

BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE APPLICATION)
OF THE CITY OF ALBUQUERQUE FOR)
PERMIT TO DIVERT SURFACE WATER)
FROM THE RIO GRANDE FOR MUNICIPAL,) FILE NO. 4830
INDUSTRIAL, AND RELATED PURPOSES)
FOR THE CITY OF ALBUQUERQUE'S)
DRINKING WATER PROJECT.)

PROTEST AND OBJECTIONS TO APPLICATION

COMES NOW, the Middle Rio Grande Conservancy District ("MRGCD"), as a political subdivision of the State of New Mexico, holder of direct diversion rights on the Rio Grande and owner of the lands on which the City of Albuquerque proposes to construct its diversion facilities, and for its Protest and Objections to the Application of the City of Albuquerque filed May 18, 2001 and June 26, 2001, states that the Application, if granted, would be contrary to the conservation of water, inconsistent with the public welfare, result in impairment of water rights of the MRGCD as well as other water users and may result in a violation of the Rio Grande Compact.

While the City of Albuquerque should be applauded for attempting to address in a meaningful way its long-term water needs, any application requires detailed study by all affected parties. As is the case with many applications to appropriate water, the instant Application is vague. If read and implemented literally, the Application is not ripe for decision by the New Mexico State Engineer, and likewise it reflects a lack of jurisdiction. Furthermore, granting such Application would cause substantial detrimental effects on the MRGCD, the riverine environment and on the public at large. For these reasons, the MRGCD, at this time, is obligated to interpose its protest to ensure the interests of its constituents and the river itself are fully protected in the process of evaluating this Application:

1. If granted, the Application would reduce the water available to, and impact, all other water rights users upon the Rio Grande, including Protestant MRGCD.
 - a) The Application, if granted, would unlawfully, substantially and materially reduce and limit all of the waters in a 14-mile segment of the Rio Grande, causing unknown impacts on flows, losses in the river bed, and effects on the river itself.
 - b) The Application, if granted would unlawfully, substantially and materially reduce and limit all of the water rights of the current diverters downstream of the proposed diversion and return flow locations on the Rio Grande.
2. The requested relief prayed for in the Application is framed in terms of consumptive use and is an attempt to increase diversions upon the basis of

consumptive use and a consideration of historic return flows. In effect, it amounts to a substitution of sewage effluent water for water of the quality available in the river for beneficial use.

3. The requested increase in diversion would unlawfully upset and vary the historic balance of the Rio Grande, and if allowed, would result in a new diversion in the year 2001 for a water right with a claimed senior priority on the river system. Specifically:

- a) The Application seeks a new water right in an over-appropriated stream system and does not comply with the statutory pre-requisites for such an application.
- b) There is no unappropriated water in the Rio Grande stream system for a new water right, which is the subject of this Application.
- c) The Application should be denied because the surface waters of the Rio Grande are not properly the subject of a new point of diversion in the amounts indicated in the Application, nor are they capable of transfer to the points of diversion described in the Application.
- d) The Application should be denied because it unlawfully attempts to combine the diversion of surface water with an unspecified program to alter the water rights contained in numerous unspecified ground water rights.

4. The granting of the Application would be contrary to the conservation of water within the State of New Mexico and detrimental to the public welfare of the State of New Mexico. Specifically:

- a) The Application could have grave and substantial impacts on the Rio Grande and its environmental amenities including riparian vegetation, fishes, bird life and other interests. It could also have substantial effects on the recreational benefits associated with the Rio Grande.
- b) The Application could also have a detrimental effect on the conservation of water by causing a deterioration of the quality of water in the Rio Grande and directly affecting the quantity and quality of water utilized by farmers for agricultural use.

5. The Application is insufficient on its face as to the requirements and impacts of operation of the system and due process obligations necessary to vary and alter the current management system of San Juan / Chama water rights and native water rights in the Rio Grande. Specifically:

- a) All of the water rights owners on the Rio Grande system will be affected by the attempted change of priorities, diversion rights, and the balance of

the river water rights that would occur from the proposed action. These parties include those that hold various contractual rights to water.

- b) By this Application the City is attempting to alter the historic relationship among all Middle Rio Grande water users as to sharing of shortages and carriage loss and if granted may result in an attempt to have the OSE adjudicate the rights of the City of Albuquerque.
- 6. The Application should be denied because it purports to establish a point of diversion from lands not owned by the Applicant.
- 7. The Application contravenes New Mexico's Water Code and Statutes as well as applicable New Mexico water law as defined by the New Mexico courts.
- 8. The Application should also be denied because it is an unlawful attempt to expand the diversion right, from time to time, beyond its proportionate share, exceeding the amount of water available to the diversion right.
- 9. The Application should be denied because, if granted, it may foreclose the MRGCD from complying with environmental commitments.

WHEREFORE IT IS PRAYED: That Application 4830 be dismissed and denied.

Respectfully submitted,

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