

Woods: Potential buyers are not admissible evidence

Story by Jessica Carranza Pino, Editor | Apr 11, 2024

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RESERVE – Judge Roscoe Woods of the Seventh Judicial District Court, granted the State Engineer’s motion for summary judgement thereby upholding the State Engineer’s denial of Augustin Plains Ranch LLC’s application to pump 54,000-acre feet of water a year from the San Agustin Plains basin at the Catron County Court house on April 5.

“For this application to go through as it is, in my opinion ... sets a bad precedent,” Woods said, during his ruling in a courtroom with standing room only. “I think the whole point of the appropriation doctrine is that we put the water to beneficial use.”

More than 100 people were present at the hearing in protest, spilling out into the hallway as lawyers shared their arguments for almost five hours.

Judge Woods allowed for the counsel to state their case, offer rebuttals and asked them several questions in between.

“Counsel, the reason why I pose these questions and talk about the case law is to give you a heads up of what I’m concerned about,” Woods said.

The state engineer’s lawyer, Simi Jain, went first and argued that, although the application was complete for filing and had “checked all the boxes,” there was speculation in the application, and it lacked sufficient evidence of a beneficial use of the water.

“There is really no constitutional basis to allow the appropriation of water to not be used, but if left in the ground while customers are being sought to put the water to beneficial use... to allow this would put the public with competition for water with APR,” Jain said.

Jain said that although APR listed six counties as end users, “it’s clear there is no commitment with these municipalities identified by the applicant.”

She argued that the application was virtually identical to the previous one that was denied, “They’ve had a decade to find an end user, they’ve had multiple chances to file evidence and how many motions for summary judgement now? And they still haven’t come up with an end user,” Jain said.

Jain said the downside of private use puts them in the power of controlling who and how water is used and that is really the role of the state engineer; “the main concern is the monopolization of water by a private identity.”



There was standing room only at the Catron County Courthouse.

Catron County's lawyer, Pete Domenici, said he represented many constituents of the county who would be "targeted to be victims" if this application was approved.

"All we have is a monopoly plan to monopolize 54,000 acres feet of water, with hopes and aspirations to force it on people who don't want to buy it," Domenici said.

Ann McCartney from New Mexico Environmental Law argued that the state engineer "seriously erred in accepting the 2014 amended application."

She said the people in Catron and Socorro Counties rely on the water from the same basin APR proposes to use and having to fight in court "wasted an enormous amount of resources not only for landowners but the counties."

"These are people with a long history in Catron and Socorro Counties and a deep connection to the land and the water, they do not consider the water a commodity... it is life blood for them," McCartney said.

Doug Meiklejohn, representing Carol Pitman, and Tessa Davidson, representing the Anita Han Trust Fund, argued there was lack of information on APR's application, its similarities to the previously denied application and the financial burden on the people directly affected.

"If this application does not meet the definition of speculation, I would ask anyone in the room what kind of application does?" Davidson said. "If you take the argument that you don't have to have any specific any user and you don't have to show any need for water, really what precedent does this application establish?"

Augustin Plains Ranch's attorney, Jeff Wechsler, argued APR has provided detailed information about the project and end users.

"We obviously provided an unprecedented level of information in the application, it's 162 pages long," Weschler said. "The application provides detailed information on the project from cradle to grave and I think it's not an exaggeration to say the Augustin application contains more information than any application that has ever been presented here."

He said the application includes a site plan, a map of the wells, a project description, a description of the need for the water, information on the wells, miles by mile depiction of the pipeline, information on cultural and biological resources, investor letters, detailed descriptions, sample letters from municipality showing desire, sample forms of agreements, conceptual engineering design, hydraulic analysis, energy requirements and how they will be met.

“What is lacking? the state engineer says the identification of end users, the law does not require that,” Weschler said. “Now the state engineer is attempting to move the goal posts.”

He said as far as end users go, they have two letters of support and affidavit with information about buyers.

“They may not think that’s enough evidence, but it can’t be ignored,” Wechler said. “On this issue, I don’t think this case is a close or difficult case...it’s hard to imagine a more specific plan.”

Final Ruling

In his final ruling, Woods said the New Mexico constitution gives the right to appropriation of water for “beneficial use in accordance with the law for the priority of appropriation with beneficial use.”

“So, we have this question of the application of whether they identify a beneficial use, I think the operative word is with specificity. We are looking at something more than just demand or desire... we need a plan because otherwise all we do have is speculative conjecture, hypotheticals,” Woods said.

Woods said that although he appreciated the affidavit provided by APR with references to potential buyers, “that wouldn’t, in my opinion, be admissible evidence because, again, it’s speculation, it calls for hearsay.”

Wood also had a problem with APR’s application where they included stage two.

“It’s their own language in the application when they talk about stage two where they plan to provide additional details regarding the types and placement of the use for the water. So, they’re not certain themselves, it doesn’t appear, because they need stage two ecological to determine that,” Woods said. “There’re no specifics on appropriating the quantity. There is a general 54,000, but in stage two we’ll figure it out. No specific identifiable uses. This is all on demand from municipalities but there’s no confirmation of this.”

He was concerned about the control it would give ARP while it was confirming buyers, he said if he were to grant the applicants’ motion.

“This in essence would allow Augustin Plains to control this body of water... to allow it would deprive the public an opportunity, under the constitution, to appropriate water for beneficial use... a certain and definite identifiable need which here in the case APR does not provide that.” Woods said.