IN THE COURT OF APPEALS FOR THE STATE OF NEW MEXICO

AUGUSTIN PLAINS RANCH, LLC,

Applicant-Appellant-Cross-Appellee,

v. Ct. App. No. A-1-CA-38615

JOHN D'ANTONIO, P.E., New Mexico State Engineer,

Appellee-Cross-Appellant,

and

CATRON COUNTY BOARD OF COUNTY COMMISSIONERS, et al.,

Protestants-Appellees.

DOCKETING STATEMENT

APPEAL FROM THE DISTRICT COURT OF CATRON COUNTY
District Court No. D-728-CV-2018-00026
MATTHEW REYNOLDS, District Judge

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Applicant-Appellant-Cross-Appellee Augustin Plains Ranch, LLC ("Augustin"), pursuant to Rule 12-208 NMRA, submits this Docketing Statement in its appeal from the district court's Final Order Granting Summary Judgment in Favor of the Community Protestants and the Catron County Board of County Commissioners and Dismissal With Prejudice, which was based on the district court's Memorandum Decision on Motions for Summary Judgement, and was modified by the district court's Order on State Engineer's Motion to Reconsider.

NATURE OF THE PROCEEDING

This appeal arises from the State Engineer's dismissal of Augustin's Application to Appropriate Groundwater dated December 23, 2014 ("2014 Application") on summary judgment without reaching the full merits or allowing Augustin a full evidentiary hearing, either before or after decision. Augustin appealed from the State Engineer Report and Recommendation Granting Motions for Summary Judgment, accepted and adopted by the State Engineer without modification on July 31, 2018, and the Oreder [sic] Denying Applicant's Request for Hearing, issued August 28, 2018, and adopted without modification on September 5, 2018, pursuant to NMSA 1978, § 72-7-1 (1971).

The district court granted summary judgment in favor of the Catron County Board of County of Commissioners ("County") and certain individual protestants

represented by the Environmental Law Center ("ELC Protestants") on the "threshold issue of collateral estoppel." In the resulting Memorandum Decision on Motions for Summary Judgment ("Mem. Dec."), filed July 24, 2019, the district court concluded that its 2012 Decision finding Augustin's prior Application for Permit to Appropriate Underground Water, dated October 12, 2007 ("2007 Application"), was facially invalid precluded "any argument against summary judgement being granted on the grounds of the facial invalidity of [Augustin's 2014 Application]" and "render[ed] all other disputes in this case immaterial." Mem. Dec. at 5.

In so ruling, the district court misconstrued the statutory requirements governing proceedings before the State Engineer and deprived Augustin of the right to present evidence in support of its 2014 Application. The district court also fundamentally misapplied the doctrine of collateral estoppel, applying the doctrine to preclude Augustin from proceeding on its 2014 Application due to perceived faults in the separate, and materially different, 2007 Application. These legal errors caused the district court to reach an incorrect result. The district court's decision is inconsistent with the fundamental principles of the New Mexico Water Code, NMSA 1978, §§ 72-1-1 *et seq.*, and, if not rectified in this appeal, could introduce doubt in well-established statutory principles governing practice before the State Engineer and have long-lasting negative impacts on the State Engineer application process.

STATEMENT OF TIMELY APPEAL

The district court issued its Final Order Granting Summary Judgment in Favor of the Community Protestants and the Catron County Board of County Commissioners and Dismissal with Prejudice ("Final Order") on August 23, 2019. Augustin filed a timely notice of appeal from that Final Order on September 20, 2019. However, on September 23, 2019, the State Engineer filed a Motion to Reconsider the Final Order tolling the time for appeal pursuant to Rule 12-201(D) NMRA. The district court issued its Order on State Engineer's Motion to Reconsider on November 13, 2019. Accordingly, by application of Rule 12-201(D)(4), Augustin's Notice of Appeal is deemed effective as of November 13, 2019

STATEMENT OF THE CASE

I. The Augustin Project

Augustin seeks approval from the State Engineer for a permit to appropriate 54,000 acre-feet per year of water from the San Augustin basin, using 37 wells to be drilled on Augustin's property near Datil, New Mexico. Augustin intends to deliver the water through a pipeline to the Albuquerque metropolitan area and to other parts of the Middle Rio Grande valley that are facing water shortages. The water will be used for municipal purposes and commercial sales at locations along the length of the pipeline.

Through the lengthy application process to date, Augustin has undertaken significant steps to develop the proposed water production and distribution project, including spending significant money and resources to drill two test wells and one borehole, conducting pump tests, conducting initial analyses of the aquifer, developing a preliminary groundwater model, evaluating the project's preliminary engineering and cost estimates, conducting a routing analysis for the pipeline, holding discussions with all major water users in the Middle Rio Grande, making public presentations to all interested stakeholders, evaluating the economic and financial feasibility of the project, and working with several infrastructure investors.

II. The 2007 Application

Augustin's submitted its 2007 Application to appropriate groundwater on October 12, 2007. Following amendment and a number of protests, the State Engineer dismissed Augustin's 2007 Application on Summary Judgment in 2012without reaching the merits or allowing Augustin to offer supporting evidence. In support of its dismissal, the State Engineer reasoned that an application should demonstrate that the applicant "is ready, willing and able to proceed to put water to beneficial use" and determined that the 2007 Application contained insufficient "specificity to allow for reasonable evaluation of whether the proposed appropriation would impair existing rights." The State Engineer dismissed the 2007 Application "without prejudice to filing of subsequent applications."

The district court upheld the State Engineer's Order dismissing the 2007 Application without affording Augustin a full evidentiary hearing because the district court determined that the 2007 Application was "facially invalid" because "the eleven proposed uses, in conjunction with the broad descriptions for place of use, were not sufficiently specific to allow the State Engineer to determine whether the application should be granted."

Augustin then appealed to this Court, asserting that the 2007 Application satisfied the statutory and regulatory requirements and that Augustin was entitled to an evidentiary hearing in order to prove that it satisfied the criteria for a permit. The State Engineer responded, arguing in part that, instead of pursuing an appeal, Augustin "could simply have submitted a new application to the State Engineer that comports with law."

