

SAN AUGUSTIN WATER COALITION

Notes from the Motion for Summary Judgment Hearing, June 26, 2019

Somewhere around 85 people gathered in the small courtroom in Reserve on Wednesday, June 26th, to hear the motions for summary judgment proceedings conducted by 7th District Court Judge Matthew Reynolds. Attorneys representing the Augustine Plains Ranch, LLC, the Office of the State Engineer, Catron County, and the N.M. Environmental Law Center (representing a group of 80 protestants) were each given 25 minutes to present their arguments. Judge Reynolds gave them the opportunity to relinquish time to other attorneys for additional comments, should they wish to do so.

Other attorneys present included those representing Isleta Pueblo, Sandia Pueblo, Santa Ana Pueblo, the Navajo Nation, Wild Earth Guardians, and the Hand Family Trust.

Judge Reynolds allowed the attorney representing the APR, LLC., Mr. Wexler, to address the court first. He opened by saying that the OSE had made errors when they turned down the application in (1) refusing to hold an evidentiary hearing, (2) in saying “purposes of use” were not defined, (3) in separating out the speculation argument, and (4) was not correct when they held up the 2014 application. As he detailed his arguments, Mr. Wexler cited several examples of case history from N.M. law, and OSE statutes which he said backed up his arguments. ([I am not an attorney, and will not go into these arguments---these notes are to provide an overview of the proceedings only](#)) Mr. Wexler also cited Montana law and was stopped by Judge Reynolds, who said he will not use case law from any other state to decide New Mexico law.

The Office of the State Engineer attorney spoke next. (I did not get her name.) She told the court that although the LLC’s application met the OSE’s requirements for being “complete for filing” for the OSE’s Water Rights Division, a permit was denied due to its speculative nature and failure to provide a specific end-user, and that the NM “law of prior appropriation” discourages such speculation, and has since 1907. She further said the LLC has failed to demonstrate “actual need” in the application.

Doug Meikeljohn of the NM Environmental Law Center, representing 80 protestants since the original application was filed in 2007, spoke next. He reiterated that the application (1) fails to identify specific end-users, (2) it gives no places where uses will occur, (3) and that the LLC’s request for the 2-pronged application process violates OSE regulations. He pointed out that Judge Reynolds had previously decided during the first appeals process in 2012 that the LLC had not been entitled to an evidentiary hearing. He then turned the floor over to Francine Jaramillo, attorney for Isleta Pueblo, who told the court that Isleta Pueblo has never been contacted by the LLC in the 12 years this has been going on about a “compensatory right-of-way” for the proposed pipeline. She reminded the court that the Pueblo is a sovereign nation, and that no pipeline will be going north of the Pueblo without their approval and associated contracts, and that “the Pueblo takes its time in all its negotiations”. She asked for the application to be dismissed with prejudice.

Wild Earth Guardians spoke next. (I failed to get their attorney’s name.) She pointed out that by failing to identify “place of use” as required by the OSE, the application denied the right to know where the water would be used, thereby denying the public in those areas to know how they would be affected. This would be detrimental to public welfare, as defined by the OSE.

Representing Catron County in this matter, attorney Pete Dominici Jr. spoke next. He described the application as “antithetical to the N.M. Constitution” as it concerns the 2-phase process request, and that the pipeline is a “diversion” and has nothing to do with “use”. He said the stage-2 part of the proposal is “nothing more than window-dressing outside of the statute, and violates prior appropriation.

He brought a lot of laughter to the proceedings when he compared this whole situation to the movie “Groundhog Day”.

He asked Judge Reynolds to re-state Section-B in the judge’s 2012 ruling, which discussed the violation of permitting of underground water.

Following this, each attorney was allowed 5 minutes for rebuttals to what had been said:

- 1) The LLC asked that the evidentiary hearing be granted.
- 2) The OSE asked that the application NOT be dismissed with prejudice, as it would close off future applications by others, and further saying that the Water Rights Division is required to tell the applicant how to fix the errors in the application.
- 3) The NM ELC asked that the application be dismissed as in 2012
- 4) Tessa Davidson, for the Hand Family Trust said that “commercial sales”, stated as a “use” by the LLC, can’t be anonymous as to beneficial use, according to statute, and that some commercial sales would not be considered “beneficial”. She further pointed out that public welfare can’t be argued without specifying beneficial use.
- 5) Mr. Dominici asked for “dismissal with prejudice” so we do not have to go thru any more of these applications.

Judge Reynolds had several questions for Mr. Wexler as to case precedent previously cited by the LLC’s attorney. Judge Reynolds said he was familiar with all but one of the cases, and would review all of them before making a decision, which will be rendered by the end of July.