

County drops protest of Abeyta-related water transfer

By J.R. Logan

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The Taos County Commission voted Tuesday (Feb. 17) to rescind its protest of water rights transfers tied to the Abeyta Water Settlement.

El Prado Water and Sanitation District is asking the State Engineer for approval to move 284 acre-feet of water rights from former agricultural properties in northern Taos County to be used on wells closer to Taos, including two yet-to-be drilled deep wells near the Taos airport that would draw from the R'o Grande aquifer.

The water rights shuffling is one of the initial steps in the implementation of the massive Abeyta Water Rights Settlement — a \$124 million deal hashed out between Taos Pueblo, domestic water providers and acequia users that is meant to acknowledge the tribe's senior water rights while ensuring a supply for other water users in the valley.

In 2012, the then-county commission unanimously voted to protest the transfers proposed by El Prado. The commission acted on the advice of a volunteer water commission, which questioned whether the small water district needed that much water and pointed out that the move would permanently dry up agricultural land in northern Taos County.

The current county commission's 3-2 decision Tuesday to drop its objections came just after one commissioner, Jim Fambro, called the fight a "losing battle." Those who voted to drop objections were commissioners Mark Gallegos, Tom Blankenhorn and Fambro. Those who voted against were Gabe Romero and Candyce O'Donnell.

Fambro's comment articulated the sense that there was little use in trying to stand in the way of the settlement, in part because the State Engineer — the same agency that would ultimately approve any water rights transfers — is a signatory to the deal. Internal email obtained by *The Taos News* show the agency has, at least in the past, had similar concerns.

Opponents of the El Prado transfers argue the "paper" water rights have no real link to the "wet" water in the R'o Grande, and that the effects of additional pumping from deep wells could have unforeseen and dangerous consequences.

Proponents of the transfer counter that the Abeyta Settlement is based on solid hydrology and is necessary to provide water to all valley residents while avoiding decades of costly litigation.

The State Engineer's Office was intimately involved in the Abeyta negotiations, and a state engineer hydrologist is in charge of the model used to justify groundwater pumping related to the settlement.

The State Engineer is also charged with determining if any transfer of water rights would be detrimental to the public welfare or would impair other water users.

Further, the settlement stipulates that another arm of the same agency — the Interstate Stream Commission — will pay El Prado for water rights purchases and reimburse El Prado Water's attorney fees for fighting to have the transfers approved.

Per the Abeyta, the Interstate Stream Commission agreed to provide up to \$2 million to El Prado to buy water rights and pay to get transfers of those rights through the State Engineer's Office.

The State Engineer will still make a ruling on the El Prado transfers, but now that Taos County has dropped its protest, the issue won't go to a formal hearing. The fact that the State Engineer agreed to the overall settlement could be interpreted as tacit approval of the various water rights transfers the deal prescribes.

And while conflict of interest concerns have been raised by critics of the settlement, internal emails show there might be the same worry inside the agency itself.

On Jan. 5, *The Taos News* made a public records request with the State Engineer's Office seeking all correspondence related to water rights purchases by El Prado Water and Sanitation District.

In response, the agency produced hundreds of pages of emails, including emails among legal staff for the State Engineer and Interstate Stream Commission.

The correspondence included a September 2013 email written by State Engineer lawyer Chris Shaw to Amy Haas, an attorney for the Interstate Stream Commission who is now the agency's interim director.

In the email, Shaw raised the question of a "perceived" conflict that would arise if the Interstate Stream Commission gave money to El Prado to fight for the transfer's approval.

"In the instant case, the [Interstate Stream Commission] would essentially agree to pay Jim Brockman [El Prado's lawyer] to transfer rights in an ongoing protested [State Engineer] administrative process."

Public records show that payments to Brockman could amount to tens of thousands of dollars.

In a scope of work attached to correspondence provided to *The Taos News*, Brockman sought \$75,000 to handle the transfer of 17 acre-feet of Top of the World water rights (only one of the three deals the county had protested), plus \$10,000 if the transfer becomes "overly complex."

Payments to Brockman would be made as reimbursements, meaning El Prado would need to front the costs then ask the Interstate Stream Commission to be paid back.

While there is a perception that the deck might be stacked in favor of El Prado, agency emails also show the attorneys have butted heads with Painter and Brockman on several occasions.

“Sorry you missed John Painter yelling at us during the meeting that we were all just being ‘G-d da--ed pains in the a-s,’” wrote Shaw in an email to Haas describing a discussion he had with Painter and Brockman in August 2013.

“I think this literally counts as biting the hand that feeds you,” Haas responded.

In fact, the disagreements led El Prado to bring a lawsuit against the Interstate Stream Commission over the agency’s refusal to fund several purchases, including the Top of the World rights that were under protest. That litigation remains ongoing.

Lela Hunt, a spokesperson for the State Engineer, said in an email there was no conflict of interest in the arrangement to have the Interstate Stream Commission cover at least some of El Prado’s attorney’s fees to transfer water rights.

Hunt said the agency declined to comment further in light of the pending litigation.