

Taos, Santa Fe residents protest Top of the World water rights transfer

By J.R. Logan

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Formal protests of the controversial plan to transfer water rights from Top of the World Farm in Taos County to a not-yet-built water system in Santa Fe County contend the project has not undergone adequate scrutiny, and is contrary to traditional uses of water in Taos County.

But those behind the transfer maintain that the plan to move 1,752-acre-feet of agricultural water rights across county lines is vital to the success of a massive water settlement in the Pojoaque Basin. That deal, known as the Aamodt Settlement, is intended to acknowledge the senior water rights of four pueblos in that region while making room for future growth in the area north of Santa Fe.

The Office of the State Engineer says it received five formal protests before the deadline to file an objection lapsed July 13. Those protests include Juan Montes of Questa, the Taos County Commission, and almost identical protests from Beverly Duran-Cash, Tim Cash and David Neal, all from Santa Fe.

In his critique, Montes argues the water rights transfer would set a “precedence of divorcing water from the land and selling outside of the watershed, region and in contravention to existing Taos County law and acequia traditional and customary uses.”

Montes went on to argue that the water rights would be to “serve anticipated speculative housing development and unplanned urban growth within [Santa Fe] county.”

Taos County Attorney Robert Malone did not offer specific arguments in his written protest, but did say the protest was related to general issues of public welfare, water conservation, impairment of existing water rights, and failure to comply with the state constitution, state law and state engineer regulations.

The protests from Santa Fe residents pointed out that an Environmental Impact Statement analyzing the possible effects of the new water system has not been completed, nor has a specific location for diverting water from the Rio Grande been determined. Without knowing where water will come from the river, the protests argue the State Engineer can’t “adequately assess or identify impairments resulting from the proposed diversion that will ultimately reduce the available surface water in the Rio Grande ...” The protests concluded a much more detailed hydrologic analysis was needed to identify any adverse effects caused by taking additional surface water from the Rio Grande.

The State Engineer says it received late protests from the Taos County Water Advisory Board, Alex Trujillo, Martha Trujillo, Roger Blanco, Larry Sanchez, Richard Cisneros, Antonio Trujillo, Joe Cisneros, Vickie Cisneros and Llano Ditch Association Vice President (no name was provided by the agency).

John Utton, an attorney representing Santa Fe County in the Aamodt, told *The Taos News* Wednesday (Aug. 5) that, given the controversial nature of the move, he was surprised only five protests were filed against the transfer, including just two from Taos County. Utton said he and other officials proposing the transfer were present at three public meetings in Taos County hoping to answer questions. "We tried to do a fair amount of public outreach, so perhaps that helped explain what we are doing," Utton said.

Utton dismissed Montes' claim that the transfer should be denied because the water rights would serve future customers. Utton pointed to a provision in state law that allows a water system to acquire water rights without putting them to use, as long as it can show a plan that predicts the water rights would be needed in the next 40 years.

Utton also said the argument for finishing the Environmental Impact Statement before asking to transfer water rights ignores the fact the Aamodt parties have several pending approvals and agreements for funding that need to be completed concurrently. "It's a timing issue," Utton said. "These are big projects. A lot of things have to be done at once."

Lela Hunt, a spokesperson for the state Office of the State Engineer, wrote in an email the next step in the protest process would be to set a pre-hearing scheduling conference.

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