

**BEFORE THE NEW MEXICO STATE ENGINEER**

**IN THE MATTER OF THE APPLICATION )  
BY SANTA FE COUNTY AND SANTA FE ) Hearing No. 07-059  
WATER RESOURCE ALLIANCE LLC FOR )  
PERMIT TO CHANGE POINT OF DIVER- ) OSE File No. SD-04729 &  
SION & PLACE & PURPOSE OF USE OF ) RG-74141 into SP-4842  
SURFACE WATER WITHIN THE RIO )  
GRANDE BASIN IN NEW MEXICO )**

**REPORT & RECOMMENDATION  
OF THE HEARING EXAMINER**

This matter came on for hearing before Victor Kovach, the State Engineer's designated Hearing Examiner, on April 20 and 21, 2009, in Albuquerque, New Mexico. The parties appeared as follows: John W. Utton, Esq., represented Applicant Santa Fe County; Tanya L. Scott, Esq., and Nathaniel Q. Gentry, Esq., represented Applicant Santa Fe Water Resource Alliance, LLC; Jessica Aberly, Esq., represented Protestant Pueblo of Isleta; Peter White, Esq., represented the Socorro Valley Agricultural Alliance (SVAA) (comprising Protestants Paul Bauer, Robert Bowman, Johannes Heynekamp, Michiel R. Heynekamp, Virgil W. Lueth, Robert E. Markwell, Byron Sessions, Minda Stillings and J. Michael Timmons) (Sherry Tippett, Esq., also appeared for SVAA on April 20, 2009); and Jonathan Sperber, Esq., represented the Water Rights Division (WRD) of the Office of the State Engineer. Following two requested extensions, the parties submitted Proposed Findings of Fact and Conclusions of Law on July 30, 2009. Having considered the evidence and pleadings submitted in the captioned matter, the Hearing Examiner recommends the following findings and order.

**FINDINGS OF FACT**

1. The State Engineer has jurisdiction of the parties and subject matter.
2. On February 8, 2007, Co-Applicants Santa Fe County and Santa Fe Water Resource Alliance, LLC, (SFWRA) filed Application No. SD-04729 and RG-74141 into SP-04842 with the State Engineer for Permit to Change Point of Diversion and Place and/or Purpose of Use of Surface Water within the Rio Grande Basin in New Mexico. Applicants propose to cease the diversion of 417.15 acre-feet per year

(afy) of surface water of the Rio Grande, from the Socorro Main Canal, with point of diversion on the Rio Grande at the San Acacia Diversion Dam in the SW ¼ NE ¼ NE ¼ of Section 1, Township 1 South, Range 1 West, NMPM, for the irrigation of 139.05 acres of land owned by Augustine and Arlene Wagner, described as Tract 11 (28.58 acres), located in Section 31, Township 2 South, Range 1 East, NMPM, on Middle Rio Grande Conservancy District (MRGCD) Map No. 159, Tract 1A1 (22.60 acres), Tract 1A2 (22.60 acres), Tract 1B1(52.17 acres) and Tract 1C1(13.10 acres), all located in Section 31 and Section 6, Township 2 and 3 South, Range 1 East, NMPM, all on MRGCD Map No. 161. The move-from lands are located in Socorro County, New Mexico, about ½ mile south of the City of Socorro Flood Control Channel between the Luis Lopez Drain and the Socorro Main Canal.

3. Applicants further propose to change the point of diversion for the claimed consumptive use amount of 292.005 afy (139.05 acres x 2.1 acre-feet per irrigated acre consumptive irrigation requirement (CIR) = 292.005) to permitted surface point of diversion SP-4842 (Buckman Direct Diversion) located on the Rio Grande on lands owned by the United States Forest Service within a 500 foot radius of a point where X=525,982 feet and Y=1,759,620 feet NMCS, Central Zone, NAD 27, approximately 3.3 miles downstream from the Highway 502 Bridge (Otwi). Applicants seek to change the place and purpose of use of the claimed water right from irrigation of the described move-from lands to domestic, municipal, industrial, commercial, county utility, and related purposes to be used on lands within the Santa Fe County water service area.
4. Affidavits of Publication filed with the WRD reflect that legal notice of the Application was published in the *Valencia County News-Bulletin*, *The Albuquerque Journal* and the *El Defensor Chieftain* on May 2, 9 & 16, 2007, and in *The Santa Fe New Mexican* and the *Rio Rancho Observer* on May 3, 10 & 17, 2007.
5. The United States Bureau of Reclamation (USBOR), the Bosque del Apache National Wildlife Refuge (NWR), the Pueblo of Isleta, the Acequia de La Cienega, and the individuals who comprise the SVAA filed timely protests objecting to the granting of the application.

