or** Name of Irrigation or Conservation District, **and/or** Name and County of Subdivision **and/or** Grant	PLSS Section **and/or** Map No **and/or** Lot No.	PLSS Township **and/or** Tract No. (Please list each tract individually) **and/or** Block No.	PLSS Range	Acres	Priority
Parts of Tracts 1B1, 1B2A	19, 20, 29, 30	3 North	1 East		12/31/1851
Part of Tract 1B2B	29, 30, 31, 32	3 North	1 East		12/31/1851
MRGCD Maps 164 & 165					
Part of Tract 3	31	3 North	1 East		12/31/1851
MRGCD Map 166					
			Total Acres:	238.1	

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

Place of use is on land owned by (required):
Bosque Del Sol, LLC

Are there other sources of water for these lands? No ☐ Yes ☒ describe by OSE file number: RG-14999 et al.

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

11. ADDITIONAL STATEMENTS OR EXPLANATIONS

The purpose of this application is to request that, as per terms of the Water Rights Purchase Agreement between the former owner of the water rights and Applicant, the water rights transferred SD-08707 into RG-6745 et al., be retained at the move-from location for a period of ten (10) years after approval of the transfer by the State Engineer and for an additional five (5) year term or a longer term or terms as the Parties may agree upon, subject to necessary approval by the Office of the State Engineer. The reason for the application is that the transferred water rights are not needed for the exercise of permit RG-6745 et al. for the period of the transfer.

ACKNOWLEDGEMENT

We, the City of Rio Rancho, and co-applicant Bosque Del Sol, LLC affirm that the forgoing statements are true to the best of our knowledge and belief.

City of Rio Rancho, a New Mexico Municipal Corporation

By: _____
Steve Gallegos, Interim Utilities Director

Bosque Del Sol, LLC, a New Mexico Limited Liability Company

By: _____
Tessa Davidson, its legal agent

ACTION OF THE STATE ENGINEER

This application is:

☐ approved ☐ partially approved ☐ denied

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

Witness my hand and seal this _____ day of _____ 20 _____ , for the State Engineer,

_____, State Engineer

By: _____ _____
Signature Print

Title: _____
Print

OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:

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:	**b. Information on Attachment(s):**
☒ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

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

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long– (WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-5	X or Longitude 374,600 Feet	Y or Latitude 1,545,000 Feet	Other Location Description:
POD Number: RG-6745-S-6	X or Longitude 364,000 Feet	Y or Latitude 1,554,600 Feet	Other Location Description:
POD Number: RG-6745-S-7	X or Longitude 356,400 Feet	Y or Latitude 1,555,300 Feet	Other Location Description:
POD Number: RG-6745-S-8	X or Longitude 355,900 Feet	Y or Latitude 1,549,000 Feet	Other Location Description:
POD Number: RG-6745-S-9	X or Longitude 351,500 Feet	Y or Latitude 1,552,000 Feet	Other Location Description:
POD Number: RG-6745-S-10	X or Longitude 352,100 Feet	Y or Latitude 1,559,100 Feet	Other Location Description:
POD Number: RG-6745-S-11	X or Longitude 357,400 Feet	Y or Latitude 1,560,400 Feet	Other Location Description:
POD Number: RG-6745-S-12	X or Longitude 361,000 Feet	Y or Latitude 1,556,400 Feet	Other Location Description:
POD Number: RG-6745-S-13	X or Longitude 335,100 Feet	Y or Latitude 1,555,900 Feet	Other Location Description:

STATE ENGINEER OFFICE
2016 DEC 29 AM 11:34

FOR OSE INTERNAL USE

Form wr-08
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

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:	**b. Information on Attachment(s):**
☒ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

