

# Official questions water project

John Larson – El Defensor Chieftain staff writer Dec 21, 2017

Arguments for and against the proposed project by Augustin Plains Ranch LLC (APR) were heard last Wednesday, Dec. 13 at the Catron County Court House in Reserve.

The plan by APR is to drill 37 wells to a depth of 2,000 feet to pump water from the aquifer beneath the Plains of San Agustin in Catron and Socorro counties and send it in bulk via a north-south pipeline to as yet unknown customers in Albuquerque and surrounding communities.

This hearing for oral arguments came in the wake of two motions that have been filed to dismiss the application.

The two parties who filed motions for summary judgment were the Community Protestants group (some 80 individuals and organizations represented by the New Mexico Environmental Law Center) and the Catron County Board of County Commissioners (represented by the Domenici Law Firm). Several other parties were added to those two motions, and they were also allowed to address the hearing officer.

“A number of parties filed what are called ‘joinders’ in those motions,” said Doug Meiklejohn with the New Mexico Environmental Law Center (NMELC). “In other words, they’re saying, ‘we support those motions’ and they were given a chance to speak.”

One protestant, Carol Pittman of Catron County, said she estimated up to 60 people crowded into the courtroom in Reserve for the hearing.

“Attorneys representing protestants did an outstanding job stating our case,” she said.

Speaking on behalf of the Hand Ranch, attorney Tessa Davidson said, “Here we have a private entity with a lot of money who want to drill 37 wells...to appropriate a vast amount of water.”

“But we really have no basis for the demand (of water) they are asking for,” she said.

Also speaking in favor of the motions to dismiss were Meiklejohn for the NMELC, Pete Domenici Jr. for the Catron County Commission, Samantha Ruscavage-Barz for Wildearth Guardians, Jessica R. Aberly for Sandia Pueblo, Peter Thomas White for the Cuchillo Valley Community Ditch Assoc., and Simon Herskovits for Advocates for Community and Environment.

Following the protestants’ presentations, APR’s attorney, Jeffrey Wexler, made his case for dismissing the motions, approving the applicant and granting the permit.

In summing up a lengthy argument for granting the application, Wexler said, “We’ve shown in great detail exactly what the plan of the applicant is.”

The hearing officer, Uday V. Joshi, asked Wexler specifically about the demand for water.

“Do you believe that you will be able to analyze the reasonable demand for this water without knowing the municipality to which you would be selling water?” he said.

Wexler said the applicant has had multiple conversations with prospective users.

“I am quite confident that the demand is there,” Wexler said.

It was then the Water Rights Division's turn to speak. The Water Rights Division's response last month to the two motions to dismiss stated what looked to be an opinion in favor of Augustin Plains Ranch. At this hearing, however, attorney Chris Lindeen, explained that the Water Rights Division's response was only intended to show that the application was complete.

In his explanation Lindeen used the "chicken or the egg" example. He said one way to look at the chicken-and-egg question is, "no one's going to sign up until they show they have an appropriation."

The other way to look at it is, "everybody thinks it's too speculative, so they're not going to buy the egg," he said.

Then Lindeen went on to say that the Water Rights Division was going to recommend that the state engineer dismiss the application, based on speculation. This appeared to be a reversal from its response last month.

"The shock in the courtroom was palpable," one attendee said. "You could have heard a pin drop."

The hearing officer, Uday V. Joshi, is expected to make a recommendation to the State Engineer Blaine within the next few days. Joshi said a final decision may come as soon as two or three months from now.

"Then the state engineer can accept or deny the application," Meicklejohn said.

According to an opinion of the New Mexico Environmental Law Center the case has major implications for water management in New Mexico and for the future of rural communities in the state "that would likely be exposed to water mining if Augustin Plains Ranch's application is approved."

The Law Center represents over 80 individuals, several homeowners' associations, and the Gila Conservation Coalition.

Augustin Plains Ranch applied once before, but the Office of the State Engineer denied that application and the denial was upheld by the Seventh Judicial District Court. A second application was not accepted by the OSE for filing, but a third, "corrected", application was accepted for filing and public notice.

The third application is the subject of the current proceeding.

"The Law Center has filed a motion asking the State Engineer to dismiss the 2016 'Corrected' Application for two reasons," the statement said. "The first is that the 'corrected' application fails to identify specific beneficial uses and particular places of use and end users. These are statutory requirements for an application and were also missing in the prior application that was denied by the State Engineer.

"The second reason is that the previous rulings of the State Engineer and the State District Court dismissing the earlier application are binding on the State Engineer. Those rulings require the State Engineer to dismiss the 'Corrected' Application because it is substantially the same as the earlier application that was denied by the State Engineer and the State District Court," the NMELC states.

If neither motion for summary judgment is granted, the Scheduling Order issued on August 10 of this year sets the evidentiary hearing on the Ranch's application for June, 2019.

"I thought the Hearing Officer did a fair and even-handed job conducting the hearing," Pittman said. "He outlined the procedure at the beginning of the hearing so that everyone would know what to expect. He asked good questions of the attorneys presenting their arguments, and at the end again told everyone what to expect regarding a decision by the State Engineer."

Pittman added that, "the only problem throughout the hearing was a lack of amplification for the speakers – apparently the microphone was not functioning – so that the audience had some trouble hearing the speakers."