

Need for a final decision from OSE:

Headen v. D'Antonio, 2011-NMCA-058, 149 N.M. 667, 253 P.3d 957

Purported owner of water rights was required to exhaust administrative remedies through administrative appeal from pre-hearing denial of his application with State Engineer to change point of diversion prior to filing a declaratory judgment action in district court; where the OSE's prehearing determination was that there was unavailable water, the purported owner was required to request a hearing before the OSE prior to filing an action in district court.

The doctrine [exhaustion of administrative remedies] rests upon the principle that "the interests of justice are best served by permitting the agency *672 **962 to resolve factual issues within its peculiar expertise" prior to allowing the party to proceed to the courts. Id.

In Smith, the Court held that "a declaratory judgment action [may] provide an alternative means of challenging an administrative entity's authority," as long as such action is not used to "circumvent established procedures for seeking judicial review of a municipality's administrative decisions." 2007-NMSC-055, ¶¶ 1, 11-15, 142 N.M. 786, 171 P.3d 300. ... The Supreme Court:

caution[ed] against using a declaratory judgment action to challenge or review administrative actions if such an approach would foreclose any necessary fact-finding by the administrative entity, discourage reliance on any special expertise that may exist at the administrative level, disregard an exclusive statutory scheme for the review of administrative decisions, or circumvent procedural or substantive limitations that would otherwise limit review through means other than a declaratory judgment action.

Smith, 2007-NMSC-055, ¶ 15, 142 N.M. 786, 171 P.3d 300;

Augustin Plains Ranch LLC v. John Dantonio P.E. (No.-A-1-CA-3)

We clarify that with its dismissal, the district court acted upon the application, as opposed to acting upon the State Engineer's decision regarding the application. [*In the appellate capacity, it was not within the province of the district court to act on the application itself, but to review the decision of the hearing officer for the State Engineer*]. See Lion's GateWater, 2009-NMSC-057, ¶ 34 ("[T]he water code's de novo standard constrains appellate review to the issue presented." (internal quotation marks and citation omitted)). We agree with the State Engineer that in doing so, the district court exceeded its jurisdiction.