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

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-14	X or Longitude 367,700 Feet	Y or Latitude 1,539,700 Feet	Other Location Description:
POD Number: RG-6745-S-15	X or Longitude 371,250 Feet	Y or Latitude 1,584,800 Feet	Other Location Description:
POD Number: RG-6745-S-16	X or Longitude 376,600 Feet	Y or Latitude 1,554,900 Feet	Other Location Description:
POD Number: RG-6745-S-17	X or Longitude 376,400 Feet	Y or Latitude 1,551,200 Feet	Other Location Description:
POD Number: RG-6745-S-18	X or Longitude 375,300 Feet	Y or Latitude 1,558,600 Feet	Other Location Description:
POD Number: RG-6745-S-19	X or Longitude 384,400 Feet	Y or Latitude 1,557,300 Feet	Other Location Description:
POD Number: RG-6745-S-20	X or Longitude 403,900 Feet	Y or Latitude 1,573,150 Feet	Other Location Description:
POD Number: RG-6745-S-21	X or Longitude 397,850 Feet	Y or Latitude 1,572,100 Feet	Other Location Description:
POD Number: RG-6745-S-22	X or Longitude 343,400 Feet	Y or Latitude 1,550,750 Feet	Other Location Description:

FOR OSE INTERNAL USE

Form wr-08
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

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:	**b. Information on Attachment(s):**
☒ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

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

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-23	X or Longitude 388,700 Feet	Y or Latitude 1,589,900 Feet	Other Location Description:
POD Number: RG-6745-S-24	X or Longitude 379,900 Feet	Y or Latitude 1,574,200 Feet	Other Location Description:
POD Number: RG-6745-S-25	X or Longitude 391,800 Feet	Y or Latitude 1,564,000 Feet	Other Location Description:
POD Number: RG-6745-S-26	X or Longitude 387,400 Feet	Y or Latitude 1,555,900 Feet	Other Location Description:
POD Number: RG-6745-S-27	X or Longitude 378,100 Feet	Y or Latitude 1,566,100 Feet	Other Location Description:
POD Number: RG-6745-S-28	X or Longitude 371,000 Feet	Y or Latitude 1,563,800 Feet	Other Location Description:
POD Number: RG-6745-S-29	X or Longitude 355,100 Feet	Y or Latitude 1,565,000 Feet	Other Location Description:
POD Number: RG-6745-S-30	X or Longitude 344,600 Feet	Y or Latitude 1,562,500 Feet	Other Location Description:
POD Number: RG-6745-S-31	X or Longitude 353,500 Feet	Y or Latitude 1,548,800 Feet	Other Location Description:

FOR OSE INTERNAL USE

Form wr-08
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

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:	b. Information on Attachment(s):
☒ Move-From Point of Diversion(s) ☐ Move-To Point of Diversion(s)	Number of points of diversion involved in the application: 35 Total number of pages attached to the application: 4

☐ **Surface Point of Diversion** **OR** ☒ **Well**

Name of ditch, acequia, or spring:	
Stream or water course:	
Tributary of:	

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

NM State Plane (NAD83) (feet) NM West Zone ☐ NM Central Zone ☐ NM East Zone ☐	UTM (NAD83) (meters) Zone 13N ☐ Zone 12N ☐	☐ Lat/Long–(WGS84) 1/10th of second	OTHER (allowable only for move-from descriptions - see application form for format) ☐ PLSS (quarters, section, township, range) ☐ Hydrographic Survey, Map & Tract ☐ Lot, Block & Subdivision ☐ Grant
POD Number: RG-6745-S-32	X or Longitude: 357,800 Feet	Y or Latitude: 1,543,300 Feet	Other Location Description:
POD Number: RG-6745-S-33	X or Longitude: 362,100 Feet	Y or Latitude: 1,537,100 Feet	Other Location Description:
POD Number: RG-6745-S-34	X or Longitude: 344,900 Feet	Y or Latitude: 1,541,000 Feet	Other Location Description: All located within the Town of Alameda Grant,
POD Number:	X or Longitude	Y or Latitude	Other Location Description: NMCS, within the Service area of the City of
POD Number:	X or Longitude	Y or Latitude	Other Location Description: Rancho municipal water system.
POD Number:	X or Longitude	Y or Latitude	Other Location Description: Well coordinates are described in N.M.C.S,
POD Number:	X or Longitude	Y or Latitude	Other Location Description: Central Zone, NAD 27 (Feet).
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
POD DESCRIPTIONS - ATTACHMENT 1

File Number:	Trn Number:
Trans Description (optional):	

MODRALL SPERLING

LAWYERS

February 13, 2018

Barbara C. Lucero, CP
Certified Paralegal
505.848.1865 Direct
505.848.1889 Fax
barbaral@modrall.com

HAND DELIVERED & FILED

Mr. Gary Stansifer
Water Resource Specialist Senior
OFFICE OF THE STATE ENGINEER – DISTRICT 1
5550 San Antonio Dr. NE
Albuquerque, New Mexico 87109-4127

Re: Filing on behalf of the City of Rio Rancho
OSE File No. RG-6745 et al.

