

Catron County files motion for oral argument

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Just a couple of weeks ahead of the Office of the State Engineer’s hearing for oral arguments on the proposed Augustin Plains Ranch LLC (APR) so-called “water mining” project, the Catron County Commission has filed a legal Reply in support of its previous motion for summary judgment; in other words, its request for the State Engineer to dismiss the application right now.

Those oral arguments will be heard at the Catron County Court House in Reserve on Wednesday, Dec. 13 at 1 p.m., concerning various motions and replies to motions.

In its Reply “Catron County Board of County Commissioners’ Reply in Support of Motion for Summary Judgment,” the Catron County Commission addresses specific responses by both Augustin Plains Ranch, and the Water Rights Division (WRD) of the Office of the State Engineer, as well as APR’s and WRD’s responses denying the New Mexico Environmental Law Center’s motion for summary judgment.

The Reply, prepared by attorneys of the Domenici Law Firm in Albuquerque, refutes arguments by APR and WRD that the motion for summary judgment should be denied. The Catron County argues in the Reply that its motion for denying the permit is based on the Applicant’s “continued failure” to comply with the provisions of state statute 72-12-3.A, which sets forth the requirements for an application to appropriate groundwater for beneficial use. Specifically, it says, “the application fails to identify a specific end-user for the water or a specific, actual place of use for the water, as required by state statute.”

Under seven headings in the 14 page Reply, the county commission outlines its stance.

“It is the position of Catron County that, rather than demonstrating an actual beneficial use for 54,000 acre-feet of water annually, the Applicant is attempting to use the OSE application process to tie-up and then market a vast quantity of groundwater located within Catron County. If successful, the Applicant apparently intends to export the groundwater to other places, as yet unknown, to locations, also unknown, within the Rio Grande basin,” the Reply states.

“The Board is not arguing that groundwater should never be appropriated, or that the water should not be available to be moved from one location to another,” the document says, but that any applicant must adhere strictly to state law.

The Reply contends that APR’s most recent application has still not indentified specific places of use, specific end-users and the amount of water that a specific end-user will put to beneficial use. In addition, it states the Water Right’s Division, “while opposing the two pending motions for summary judgment, agrees that an applicant such as Augustin Plains Ranch should ‘have a specific plan to deliver a specific quantity of water to each identified entity that will place the water to beneficial use.’”

The Reply maintains that “it is undisputed that the Applicant does not have such a plan and the application does not include this information,” and that the application “does not meet the statutory requirement for a complete application and it should be denied.”

If an alternative location for the hearing (Santa Fe) has not been agreed upon by all parties by Dec. 1, the hearing will stay in Reserve at the Catron County Court House.