

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

WILDEARTH GUARDIANS,

Appellant/Aggrieved Party,

vs.

No. D-101-CV-2020-02612

JOHN D'ANTONIO, P.E., in his capacity
as New Mexico State Engineer,

Appellee,

MIDDLE RIO GRANDE CONSERVANCY
DISTRICT,

Appellee/Applicant.

**DECISION REVERSING ORDER
GRANTING MRGCD'S MOTION TO DISMISS**

THIS MATTER came before the Court on the Appeal De Novo from the New Mexico State Engineer's Order, dated November 9, 2020, granting Applicant Middle Rio Grande Conservancy District's Motion to Dismiss, pursuant to NMSA 1978, Section 72-7-1; the Appellant WildEarth Guardians being represented by Samantha Ruscavage-Barz, Esq.; the Appellee John D'Antonio, P.E., being represented by A. Nathaniel Chakeres, Esq., Simi Jain, Esq., and L. Christopher Lindeen, Esq.; the Appellee/Applicant The Middle Rio Grande Conservancy District ("MRGCD") being represented by Law & Resource Planning Associates, P.C., by Charles T. DuMars, Esq., Tanya L. Scott, Esq. and Lacy A. Daniel, Esq.; the Court having heard the arguments of counsel, reviewed the pleadings and all matters of record and being fully advised in the premises, finds the Order Granting MRGCD's Motion to Dismiss, dated November 9, 2020, should be reversed.

Based upon the arguments of counsel, pleadings and all matters of record, this Court finds:

1. This Court has jurisdiction over the parties hereto and the subject matter hereof.
2. Pursuant to the Scheduling Order in Hearing No.19-021, Before the New Mexico State Engineer, the Parties stipulated “as evinced in the Proposed Scheduling Order and by statements made at the Pre-Hearing Scheduling Conference, to the following Statement of Issues(s): “Did the Water Rights Division have the discretion to accept and approve the MRGDD’s extension of time for this permit? In limiting the issue, the Parties are not waiving other relevant issues related to this issue.”
3. The State Engineer’s appointed Hearing Examiner in Hearing No. 19-021, issued his Order Granting MRGCD’s Motion to Dismiss which was accepted and adopted by the New Mexico State Engineer on November 2, 2020 and thereafter filed in the record on November 9, 2020.
4. On or about December 26, 2018, Applicant MRGCD filed an Application for Extension of Time in Which to Perfect an Appropriation of Surface Water under Permit No.1690 with the Office of the New Mexico State Engineer.
5. In support of its Application, MRGCD attached a summary statement and MRGCD’s Resolution No. M-09-24-18-157 authorizing the filing of the Application, which summary statement did not set forth any particularized reason for the extension and specifically stated that “[t]his application for an extension of time is not intended to in any way affect or quantify the water rights of any beneficial uses of the water in the Middle Rio Grande.”

6. On January 11, 2019, an Extension of Time for Applicant to file proof of beneficial use for Permit No. 1690 was granted without any explanation of why the extension was in the interest of the development of the state or how it was in the public interest.
7. In resolving ambiguities in a statute or regulation which an agency is charged with administering, the Court will generally defer to the agency's interpretation if it implicates agency expertise but not to its statutory interpretation which is reviewed as a matter of law.

... A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Snyder Ranches, Inc. v. Oil Conservation Comm'n*, 110 N.M. 637, 639, 798 P.2d 587, 589 (1990); see *Hobbs Gas Co. v. N.M. Serv. Comm'n*, 115 N.M. 678, 680, 858 P.2d 54, 56 (1993) (stating that burden on review of administrative decision under arbitrary and capricious standard is to show that the decision is "unreasonable or unlawful.") In making these determinations, we must remain mindful that "in resolving ambiguities in the statute or regulations which an agency is charged with administering, the Court generally will defer to the agency's interpretation if it implicates agency expertise." *Atlixco*, 1998-NMCA-134, ¶ 30, 125 N.M. 786, 965 P.2d 370; see *Chavez*, 1996-NMSC-070, ¶ 21, 122 N.M. 579, 929 P.2d 971. Further, "[t]raditionally, cases have uniformly held the hearing of an administrative appeal at the district court level is an appellate procedure, *not a trial de novo*." *Groendyke Transp., Inc. v. N.M. State Corp. Comm'n*, 101 N.M. 470, 476, 684 P.2d 1135, 1141 (1984) (emphasis added). "It is not the function of the trial court to retry the case ... admit new evidence unless under an [statutory] exception ... or substitute its judgment for that of [an administrative agency]." *Id.* (internal citations omitted). However, we will not defer to the Commission's or the district court's statutory interpretation, as this is a matter of law that we review *de novo*. See *Mutz v. Mun. Boundary Comm'n*, 101 N.M. 694, 697-98, 688 P.2d 12, 15-16 (1984).

Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission, 2003-NMSC-005, ¶17, 133 N.M. 97, 61 P.3d 806.

8. 1978 NMSA, § 72-5-14 provides in pertinent part:

... "the state engineer may, if he is satisfied of the good faith of the applicant and that the project will be to the interest of the development of the state, extend the time for completion of works and application of water

to beneficial use for any additional periods he may deem necessary, but not exceeding two years for any one extension, upon such reasonable terms and conditions as he may prescribe; and at the time of granting such extension shall endorse his approval thereon and shall make the proper entry in his records.”

9. 1978 NMSA, § 72-5-28(B) provides:

B. Upon application to the state engineer at any time and a proper showing of reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public interest, the state engineer may grant extensions of time, for a period not to exceed three years for each extension, in which to apply to beneficial use the water for which a permit to appropriate has been issued or a water right has vested, was appropriated or has been adjudicated.

10. Pursuant to both §§ 72-5-14 and 72-5-28(B), the New Mexico State Engineer, in his discretion, may grant extensions upon a proper showing by the applicant and explicit findings by the New Mexico State Engineer.

11. The mere fact that an extension has been approved does not by itself indicate that an applicant has made a proper showing or that the New Mexico State Engineer has made a proper finding to satisfy the requirements of either statute.

12. The Order Granting MRGCD’S Motion to Dismiss found in Paragraph 24 that “[t]he State Engineer has the sole authority to decide whether to grant an extension of time based on the discretion afforded (analysis of the public interest, reasonable cause for delay, etc.) to him, and that is what occurred.”

13. The Order does not cite the Record for the Finding set forth in Paragraph 24 and neither the Application nor the Order approving the Application for Extension provide evidence for the Finding in Paragraph 24 of the Order.

14. An affidavit of Allen Gary Stansifer dated November 1, 2019, filed in support of the Water Rights Division’s Motion for Summary Judgment in Hearing 19-021 affirmed in Paragraph 11 that “[t]he WRD’s granting of the extension of time was based on the good

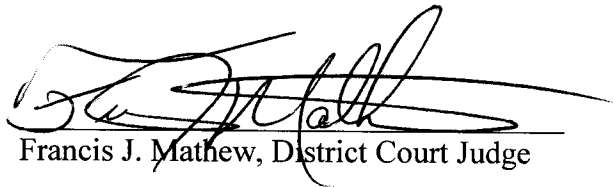
faith of the MRGCD and the successful implementation of what MRGCD is trying to achieve with Permit 1690 is in the interest of the development of New Mexico.”

15. Mr. Stansifer’s affidavit in support of the Water Rights Division’s Motion for Summary Judgment in Hearing 19-021 does not provide proper support for the Order Granting MRGCD’S Motion to Dismiss or the Finding found in Paragraph 24 of the Order.

16. A ruling that is not in accordance with law should be reversed ‘if the agency unreasonably or unlawfully misinterpret or miss applies the law.’ *In re Final Order in Alta Vista Subdivision DP No. 1498 ...*, 2011-NMCA-097, ¶ 10, 150 N.M. 694, 265 P.3d 745.

17. The New Mexico State Engineer’s Order, dated November 9, 2020, granting Applicant Middle Rio Grande Conservancy District’s Motion to Dismiss should be reversed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the New Mexico State Engineer’s Order, dated November 9, 2020, granting Applicant Middle Rio Grande Conservancy District’s Motion to Dismiss is **REVERSED**, and this Matter is remanded to the New Mexico State Engineer for further proceedings in accordance with this Order.


Francis J. Mathew, District Court Judge

xc: Counsel, e-served.