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El Prado, state quarrel over water rights deal

By J.R. Logan

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State water managers are refusing to give money to El Prado Water and Sanitation District for water rights because state officials say the district hasn't justified the \$20,000 per acre-foot purchase price.

Members of the district counter there is a scarcity of useful water rights in northern Taos County, and the sale is critical to fulfilling its obligations under the Abeyta Water Settlement.

The feud highlights the close connections between some well-heeled water rights buyers and sellers in the state, as well as the administrative challenges Abeyta parties face in implementing the massive compromise.

El Prado Water proposes to buy 17 acre-feet of water rights from Montoso Bison Company for \$340,000. The water rights are currently tied to Top of the World Farm near Costilla and are considered to be part of the R'o Grande main stem.

Attorneys for the state have raised doubts the deal was struck at "arms-length" because El Prado board member John Painter has been employed as a contractor for Montoso and Montoso owner, Alfred Keller, for more than 20 years.

El Prado Water and Montoso filed a joint lawsuit against the state in January, protesting the state's "unreasonable refusal" to hand over the money for the Montoso purchase, and another deal to buy 36 acrefeet of water rights in Arroyo Seco from Weimer Properties for \$358,000.

A copy of the complaint and related documents can be found with this story at taosnews.com.

The proposed water rights purchases are part of the Abeyta Water Rights Settlement — an agreement meant to acknowledge Taos Pueblo's senior rights while protecting non-Indian irrigators and ensuring a supply for domestic water systems.

As part of the Abeyta, El Prado was promised \$2 million to buy water rights. The state Legislature has allocated money for Abeyta water rights purchases. That money is being held by the state.

El Prado filed an application with the State Engineer in 2011 to transfer the 17 acre-feet of rights to its existing wells and two yet-to-be-drilled wells near the regional airport. The application was

protested and remains in limbo until its fate is decided at a public hearing.

Many of the underground agricultural water rights associated with large (and in some cases, defunct) farms in Northern Taos County have already been snatched up by the likes of Santa Fe County, MolyCorp and even El Prado Water.

After the state raised concerns last fall that Keller's asking price was too high, El Prado Water sought to prove that it was fair considering the apparent lack of options.

In December 2013, Paul Saavedra with Santa Fe Engineering Consultants wrote El Prado board member Painter a brief letter on the availability of Rio Grande water rights in the area. Saavedra concluded the only main stem Rio Grande rights for sale were those owned by Keller. He went on to say since Keller is asking \$20,000 an acre-foot, he "is setting the fair market value at this time."

In a market with limited supply, Painter finds himself in the unique position of being linked to both an eager buyer and the only vocal seller. And though the state has raised a red flag about Painter's role, he sees himself as more of a benevolent matchmaker than an opportunist.

For years Painter has warned Taos County water rights will go downriver unless someone in the area buys them up. He sees his connection to a big water rights holder like Keller as a chance for El Prado customers that might not exist otherwise.

Keller owns hundreds of acre feet of water rights in northern Taos County, including the 17 acre-feet at Top of the World and another 695 acre-feet that came from Ute Mountain Farms.

As an El Prado board member, Painter says he desperately hopes the district is able to buy the 17 acre-feet to serve its customers. But as Keller's ranch manager, he said the rights could go to another buyer if the district doesn't get money from the state.

Despite concerns about kickbacks from the state and local critics, Painter swears he sees no financial benefit if El Prado Water uses public funds to buy water rights from his employer. It's impossible to confirm or disprove Painter's assertion.

A purchase contract between El Prado and Montoso purports to describe how the deal came to be. The contract states that Painter asked Keller (identified as owner of Montoso Bison Company, Inc.) if he was interested in selling 17 acre-feet of water rights he owned at Top of the World Farms.

The contract states that Keller "answered in the affirmative" and "conveyed the price he would sell for," and Painter passed this info on to the El Prado board. The board voted to buy the rights in October 2013, and according to the contract, Painter abstained.

Painter is adamant that he is a "contractor" not an "employee" of Montoso Bison Company, and he says he has no ownership in the company. In corporate records kept by the state, Keller is listed as president of the Montoso Bison Company. Painter is identified as the secretary.

Painter isn't the only link between Montoso/Keller and El Prado. Prominent water rights attorney James Brockman was hired by El Prado to handle its Abeyta Settlement negotiations.

Brockman has also done legal work for Keller, including preparing applications for the State Engineer's Office related to large water rights transfers in northern Taos County.

Similarly, Frank Coppler, the attorney who filed the joint complaint against the state, does legal work for the district. Coppler is currently handling a case for the district brought by a former contractor alleging misuse of public funds. Coppler is also a lobbyist for Keller, according to state records.

For years, Keller unsuccessfully pushed a bill at the Legislature that would allow a water rights owner to keep those rights if "circumstances beyond the [owner's] control" prevent the water from actually being used. State water law is based on the "use it or lose it" principle that requires water rights be put to "beneficial use" or risk being forfeited.

The State Engineer repeatedly raised concerns that the bill would legitimize speculation in water rights by relaxing the requirement that water rights be exercised at a specified location.

The bill would have helped Keller hang on to rights he bought from Ute Mountain Farms and moved to the Cerro San Cristobal Ranch on the west side of the R'o Grande Gorge in 1998.

Keller repeatedly had to ask the State Engineer to grant extensions to the beneficial use requirement (at least seven requests between 1999 and 2005 according to the State Engineer's records) because the ranch was unable to produce enough water to meet with water rights amount.

Painter said in an interview this week that the ranch is still only using about half of its full water rights. Asked if Keller would be willing to sell some of those rights to the district, Painter said "not at this time."