Even though Augustin was confident in its position on appeal that it was legally entitled to an evidentiary hearing before the State Engineer, it decided that its interests in developing a water right in the basin would be more efficiently advanced by refiling an application that addressed the concerns of the State Engineer in large part because, even if successful on appeal, the 2007 Application would ultimately require the State Engineer's approval. Augustin filed the 2014 Application on July 14, 2014, and informed the Court of Appeals that it was not pursuing its appeal on the 2007 Application. The ELC Protestants responded in

opposition to Augustin's request to dismiss the 2007 Application appeal as moot, arguing as follows: "The new application is not new. It is in all material respects identical to the application under appeal." This Court rejected that contention and dismissed the appeal, permitting Augustin to proceed on the 2014 Application.

Unsatisfied with that result, the ELC Protestants next made their argument against dismissal of the appeal of the 2007 Application to the New Mexico Supreme Court as part of a Verified Petition for Writ of Mandamus and Request for Stay. The Supreme Court, after requesting responses to the Petition for Writ of Mandamus and Request for Stay, issued an order denying the petition, implicitly rejecting the position advanced by the ELC Protestants.

The ELC Protestants raised the argument for a third time in a motion to the district court requesting relief from its order closing the case. As they had previously, the ELC Protestants argued that "[t]he Ranch's amended application has been filed with the New Mexico State Engineer . . . and, even though the Ranch's amended application has the same defects that caused both the State Engineer and this Court to reject the Ranch's original application . . . the State Engineer has authorized publication . . . . The Protestants seek to have this matter re-opened so that they can request that this court enforce its Memorandum Decision and order the State Engineer to reject the Ranch's Amended Application". Without waiting for a

response from Augustin, the district court issued an order denying the motion, finally ending proceedings on the 2007 Application.

III. The 2014 Application

In drafting the 2014 Application, Augustin considered and addressed the State Engineer's and the district court's concerns with the 2007 Application. The 2014 Application narrows the purpose of use to "municipal purposes and commercial sales for uses at locations along the length of the pipeline" and includes meticulous detail regarding the proposed project in addition to what was provided in the 2007 Application. Specifically, the corrected 2014 Application includes:

a. An overview of the Project, including a description of the work undertaken thus far (hydrologic, engineering, stakeholder involvement, and financial), the purpose and amount of water, the counties where the water will be used, the places of use for both municipal purposes and commercial sales, and a description of the distribution system, delivery points, and methods of delivery;

b. A detailed Project Description outlining the business model, demand, and uses for the water;

c. Letters indicating financial feasibility;

d. A map of the points of diversion;

e. A detailed Routing Analysis from SWCA Environmental Consultants describing the pipeline route, which evaluates the environmental, cultural, and land

ownership issues, and which provides detailed, mile-by-mile information on the pipeline route and elevation;

f. Letters of interest from municipal users in the Middle Rio Grande indicating demand;

g. Sample long-term sales agreement, an infrastructure participation agreement and other agreements that will be entered into with end-users; and

h. A Conceptual Engineering Design showing, among other things, the locations in each place of use where water will be supplied to end-users.

On August 12, 2016, the State Engineer determined that the 2014 Application "conform[ed] to the requirements of the statutes and rules and regulations of the state engineer," accepted the 2014 Application as administratively complete, and issued notice for publication.

Following the publication of notice of the 2014 Application, the State Engineer received a number of protests. Accordingly, the State Engineer appointed a hearing examiner and issued an order docketing the 2014 Application. The ELC Protestants and the County filed motions for summary judgment seeking dismissal of the 2014 Application on a number of grounds, including: (1) the 2014 Application is incomplete; (2) the 2014 Application should be denied as *res judicata* due to the State Engineer's prior dismissal of the 2007 Application; (3) the 2014 Application is facially invalid, and it does not provide a sufficient degree of specificity in order

for it to be analyzed; and (4) the 2014 Application is speculative. Augustin responded to the motions to for summary judgment and argued, in pertinent part, that it was entitled to a full evidentiary hearing on the 2014 Application.

Upon completion of written briefing, the hearing examiner held an oral argument on the motions for summary judgment. Then, on July 31, 2018, the hearing examiner issued, and the State Engineer adopted without modification, the Report and Recommendation Granting Motions for Summary Judgment. The State Engineer concluded that Augustin was not entitled to an evidentiary hearing because (a) oral argument upon the motions for summary judgment was sufficient opportunity to be heard, and (b) concerns of administrative efficiency, reflected in the State Engineer's procedural regulations, prevent holding an evidentiary hearing when an application may be denied based on a dispositive motion. The State Engineer also explicitly rejected the first three grounds for relief sought in the ELC Protestants' and County's motions: the 2007 Application was different from the 2014 Application such that *res judicata* or collateral estoppel would not prevent the State Engineer from reaching the merits of the 2014 Application, and the 2014 Application contained all the information required under the Water Code and its implementing regulations and was administratively complete. However, on the final issue, the State Engineer concluded that the 2014 Application "is speculative and should be denied . . . as a matter of law."

Following the State Engineer decision, Augustin moved for a post-decision hearing pursuant to NMSA 1978, § 72-2-16 (2015). The State Engineer, refusing to allow Augustin an evidentiary hearing on the 2014 Application, summarily denied the request.

IV. Proceedings Before the District Court

On October 3, 2018, Augustin filed a notice of appeal *de novo* from the State Engineer order dismissing the 2014 Application. Following transmission of the State Engineer's administrative record and a brief period of discovery, Augustin, the County, the ELC Protestants, and the State Engineer each filed cross motions for summary judgment.

Augustin's motion presented four principal questions for review to the district court: (1) did the State Engineer err by disregarding controlling precedent, refusing to hold an evidentiary hearing on the merits of Augustin's 2014 Application, and denying Augustin's request for a post-decision hearing pursuant to Section 72-2-16?; (2) did the State Engineer improperly allow piecemeal litigation, by partitioning the issue of speculation for separate consideration without considering the controlling issues of impairment, conservation, and public welfare required by the Water Code?; (3) did the State Engineer err by disregarding Augustin's evidence, regarding its intent to put the applied-for water to beneficial use and the specific plan to do so, in order find that there was no material dispute of fact on the question of

speculation?; and (4) was the State Engineer correct in holding the 2014 Application is administratively complete and facially valid?