6. The protest of the Acequia de La Cienega was withdrawn and it was dismissed from the proceedings by order issued on December 4, 2007.
7. The protest of the Bosque del Apache NWR was dismissed by order issued on August 15, 2008.
8. The protest of the USBOR was withdrawn and it was dismissed from the proceedings by order issued on April 1, 2009.
9. The Scheduling Order entered on June 16, 2008, reflects that the issues for determination at hearing include the following: availability of water to satisfy the application; nature and extent of the claimed water right; whether granting the application would result in impairment to existing water rights; whether granting the application would be detrimental to the public welfare of the state; and whether granting the application would be contrary to the conservation of water within the state.
10. The surface waters of the Rio Grande have been considered fully appropriated since the Rio Grande Compact was consummated.
11. Water is available to satisfy the present application to the extent that it can be demonstrated that the move-from lands have valid, existing, appurtenant surface water rights with a pre-1907 priority.
12. Beneficial use is the basis, measure and limit of a water right. N.M. Const. art. XVI, § 3.
13. On December 17, 1999, Augustine and Arlene Wagner (Wagners) filed a Declaration of Ownership of Water Right Perfected Prior to March 19, 1907 (Declaration No. 04279), wherein it is asserted that water was placed to beneficial use on 139.05 acres of land prior to 1800, beginning immediately after construction of the Socorro Main Canal. The irrigated acreage is described as Tract 11 (28.58 acres) MRGCD Map 159, and Tracts 1A1 (22.60 acres), 1A2 (22.60 acres), 1B1 (52.17 acres) and 1C1 (13.10 acres) MRGCD Map No. 161. Mr. Wagner declared that to the best of his knowledge and belief water has been continuously, uninterruptedly and openly placed to beneficial use on the above described lands from the date of the inception of the right to the present time.

14. The 139.05 acres of land includes the same tracts described as the move-from lands in the subject application.
15. Declarations are prima facie evidence of the truth of their contents, if not rebutted. NMSA 1978, § 72-1-3 (1961); *State ex rel. Martinez v. Lewis*, 118 N.M. 446, 882 P.2d 37 (Ct. App. 1994).
16. Acceptance of a Declaration by the OSE does not constitute approval of the right claimed. 19.26.2.8(D) NMAC.
17. On April 12, 2000, the Wagners supplemented Declaration No. 04279 by filing an affidavit of Jose P. Gonzales dated March 28, 2000. Mr. Gonzales indicates that he was born in 1902, that he has resided in Socorro County his entire life and that he is familiar with the move-from tracts. The affidavit further states:

I have seen [the subject move-from] lands and have definite knowledge of its use since 1906. Further, I am aware that crops were planted and livestock grazing on these properties. Also, I have seen alfalfa, and pasture growing on this land. I am aware of this land being irrigated as far back as the year 1906.

Mr. Gonzales was 98 years old when he signed the affidavit.
18. It is not clear from the face of the affidavit, whether Mr. Gonzales' statement as to irrigation of the land includes the entire 139.05 acres or some part thereof. Mr. Gonzales did not testify at hearing.
19. To the extent that the declaration and affidavit are presented as evidence of continuous beneficial use by irrigation of all 139.05 acres of the move-from land they are rebutted by maps, surveys and aerial photographs from 1917 through 1935 which show a large portion of the land covered in cottonwood and bosque.
20. On January 3, 2001, the State Engineer issued a permit numbered 04279 and RG-74141 to Gus A. Wagner for a supplemental well for irrigation of the 139.05 acres. Applicants contend that issuance of the permit constitutes a determination by OSE that the 139.05 acres of move-from land have appurtenant pre-1907 water rights.
21. Condition of Approval No. 4 of permit 04279 and RG-74141 provides:

Granting of this application in no way obligates the State

Engineer to recognize the declared pre-1907 water right associated with Declaration number 04729 and appurtenant to Tract 11, MRGCD Map 159, and tracts 1A1, 1A2, 1B1A, 1C1, MRGCD Map 161. Furthermore, the granting of this application does not obligate favorable consideration of any future applications to transfer the declared water right within the Rio Grande stream system.

