

Appellate judges assigned to water case

Story by [John Larson, El Defensor Chieftain](#) | Jul 28, 2022

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The case of the Augustin Plains Ranch LLC's attempt to mine water in the Plains of San Augustin is slowly advancing through the state's appellate court. Most recently, a three-judge panel has been appointed to hear the denial by the Office of the State Engineer (OSE) of the drilling permit by APR to drill and remove 54,000 acre-feet of water every year.

The years-long struggle between Augustin Plains Ranch LLC (APR) and countless protestants was ostentatiously put to rest in 2019 when then-Seventh Judicial District Judge Matthew Reynolds ruled on a final order filed by the Community Protestants and Catron County granting summary judgment and dismissing APR's latest application. In effect, upholding the denial by the OSE.

In making his decision, the judge wrote "[t]he people of New Mexico should not have their water tied up any longer."

In Reynold's six-page order, "Notice of Submission of Final Order Granted Summary Judgment in Favor of the Community Protestant and the Catron County Board of County Commissioners and Dismissal with Prejudice" the Court found:

1. That the motions for summary judgment filed by the Community Protestants are granted.
2. All other motions for summary judgment are denied as moot.
3. Augustin Plains Ranch's appeal from the State Engineer's August 1, 2018 order denying the Augustin Plains Ranch's 2014/2016 Application to appropriate groundwater is dismissed with prejudice.

"Dismissal with prejudice" is a final judgment by the court, and the plaintiff (APR) is barred from bringing an action on the same claim.

If it had been approved by the Office of the State Engineer, APR's application would permit it to drill 37 wells to a depth of 2,000 feet to pump 6.9 billion gallons of water per day from the San Augustin aquifer beneath the Plains of San Augustin in Catron and Socorro counties and send it in bulk via a pipeline to as yet unknown entities.

The crucial factor in the denial by then-State Engineer Tom Blaine was that the application for the permit was deemed speculative, running counter to state law which says a permit to drill groundwater must be beneficial to New Mexicans and list specific uses for the water. The contested application does not specify a use or a buyer of the water, only that it would be available for purchase by, for example, a municipality.

Maslyn Locke, an attorney with the New Mexico Environmental Law Center, said there is no word on when the case will be reviewed by the panel.

"The job of the Appellate Court is to review the procedures and the decisions made in the trial court to make sure that the proceedings were fair and that the proper law was applied correctly," she said, adding that the panel may forego a hearing.

Objecting to the permit include 600 protestants and 52 government entities.

In addition, the San Augustin Water Coalition was formed by ranchers and property owners in western Socorro and eastern Catron counties soon after the first request for the permit was published in Nov. 2007.

Organizers of the coalition contend that area may be facing a severe water shortage in years to come if the Italian-owned company based in New York City has its way.

The current coalition board is chaired by rancher Roy Farr. Other members of the board are Vice Chair Brett Bruton, secretary Mahana Burnett, and treasurer Eileen Dodds. Dale Armstrong, Nicole Sanders, Anita Hand and Melynda James round out the board.

“We knew it was going to be about two years late,” Dodds said on Friday. “Obviously, it’s been longer because of COVID, and now it has been assigned to these three judges, who may just review everything and make a decision without hearing any new arguments.”

Either way, the case is expected to go to the state Supreme Court.

“We do feel whichever decision is made, it will go to the state supreme court,” she said. “We have expected that all along.”