In contrast, the ELC Protestants argued that the district court should affirm in part and reverse in part the State Engineer decision on four grounds: (1) the 2014 Application failed to set out the information required by the Water Code and its implementing regulations; (2) the 2014 Application is impermissibly speculative; (3) the 2014 Application should be dismissed pursuant to the doctrines of *res judicata* or collateral estoppel; and (4) Augustin is not entitled to a hearing on the 2014 Application.

The County similarly argued that: (1) the 2014 Application should be dismissed for failure to include information required under the Water Code regarding the beneficial use to which the water would be applied and the place at which the water would be used; (2) the doctrine of collateral estoppel precluded Augustin from re-litigating the degree of specificity required under the Water Code; and (3) the 2014 Application was speculative and should be denied pursuant to the prior appropriation doctrine.

Finally, the State Engineer's motion for summary judgment requested affirmance of its decision, arguing that (1) the 2014 Application was complete as to form for filing and publication, but (2) denial of the 2014 Application is appropriate because it is speculative and contrary to the law of prior appropriation.

Following extensive briefing and oral argument, the district court issued its Memorandum Decision concluding, as a threshold issue, that the doctrine of collateral estoppel precluded Augustin from proceeding on the 2014 Application. The district court reasoned that its prior decision that the 2007 Application was "facially invalid" for insufficient specificity precluded Augustin's 2014 Application because "[Augustin] actually litigated and lost on summary judgment years ago on the same issue presented here[:] that is, whether its hopes and possibilities, detailed as they may be in this second round, are facially valid under the New Mexico Water Code."

In so ruling, the district court found unpersuasive the arguments of Augustin and the State Engineer that the 2014 Application contains all the specific information necessary under the Water Code for a groundwater application. Relatedly, the district court also found unpersuasive arguments that the additional substantial detail contained in the 2014 Application distinguishes it from 2007 Application for the purposes of collateral estoppel, concluding instead that the two applications are effectively identical. The district court also found that no prudential concerns militated against application of the doctrine, despite Augustin's arguments regarding the procedural history related to withdrawal of the appeal on the 2007 Application.

By avoiding all other issues as moot, the district court did not reach the substance of Augustin's principal argument on appeal from the State Engineer: that

the Water Code *requires* the State Engineer to hold a full evidentiary hearing on the merits of an administratively complete application either prior to its decision or, following appropriate and timely demand, after. The district court did not reach or analyze Augustin's arguments, under Section 72-2-16 and controlling precedent, that the State Engineer's failure to hold an evidentiary hearing below prevents the district court from acquiring jurisdiction to reach the merits of the 2014 Application, necessitating remand. This issue presents a pure question of law that was not squarely decided in proceedings on the 2007 Application and that the district court's disposition on collateral estoppel grounds effectively immunizes from appropriate appellate review.

Finally, the district court's decision effectively reiterates and adopts its prior reasoning with regard to disposition of the 2007 Application. As such, the district court effectively makes the same putative errors in its reasoning with regard to the elements necessary to state a "facially valid" application for appropriation of groundwater that Augustin briefed to this Court in its appeal on the 2007 Application. Although previously before the Court, the Court has not yet rendered a decision on these matters due to Augustin's voluntary withdrawal of its appeal on the 2007 Application.

The Final Order granted, without limitation, the Motions for Summary Judgment filed by the County and ELC Protestants, and denied all other pending

motions as moot and dismissed "the Augustin Plains Ranch's Application to appropriate ground water from the San Agustin Basin . . . with prejudice."

The State Engineer moved for reconsideration of the Final Order, arguing that the dismissal should operate as a dismissal of the *de novo* appeal, rather than the 2014 Application itself. The State Engineer further asserted that the purported "dismissal with prejudice" violated New Mexico's constitutional provision allowing appropriation of water in accordance with law, N.M. Const. art XVI, § 2, which guarantees Augustin's ability to file a later application in accordance with law irrespective of disposition of the 2014 Application. Augustin filed a response in support of the State Engineer's motion, and the County and ELC Protestants each filed responses in opposition.

The district court granted in part the State Engineer's Motion to Reconsider without hearing. In the Order on State Engineer's Motion to Reconsider, dated November 13, 2019, the district court amended the final holding of its order granting summary judgment to the ELC Protestants and County to read "The Augustin Plains Ranch's 2014/2016 Application to appropriate groundwater from the San Agustin Basin is dismissed with prejudice." The district court did not articulate a rationale for this amendment or clarify whether this amendment would address the State Engineer's concern such that dismissal of the 2014 Application does not prejudice

Augustin's ability to file a future application to appropriate water from the San Agustin basin in accordance with the Water Code and New Mexico Constitution.

Augustin appealed the district court's decision to this Court, and the State Engineer timely filed a cross appeal.

STATEMENT OF THE ISSUES

This appeal includes issues of first impression that have not been considered by this Court or the New Mexico Supreme Court. Augustin states the following issues for purposes of this Docketing Statement only, and reserves the right to state additional issues.

ISSUE 1: Whether the district court improperly allowed piecemeal litigation in violation of controlling precedent, by partitioning issues for separate consideration without considering the issues of impairment, conservation, and public welfare required by the Water Code.

Procedural Posture:

Augustin raised and preserved this issue in briefing on Applicant Augustin Plains Ranch, LLC's Motion for Summary Judgement and in oral argument on the motion.

Authorities:

NMSA 1978, § 72-2-17(B)(1) (1965) (providing that that the parties shall be afforded an opportunity "to appear and present evidence and argument on all issues involved").

NMSA 1978, § 72-12-3(F) (2011, amended 2019) (providing that, if objections or protests have been filed, the State Engineer may deny the application without a hearing or may order that a hearing be held).

NMSA 1978, § 72-12-3(E) (2011, amended 2019) (providing that the State Engineer shall grant an application and issue a permit if he finds that there are unappropriated waters or that the proposed appropriation will not impair existing rights, is not contrary to conservation of water, and is not detrimental to the public welfare).

19.27.1.15 NMAC (providing that "hearings shall be conducted" in the event an application is protested).

19.25.4.8 NMAC (providing that "[h]earings before the state engineer will be held when an application has been duly protested by one or more persons; upon written request of the applicant when an unprotested application has been denied by the state engineer without hearing; and upon written request by any person aggrieved by any action or refusal to act by the state engineer").

