

**STATE OF NEW MEXICO  
COUNTY OF CATRON  
SEVENTH JUDICIAL DISTRICT**

**AUGUSTIN PLAINS RANCH, LLC,**

**Applicant-Appellant,**

**v.**

**No. D-728-CV-2012-0008**

**NEW MEXICO STATE ENGINEER,  
SCOTT A. VERHINES,**

**Appellee,**

**And**

**KOKOPELLI RANCH, LLC and CUCHILLO  
VALLEY COMMUNITY DITCH ASSOCIATION,**

**Protestants-Appellees.**

**CUCHILLO VALLEY COMMUNITY DITCH ASSOCIATION'S  
RESPONSE IN OPPOSITION TO MOTION TO DISMISS AND REMAND**

The protestant-appellee Cuchillo Valley Community Ditch Association (Cuchillo Ditch) submits this response in opposition to the Motion to Dismiss and Remand to the State Engineer filed by Augustin Plains Ranch, LLC on July 30, 2015.

**Proceedings**

1. Augustin Plains Ranch filed an application to appropriate groundwater in the Rio Grande basin in October 2007. The application was amended in May 2008. The State Engineer adopted the order of the Hearing Examiner and denied the application in March 2012 on the grounds that the application lacked specificity of purpose of use of water and specificity as to the actual end-user of water.

2. Augustin Plains Ranch appealed the State Engineer's Order Denying Application to the district court of Catron County. On November 14, 2012, the

district court entered a Memorandum Decision. The Decision stated that the State Engineer had no choice but to reject the application because it did not reveal a present intent to appropriate water. On January 3, 2013, the district court entered a final Order on Kokopelli Ranch's Motion for Summary Judgment. The Order granted the protestant's motion and affirmed the State Engineer's denial of the application.

3. Augustin Plains Ranch filed an appeal in the Court of Appeals from the district court Decision and Judgment. There was full appellate briefing during July-October 2013.

4. Augustin Plains Ranch filed on July 14, 2014, a new application to appropriate ground water within the Rio Grande basin. The Court of Appeals entered an Order on July 23 directing the parties to file supplemental briefs to address whether the July 2014 application rendered the case moot because there was no longer a controversy.

5. After the parties submitted supplemental briefs, the Court of Appeals entered an Order on August 19 which stated that: "We read Appellant's Clarification to constitute a request to this Court to dismiss its appeal." The Order stated, "the Appeal in Cause No. 32,705 is dismissed." *See* Exhibit A attached to Augustin Plains Ranch motion to dismiss and remand (emphases added). Augustin Plains Ranch did not object to the Order dismissing its appeal. The Order did not dismiss the case on the grounds of mootness.

6. The Chief Clerk of the Court of Appeals issued on January 8, 2015, the Mandate to the District Court Clerk. The Mandate states that: "This order [the Court' of Appeals' August 19, 2014, Order] being now final, the cause is remanded to you

for any further proceedings consistent with said order.” See Exhibit B attached to Augustin Plains Ranch’s motion to dismiss and remand (emphasis added).

### **Argument**

The Court of Appeals’ Order and Mandate do not direct the district court to dismiss the case. Nor do they direct the district court to remand the 2008 amended application to the State Engineer to allow Augustin Plains Ranch to withdraw the 2008 application. In fact they do not specify “any further proceedings” in the case. There is no need to do so. The State Engineer had denied the application in 2012.

Furthermore, Augustin Plains Ranch did not request the Court of Appeals to remand the case to the district court to dismiss the case or remand it and then on to the State Engineer so that it’s 2008 amended application could be withdrawn.

The New Mexico Supreme Court has held that the district courts have only such jurisdiction on remand as the opinion and mandate of the appellate court “specifies.” *Vinton Eppsco Inc. of Albuquerque v. Showe Homes, Inc.*, 97 N.M. 225, 638 P.2d 1070 (1981), *citing*, *Genuine Parts Co. v. Garcia*, 92 N.M. 57, 60, 582 P.2d 1270 (1978).

### **Conclusion**

The district court’s Decision and Judgment are final and binding upon the parties to the case. The district court has no jurisdiction under the Mandate from the Court of Appeals to dismiss the case or to remand it to the State Engineer in order to allow Augustin Plains Ranch to withdraw its 2008 Application. The Augustin Plains Ranch’s motion to dismiss the case and remand it to the State Engineer should be

denied. The case was closed by the action of the Court of Appeals approving Augustin Plains Ranch's request to dismiss its appeal.

*/s/ Peter Thomas White*  
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**CERTIFICATE OF SERVICE**

I certify that on August 12, 2015, a copy of Cuchillo Valley Community Ditch Association's Response in Opposition to the Motion to Dismiss and Remand was e-filed and served through the Court's electronic system upon counsel of record.

*/s/ Peter Thomas White*  
Peter Thomas White