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TOP STORY

APR's drilling permit denied

By John Larson - El Defensor Chieftain Staff Writer Aug 9, 2018 Updated Aug 9, 2018



Augustin Plains Ranch drilled a 3,000-foot deep exploratory well in 2008.

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Opponents of the attempt by Augustin Plains Ranch LLC (APR) to mine water from the large aquifer beneath the San Agustin Plains scored a victory of sorts this week, following the release of a report by the Office of the State Engineer's Hearing Officer, which recommends the denial of the permit.

In a hearing in Reserve on December 13, 2017, the OSE's Hearing Officer Uday V. Joshi heard arguments for and against the application, and then on Tuesday, July 31, he finally submitted his recommendation for a motion for summary judgment to State Engineer Tom Blaine.

The Hearing Examiner states that “All of the findings of fact and conclusions of law set out above collectively support the conclusion that APR’s Corrected Application is speculative and should be denied...as a matter of law.”

Problems with the application stem from a too broad of an interpretation of New Mexico’s statutes governing water resources. In his “Report And Recommendation Granting Motions For Summary Judgment,” Joshi outlines numerous problem areas.

It says: “The Corrected Application expresses APR’s intent to provide water for municipal purposes to the following municipalities and entities: Magdalena, Socorro, Belen, Los Lunas, Albuquerque Bernalillo County Water Utility Authority, and Rio Rancho, but it does not demonstrate the existence of a contractual agreement for the purchase or delivery of water with any of these municipalities or entities.”

At heart is the OSE’s opinion that the application is speculative, and puts the requirement of “beneficial use” in question.

The most recent application by the private company was rejected in 2016. The application outlined a plan to pump 54,000 acre-feet per year and offer the water – via a pipeline – to northern New Mexico entities and communities, including Rio Rancho, whose city manager has shown interest. The report points out that even though the Rio Rancho City Manager stated in a letter that his municipality would be looking into the feasibility of purchasing the water, “the mere negotiations with other municipalities clearly do not rise to the level of definite commitment for use required to prove the intent here required.”

When the first permit was applied for in 2007 there were 250 protests from Catron County, reportedly the largest protest the state engineer has ever had. The original proposal by the company asked for permission to “divert and consumptively use 54,000 acre-feet of water yearly for domestic, livestock, irrigation, municipal, industrial, and commercial uses to include providing water to the state of New Mexico to augment its capacity to meet deliveries to the state of Texas at Elephant Butte dam and offsetting effects of ground water pumping on the Rio Grande in lieu of retirement of agriculture via a pipeline to the Rio Grande.”

The proposal was amended in May, 2008, to allow the drilling to go deeper; from 2,000 feet to 3,000 feet, and 800 more protested. Those filings protests included not only one hundred individual ranchers and residents of the area, but Catron and Socorro county governments, New Mexico

Department of Game and Fish, Gila National Forest, Cibola National Forest, New Mexico Interstate Stream Commission, the Middle Rio Grande Conservancy District, U.S. Bureau of Reclamation, the Navajo Nation and several Pueblos including Isleta, Santa Ana, San Felipe, Sandia, Acoma, Santo Domingo and Zuni.

A new application in 2012 was denied on grounds that it was speculative.

Another application in 2014 was rejected on grounds that it was also speculative.

“All APR has established is that it wants to appropriate and convey water to uncommitted municipalities or entities in unknown quantities,” the report states. “Here, there is a striking absence of information, namely agreements with specific end-users for specific quantities and purposes that APR could rely upon to defeat a claim of speculation and show a substantial probability that it will complete the proposed appropriation with diligence by placing water to beneficial use within a reasonable period of time.”

It says approval of the application would “encourage those with vast monetary resources to monopolize, for personal profit rather than for beneficial use, whatever unappropriated water remains.” Approval of the Corrected Application would be contrary to long established principles of the law of prior appropriation embodied in our Constitution and water code. In the absence of a specific plan to appropriate a specific quantity of water for specific identified beneficial uses, there is no showing of a non-speculative need, which is a requirement for the issuance of a permit under which a water right may be developed.

On the other hand, according to an article published Monday in the Albuquerque Journal Michel Jichlinski, director of the project, was quoted as saying the decision was “shortsighted.”

“Much is made of the issue of speculation. But anybody who cares to study the recently published New Mexico water plan, presumably the most important document guiding the future of water resources in the State, will note that no entity, except for (Augustin Plains Ranch), has any intention to put this resource to use,” Jichlinski wrote in an email. “How can we ‘tie up’ a resource that nobody cares about?”

The matter is now put to rest, at least for the time being. Attorney Doug Meiklejohn of the New Mexico Environmental Law Center, said it was his understanding that APR had 30 days to appeal the decision, but “it is unknown if they will submit a new application.”