Lion's Gate Water v. D'Antonio, 2009-NMSC-057, ¶ 31, 147 N.M. 523 ("Only when the State Engineer makes an initial determination that water is unavailable to appropriate is the State Engineer . . . jurisdictionally limited to consideration of that issue. Otherwise, following a determination that water is available to appropriate, the State Engineer must consider the full merits of an application . . . .").

Colorado v. Sw. Colo. Water Conservation Dist., 671 P.2d 1294, 1321 (Colo. 1983) (en banc) (dismissal of applications claiming rights in tributary groundwater without an evidentiary hearing on the basis that "the claims were merely speculative and made for the purpose of profit" was "incorrect and unfairly place[d] a burden on the applicant not contemplated by the statutory scheme").

ISSUE 2: Whether the district court erred by finding that the State Engineer can dismiss an application for facial invalidity after having accepted that same application as facially satisfying the statutory requirements.

Procedural Posture

Augustin raised and preserved this issue in briefing on Applicant Augustin Plains Ranch, LLC's Motion for Summary Judgement and in oral argument on the motion.

Authorities

NMSA 1978, § 72-12-3(A) (setting forth required information for applications to appropriate underground waters).

NMSA 1978, § 72-12-3(C) (stating that "[n]o application shall be accepted by the state engineer unless it is accompanied by all the information required" by Section 72-12-3).

19.27.1.11 NMAC (providing that "[b]efore acceptance by the state engineer, applications tendered must conform to the requirements of the statutes. . . . Applications which are defective as to form or fail to comply with the rules and regulations shall be returned promptly to the applicant with a statement of the changes required. If the changes are made and the application refiled with the state engineer within thirty (30) days after the applicant has been notified of the changes required, the application shall be processed with a priority date the same as the original filing date. When a corrected application is filed after the time allowed, it shall be treated in all respects as an original application received on the date of its refiling").

19.27.1.12 NMAC ("Upon receipt of an acceptable application the state engineer shall prepare and issue a notice for publication and shall send it to the applicant with instructions that it be published weekly for three consecutive weeks

in a newspaper of general circulation within the county in which the well is to be drilled.").

ISSUE 3: Did the Court err by refusing to require the State Engineer to hold an evidentiary hearing on the merits of the 2014 Application, and ignoring Augustin's request for a post-decision hearing?

Procedural Posture

Augustin raised and preserved this issue in briefing on Applicant Augustin Plains Ranch, LLC's Motion for Summary Judgement and in oral argument on the motion.

Authorities

NMSA 1978, § 72-2-16 (1965) (providing that, if the State Engineer denies an application without a hearing, it is required to hold a hearing if the applicant so requests).

NMSA 1978, § 72-2-17 (1965) (defining the conduct of a "hearing" before the State Engineer to include the opportunity "to appear and present evidence and argument," "conduct cross-examinations," and present "findings of fact" based on the evidence).

NMSA 1978, § 72-12-3(F) (2011, amended 2019) (providing that, if objections or protests have been filed, the State Engineer may deny the application without a hearing or may order that a hearing be held).

19.25.2.22 NMAC ("Evidentiary hearings on the merits of a pending matter are formal, recorded proceedings at which the testimony of witnesses is taken under oath and exhibits are presented for consideration of the hearing examiner for admission as evidence in the record . . . . The parties shall have a reasonable opportunity to cross-examine the witnesses of opposing parties.").

19.25.4.8 NMAC (providing that "[h]earings before the state engineer will be held when an application has been duly protested by one or more persons; upon written request of the applicant when an unprotested application has been denied by the state engineer without hearing; and upon written request by any person aggrieved by any action or refusal to act by the state engineer").

19.27.1.15 NMAC (providing that "hearings shall be conducted" in the event an application is protested).

Lion's Gate Water v. D'Antonio, 2009-NMSC-057, ¶¶ 24, 31, 147 N.M. 523 ("The general purpthe State Engineer of the water code's grant of broad powers to the State Engineer, especially regarding water rights applications, is to employ his or her expertise in hydrology and to manage the State Engineer applications through an exclusive and comprehensive administrative process that maximizes resources through its efficiency, while seeking to protect the rights and interests of water rights applicants.") ("Otherwise, following a determination that water is available to appropriate, the State Engineer must consider the full merits of an application").

D'Antonio v. Garcia, 2008-NMCA-139, ¶¶ 8-9, 15, 145 N.M. 95 (reasoning that Section 72-2-16 establishes a "procedural right" to a hearing "that is intended to ensure that the state engineer affords an appropriate degree of process to the parties before a final decision is entered") (explaining that the State Engineer erred in *Derringer* because "instead of conducting a full evidentiary hearing, the state engineer granted summary judgment to one party in a water appropriation dispute").

Derringer v. Turney, 2001-NMCA-075, ¶¶ 13, 15, 131 N.M. 40 (providing that the "plain language" of the Water Code "guarantees an aggrieved party one hearing") ("We are not persuaded that the pre-decision hearing described in Section 72–2–16 can be satisfied solely by the written pleadings of the parties. NMSA 1978, § 72–2–17(B) (1965), sets forth the requirements for the conduct of hearings before the state engineer, and although Section 72–2–17(B)(1) allows for part of the evidence to be received in written form to expedite the hearing, it states that the parties shall be afforded an opportunity 'to appear and present evidence and argument on all issues involved.' In our view, written motions and responses do not satisfy the requirements clearly set forth in the statute.").

ISSUE 4: Section 72-2-16 predicates the district court's jurisdiction for a de novo appeal of a State Engineer decision on the State Engineer's having held a hearing. In this case, the State Engineer denied Applicants request for a hearing.

Did the district court lack jurisdiction to review the case where no hearing on the full merits of the 2014 Application was held?

Procedural Posture

Augustin raised and preserved this issue in briefing on Applicant Augustin Plains Ranch, LLC's Motion for Summary Judgement and in oral argument on the motion.

Authorities

N.M. Const., Art. 16, § 5 ("In any appeal to the district court from the decision, act or refusal to act of any state executive officer or body in matters relating to water rights, the proceeding upon appeal shall be de novo as cases originally docketed in the district court unless otherwise provided by law.").

NMSA 1978, § 72-7-1(E) (1971) ("The proceeding upon appeal shall be de novo as cases originally docketed in the district court.").