Dear Mr. Stansifer:

Attached for filing are four (4) original Affidavits of Publications from the Rio Rancho Observer, Albuquerque Journal, Valencia County News-Bulletin and Socorro El Defensor Chieftain regarding an *Application to Change the Point of Diversion, Place and Purpose of Use from Surface Water to Groundwater* and an *Application for Permit to Temporarily Change the Point of Diversion, Place and Purpose of Use from Groundwater to Surface Water* filed by the City of Rio Rancho and Co-Applicant Bosque Del Sol, pertaining to OSE File No. SD-08707 into RG-6745 et al. and (RG-6745 et al. into SD-08707)-T.

Please direct all correspondences regarding this matter to Maria O'Brien at our address below. Should you have any questions please call me at 848-1865. Thank you for your assistance.

Very truly yours,

Barbara C. Lucero, CP
Paralegal

Enclosures
c: Maria O'Brien, Esq.
Tessa Davidson, Esq.

Modrall Sperling
Roehl Harris & Sisk P.A.

500 Fourth Street NW
Suite 1000
Albuquerque,
New Mexico 87102

PO Box 2168
Albuquerque,
New Mexico 87103-2168

Tel: 505.848.1800
www.modrall.com

EXHIBIT
7

AFFIDAVIT of PUBLICATION

Argen M. Duncan, being first duly sworn, deposes and says:
That she is the Editor of the ***Rio Rancho Observer,*** printed and published once each week in the County of Sandoval, State of New Mexico, and of general circulation in the City of Rio Rancho, County of Sandoval, State of New Mexico and elsewhere, and the here to attached

STATE OF NEW MEXICO)

:SS APPLICATION NO. SD-08707 into RG-6745 et al

COUNTY OF SANDOVAL)

was printed and published correctly in the regular and entire issue of said ***Rio Rancho Observer*** 3 issue(s), that the first was made on the 14th day of January, 2018, and subsequent publications being:
January 21, 2018
January 28, 2018

Request of ***RIO RANCHO OBSERVER***

By:

Argen M. Duncan

Affiant

Subscribed and sworn to me this 28th day of January, 2018 in the City of Rio Rancho County of Sandoval State of New Mexico.

Phyllis A. Santora

Notary

Notary Public in and for the County of Sandoval, State of New Mexico

Seal

Phyllis A. Santora
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 2-19-2018

NOTICE is hereby given that on December 29, 2016, and revised on December 27, 2017, co-applicants, the City of Rio Rancho, a New Mexico Municipal Corporation, c/o Steve Gallegos, 3200 Civic Center Circle NE, Rio Rancho, NM 87144, and Bosque Del Sol, LLC, 190 Central Park Sq., Ste. 301,Los Alamos, NM 87544, c/o Tessa Davidson, P. O. Box 2240, Corrales, NM 87048, filed Application No. SD-08707 into RG-6745 et al. with the STATE ENGINEER for Permit to Change Point of Diversion, Place, and Purpose of Use from Surface to Groundwater within the Rio Grande Underground Water Basin of the State of New Mexico.

