



Mark Reynolds

IN THE COURT OF APPEALS  
OF THE STATE OF NEW MEXICO

AQUIFER SCIENCE, LLC,

Applicant-Appellant/Cross-Appellee,

v.

A-1-CA-39080

[consolidated with A-1-CA-  
38539 & A-1-CA-39078]<sup>1</sup>

SCOTT A. VERHINES,  
New Mexico State Engineer,

Appellee-Appellee/Cross-Appellant,

and

COUNTY OF BERNALILLO, et al.,

Protestants-Appellees/Appellees.

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Appeal from the Second Judicial District Court  
Bernalillo County  
The Honorable C. Shannon Bacon  
The Honorable Clay Campbell

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**MOTION TO AMEND CASE CAPTION**

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Pursuant to Rule 12-309, NMRA, Protestants-Appellees San Pedro Creek

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<sup>1</sup>By Order dated June 30, 2021, the Court dismissed the State Engineer's cross-appeal in A-1-CA-38539, as well as the State Engineer's appeal (A-1-CA-39078).

Estates Homeowners Association, et al.<sup>2</sup> [hereinafter collectively referred to as “San Pedro Creek” or “the San Pedro Creek Protestants”], by and through undersigned counsel, hereby ask the Court to amend the case caption. According to the current caption, no party is designated as an appellant in this Court, and an important group of appellees is unnamed. This motion seeks to accomplish three goals: 1) to add San Pedro Creek as Protestants-Appellees/Appellees along with Bernalillo County; 2) to clarify that the State Engineer is no longer a cross-appellant (or appellant), since the Court granted its motion for voluntary dismissal;<sup>3</sup> and 3) to clarify that Aquifer Science is no longer a cross-appellee and is the only appellant in this Court. As grounds for this motion, San Pedro Creek states as follows.

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<sup>2</sup>As used herein, “San Pedro Creek” or “the San Pedro Creek Protestants” refers to San Pedro Creek Estates Homeowners Association, Old Sandia Park Service Cooperative, Rosemary Amspaugh, Caryl Baron, Phyllis Bergman, Nathaneal Brown and Anne Strader, Carolyn K. Bryan, Margaret M. Carroll, Tom Christensen & Joanne Hilton, Beth Corwin, Richard and Barbara Davis, Barbara S. Herrington, David J. Holcomb and Kathy McCoy, Dale Kennedy, Charles King and Karen Salmi, Marlyss Lesley, Frances Lusso and David Weaver, Jim and Marjorie Mullany, Jerry Page, Richard Ragle, Doug Salmi, Carol Sanders-Reed, Julie Lynch Seimers, Barry Silbaugh and Janet Winchester-Silbaugh, Carolyn J. Simmons, Jerry A. Simmons, Sue Ann Slates, Robert and Antoinette Smith, and Jan Wiste.

<sup>3</sup>See Order Dismissing the Cross-Appeal and Appeal of the State Engineer (June 30, 2021).

1. The Court assigned this case to the general calendar on August 21, 2020.
2. On its own motion, the Court consolidated the various appeals in this matter. *See* Order Consolidating Appeals (Aug. 21, 2020).
3. The district court entered judgment on September 3, 2019. [12 RP 2911] In the caption, the district court used the shorthand “et al.” for the Protestants-Appellees, but the court named them in the body of the judgment. [12 RP 2912-13]
4. Aquifer Science filed a notice of appeal from the judgment on October 3, 2019. [12 RP 3029] The State Engineer filed a cross-appeal on October 17, 2020.<sup>4</sup> [12 RP 3098]
5. Aquifer Science filed its docketing statement on November 26, 2019, and the State Engineer filed a docketing statement on January 17, 2020. [13 RP 3227]<sup>5</sup>
6. Aquifer Science’s first notice of appeal filed in the fall of 2019 did not say against whom it was appealing, as required by Rule 12-202(B)(1) NMRA.

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<sup>4</sup>The State Engineer filed an “Amended Notice of Cross Appeal” the following day. [12 RP 3110]

<sup>5</sup>Aquifer Science’s first docketing statement appears to be missing from the record proper but can be found on this Court’s docket.

[12 RP 3029] Nor did Aquifer Science include appellate party designations (other than district court de novo appeal designations) in its notice of appeal to this Court. *Id.*

7. It was not until Aquifer Science filed its first docketing statement that it denominated itself as “Applicant-Appellant/Appellant/Cross-Appellee.” *See* Civil Appeal Docketing Statement (Nov. 26, 2019). When the State Engineer filed its first docketing statement, it used the same party designations. [13 RP 3227]

8. There was only one docket number for those first two appeals (A-1-CA-38539).

9. Aquifer Science did not include the San Pedro Creek Protestants (or any other Protestants besides Bernalillo County) as parties to the appeal when it initiated its first appeal in Odyssey. Instead, it denominated all Protestants as “County of Bernalillo et al.” The “et al.” includes over 150 different entities and individuals, some of whom (the San Pedro Creek Protestants) were represented by the New Mexico Environmental Law Center at trial and were instrumental (alongside Bernalillo County) in successfully defeating Aquifer Science’s application for a water permit. *See, e.g.*, 12 RP 2912-13.

10. Counsel for San Pedro Creek worked with the Clerk of Court, so that the San Pedro Creek Protestants could be added as parties to the appeal (appearing

in Odyssey collectively under the San Pedro Creek banner), and so that their attorneys could be added as service contacts on behalf of their clients.

