

Notes from the STATUS HEARING for the APR, LLC drilling application held on February 13<sup>th</sup>, 2019

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There were approximately 80 people (including the attorneys) in the small courtroom in Reserve for the hearing. Judge Reynolds opened the proceedings by telling the audience to maintain decorum—no clapping, cheering, or any other noise would be allowed. He called on all attorneys to introduce themselves and state whom they represented.

Mr. Wexler for the APR, LLC spoke first, asking for 5-6 months of “discovery”, both written and oral. His timeline asked for an August briefing, September responses from protestants, then another status conference by late this year or early next year.

Mr. Lindeen, representing the Office of the State Engineer, was in favor of the discovery request, but also wanted a fully-developed record and all issues (including anti-speculation) argued.

Jamie Park, representing some 80 clients of the NM Environmental Law Center, cited Article 16, Section 5 of a code, which limits the court to decisions based on OSE statutes. She said the facts in the application itself were enough for the court to decide on the Motion for Summary Judgment which the NMELC filed 60 days ago. She requested a hearing on that motion by March 15<sup>th</sup>.

Mr. Dominici, representing Catron County, opposed the discovery request, saying the court has already reviewed everything, and that the OSE was comfortable with their decision. He supported the decision on summary judgment to be made sooner than later.

Ms. Davidson, representing the Hand Family Trust, asked for a full argument on anti-speculation.

Then Judge Reynolds addressed the proceedings. He did not limit what anyone could file on summary judgment if it was brought up in the OSE’s denial and issues in the ORIGINAL application. He said he thought this new application was different enough from the original to allow it. BUT he expressed aggravation about the length of time this has been going on (12 years), and by the LLC’s request for discovery at this time. He said they have had 12 years to discover everything, and they should have raised the issue before. (Rule 56 ?) He said he needs to resolve Rule 56 to be able to consider “dismissing with prejudice”, as it is a drastic issue, and the APR is entitled to the benefit of doubt. He cautioned care on everyone’s responses. He told the LLC that just because the OSE may not have followed their own statutes with other drilling applications, it was no reason to disregard the statutes, and he would be looking at the LETTER of the law. He wants to see the argument on the question of commercial sale of water proving “beneficial use” in New Mexico. He said the LLC does NOT need an evidentiary delay. He cautioned all attorneys against asking for continuances, and he set the calendar for coming proceedings.

- 1) By 3/15/19—Amended Motion for Summary Judgment—NO MORE after this date
- 2) By 3/29/19---All Joinders to be filed
- 3) By 4/29/19---All responses to item #1 (nothing stopping Discovery)
- 4) By 5/30/19---Derrogatories, etc., within 2 weeks after #3. Telephonic conferences are ok. Then another hearing on the answers within 30 days.
- 5) Oral arguments around 6/26/19—and he said not to bring up Conservation, Impairment, or Public Welfare.