The applicants propose to discontinue the farm delivery requirement of 714.285 acre-feet of surface water per annum (afa), inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW 1/4 NE1/4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238.1 acres of land owned by Bosque Del Sol, LLC,as particularly shown on the "Map of Move-From Area" attached to the Application, and as described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described move-from lands from surface water of the Rio Grande is supplemented by four (4) permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet;RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-from tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1 .0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

The applicants further propose to transfer the above described consumptive use amount to the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located within the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes of use within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

Diversion of water under City of Rio Rancho's permit RG-6745 et al. shall not exceed 24,020.16 acre-feet per annum for domestic, commercial, industrial, housing subdivision, and related purposes within the service area of the Rio Rancho Municipal Water System. No increase in diversion is contemplated by the transfer of water rights under this application. This application is made for the purpose of complying with the Conditions of Approval of Permit No. RG-6745 et al., which requires the City of Rio Rancho to offset the impacts of groundwater pumping on surface flows of the Rio Grande and its tributaries.

NOTICE is further given that on December 29, 2016, and revised on December 27, 2017, the co-applicants filed Application (RG-6745 et al. into SD-08707)-T with the STATE ENGINEER for Permit to Temporarily Change Point of Diversion, Place, and Purpose of Use from Groundwater to Surface Water within the Rio Grande Stream System of the State of New Mexico under the Water-Use Leasing Act (NMSA 1978, Sections 72-6-1 through-7) for a period of ten (10) years from the approval of the transfer by the State Engineer, for the reason that the water rights are not immediately needed for the exercise of Permit RG-6745 et al.

The applicants propose to temporarily discontinue the consumptive use of 500.0 acre-feet of groundwater per year from the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located with the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

The applicants further propose to commence the diversion of the farm delivery requirement of 714.285 acre-feet of surface water per annum, inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW1/4 NE1/4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238.1 acres of land owned by Bosque Del Sol, LLC, described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described lands from surface water of the Rio Grande is supplemented by 4 permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet;RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-to tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1 .0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

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

In the event that a party filed a timely written protest or objection to the original applications held under Nos. SD-08707 into RG-6745 et al. and/or (RG-6745 et al. into SD-08707)-T, filed with the State Engineer on December 29, 2016, it is not necessary to file an additional written protest. Those protests or objections are considered timely for this revised application and notice for publication.

Pub Date(s):1/14, 1/21 & 1/28, 2018

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

NOTICEISHEREBYGIV
ENTHATONDECEMBE
R292016ANDREVISED
ONDECEMBER272017
COAPPLICANTSTHECI
TYOFRIORANCHOAN
EWMEXICOMUNICIPA
LCORPORATIONC

Bernadette Gonzales , the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 3 time(s) on the following date(s):

01/18/2018, 01/25/2018, 02/01/2018

OFFICIAL SEAL
Sandra B. Gutierrez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 2-18-21

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 1 day of February of 2018

PRICE $832.18

Statement to come at the end of month.

ACCOUNT NUMBER 1007603

NOTICE is hereby given that on December 29, 2016, and revised on December 27, 2017, co-applicants, the City of Rio Rancho, a New Mexico Municipal Corporation, c/o Steve Gallegos, 3200 Civic Center Circle NE, Rio Rancho, NM 87144, and Bosque Del Sol, LLC, 190 Central Park Sq., Ste. 301, Los Alamos, NM 87544, c/o Tessa Davidson, P.O. Box 2240, Corrales, NM 87048, filed Application No. SD-08707 into RG-6745 et al. with the STATE ENGINEER for Permit to Change Point of Diversion, Place, and Purpose of Use from Surface to Groundwater within the Rio Grande Underground Water Basin of the State of New Mexico.

The applicants propose to discontinue the farm delivery requirement of 714.285 acre-feet of surface water per annum (afa), inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW1/4 NE1/4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238 .1 acres of land owned by Bosque Del Sol, LLC, as particularly shown on the "Map of Move-From Area" attached to the Application, and as described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described move-from lands from surface water of the Rio Grande is supplemented by four (4) permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet; RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-from tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1.0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

The applicants further propose to transfer the above described consumptive use amount to the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located within the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes of use within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

Diversion of water under City of Rio Rancho's permit RG-6745 et al. shall not exceed 24,020.16 acre-feet per annum for domestic, commercial, industrial, housing subdivision, and related purposes within the service area of the Rio Rancho Municipal Water System. No increase in diversion is contemplated by the transfer of water rights under this application. This application is made for the purpose of complying with the Conditions of Approval of Permit No. RG-6745 et al., which requires the City of Rio Rancho to offset the impacts of groundwater pumping on surface flows of the Rio Grande and its tributaries.

