

Water rights case gets bounced back to District Court

Story by [John Larson, El Defensor Chieftain](#) | Aug 18, 2022

<https://dchieftain.com/water-rights-case-gets-bounced-back-to-district-court/>

The case between Augustin Plains Ranch, LLC (APR) and State Engineer John D'Antonio along with dozens of protestants and 52 government agencies has been kicked back to Seventh District Court by the three-judge panel of the New Mexico Court of Appeals.

In a decision released on Aug. 14, the appellate court ruled that the late District Judge Matthew Reynolds was in error by applying collateral estoppel. In other words, in his ruling on the 2014 application, Reynolds erred by determining that he had already ruled on the original Augustin Plains Ranch application of 2007.

“After reviewing the State Engineer’s decision to deny Appellant Augustin Plains Ranch, LLC’s (Applicant) application to appropriate groundwater, the district court dismissed with prejudice Applicant’s 2014 Application to appropriate groundwater from the San Agustin Basin,” the appellate judges wrote. “We reverse and remand because we determine the district court erred in applying collateral estoppel.”

Attorney Doug Meiklejohn, who has been connected with the case since its early days and is still representing a handful of protestants, said the doctrine of collateral estoppel is intended to prevent litigation of issues over and over again.

“In this case, the appellate court said the determination by Judge Reynolds that the 2007 ruling barred the current 2014 application, and that that decision was wrong,” Meiklejohn said. “To clarify, if you have decided an issue once and the parties were the same and both parties had a fair opportunity to litigate those issues then you don’t need to decide that issue again. And so the appellate court sent it back to the district court for a hearing on the merits of the current APR application.”

Another point about the ruling, Meiklejohn said, has to do with APR’s request for an evidentiary hearing.

“Augustin Plains Ranch has argued throughout the process on the current application that it is entitled to an evidentiary hearing on the merits of its application,” he said. “The Court of Appeals said, ‘no, you’re not entitled to that.’

“They said that the determination that these issues had already been decided with respect to the earlier application was incorrect,” Meiklejohn said.

Carol Pittman of Datil helped form the San Augustin Water Coalition with other Catron County residents in 2008. For the last 14 years, Pittman and other coalition members have been fighting APR’s attempt to drill and remove 54,000 acre-feet of water from the aquifer beneath the Plains of San Agustin every year. In other words, 6.9 billion gallons of water per day.

“That decision by the Court of Appeals is disappointing but we have to face up to it,” Pittman said. “And we will.”

Pittman and the other litigants now have an option, according to Meiklejohn.

“There are two things that can happen now,” he said. “One is that we or other parties can ask the New Mexico Supreme Court to review this ruling. But, of course, the state Supreme Court doesn’t have to. It would be discretionary.”

“Or, do what the Court of Appeals said, to go back to the district court for a hearing on the merits of the 2014 application,” Meiklejohn said.

Click the link below for the entire court order:

[Augustin Plains Ranch, LLC v. John D’Antonio, P.E., No. A-1-CA-38615](#)