NMSA 1978, § 72-2-16 (2015) ("An appeal shall not be taken to the district court until the state engineer has held a hearing and entered a decision in the hearing.").

Lion's Gate Water v. D'Antonio, 2009-NMSC-057, ¶¶ 34-35, 147 N.M. 523 (limiting "de novo" review to the issue before the State Engineer to avoid the "'absurd' and 'unreasonable' result that would ensue if water rights applicants, seeking a more favorable outcome, could transform district courts into general

administrators of water rights applications by forcing district courts, rather than the State Engineer, to consider on appeal the merits of their applications").

Smith v. City of Santa Fe, 2007–NMSC–055, ¶ 15, 142 N.M. 786 (cautioning against actions that "would foreclose any necessary fact-finding by the administrative entity, discourage reliance on any special expertise that may exist at the administrative level, [or] disregard an exclusive statutory scheme for the review of administrative decisions").

Derringer v. Turney, 2001-NMCA-075, ¶ 14, 131 N.M. 40 (reasoning that Section 72-2-16 "comports with the principle that a party is required to pursue the available administrative remedies before resorting to the courts for relief.").

ISSUE 5: The 2014 Application was 162 pages long and addressed each of the issues identified by the district court and State Engineer in their previous decisions. Applicant provided an affidavit identifying at least 15 substantive ways the 2014 Application was different from the 2007 Application. Given that the 2007 Application was denied "without prejudice" to refiling, and given that the Supreme Court and State Engineer both rejected the same argument, did the district court err by finding that the 2014 and 2007 Applications were identical for purposes of collateral estoppel?

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

State ex rel. Peterson v. Aramark Correctional Servs., LLC, 2014-NMCA-036, ¶¶ 42-45, 321 P.3d 128 (reasoning that "commonality" of some question of law or fact "is an insufficient basis on which to apply the doctrine of issue preclusion" where the ultimate issue is not identical between the prior and current actions).

Rosette, Inc. v. U.S. Dept. of the Interior, 2007-NMCA-136, ¶ 39, 142 N.M. 717 (reasoning that collateral estoppel applies only if the issue previously decided is identical with the one presented in the present action).

ISSUE 6: Whether the district court erred by concluding that the issues presented in the appeal from the dismissal of the 2014 Application are identical to the issues presented in the 2007 Application proceeding and were fully and fairly litigated.

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County

Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

NMSA 1978, § 72-2-16 (1965) (providing that, if the State Engineer denies an application without a hearing, it is required to hold a hearing if the applicant so requests).

NMSA 1978, § 72-12-3(F) (2011, amended 2019) (providing that, if objections or protests have been filed, the State Engineer may deny the application without a hearing or may order that a hearing be held).

Torres v. Vill. of Capitan, 1978-NMSC-065, ¶ 16, 92 N.M. 64 ("Collateral estoppel applies to prevent the relitigation, as between the parties, of ultimate facts or issues actually and necessarily decided by the prior suit.").

D'Antonio v. Garcia, 2008-NMCA-139, ¶ 10, 145 N.M. 95 (holding that defendant's failure to file timely demand for post-decision hearing before the State Engineer resulted in waiver of his right for a comprehensive administrative hearing by inaction).

ISSUE 7: Whether the district court erred by applying the doctrine of collateral estoppel to purely legal questions.

Procedural Posture

Augustin raised and preserved this issue in briefing on Applicant Augustin Plains Ranch, LLC's Motion for Summary Judgement and in oral argument on the motion.

Authorities

NMSA 1978, § 72-2-16 (1965) (providing that, if the State Engineer denies an application without a hearing, it is required to hold a hearing if the applicant so requests).

NMSA 1978, § 72-2-17(B)(1) (1965) (providing that that the parties shall be afforded an opportunity "to appear and present evidence and argument on all issues involved").

Torres v. Vill. of Capitan, 1978-NMSC-065, ¶ 18, 92 N.M. 64 ("[A] conclusion or statement purely of law which is not dependent for its meaning or validity on the facts of a particular case is not binding on the judge in a later suit between the parties.").

McDonald v. Padilla, 1948-NMSC-066, ¶ 29, 53 N.M. 116, *disapproved on other grounds Town of Atrisco v. Monohan*, 1952-NMSC-011, ¶ 25, 56 N.M. 70 ("[L]itigants have no vested right to an erroneous conclusion of law.")

D'Antonio v. Garcia, 2008-NMCA-139, ¶¶ 8-9, 145 N.M. 95 (reasoning that Section 72-2-16 establishes a "procedural right" to a hearing "that is intended to

ensure that the state engineer affords an appropriate degree of process to the parties before a final decision is entered").

Derringer v. Turney, 2001-NMCA-075, ¶ 13, 131 N.M. 40 (providing that the "plain language" of the Water Code "guarantees an aggrieved party one hearing").

ISSUE 8: The State Engineer has recognized the important nature of the water law issues presented in this appeal, and has recognized the value that guidance from the appellate courts would provide. In light of this recognition, did the district court err by applying collateral estoppel and failing to recognize the significant prudential concerns militating in favor of appellate review?

Procedural Posture

Augustin raised and preserved this issue in briefing on Applicant Augustin Plains Ranch, LLC's Motion for Summary Judgement and in oral argument on the motion.

Authorities

Torres v. Vill. of Capitan, 1978-NMSC-065, ¶ 18, 92 N.M. 64 (providing that collateral estoppel "is not intended to . . . be a way to amend the law of New Mexico by forcing one judge to accept the conclusions of pure law made by another without benefit of an appeal").

Cherpelis v. Cherpelis, 1996-NMCA-037, ¶ 19, 121 N.M. 500 (providing that countervailing equities may prevent application of collateral estoppel).

Hyden v. Law Firm of McCormick, Forbes, Caraway & Tabor, 1993-NMCA-008, ¶ 14, 115 N.M. 159 ("[T]he trial court must consider whether countervailing equities such as lack of prior incentive for vigorous defense, inconsistencies, lack of procedural opportunities, and inconvenience of forum militate against application of [collateral estoppel]").

Reeves v. Wimberly, 1988-NMCA-038, ¶ 14, 107 N.M. 231 (directing that collateral estoppel should be applied only where the judge determines that its application would not be "fundamentally unfair").