NOTICE is further given that on December 29, 2016, and revised on December 27, 2017, the co-applicants filed Application (RG-6745 et al. into SD-08707)-T with the STATE ENGINEER for Permit to Temporarily Change Point of Diversion, Place, and Purpose of Use from Groundwater to Surface Water within the Rio Grande Stream System of the State of New Mexico under the Water-Use Leasing Act (NMSA 1978, Sections 72-6-1 through-7) for a period of ten (10) years from the approval of the transfer by the State Engineer, for the reason that the water rights are not immediately needed for the exercise of Permit RG-6745 et al.

The applicants propose to temporarily discontinue the consumptive use of 500.0 acre-feet of groundwater per year from the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located with the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

The applicants further propose to commence the diversion of the farm delivery requirement of 714.285 acre-feet of surface water per annum, inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW1/4 NE1 /4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238.1 acres of land owned by Bosque Del Sol, LLC, described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described lands from surface water of the Rio Grande is supplemented by 4 permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet; RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-to tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1.0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

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

In the event that a party filed a timely written protest or objection to the original applications held under Nos. SD-08707 into RG-6745 et al. and/or (RG-6745 et al. into SD-08707)-T, filed with the State Engineer on December 29, 2016, it is not necessary to file an additional written protest. Those protests or objections are considered timely for this revised application and notice for publication.

Journal: January 18, 25, February 1, 2018

AFFIDAVIT of PUBLICATION

Clara Garcia, being first duly sworn, deposes and says that she is Editor of the ***Valencia County New-Bulletin***, printed and published each week in the County of Valencia, State of New Mexico, and of general circulation in the city of Belen, County of Valencia, State of New Mexico and elsewhere, and the hereto attached

STATE OF NEW MEXICO)

:SS

COUNTY OF VALENCIA)

was printed and published correctly in the regular and entire issue of said **VALENCIA COUNTY NEWS-BULLETIN** for 3 issue(s), that the first was made on the 18 day of January 2018, and subsequent publications being: 25 " January

1 " February

Request of **VALENCIA COUNTY NEWS-BULLETIN**

By:

Affiant Clara

Subscribed and sworn to me this 1 day of February, 2018

in the County of VALENCIA, State of New Mexico.

Billie Saiz

Notary Public

Notary Public in and for the County of Valencia, State of New Mexico

My Commission Expires: 9.17.18

Seal

Official Seal
BILLIE SAIZ
Notary Public
State of New Mexico
My Commission Expires

Account Number: 1002312 Ad Number: 13879641

Price: $791.89 (Statement to come at end of month)

NOTICE is hereby given that on December 29, 2016, and revised on December 27, 2017, co-applicants, the City of Rio Rancho, a New Mexico Municipal Corporation, c/o Steve Gallegos, 3200 Civic Center Circle NE, Rio Rancho, NM 87144, and Bosque Del Sol, LLC, 190 Central Park Sq., Ste. 301, Los Alamos, NM 87544, c/o Tessa Davidson, P.O. Box 2240, Corrales, NM 87048, filed Application No. SD-08707 into RG-6745 et al. with the STATE ENGINEER for Permit to Change Point of Diversion, Place, and Purpose of Use from Surface to Groundwater within the Rio Grande Underground Water Basin of the State of New Mexico.

The applicants propose to discontinue the farm delivery requirement of 714.285 acre-feet of surface water per annum (afa), inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW 1/4 NE1/4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238.1 acres of land owned by Bosque Del Sol, LLC, as particularly shown on the "Map of Move-From Area" attached to the Application, and as described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described move-from lands from surface water of the Rio Grande is supplemented by four (4) permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet; RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-from tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1 .0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

The applicants further propose to transfer the above described consumptive use amount to the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located within the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes of use within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

Diversion of water under City of Rio Rancho's permit RG-6745 et al. shall not exceed 24 ,020.16 acre-feet per annum for domestic, commercial, industrial, housing subdivision, and related purposes within the service area of the Rio Rancho Municipal Water System. No increase in diversion is contemplated by the transfer of water rights under this application. This application is made for the purpose of complying with the Conditions of Approval of Permit No. RG-6745 et al., which requires the City of Rio Rancho to offset the impacts of groundwater pumping on surface flows of the Rio Grande and its tributaries.