Gus Wagner did not file a grievance or otherwise object to Condition of Approval No. 4 of permit 04278 and RG-74141.

22. Applicants' contention that issuance of supplemental well permit 04278 and RG-74141 constitutes a validation of its declared water rights is contrary to the express language of a condition of approval for that very permit and it is therefore unpersuasive.
23. In evaluating the validity of declared pre-1907 water rights appurtenant to lands within the MRGCD, the WRD of the OSE uses criteria that were set forth in a policy memorandum issued on October 12, 2001, and an attached flowchart (hereinafter "OSE criteria"). The OSE criteria use a series of available surveys, documents and photographs from 1917 to the present to determine whether the declared lands have been continuously irrigated since 1907 including: (1) the 1917-1918 Rio Grande Drainage Survey; (2) the 1926-27 MRGCD Appraisal Sheets; (3) the 1926-1927 MRGCD Plane Table Survey; (4) 1936 Rio Grande Joint Investigation; (5) aerial photographs from 1935, 1947, 1955, 1963 and subsequent available aerial photographs. If evidence of irrigation is shown on the 1917-1918 Rio Grande Drainage Survey, the WRD presumes that the declared tract was irrigated beginning prior to 1907 and through 1917-18, without requiring further proof. Where evidence of irrigation is not shown upon review of the Rio Grande Drainage Survey, an applicant can produce other information to prove that the subject land was irrigated during that same time period.
24. The OSE criteria utilize available data that reasonably describe the circumstances on land within the MRGCD at representative points in time. The criteria provide a

reasonable and appropriate method for evaluating the validity of declared pre-1907 water rights in the MRGCD.

25. The move-from lands are located within the MRGCD and receive water via the MRGCD diversion and delivery works.
26. Lands classified as cultivated class 1, cultivated class 2, or orchard on the 1917-1918 Rio Grande Drainage Survey are considered irrigated. Lands otherwise classified, including those classified as alkali, salt grass, sand and sagebrush, cottonwood and bosque, are considered non-irrigated.
27. 29.16 acres of the move-from lands (5.6 acres in Tract 1A2, 3.79 acres in Tract 11, and 19.77 acres in Tract 1B1A) are classified as cultivated class 1 (hereinafter CC1) on the 1917-1918 Rio Grande Drainage Survey. The remaining 109.89 acres of move-from land is classified as either alkali, covered by salt grass or cottonwood bosque.
28. According to the 1917-1918 Rio Grande Drainage Survey, 29.16 acres of the move-from land can be considered irrigated from prior to 1907 to the date of the survey.
29. Applicants' Exhibit L is titled Bureau of Land Management Research and it includes excerpts from the following:

Field notes of the Survey of the Principal Meridian South of the Base Line in New Mexico by the United States Department of Agriculture, Bureau of Land Management (BLM), filed October 24, 1855;

Field notes of the BLM Survey of the Exterior Boundary lines of the Town of Socorro Grant (P.L.C. Docket No. 13) Townships 2 and 3 South, Ranges 1 East and 1 West, NMPM, completed June 1894;

Field notes of the BLM Survey of the Subdivision and meander lines of Fract., Township 3 South, Range 1 East, NMPM, completed March 25, 1901;

Field notes of the BLM Survey of the Subdivision Lines of Township 2 South, Range 1 East, NMPM, completed May 8, 1901;

Notes on small holdings in Township 2 South, Range 1 East from survey commenced July 17, 1914;

Field notes of the survey of Small Holding Claims in Township 3 South, Range 1 East, NMPM, completed November 2, 1914.

