Augustin Plains Ranch: 'Groundhog Day' all over again?

http://www.dchieftain.com/news/augustin-plains-ranch-groundhog-day-all-over-again/article_276ab584-a323-11e9-916f-fb3cf4feab15.html

- By John Larson, El Defensor Chieftain Senior Staff Writer July 11, 2019

The Catron County Courthouse courtroom was filled to capacity to hear arguments for and against APR's plan to mine water from the San Agustin Plains.

Photo by James Cherry

The latest round of court proceedings concerning the attempt by a foreign-owned company to mine water from the San Agustin Plains was held Wednesday, June 26 at the Catron County Courthouse in Reserve.

Eileen Dodds of the San Agustin Water Coalition estimated that 85 people were packed into the courtroom, where Seventh Judicial District Judge Matthew Reynolds heard arguments relating to the Augustin Plains Ranch LLC's (APR) permit application to drill 37 water wells on the San Agustin Plains in western Socorro County and pump 54,000 acre feet of water annually from the aquifer.

The issue was over a request for summary judgment. That is, deciding whether or not the application should be dismissed if it does not meet statutory requirements.

New Mexico Environmental Law Center and the County of Catron, along with others, had asked the court to summarily dismiss the latest application because it was not substantially different from a previous application. Other attorneys at the hearing represented Isleta Pueblo, Sandia Pueblo, Santa Ana Pueblo, the Navajo Nation, Wild Earth Guardians, and the Hand Family Trust.

An earlier version of the application had been rejected by the Office of the State Engineer (OSE) because it did not specify the beneficial uses of the water.

Now, APR wants a two stage hearing; the first stage to examine the hydrology of the aquifer and technicalities, and the second stage to discuss beneficial use.

However, there is no precedent for such a two stage hearing, and how APR will meet the requirements of beneficial use for the water was in contention.

Jeffrey Wechsler, the attorney representing APR, argued that the OSE had made errors when they turned down the latest application; first by refusing to hold an evidentiary hearing, second in stating "purposes of use" were not defined, third in separating out the speculation argument, and fourth, that the OSE was not correct when it held up a 2014 application. Wechsler cited several examples of case history from New Mexico law and OSE statutes, which he said backed up his arguments. He also cited Montana law but was stopped by Reynolds, who said he will not use case law from any other state to decide New Mexico law.

The Office of the State Engineer's position was that although APR's application met its requirement for being complete for filing for the Water Rights Division, the permit was denied due to its speculative nature, failure to provide a specific end-user, and that New Mexico's prior appropriation law discourages such speculation; that APR has failed to demonstrate "actual need" in the application.

Representing the County of Catron, attorney Pete Domenici Jr. described the application as "antithetical to the New Mexico constitution," as it concerns a two-stage process request, and that the pipeline is a "diversion" and has nothing to do with "use." He said the two-stage part of the proposal is "nothing more than window-dressing outside of the statute," and violates prior appropriation.

He said the battle over San Agustin aquifer water has been going on for 12 years, suggesting that repeated hearings on the same application should not be allowed, and compared the whole situation to the movie Groundhog Day. He asked for dismissal with prejudice so "we do not have to go thru any more of these applications."

Doug Meiklejohn of the Environmental Law Center, representing 80 protestants since the original application was filed in 2007, reiterated that the application fails to identify specific end-users, specifies no places where uses will occur, and APR's request for the two-stage application process violates OSE regulations.

Meicklejohn pointed out that Reynolds had previously decided during the first appeals process in 2012 that APR had not been entitled to an evidentiary hearing.

Tessa Davidson, representing the Hand Family Trust, said that commercial sales, stated as a use by APR, does not define "beneficial use," according to statute, and that some commercial sales would not be considered beneficial. Davidson said that public welfare can't be argued without specifying beneficial use.

A representative for Wild Earth Guardians pointed out that by failing to identify "place of use" as required by the OSE, the application does not specify 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, she said, as defined by the OSE.

Attorney for Isleta Pueblo Francine Jaramillo told the court that in the last 12 years Isleta Pueblo has not once been contacted by APR 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 can go through the Pueblo without its approval and that "the Pueblo takes its time in all its negotiations."

She asked for the application to be dismissed with prejudice.

The judge then questioned Wechsler on the case precedents he cited in his arguments. Reynolds said he was familiar with all but one of the cases and would review all of them before making a decision.

He said he would render that decision by the end of this month.