NOTICE is further given that on December 29, 2016, and revised on December 27, 2017, the co-applicants filed Application (RG-6745 et al. into SD-08707)-T with the STATE ENGINEER for Permit to Temporarily Change Point of Diversion, Place, and Purpose of Use from Groundwater to Surface Water within the Rio Grande Stream System of the State of New Mexico under the Water-Use Leasing Act (NMSA 1978, Sections 72-6-1 through-7) for a period of ten (10) years from the approval of the transfer by the State Engineer, for the reason that the water rights are not immediately needed for the exercise of Permit RG-6745 et al.

The applicants propose to temporarily discontinue the consumptive use of 500.0 acre-feet of groundwater per year from the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located with the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

The applicants further propose to commence the diversion of the farm delivery requirement of 714.285 acre-feet of surface water per annum, inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW1/4 NE1/4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238.1 acres of land owned by Bosque Del Sol, LLC, described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described lands from surface water of the Rio Grande is supplemented by 4 permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet; RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-to tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1 .0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

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

In the event that a party filed a timely written protest or objection to the original applications held under Nos. SD-08707 into RG-6745 et al. and/or (RG-6745 et al. into SD-08707)-T, filed with the State Engineer on December 29, 2016, it is not necessary to file an additional written protest. Those protests or objections are considered timely for this revised application and notice for publication.

Published in the Valencia County News-Bulletin on January 18, 25 & February 1, 2018.

AFFIDAVIT of PUBLICATION

Scott Turner, being first duly sworn, deposes and says that he is Editor/Publisher of the ***El Defensor Chieftain,*** printed and published each week in the County of Socorro, State of New Mexico, and of general circulation in the city of Socorro, County of Socorro, State of New Mexico and elsewhere, and the hereto attached

STATE OF NEW MEXICO)
:SS
COUNTY OF SOCORRO)

was printed and published correctly in the regular and entire issue of said ***EL DEFENSOR CHIEFTAIN*** for 3 issue(s), that the first was made on the 18 day of January 2018, and subsequent publications being:

25 January 2018

1 February 2018

Request of ***EL DEFENSOR CHIEFTAIN***

By:
Affiant Scott Turner

Subscribed and sworn to me this 1 day of February 2018 in the County of Socorro, State of New Mexico.

Julianna Vote
Notary Public

Notary Public in and for the County of Socorro, State of New Mexico
My Commission Expires: 2-14-2021

Seal

Official Seal
JULIANNA VOTE
Notary Public
State of New Mexico
My Commission Expires

Account Number/Ad Number: 1002312 / 00013879841

Price: $1015.82

(Statement to come at end of month)

NOTICE is hereby given that on December 29, 2016, and revised on December 27, 2017, co-applicants, the City of Rio Rancho, a New Mexico Municipal Corporation, c/o Steve Gallegos, 3200 Civic Center Circle NE, Rio Rancho, NM 87144, and Bosque Del Sol, LLC, 190 Central Park Sq., Ste. 301, Los Alamos, NM 87544, c/o Tessa Davidson, P.O. Box 2240, Corrales, NM 87048, filed Application No. SD-08707 into RG-6745 et al. with the STATE ENGINEER for Permit to Change Point of Diversion, Place, and Purpose of Use from Surface to Groundwater within the Rio Grande Underground Water Basin of the State of New Mexico.