ISSUE 9: Whether the district court erred by rejecting the State Engineer's acceptance of the 2014 Application as facially sufficient and administratively complete with regard to the statutory requirements of the Water Code.

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

NMSA 1978, § 72-12-3(A) (2001, amended 2019) (setting forth required information for applications to appropriate underground waters).

NMSA 1978, § 72-12-3(C) (2001, amended 2019) (stating that "[n]o application shall be accepted by the state engineer unless it is accompanied by all the information required" by Section 72-12-3).

19.27.1.11 NMAC (providing that "[b]efore acceptance by the state engineer, applications tendered must conform to the requirements of the statutes. . . . Applications which are defective as to form or fail to comply with the rules and regulations shall be returned promptly to the applicant with a statement of the changes required. If the changes are made and the application refiled with the state engineer within thirty (30) days after the applicant has been notified of the changes required, the application shall be processed with a priority date the same as the original filing date. When a corrected application is filed after the time allowed, it shall be treated in all respects as an original application received on the date of its refiling").

19.27.1.12 NMAC ("Upon receipt of an acceptable application the state engineer shall prepare and issue a notice for publication and shall send it to the applicant with instructions that it be published weekly for three consecutive weeks in a newspaper of general circulation within the county in which the well is to be drilled.").

Mathers v. Texaco, Inc., 1966-NMSC-226, ¶¶ 28-31, 77 N.M. 239 (Applications filed pursuant NMSA 1978, § 72-12-3(A)(2) were in proper form

where the applications were made on forms furnished and prescribed by the state engineer and where the applications designated the name of the applicant, the underground basin from which the water was proposed to be appropriated, the beneficial use to which it was proposed to apply, the location of the proposed wells, the name of the owner of the lands on which the wells would be located, the amount of water applied for, and the use for which the water was desired).

ISSUE 10: Whether the district court erred by finding that the 2014 Application lacked the requisite specificity with respect to Augustin's intended beneficial use.

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

N.M. Const. art. XVI, § 3 ("Beneficial use shall be the basis, the measure and the limit of the right to the use of water.").

NMSA 1978, § 72-12-2 (1931) ("Beneficial use is the basis, the measure and the limit to the right to the use of [underground waters].").

NMSA 1978, § 72-12-3(A)(2) (2001, amended 2019) (providing the requirement that an applicant specify the beneficial use to which the water will be applied).

Mathers v. Texaco, Inc., 1966-NMSC-226, ¶ 30, 77 N.M. 239 ("Certainly there is nothing in our law which requires that an application to appropriate public waters for a beneficial use must be made by or in the names of all persons who may ultimately use or be benefited by such use.").

State ex rel. Erickson v. McLean, 1957-NMSC-012, ¶ 29, 62 N.M. 264 ("This beneficial use is determined . . . to be the use of such water as may be necessary for some useful and beneficial purpose in connection with the land from which it is taken.")

Albuquerque Land & Irrigation Co. v. Gutierrez, 1900-NMSC-017, ¶ 4, 10 N.M. 177 ("It seems to us to be equally well settled that it is not necessary that the company diverting, carrying, delivering and distributing water for such purpose shall be itself a consumer, provided that the water, when so carried and distributed, shall, within a reasonable time, be applied to a beneficial use"), *aff'd Gutierres v. Albuquerque Land & Irrigation Co.*, 188 U.S. 545 (1903).

Trujillo v. CS Cattle Co., 1990-NMSC-037, 109 N.M. 705 (recognizing sale as a beneficial use)

Curry v. Pondera County Canal & Reservoir Co., 370 P.3d 440, 449 (Mont. 2016) (recognizing sale as a beneficial use).

S.C. Weil, *Water Rights in the Western States*, 2d ed., §120, p. 198 ("Mining and power are useful purposes for which appropriation may be made. Sale or public supply likewise.") (internal citations omitted).

ISSUE 11: Whether the district court erred by finding that the 2014 Application lacked the requisite specificity with respect to the place of use.

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

NMSA 1978, § 72-12-3(A)(6) (2001, amended 2019) (Requirement that applicant specify place of use for which the water is desired).

NMSA 1978, §§ 4-1-1 to -2 & Compiler's notes (1852) (defining Bernalillo County, including description by legal subdivision).

NMSA 1978, § 4-23-1 (1905) (defining Sandoval County, including description by legal subdivision).

NMSA 1978, § 4-2-1 (1921) (defining Catron County, including description by legal subdivision).

NMSA 1978, § 4-26-1 (1889) (defining Santa Fe County, including description by legal subdivision).

NMSA 1978, § 4-27-1 (1884) (defining Sierra County, including description by legal subdivision).

NMSA 1978, § 4-28-1 (1852) (defining Socorro County, including description by legal subdivision).

NMSA 1978, § 4-32-1 (1853) (defining Valencia County, including description by legal subdivision).

19.27.49 NMAC (defining and describing Rio Grande Basin, including maps showing the location of the Rio Grande Basin within each of the seven counties identified in the Application, complete with township and range designations).

Mathers v. Texaco, Inc., 1966-NMSC-226, ¶¶ 28-31, 77 N.M. 239 (Applications filed pursuant NMSA 1978, § 72-12-3(A)(2) were in proper form where the applications were made on forms furnished and prescribed by the state engineer and where the applications designated the name of the applicant, the underground basin from which the water was proposed to be appropriated, the beneficial use to which it was proposed to apply, the location of the proposed wells,

the name of the owner of the lands on which the wells would be located, the amount of water applied for, and the use for which the water was desired).

Bogan v. Sandoval Cty. Planning and Zoning Comm'n, 1994-NMCA-157, ¶ 24, 119 N.M. 334 (Ct. App. 1994) (notice is sufficient where a reasonable inquiry would reveal the pertinent facts).

ISSUE 12: Whether the district court erred in its application of the doctrine of prior appropriation by failing to recognize that the doctrine allows an applicant to file its application, obtain a permit, and then put the water to beneficial use within a reasonable amount of time.

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

N.M. Const. art. XVI, § 3 ("Beneficial use shall be the basis, the measure and the limit of the right to the use of water.").

NMSA 1978, § 72-12-2 (1931) ("Beneficial use is the basis, the measure and the limit to the right to the use of [underground waters].").

