

AQUIFER SCIENCE (AS) HEARING SUMMARY June 13, 2017

Some of you may have seen on KRQE an erroneous announcement that the Judge had ruled in this case and denied the water to Aquifer Science and Campbell Ranch. That is NOT true. We don't know how they came to that conclusion. Below is a summary of the hearing. While the Judge did not rule to throw out the case as we and Bernalillo County requested, she DID indicate that the arguments raised her interest and understanding of some of the key elements of the case. Our attorneys are very pleased with that outcome.

The purpose of the hearing was for Judge C. Shannon Bacon to rule on two motions submitted to the Second District Court by 1) Bernalillo County and the 2) New Mexico Environmental Law Center (NMELC). Each asked for a Summary Judgment in their favor. These motions, if so ruled, would have ended the Aquifer Science appeal and there would have been no trial.

Once again, there was substantial community support in that over 40 East Mountain residents attended the hearing. Pro-Se protestants were allowed to introduce themselves to the court.

Bernalillo County's argued that the case should be dismissed in our favor (Summary Judgement) because:

- 1) The AS application was invalid in that there was no clearly defined point of Beneficial use since Campbell had not met the requirements to have their final plans approved by Edgewood.
- 2) Village 1 (of 4 total) lies outside of Edgewood and therefore must have approval from Bernalillo County, which has not been given.
- 3) The application did not include certified surveys, plats or legal descriptions for the point of use and was not consistent with New Mexico applicable statutes.

The judge denied Bernalillo County's motion for Summary Judgment since it was based on relatively minor points and not significant at the "Summary" level.

NMELC focused on the last two of the "Big Four" reasons that the State Engineer can deny an application:

1. Lack of available water
2. Impairment to existing water rights
3. Not in the Public Welfare
4. Not Conservation of water

NMELC also focused on the speculative nature of the business model of Aquifer Science and its parent companies (Vidler Water and PICO Holdings). The judge denied the NMELC motion, as well, probably since she wants to get to the specific FACTS of the case (1 and 2 of the 4).

In summary, in denying the motions, Judge Bacon said:

1. The AS application was "valid enough" for OSE use and was complete enough for a decision to be made.

2. She wants to review and understand the FACTS of the case as they pertain to the "Big Four" so she can make a decision.

This was not a surprise to us, just a legal step that needed to be taken.

And on June 27, 2017

another hearing was held....

The purpose of the hearing was for Judge C. Shannon Bacon of the Second District Court to rule on two motions submitted to the Second District Court by Aquifer Science:

MOTION ONE: For AS to amend their application for 717 acre feet per year (afy) to 350 afy drawn from the Sandia Basin and provide the rest of the 717 afy from the Estancia Basin.

MOTION TWO: To vacate (delay) the current trial date of August 7, 2017, in the event that Motion One was granted.

Once again, there was substantial community support in that about 30 East Mountain residents attended the hearing, even though it was held in a smaller courtroom. Pro-Se protestants were allowed to introduce themselves to the court.

Motion ONE was to reduce the water drawn from the Sandia Basin to 350 afy and obtain the remaining 367 afy from the Estancia Basin provided by the Entranosa Water and Waste Water Co-Op. This could be provided by using existing Campbell Farming Corporation (CFC) water rights in the Estancia Basin. AS has consistently reduced their application from a start of 1,500 afy in 2009, to 1,010 in 2012, to 717 in 2013 and now to 350.

Both Bernalillo County and the NMELC opposed the motion for the following reasons (not an all-inclusive list):

1. Protestants were given little time to analyze the new application and changes to the AS model as the Motion was filed after Discovery closed.
2. The Estancia Basin is considered a "Critical [water] Management Area" by the OSE and its limited water resources are carefully managed by the OSE.
3. This "amendment" should be viewed as a "new" application and should be adjudicated by the OSE and not the Court.
4. Much more time is needed by the Protestants to review the new AS application and supporting data.

Motion ONE was approved as the Court feels that it has prior rulings allowing it to continue and no need to defer to the OSE for a decision on the new application.

Motion TWO (delay the trial date) was approved as the Court agreed that more time was needed by the Protestants to develop their case in response to the amendment. **The new trial dates are from March 5 -16, 2018.** The Discovery end date is November 11, 2017. The attorneys (Bernalillo County, NM Environmental Law Center (NMELC), AS and the Office of the State Engineer (OSE) are to agree on any remaining dates and present them to the Judge for approval.