Residents ask state Supreme Court to rule in Augustin Plains water grab case

Santa Fe, NM — Today, a retired couple from western New Mexico asked the state Supreme Court to order the State Engineer to dismiss a massive speculative water appropriation application from Augustin Plains Ranch, LLC ("APR").

In their petition for a writ of mandamus, filed by attorney Bruce Frederick of the non-profit New Mexico Environmental Law Center, Ray and Carol Pittman state that a second application filed by APR this summer is "identical in all material respects" to the application that APR filed in 2007. The 2007 application was denied by State Engineer Scott Verhines and a District Court after five years of litigation. Just like the 2007 application, the 2014 application seeks to appropriate 54,000 acre-feet of water per year (afy), but fails to indicate exactly how or where the water will be used, as required by the state Constitution. "By keeping the intended use vague," said Frederick, "the Ranch hopes to speculate in future water markets and ultimately sell to whoever the highest bidders may be in seven counties."

Under state law, the State Engineer has a non-discretionary duty to dismiss applications that that fail to specify any particular purpose or place of use of water or end user. Courts use writs of mandamus to compel recalcitrant government agencies to perform clear duties required of them by law. In this case, the Pittmans petitioned the state Supreme Court to "order the State Engineer to promptly reject [APR's] 2014 application." "The State Engineer must reject the 2014 application for the same legal reasons that he denied the 2007 application," said Frederick.

The Pittman's efforts come in response to legal maneuvering undertaken by APR and the State Engineer this summer. The Pittmans along with 80 neighbors eventually persuaded the State Engineer and a District Court to deny APR's 2007 application because it was 'vague, over broad, lacked specificity, and the effects of granting it cannot reasonably be evaluated.'**[1]** APR then appealed to the Court of Appeals, where the case was fully briefed.

APR filed its "new" application a few weeks before the parties were scheduled to present oral argument to the Court of Appeals. The State Engineer and APR told the Court to dismiss the appeal because, according to them, APR's 2014 application superceded the 2007 Application. Even though the two applications are substantively identical, State Engineer Verhines told the Court of Appeals that he would evaluate the 2014 Application without regard to his prior denial of the 2007 Application. The Court of Appeals dismissed the appeal, which allowed the State Enigneer and APR to avoid a precedent that may have appropriately limited the State Engineer's discretion and dissuaded investment in APR's speculative water project.

"My husband and I love New Mexico, and we just wanted a quiet retirement in Datil. When the Ranch filed its first application in 2007, none of us wanted to get involved in a drawn-out proceeding. But we did because it was the right thing to do," says petitioner Carol Pittman. "I hope the Supreme Court will step in and stop this scheme once and for all, not only for the people of west-central New Mexico, but for the people in our state's other rural communities. Because this is going to be a big problem for them too if the State Engineer opens the door to water grabs."

"The District Court ruled that the State Engineer had no choice but to deny the 2007 Application," said Frederick, "because it did not indicate how or where the Ranch intended to use the tremendous amount of water it was seeking. We're hoping that the Supreme Court takes up our petition and reaches the same conclusion regarding the 2014 Application. This would avoid years of additional litigation and save investors from wasting money on an illegal project."

INTERVIEWS, IMAGES and EXHIBITS ARE AVAILABLE UPON REQUEST

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