State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, ¶ 35, 135 N.M. 375 ("If the application to beneficial use is made in proper time, it relates back and completes the appropriation as of the time when it was initiated").

Yeo v. Tweedy, 1929-NMSC-033, ¶ 20, 34 N.M. 611 (explaining that under the prior appropriation doctrine "[i]nvested capital and improvements are . . . protected").

Snow v. Abalos, 1914-NMSC-022, ¶ 12, 8 N.M. 681("The intention to apply to beneficial use, the diversion works, and the actual diversion of the water necessarily all precede the application of the water to the use intended . . . .").

In re Gen. Adjudication of All Rights to Use Water in Big Horn River Sys., 48 P.3d 1040, 1049 (Wyo. 2002) (noting that "contemporary water projects often entail extended planning, financing, and construction lead times, and, without application of the relation back doctrine, the security of the project's water right could be undermined").

In re Gen. Adjudication of All Rights to Use Water in Big Horn River Sys., 48 P.3d 1040, 1049 (Wyo. 2002) ("Relation back encourages the development of water resources by allowing prospective appropriators to initiate appropriation and then complete financing, engineering, and construction aspects of their projects with the understanding that, with diligent pursuit and development, their rights will become absolute upon beneficial use with a priority date of the initial action.").

ISSUE 13: Whether the district court erred by depriving Applicant of the right to submit evidence that it will put the requested amount of water to beneficial use in the specified areas.

Procedural Posture

This issue was raised and preserved in Augustin's briefing in opposition to the Motion to Dismiss, and in its arguments at the hearing on the Motion.

Authorities

NMSA 1978, § 72-12-3(E) (before granting permit, State Engineer shall determine that the applicant's proposed use "will not impair existing rights, is not contrary to conservation of water within the state, and is not detrimental to the public welfare").

NMSA 1978, § 72-12-3(F) (providing that, if objections or protests have been filed, the State Engineer may deny the application without a hearing or may order that a hearing be held).

NMSA 1978, § 72-2-16 (providing that, if State Engineer denies an application without a hearing, he is required to hold an evidentiary hearing if the applicant so requests).

NMSA 1978, § 72-12-3(E) (providing that the State Engineer shall grant an application and issue a permit if he finds that there are unappropriated waters or that

the proposed appropriation will not impair existing rights, is not contrary to conservation of water, and is not detrimental to the public welfare).

19.27.1.15 NMAC (providing that "hearings shall be conducted" in the event an application is protested).

Lion's Gate Water v. D'Antonio, 2009-NMSC-057, ¶ 31, 147 N.M. 523, 226 P.3d 622 ("Only when the State Engineer makes an initial determination that water is unavailable to appropriate is the State Engineer . . . jurisdictionally limited to consideration of that issue. Otherwise, following a determination that water is available to appropriate, the State Engineer must consider the full merits of an application . . . .").

Transamerica Ins. Co. v. Sydow, 97 N.M. 51, 54, 636 P.2d 322, 325 (Ct. App. 1981) (New Mexico courts "require that the rights of litigants be determined by an adjudication on the merits rather than upon the technicalities of procedure and form").

ISSUE 14: Whether the district court erred in finding that the Applicant failed to demonstrate a specific intent to appropriate water for beneficial use in the 2014 Application and by finding that an applicant's intent can be determined from the face of an application prior to the presentation of evidence.

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, ¶ 35, 135 N.M. 375 ("If the application to beneficial use is made in proper time, it relates back and completes the appropriation as of the time when it was initiated").

State ex rel. Reynolds v. Mendenhall, 1961-NMSC-083, ¶¶ 22-24, 27-29, 68 N.M. 467 (accepting that it may require years to commence an appropriation, drill a well, install equipment, and dig ditches, all as prerequisite to applying the water to a beneficial use).

Hanson v. Turney, 2004-NMCA-069, ¶ 8, 136 N.M. 1 (recognizing that "establishing a water right is a process that takes a period of time").

ISSUE 15: Whether the district court erred by finding that the applicable statute requires an application, prior to evidence being presented at a hearing, to contain all of the information necessary to grant a permit.

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, and in oral argument on the motions.

Authorities

State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, ¶ 35, 135 N.M. 375 ("If the application to beneficial use is made in proper time, it relates back and completes the appropriation as of the time when it was initiated").

State ex rel. Reynolds v. Mendenhall, 1961-NMSC-083, ¶¶ 22-24, 27-29, 68 N.M. 467 (accepting that it may require years to commence an appropriation, drill a well, install equipment, and dig ditches, all as prerequisite to applying the water to a beneficial use).

Snow v. Abalos, 1914-NMSC-022, ¶ 12, 8 N.M. 681 ("The intention to apply to beneficial use, the diversion works, and the actual diversion of the water necessarily all precede the application of the water to the use intended . . . .").

Hanson v. Turney, 2004-NMCA-069, ¶ 8, 136 N.M. 1 (recognizing that "establishing a water right is a process that takes a period of time").

ISSUE 16: The district court created a new standard for the anti-speculation doctrine in New Mexico. It then found that the 2014 Application violated its new

standard and amounted to a monopolization of water. Did the district court articulate the wrong standard for the anti-speculation doctrine, and then compound its error by improperly applying that standard to the 2014 Application?

Procedural Posture

Augustin raised and preserved this issue in its briefing in response to ELC Protestants' First Amended Motion for Summary Judgment and to Catron County Board of County Commissioner's Motion for Summary Judgement, in its Motion for Summary Judgement and in oral argument on the motion.

Authorities

N.M. Const., Art. XVI, § 2 ("The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state.").

State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, ¶ 34, 135 N.M. 375 ("[W]ater was placed in a unique category in our Constitution—something that cannot be said of lumbering, coal mining, or any other element or industry. The reason for this is of course too apparent to require elaboration. Our entire state has only enough water to supply its most urgent needs. Water conservation and preservation is of utmost importance. Its utilization for maximum benefits is a requirement second to none, not only for progress, but for survival.").

In re Rates & Charges of U.S. W. Commc'n, Inc., 1993-NMSC-074, ¶ 15, 116 N.M. 548 (providing that a regulatory body "may not promulgate a rule during an adjudicatory process and then retroactively apply the rules to a party whose rights are being adjudicated").

