

Testimony ends in water trial

BY RUTH HEIDE

Closing arguments set in two weeks

ALAMOSA — Shortly before noon on Wednesday, and with little fanfare, a lengthy state water trial ended in Alamosa.

The trial had taken the better part of six weeks, involved about a dozen attorneys and included 19 different witnesses and hundreds of pages of documentation including reports and graphs presented in a trial to the court before District Judge O. John Kuenhold.

Kuenhold has scheduled closing arguments for Friday afternoon, March 24, in Alamosa.

The trial revolved around rules proposed by the Colorado Division of Water Resources State Engineer's office to govern new groundwater withdrawals from the confined aquifer of Division III, the San Luis Valley. Presenting the state's case was the Attorney General's office as well as attorneys for local water groups Rio Grande Water Users Association, Rio Grande Water Conservation District and the Conejos Water Conservancy District.

Challenging the proposed rules were the San Luis Valley Water Company, Colorado Association of Home Builders and Cotton Creek Circles.

At the conclusion of testimony on Wednesday, Judge Kuenhold said "I certainly have enjoyed listening to the evidence in this case and obviously I have an important and difficult job ahead of me."

He asked both sides to prepare suggested orders as well as synopses of what they believed were the most crucial pieces of information for the judge to consider.

"I may find myself caught in between what counsel proposes," Kuenhold said. He said one of the arguments made during the trial was the state had the "cart before the horse" in proposing rules for the confined aquifer but not for the unconfined aquifer in the Valley.

Kuenhold said "That's a dangerous argument for them to make because if I accept that argument I might say 'get the horse in front of the cart,' and if I were to come to that conclusion, how exactly should that be structured."

During their final morning together attorneys on both sides complimented each other and the court. For example, Allan Hale, attorney for the protesters to the state rules, commended final witness Allen Davey for his dedication and commitment in sitting through the trial.

Rio Grande Water Conservation District Attorney David Robbins specifically acknowledged Court Reporter Catherine Rodriguez whose transcription could be viewed in "real time" on computer monitors throughout the trial. "She's done a great job," Robbins said. "The day-to-day transcripts have been invaluable. They have been incredibly accurate."

Robbins also thanked the court staff for making those involved in the trial comfortable. He then thanked Kuenhold "for your courtesy and your respect and your willingness to listen to both sides."

Davey was the final witness called on Wednesday as the state had the last word in defending its proposed rules. Davey initially testified during the first week of the trial and returned to the stand as a rebuttal witness for the state on Wednesday.

Davey, a professional engineer in the Valley for more than three decades, defended hydrographs of wells which he said were representative of the wells throughout the Valley and representative of the trends he observed in studying those wells over time. "I believe my distribution of wells are adequate to show the court and

demonstrate that there is a long-term declining trend through the entire Valley," he said.

He added "I have looked at the long term trends in order to reach my opinions." Davey repeated earlier testimony regarding the condition of the Valley's aquifers, specifically the confined aquifer which is the subject of the proposed state rules. "There's clearly a declining trend," he said. The wells he reviewed confirmed that long-term declining trend, he said.

Davey said even the hydrograph trend lines presented by protesters' witness Bruce Lytle showed that decline in more than 70 percent of the hydrographs.

When he was later cross-examined by Hale, Davey said "I am saying I believe the withdrawals from the confined and in many areas the unconfined have exceeded, they are exceeding, recharge to that aquifer system ... I certainly do believe the withdrawals are exceeding the recharge ... Withdrawals from the confined aquifer are exceeding inflows on a regional basis."

Davey also testified about the uniqueness of the Valley and its hydrology, such as the Valley being the driest part of the state, encompassing a high mountain valley and containing the largest closed basin in the state.

Davey also testified: there is extensive conjunctive use in the Valley; the recurrence frequency of the 2002 drought scheduled to repeat in 53 years was properly included in the computer model associated with the rules; McIntire Springs near Manassa accurately represents the decline in the pressure head of the confined aquifer over the long term; and there is no local overdraft in the confined aquifer. He defined local overdraft as a condition where the availability of water is insufficient to provide an adequate supply for wells that tap that aquifer. "I have certainly seen a long-term decline, but I have not seen pumping levels that are to such a depth that properly constructed wells cannot access that water."