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Judge awards \$400K in legal fees in aquifer case

East Mountain residents to benefit

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A judge has ordered New Mexico's Office of the State Engineer and a Nevada-based water developer to pay nearly \$400,000 in legal fees to East Mountain residents. The payment will cover costs of a long legal battle against a groundwater pumping permit for Campbell Ranch, a large proposed residential development in the East Mountains.

On Jan. 27, state District Judge Clay Campbell awarded \$379,854.05 "in expert witness fees and court costs," to be paid jointly by the Office of the State Engineer and Aquifer Science.

"Judge Campbell's decision is a victory for the members of the East Mountains community, allowing them to recover some of the legal fees incurred as they have fought for their homes and their water resources," said Paul Hultin, a private attorney in Santa Fe who volunteered with the New Mexico Environmental Law Center to represent homeowners in the case.

Monday's decision follows a legal saga spanning more than a decade.

In 2009, the Office of the State Engineer denied an application by water developer Aquifer Science to pump 1,500 acre-feet of water — more than 488 million gallons — over 10 years from the Sandia Underground Water Basin. The water would support Campbell Ranch, a planned 8,000 acre development of 4,000 homes and two golf courses in the East Mountains.

The company appealed the decision in 2011, this time requesting half that amount of water from the aquifer. The Office of the State Engineer denied the appeal in 2014. The office said groundwater of that amount was already appropriated for existing uses and not available for a new development. But after Aquifer Science appealed again, the Office of the State Engineer reversed its position and said there was water available for the development.

The case moved to state district court in March 2018. During that trial, the OSE and Aquifer Science maintained that 12 local wells would be affected by the development's water use. Experts hired by local residents argued that the groundwater pumping would affect at least 100 local wells, and the aquifer could not sustain the increased water use.

In January 2019, a state district judge sided with the residents and rejected the groundwater pumping application. In her decision, Judge Shannon Bacon (now a New Mexico Supreme Court justice) said the proposed water use would impair the community. Bacon also concluded that the company hadn't considered climate change or long-term water availability.

THINGS YOU NEED TO KNOW ABOUT THIS NEWS:

This is a significant decision and a big win for the East Mountain community!! Everyone who has supported this effort or had any part in it deserves a big thank you from the community!

It could be years before the awarded funds will be paid.

Both Aquifer Science and the Office of the State Engineer (OSE) are appealing both the January 2019 decision denying the water rights application AND the January 2020 award of funds. Until all the appeals have been resolved, no money will be paid.

We have and will continue to incur attorney fees to respond to the Aquifer Science and OSE appeals of both Justice Bacon's January 2019 decision AND Judge Campbell's January 2020 award of costs.

The award covers only EXPERTS' fees (our geohydrology and climate experts) and some of the trial expenses (exhibits, deposition transcripts, etc). By State statute, NO attorney fees can be recovered.

These costs were incurred by both the Deep Well Protest and the San Pedro Creek Estates HOA. Any recovered funds will be apportioned according to which group paid for what.... minus the attorney fees incurred to obtain the award and fight the appeal....

SO, while this is great news, it is definitely not over and we still need your support and donations.