Cartwright v. Pub. Serv. Co., 1958-NMSC-134, ¶ 129 66 N.M. 64 (noting that the doctrine of prior appropriation originates in rejection of the "monopoly inherent in the riparian doctrine") (Federici, J. dissenting).

Mizer v. S. Pac. Co., 1966-NMSC-215, ¶ 4, 77 N.M. 74 ("In considering the merits of a motion for summary judgment it is not the function of the trial court to weigh the evidence.").

Snow v. Abalos, 1914-NMSC-022, ¶ 12, 18 N.M. 681 ("The intention to apply to beneficial use, the diversion works, and the actual diversion of the water necessarily all precede the application of the water to the use intended, but it is the application of the water, or the intent to apply, followed with due diligence toward application and ultimate application, which gives to the appropriator the continued and continuous right to take the water.").

Trujillo v. CS Cattle Co., 1990-NMSC-037, 109 N.M. 705 (recognizing sale as a beneficial use).

Albuquerque Land & Irrigation Co. v. Gutierrez, 1900-NMSC-017, ¶ 65, 10 N.M. 177 (providing that the critical element in determining whether a contemplated

use may give rise to a valid water right is whether the applicant has a "bona fide intent" to put water to beneficial use), *aff'd Gutierres v. Albuquerque Land & Irrigation Co.*, 188 U.S. 545 (1903).

Millheiser v. Long, 1900-NMSC-012, ¶ 30, 10 N.M. 99 (rejecting proposition that capacity to make an appropriation suffices to establish a water right).

Moongate Water Co. v. City of Las Cruces, 2012-NMCA-003, ¶ 26, 269 P.3d 1 (in ruling on a motion for summary judgment, the Court "view[s] the facts in a light most favorable to the party opposing the motion and draw[s] all reasonable inferences in support of a trial on the merits") (citation and internal quotation marks omitted).

In re Application for Water Rights of Applicant Raftopoulos Brothers, 307 P.3d 1056, 1067 (Colo. 2013) (articulating the "first step" test under Colorado's anti-speculation doctrine).

City of Aurora v. ACJ P'ship, 209 P.3d 1076, 1085 (Colo. 2009) (en banc) (the key inquiry, in application of the Colorado anti-speculation doctrine, is whether "evidence of factors supporting the substantial probability of future completion is sufficient to outweigh the presence of future contingencies.").

Dallas Creek Water Co. v. Huey, 933 P.2d 27, 36-37 (Colo. 1997) (en banc) (articulating six factors for consideration in conjunction with a conditional appropriation subject to Colorado's anti-speculation doctrine)

Colorado v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294, 1321 (Colo. 1983) (en banc) (dismissal of applications claiming rights in tributary groundwater without an evidentiary hearing on the basis that "the claims were merely speculative and made for the purpose of profit" was "incorrect and unfairly place[d] a burden on the applicant not contemplated by the statutory scheme").

ISSUE 17: If an application is incomplete or does not satisfy the statutory requirements, State Engineer regulations require that the application be returned with a description of the necessary corrections. Did the district court err by failing to remand the 2014 Application to the State Engineer to comply with the application correction procedures under 19.27.1.11 NMAC?

Procedural Posture

Augustin raised and preserved this issue in oral argument on ELC Protestants' First Amended Motion for Summary Judgment and Catron County Board of County Commissioner's Motion for Summary Judgement.

Authorities

NMSA 1978, § 72-5-3 (1941) (providing that water rights applications that are defective as to form must be returned to the applicant and a time allowed for corrections).

NMSA 1978, § 72-12-3(C) (2001, amended 2019) (stating that "[n]o application shall be accepted by the state engineer unless it is accompanied by all the information required" by Section 72-12-3).

19.27.1.11 NMAC (providing that "[b]efore acceptance by the state engineer, applications tendered must conform to the requirements of the statutes. . . . Applications which are defective as to form or fail to comply with the rules and regulations shall be returned promptly to the applicant with a statement of the changes required. If the changes are made and the application refiled with the state engineer within thirty (30) days after the applicant has been notified of the changes required, the application shall be processed with a priority date the same as the original filing date. When a corrected application is filed after the time allowed, it shall be treated in all respects as an original application received on the date of its refiling").

19.27.1.12 NMAC ("Upon receipt of an acceptable application the state engineer shall prepare and issue a notice for publication and shall send it to the applicant with instructions that it be published weekly for three consecutive weeks in a newspaper of general circulation within the county in which the well is to be drilled.").

ISSUE 18: Whether the district court erred by ordering dismissal of the 2014 Application "with prejudice," such that the district court ruling may preclude Augustin from refiling an amended application.

Procedural Posture

Augustin raised and preserved this issue in its response in support of the State Engineer's Motion to Reconsider.

Authorities

N.M. Const. Art. III, § 1 (establishing the separation of powers).

N.M. Const., Art. XVI § 2 (establishing a right to appropriation of water).

NMSA 1978, § 72-2-1 (1982) (providing that the State Engineer "has general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required")

Walker v. United States, 2007-NMSC-038, ¶ 21, 142 N.M. 45 ("[T]he right to use water is considered a property right.")

State ex rel. Reynolds v. Aamodt, 1990-NMSC-099, ¶ 8, 111 N.M. 4 ("The legislature granted the State Engineer broad powers to implement and enforce the water laws administered by him.")

Derringer v. Turney, 2001-NMCA-075, ¶ 15, 131 N.M. 40 (discussing an applicant's due process interest in an "opportunity to be heard" on his application "at a meaningful time and in a meaningful manner").

STATEMENT OF HOW PROCEEDINGS WERE RECORDED

The proceedings in this matter were audio recorded on compact disk under the supervision of a court monitor.

RELATED OR PRIOR APPEALS

The State Engineer has filed a cross-appeal in this case.

The related prior appeal of the 2007 Application was styled *Augustin Plains Ranch, LLC v. Verhines*, No. 32,750, before the New Mexico Court of Appeals.

CONCLUSION

The case should be assigned to the General Calendar, the district court's judgment should be reversed, and the matter should be remanded to the State Engineer for an evidentiary hearing on the 2014 Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 13, 2019, I caused true copies of this *Docketing Statement* to be served electronically or, as applicable, by United States first-class mail, postage prepaid, on the following:

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