

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

We first review the decision regarding the 2007 Application. After Applicant applied for a permit and multiple parties objected to the application, the State Engineer entered an order denying the application, but specifically ordered that it be "denied without prejudice to filing of subsequent applications."

On appeal, the district court determined "[t]he State Engineer's [o]rder [d]enying [the 2007] Application is affirmed." In relevant part it determined that *the 2007 Application was facially inadequate because it failed "to specify the beneficial purpose and the place of use of water, contrary to [Section] 72-12-3(A)(2), (6)." It also determined that the 2007 Application "contradict[ed] beneficial use as the basis of a water right and the public ownership of water, as declared in the New Mexico Constitution."* Although it upheld the denial of the 2007 Application, the district court noted, "The dismissal without prejudice allows Applicant to submit an application that meets the statutory requirement of specificity for beneficial use and place of use." *When it considered the 2014 Application, the district court did not address the previous order's language regarding Applicant's right to file a corrected application, nor did it acknowledge that the 2014 Application was significantly more detailed, and that Applicant attempted to address what the district court identified as deficiencies in the 2007 Application. The district court's only response to either consideration was a vague reference to a more detailed application. The failure to assess the facial adequacy of the significantly more expansive 2014 Application, filed after the district court's order of dismissal that specifically noted Applicant's right to file amore detailed application was fundamentally unfair*

Lion's Gate Water, 2009-NMSC-057, ¶ 24 ("The comprehensive nature of the water code's administrative process, its mandate that a hearing must be held prior to any appeal to district court, and the broad powers granted to the State Engineer therein clearly express the Legislature's intent that the water code and the administrative process it describes provide a complete and exclusive means to acquire water rights.").

*The State Engineer argues its interpretation of the water code's application process "has explicitly allowed applications to be corrected" since the enactment of the water code. NMSA 1978, § 72-5-3 (1941). Applicant applied, was told to reapply, and updated its application. Filing an updated application was not an attempt to circumvent the State Engineer's procedures, nor the district court's previous final judgment. Based on the prior determination by the district court that Applicant could file a new application that addressed the facial insufficiencies of the 2007 Application, Applicant's more robust 2014 Application in response, and our deference to the State Engineer's policy that applications for permits for underground waters may be corrected, we hold that the district court abused its discretion in applying collateral estoppel to the 2014 Application. Reversed.*

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.**

**Concurrent jurisdiction over appellate (admin dec) and original (common law or stty) juris.**

We note that when a district court reviews the decision of an administrative entity, it may be called upon to exercise both its appellate jurisdiction and its original jurisdiction. See Maso v. N.M. Tax'n & Revenue Dep't, 2004-NMCA-025, ¶¶ 15, 17, 135 N.M. 152, 85 P.3d 276 (reiterating that the district court can simultaneously exercise its appellate and original jurisdiction). The district court exercises its appellate jurisdiction when it reviews those questions that the administrative body is authorized by statute to decide, and it exercises its original jurisdiction when it decides those issues that could not be raised before the administrative body in the first instance. See id. ¶¶ 13-14.