30. Applicants assert that the BLM field notes, together with the affidavit of Jose P. Gonzales, Declaration No. 04729, testimony presented at hearing and other documents concerning lands classified as salt grass and alkali, constitute other acceptable evidence supporting its position that all of the move-from lands were, or should be considered, irrigated during the period commencing prior to 1907 through 1918.
31. The question for determination upon administrative hearing is whether the weight of the evidence presented supports a finding that the subject lands were continuously irrigated from prior to 1907 to the present.
32. The tracts comprising the move-from lands are located in Section 31, Township 2 South, Range 1 East and Section 6, Township 3 South, Range 1 East. The move-from lands straddle the township and section demarcation lines.
33. The 1855 BLM field notes include an entry describing certain features found along the NMPM beginning with the 12<sup>th</sup> mile between Section 36, Township 2 South, Range 1 W and Section 31, Township 2 South, Range 1 E. The western boundary of the move-from land lies along or near the NMPM in the southern half of the above described 12<sup>th</sup> mile, and continues south into Section 6, Township 3 South, Range 1 E. The entry describes features along intervening distances stated in chains (one chain equals 66 feet; 80 chains = one mile) as follows:
  - South Between Sections 36 & 31
  - 28.00 [28 x 66 = 1,848 feet] Left Cultivated land
  - 40.00 [1/2 mile] Set a ¼ Sec Cor post with a trench for . . .Sec Cor
  - 56.00 [3,700 feet] Entered cultivated land
  - 70.00 [4,620 feet] To An Acequia
  - 80.00 [one mile] Set a post with a trench for corner to Secs 1, 6, 31 & 36 T2 & 3S R 1W & R1E.
  - Land level bottom S ½ mile good bottom north ½ mile Sandy Timber
  - Scattering Cottonwoods
34. Comparison of the 1917-1918 Rio Grande Drainage Survey and Figure R-3 of Protestant Pueblo of Isleta's Exhibit R21 reflects that the northern boundary of the

move-from lands is at or near the ½ mile mark described in the above 1855 BLM field note entry. Cultivated lands were not entered until 3,700 feet south along the 12<sup>th</sup> mile. The northern boundary of the portion of the move-from lands that are classified as CC1 on the 1917-1918 Rio Grande Drainage Survey appears to lie a few hundred feet south of the point described in the 1855 BLM notes as 3,700 foot south along the 12<sup>th</sup> mile, where the surveyor recorded entering cultivated land. An acequia is subsequently encountered some 920 feet further south of that same point.

35. The entries in the 1855 BLM field notes are not inconsistent with the classification of the move-from land shown on the 1917-1918 Rio Grande Drainage Survey.
36. The other survey notes referenced in Finding 29 indicate that both cultivated lands and uncultivated lands were present in the region without providing any specific information as to the move-from lands.
37. The additional information presented by Applicants tends to confirm rather than refute the data reflected on the 1917-1918 Rio Grande Drainage Survey.
38. The weight of the evidence presented establishes that as of March 19, 1907, no more than 29.16 acres of the move-from lands had appurtenant irrigation rights.
39. A portion of the lands that were shown as CC1 on the 1917-1918 Rio Grande Drainage Survey subsequently appear as non-irrigated on the 1926-1927 MRGCD Plane Table Survey. WRD estimates that approximately 9.10 acres of land in Tract 1A1, classified as non-irrigated on the 1917-1918 Rio Grande Drainage Survey, appeared to be irrigated on the 1926-1927 MRGCD Plane Table Survey.
40. MRGCD Appraisal Data Sheets from July 1927, bearing serial numbers 2S1E, 31-11 (total acres 35.55) and 3S1E, 6-1 (total acres 230.30), classify all of the appraised acreage as non-irrigated. The 139.05 acres of move-from lands are included within the appraised acreage. The data sheet numbered 2S1E, 31-11 describes all 35.55 acres as being bosque. An entry on the space for identification of irrigation ditches indicates “[n]o ditches.” The data sheet numbered 3S1E, 6-1 describes the entire 230.30 acres of land as non-irrigated (comprised of 21.75 acres salt grass, 188.55 acres bosque, and 20 acres vega - pasture & hay). An entry on the space for

identification of irrigation ditches indicates “[n]ever irrigated.”

41. MRGCD 1946-1947 Reappraisal Data Sheets contain information as to the original 1927 appraisal. The data entries for Tracts 1A, 11, 1B and 1C, with combined acreage of 182.58 acres, that includes the 139.05 acres of move-from land, reflect that the land was originally appraised in 1927 as 34 acres salt grass and 158.58 acres bosque.
42. Given that the CC1 classification for 29.16 acres of land on the 1917-1918 Rio Grande Drainage Survey CC1 corresponds reasonably well with the 1855 BLM field notes, the 1917-1918 Rio Grande Drainage Survey is determined to be more probative as to irrigation of the land from prior to 1907 through 1917-1918 than entries on the 1926-1927 MRGCD Data Appraisal Sheets indicating that the lands were never irrigated.
43. Subsequent aerial photographs reflect that the 29.16 acres of land referenced in Finding 38 was restored to irrigation following construction of drains in the vicinity of the land, within the acceptable time period described in the OSE criteria and that they have since been continuously irrigated, except for a period of time when a home site existed on 0.72 acres of the land.
44. The home site is first noted on a 1947 aerial photograph. The structure on the site appears to be a mobile home. The mobile home does not appear in later photographs and the 0.72 acres appears to be cultivated from at least 1963 to the present. The evidence is insufficient to conclude that the 0.72 acre no longer has an appurtenant pre-1907 water right.
45. 29.16 acres of the move-from lands have valid appurtenant pre-1907 water rights.
46. Applicants have not demonstrated that more than 29.16 acres of the move-from land has been continuously irrigated from prior to 1907 to the present.
47. Granting of the subject application for more than the CIR for 29.16 acres of land would constitute a new appropriation of water in a fully appropriated stream system and would impair existing water rights.
48. The Farm Delivery Requirement (FDR) for the Middle Rio Grande is 3.00 afy per irrigated acre of land and the CIR is 2.1 afy per irrigated acre of land.