The applicants propose to discontinue the farm delivery requirement of 714.285 acre-feet of surface water per annum (afa), inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW 1/4 NE1/4 NE1/4 of Section 1; Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238.1 acres of land owned by Bosque Del Sol, LLC, as particularly shown on the "Map of Move-From Area" attached to the Application, and as described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described move-from lands from surface water of the Rio Grande is supplemented by four (4) permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet; RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-from tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1.0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

The applicants further propose to transfer the above described consumptive use amount to the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located within the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes of use within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

Diversion of water under City of Rio Rancho's permit RG-6745 et al. shall not exceed 24,020.16 acre-feet per annum for domestic, commercial, industrial, housing subdivision, and related purposes within the service area of the Rio Rancho Municipal Water System. No increase in diversion is contemplated by the transfer of water rights under this application. This application is made for the purpose of complying with the Conditions of Approval of Permit No. RG-6745 et al., which requires the City of Rio Rancho to offset the impacts of groundwater pumping on surface flows of the Rio Grande and its tributaries.

NOTICE is further given that on December 29, 2016, and revised on December 27, 2017, the co-applicants filed Application (RG-6745 et al. into SD-08707)-T with the STATE ENGINEER for Permit to Temporarily Change Point of Diversion, Place, and Purpose of Use from Groundwater to Surface Water within the Rio Grande Stream System of the State of New Mexico under the Water-Use Leasing Act (NMSA 1978, Sections 72-6-1 through-7) for a period of ten (10) years from the approval of the transfer by the State Engineer, for the reason that the water rights are not immediately needed for the exercise of Permit RG-6745 et al.

The applicants propose to temporarily discontinue the consumptive use of 500.0 acre-feet of groundwater per year from the City of Rio Rancho's vested and permitted wells under RG-6745 et al., consisting of 35 existing and proposed system production wells, all located with the City of Rio Rancho metropolitan area within Sandoval County, for municipal and related purposes within the service area (owned by numerous owners) of the Rio Rancho municipal water system.

The applicants further propose to commence the diversion of the farm delivery requirement of 714.285 acre-feet of surface water per annum, inclusive of a consumptive irrigation requirement of 500.0 afa from the Socorro Main Canal and the Luis Lopez Ditch, with a point of diversion located in the SW1/4 NE1/4 NE1/4 of Section 1, Township 1 South, Range 1 West, NMPM, at the San Acacia Diversion Works (SP-1690-4), located at a point where X=326,225 meters, Y=3,792,219 meters, UTM Zone 13 North, NAD 83, on land owned by the MRGCD, for the irrigation of 238.1 acres of land owned by Bosque Del Sol, LLC, described as part of Tract 1B1 on MRGCD Map 165, located within Sections 19, 20, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2A on MRGCD Map 165, located within Sections 19, 20, 29, and 30, Township 3 South, Range 1 East, NMPM; part of Tract 1B2B on MRGCD Map 165, located within Sections 29, 30, 31, and 32, Township 3 South, Range 1 East, NMPM; and part of Tract 3 on MRGCD Map 166, located within Section 31, Township 3 South, Range 1 East, NMPM, all in Socorro County, New Mexico. The irrigation of the above described lands from surface water of the Rio Grande is supplemented by 4 permitted supplemental wells identified by OSE file Nos. RG-14999 through RG-14999-S-3 described as follows with coordinates using New Mexico State Plane Coordinate System, NAD 83, Central Zone all within the Town of Socorro Grant, Socorro County, New Mexico: RG-14999 located at X=1,449,582 feet and Y=1,105,225 feet; RG-14999-S located at X=1,449,558 feet and Y=1,104,903 feet; RG-14999-S-2 located at X=1,452,747 feet and Y=1,103,108 feet and; RG-14999-S-3 located at X=1,449,925 feet and Y=1,103,451 feet. The above-described, move-to tracts are located south of the City of Socorro, east of Interstate 25 and just west of the Rio Grande River, approximately 1.0 mile south of Markland Road, between the Brown Lateral and the Socorro Main Canal, Socorro County, New Mexico.

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

In the event that a party filed a timely written protest or objection to the original applications held under Nos. SD-08707 into RG-6745 et al. and/or (RG-6745 et al. into SD-08707)-T, filed with the State Engineer on December 29, 2016, it is not necessary to file an additional written protest. Those protests or objections are considered timely for this revised application and notice for publication.

Published in El Defensor Chieftain on Jan. 18, 25 & Feb. 1, 2018