11. The district court entered an Order on Protestants' Bill of Costs on January 27, 2020. [13 RP 3257] The district court used a shorthand "et al." caption, but it referenced the list of Protestants-Appellees in Exhibit A to Protestants' Bill of Costs. [13 RP 3257 n. 1; 12 RP 2918 n. 1; 12 RP 2930]

12. The State Engineer appealed the cost award. [14 RP 3548] In that notice of appeal, the State Engineer denominated Aquifer Science as "Applicant-Appellant/Applicant" and denominated itself as "Appellee/Appellant." *Id.* Later the same day (June 3, 2020), the State Engineer amended its second notice of appeal and removed all appellate party designations (other than the district court de novo appeal designations). [14 RP 3569]

13. Aquifer Science likewise appealed the cost award. [14 RP 3591] Its second notice of appeal included no appellate party designations (other than the district court de novo appeal designations). *Id.*

14. Unlike with the first two merits appeals, which had one docket number (A-1-CA-38539), the two cost appeals were assigned two different docket numbers. Aquifer Science's appeal of the cost award was docketed as A-1-CA-39080, and the State Engineer's appeal of the cost award was docketed as A-1-

CA-39078.

15. Once again, neither Aquifer Science nor the State Engineer included the San Pedro Creek Protestants (or any other Protestants besides Bernalillo County) as parties to the appeal when they initiated the cost appeals in Odyssey. Instead, they used the same caption that denominated all Protestants as “County of Bernalillo et al.” Again counsel for San Pedro Creek worked with the Clerk of Court, so that the San Pedro Creek Protestants could be added as parties to the appeal, and so that their attorneys could be added as service contacts on behalf of their clients.

16. At one time, the caption in district court actually included the names of all of the Protestants-Appellees. [1 RP 1-2] It is understandable that the Courts and the parties would resort to using shorthand to avoid a two-page case caption. If the Court agrees to amend the case caption on appeal, undersigned counsel request that the amended caption identify San Pedro Creek, one of the main players in this case, while still utilizing “et al.” for ease of reference.

17. The San Pedro Creek Protestants, as the prevailing parties, are the parties who arguably stand to gain the most from the outcome of Aquifer Science’s cost appeal. In that portion of the consolidated appeals, San Pedro Creek appears in this Court to defend their judgment in the amount of \$379,854.05

plus interest.<sup>6</sup> Likewise, the San Pedro Creek Protestants are deeply invested in the outcome of Aquifer Science's merits appeal. Yet they are currently invisible in this Court's case caption.

18. The district court dealt with the magnitude and complexity of the case in varying ways. At one hearing, the district court told the parties that they would not be permitted to argue unless they had filed something in writing. [6-27-17 Tr. 22-24] At another hearing, the district court stated that it would not permit all of the parties to enter their appearances on the record because it would simply take too long. [12-4-19 Tr. 5-6] The Court could similarly limit the Protestants spelled out in the caption to reflect those that are actively litigating.

19. On June 30, 2021, the Court granted the State Engineer's motion for voluntary dismissal of its appeals. In that motion, the State Engineer asked to be realigned as an Appellee in Aquifer Science's remaining appeals. If the Court grants the instant motion to amend and adds the San Pedro Creek Protestants into the caption (or at least shorthand for that list of Protestants), the Court should also clarify the appellate party designations to reflect that the State Engineer is no longer an appellant or cross-appellant and that Aquifer Science is an appellant but

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<sup>6</sup>The district court also awarded costs to Bernalillo County in the amount of \$14,676.92. [13 RP 3224] Aquifer Science paid that award but appealed the costs awarded to San Pedro Creek.

no longer a cross-appellee.

20. Given all of the above, the San Pedro Creek Protestants ask that the Court amend the case caption as follows:

<p>AQUIFER SCIENCE, LLC,</p> <p>Applicant-Appellant/Appellant,</p> <p>v.</p> <p>SCOTT A. VERHINES, New Mexico State Engineer,</p> <p>Appellee/Appellee,</p> <p>and</p> <p>COUNTY OF BERNALILLO, SAN PEDRO CREEK ESTATES HOMEOWNERS ASSOCIATION, <i>et al.</i>,</p> <p>Protestants-Appellees/Appellees.</p>
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21. Pursuant to Rule 12-309(C), NMRA, San Pedro Creek states that the County of Bernalillo and the Office of the State Engineer do not oppose the relief sought in this motion. Aquifer Science’s position is as follows: “Aquifer Science does not oppose amendment of the caption with the understanding that no substantive change is intended by the amendment, and Aquifer Science takes no position with respect to the lengthy narrative contained in the motion, which it



believes is unnecessary to an uncontested motion of this nature.” Undersigned circulated the instant motion in draft form via email dated Wednesday, August 11, 2021 but as of the time of filing has not been able to ascertain the position of any other parties to this appeal.

WHEREFORE, the San Pedro Creek Protestants ask that the Court: 1) amend the case caption to include San Pedro Creek Estates Homeowners Association as Protestants-Appellees/Appellees; 2) amend the appellate party designations to clarify that the State Engineer is an appellee in this Court and is no longer a cross-appellant; and 3) amend the appellate party designations to clarify that Aquifer Science is an appellant in this Court and is no longer a cross-appellee.

Respectfully submitted,

/s/ Caren I. Friedman

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of August 2021, I electronically filed a true and complete copy of the foregoing document with the Clerk of Court, using the Odyssey File and Serve System, which caused a copy to be served on counsel of record and any other service contacts, and I further certify that I caused other parties to be served via email or first class United States mail, as noted:

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The following individuals listed in the Final Judgment have no known e-mail address or no forwarding address and to the knowledge of all counsel, have not been involved in the proceeding since the initial appeal to the Second Judicial District:

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