49. The total CIR for the irrigation water rights appurtenant to the 29.16 acres of move-from lands with valid pre-1907 water rights available for transfer to non irrigation purposes is 61.236 afy ( $29.16 \times 2.1 = 61.236$ ).
50. The reach of the Rio Grande between the move-from and move-to points of diversion is administered as a single unit with a 100% historic supply.
51. Moving the point of diversion for 61.236 afy from the San Acacia Diversion Dam to the BDD would not cause detectable hydrologic impacts to the surface or groundwater at the move-from or move to sites.
52. Calculated on an annualized basis, 61.236 afy is equivalent to 0.085 cubic feet per second (cfs) of stream flow.
53. Moving the point of diversion for 61.236 afy from the San Acacia Diversion Dam to the BDD would result in no measurable depletion to stream flows within the reach of the Rio Grande between the move-from and move-to points of diversion.
54. The potential depletion in flow of native Rio Grande water in the intervening reach would not affect the availability of water to serve existing water rights within that reach or otherwise impair existing water rights.
55. Permit restrictions on the BDD, in the form of progressive curtailment of BDD diversions, provide a level of protection to native flows of the Rio Grande.
56. The carriage water associated with delivery of water for irrigation of 29.16 acres of land at the move-to site would remain in the system and be available for delivery of water to other rights served by the MRGCD.
57. Moving the point of diversion for 61.236 afy will not impair existing water rights, provided that the rights are severed from the 29.16 acres of land and further provided that those 29.16 acres are not irrigated from any source.
58. Supplemental diversions for irrigation purposes of use under OSE permit 04729 and RG-74141 should be reduced from 417.15 afy ( $139.05 \text{ acres} \times 3.00 \text{ FDR}$ ) to 329.67 afy ( $417.15 - (29.16 \text{ acres} \times 3.00 \text{ FDR})$ ).
59. Concerns were raised as to the State Engineer's ability to enforce permit conditions requiring the drying up of land at the move-from site when the owner of that land is not an applicant or holder of a permit and the lands lie within an area served by the

MRGCD.

60. The State Engineer has express statutory authority to enforce the conditions of a permit or license. NMSA 1978, §72-2-18 (2007).
61. Approval of a change in point of diversion for the CIR for the 29.16 acres of land with valid appurtenant pre-1907 rights in the present matter should be conditioned upon receipt of written confirmation that the present owners of the 29.16 acres of land have acknowledged that the water rights have been severed therefrom and that those lands are not to be irrigated from any source of water without a separate permit issued by the State Engineer.
62. The water sought to be transferred would be delivered via the County of Santa Fe's water system and would serve anticipated growth within the County.
63. The weight of the evidence presented establishes that the County of Santa Fe and the subdivision where the water is intended to be used have adopted measures to promote the efficient use and conservation of water.
64. Granting of the application, in part, to change the point for diversion of 61.236 afy and the place and purpose of use, subject to conditions, would not be detrimental to the public welfare of the state nor contrary to the conservation of water within the state.

### **ORDER**

**THEREFORE**, Application No. SD-04729 and RG-74141 into SP-4842 is partially approved for a change in the point of diversion and place and purpose of use for 61.236 afy of water, subject to conditions, as follows:

**Permittee:** Santa Fe County and Santa Fe Water Resource Alliance, LLC

**Permit No.:** SD-04729 into SP-4842

**Priority:** March 18, 1907

**Source:** Surface water of the Rio Grande

**Point of Diversion:**

Move From: San Acacia Diversion Works of the MRGCD located in the SW ¼ NE ¼ NE ¼ of Section 1, Township 1 South, Range 1 West, NMPM.

