

APR stands firm, case advances to Court of Appeals

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By John Larson, El Defensor Chieftain staff writer Oct 3, 2019

Augustin Plains Ranch LLC, the company wanting to acquire groundwater rights to the San Agustin aquifer, is appealing the judgment by Seventh District Court Judge Matthew Reynolds. Reynolds ruled the decision to deny the permit application by the Office of the State Engineer is correct.

In submitting a 56-page document, the Ranch is seeking to have the Court of Appeals rule that Judge Reynolds made the wrong decision.

According to lawyers at the New Mexico Environmental Law Center, it is unknown the specific grounds Augustin Plains Ranch will argue, “but the gist of the appeal will be that Judge Reynolds made one or more mistakes and the Court of Appeals should reverse his ruling.”

A separate motion filed by the State Engineer – not related to the appeal filed by APR – is asking Judge Reynolds to correct three flaws that he made in his Order.

The motion states: “The Order, while correctly granting summary judgment against Augustin Plains Ranch, LLC’s appeal of the State Engineer’s August 1, 2018 Order, erred in two ways that are contrary to the New Mexico Water Code and the Constitution of New Mexico, and in a third way that could lead to unnecessary future disputes.”

In other words, the State Engineer is not asking that Judge Reynolds change his decision denying the Ranch's application. Instead, the Office of the State Engineer is asking to correct what it sees as three flaws in Reynolds' Order:

First, “The court does not have jurisdiction to permit or deny an application for a new appropriation; only the state engineer has this authority.” Reynolds' Order states that APR's "application to appropriate groundwater from the San Augustin Basin is dismissed....”

- The OSE asserts that the language wrongly implies that the Court has the authority to act on an underlying application in an appeal from a State Engineer decision. It does not invade or replace the State Engineer’s permitting authority.

Second, “It is contrary to New Mexico law to preclude APR from filing a different application by dismissing the application with prejudice.” Reynolds' Order says, “The Augustin Plains Ranch’s Application to appropriate groundwater from the San Augustin Basin is dismissed with prejudice.”

- The OSE questions what exactly is being dismissed “with prejudice.” It writes that if Reynolds intended that the phrase “with prejudice” apply precisely to the 2014/2016 application, then the Order should be amended to refer to that application with specificity. It states that the Court does not have jurisdiction “to reach into the State Engineer’s exclusive and comprehensive administrative process, whether present or future.”

Third, “The order's description that 'Augustin Plains Ranch's application to appropriate groundwater from the San Augustin basin' is overly broad and will only lead to unnecessary litigation in the future.”

- The OSE asserts that this ambiguity could easily be avoided by modifying the Order to specify that only the 2014/2016 Application is subject to the order.