Move To: SP-4842 (Buckman Direct Diversion) located on lands owned by the United States Forest Service within a 500 foot radius of a point where X=525,982 feet and Y=1,759,620 feet NMCS, Central Zone, NAD 27.

**Place of Use:** Santa Fe County water service area.

**Purpose of Use:** Domestic, municipal, industrial, commercial, county utility and related purposes.

**Amount of Water:** 61.236 afy (based upon a CIR of 2.1 acre-feet per irrigated acre for 29.16 acres of move-from land).

**CONDITIONS OF APPROVAL**

1. Permit No. SD-04729 into SP-4842 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.
2. The total diversion of water under Permit No. SD-04729 into SP-4842 shall not exceed 61.236 afy.
3. The water rights appurtenant to the 29.16 acres of irrigated land described as part of Tracts 1A2 and 1B1A on MRGCD Map 161 and part of Tract 11 on MRGCD Map 159, and delineated on WRD Exhibit 1, Attachment B1, are severed therefrom and that land shall not be irrigated from any source of water without a separate permit issued by the State Engineer.
4. Within ninety (90) days from the date of issuance of this order, the permittees shall file with the District 1 OSE in Albuquerque, New Mexico, a plat of the lands to be retired from irrigation pursuant to Condition of Approval 3.
5. Within one hundred and twenty (120) days from the date of issuance of this order, the permittees shall file with the District 1 OSE written confirmation that the present owners of the 29.16 acres of move-from land have received a copy of the Order

and Conditions of Approval for Permit SD-04729 into SP-4842 and the plat described in Condition of Approval 4 and have acknowledged that the water rights have been severed from the 29.16 acres of land described on the plat and that those lands are not to be irrigated from any source of water without a separate permit issued by the State Engineer.

6. Supplemental diversions for irrigation purposes of use under OSE permit 04729 and RG-74141 are reduced from 417.15 afy to 329.67 afy.
7. The diversion of native Rio Grande water under this permit from point of diversion SP-4842 (Santa Fe County) shall be measured by a dedicated totalizing meter that records actual diversions of water in gallons, or through a method otherwise acceptable to the State Engineer. Diversion made under SP-4842 shall be measured and reported separately from diversions made under SP-2847 E (San Juan Chama Project Permit, approved November 1, 2006) and under SP-4842-A (Las Campanas LLC).
8. Prior to any diversion of water under Permit No. SD-04729 into SP-4842, the permittees shall inform the OSE of the location of the proposed totalizing meter(s) and their make, model, serial number, number of dials, multipliers, and any other measurement or calibration information determined necessary for State Engineer approval. No diversion of water shall take place under this permit until the State Engineer approves proposed metering and diversion reporting methods.
9. Records of the amount of water diverted under SP-4842 (Santa Fe County) shall be submitted in writing to the District 6 OSE on or before the 10<sup>th</sup> day of each month for the preceding calendar month.
10. The maximum instantaneous rate of diversion from the Buckman Direct Diversion under all permits (San Juan Chama Project water and native Rio Grande water) shall not exceed 32.0 cfs, inclusive of the amount of water necessary for sediment removal.
11. Diversion of water under this permit shall be subject to adherence with the Staged Curtailment Schedule (U.S. Department of Interior, Fish and Wildlife Biologic Opinion, June 25, 2007 at 12) for the Buckman Project when Otowi Gage native

flows are below 325 cfs.

12. Permittees shall utilize the highest and best technology available to ensure conservation of water to the maximum extent practical.
13. Within five (5) years from the date of issuance of the State Engineer's order approving Permit No. SD-04729 into SP-4842, the permittees may, if they have not placed water to beneficial use under the permit, file an application to cancel and re-permit a change to the proposed point of diversion, place of use or purpose of use of the original water right appurtenant to 29.16 acres of land.
14. Proof of Completion of Works shall be filed on or before December 31, 2012.
15. Proof of Application of Water to Beneficial Use shall be filed on or before January 31, 2014.

Respectfully submitted.

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Victor Kovach  
Hearing Examiner

**I ACCEPT AND ADOPT THE REPORT AND RECOMMENDATION OF THE HEARING EXAMINER THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.**

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**JOHN R. D'ANTONIO, JR. P.E.  
NEW MEXICO STATE ENGINEER**