

## Water trial ends

BY HEW HALLOCK

Lawyers sum up cases

ALAMOSA — Final arguments were heard yesterday in a six-week long case protesting proposed rules from the State Water Engineer to manage underground water in the Rio Grande Basin. The case was heard before District Judge O. John Kuenhold.

Lawyers for the state reiterated the position that the Valley is using more water from its underground supply than is being replenished. The current situation of water use is unsustainable, they maintained, and must be remedied with the help of the proposed rules. "The San Luis Valley is in a hole," Assistant Colorado Attorney General Peter Ampe told the court. "The first thing we must do is stop digging a hole."

Ampe was one of four attorneys advocating the state's case. Others included David Robbins from the Rio Grande Water Conservation District, Bill Paddock representing the Rio Grande Water Users Association, and David Harrison for the Conejos Water Conservancy District.

The proposed rules would require any new withdrawals from the confined aquifer which lies under the Valley be augmented, or replaced with an equal amount of water.

Lawyers opposing the rules called them extraordinary measures for an ordinary problem, and in violation of the state constitution and the right to appropriate water.

"The rules have been promulgated to protect a regime of water use in the Rio Grande Basin that is contrary to the right of prior appropriation, ignoring Colorado law," said Allan Hale, an attorney for the objectors to the rules.

Based on legislative authorization and a groundwater computer model called the Rio Grande Decision Support System – RDSS – the state developed the rules for managing groundwater withdrawals from the confined aquifer in Division III (the Valley) on June 30, 2004. The rules were challenged by the San Luis Valley Water Company, Colorado Association of Home Builders, and Cotton Creek Circles. The trial began Jan. 30 before Judge Kuenhold. In yesterday's final hearing both sides recapped their cases before the judge.

Proponents said the hydrological system of the Rio Grande Basin in Colorado is unique and complex. Its underground water supplies in the unconfined and confined aquifers are interrelated and over-appropriated. In order to protect senior water rights and to continue to meet obligations of the Rio Grande Compact to downstream states, the rules are necessary. Kuenold asked Ampe, if the state was so concerned about over-pumping of the aquifer, why didn't it prevent pumping in 2002, the year of the worst drought on record.

Ampe replied that under H.B. 1011, there could be no rules and regulations without a study of the Rio Grande Basin, and the State Engineer would have to make a determination on each individual, a long process.

Paddock also responded to Kuenhold's question. "We cannot immediately implement rules," Paddock said. "We don't have the tolls to say, 'no more pumping.' It's impractical."

Opponents attacked the RDSS saying the model is flawed, and does not support the proposed rules. It may create more problems, charged attorney Kevin Kinnear.

"Are you ready to challenge the amount of work that went into that database?" asked Kuenhold.

"Absolutely not," Kinnear responded quickly. "They did the best job they could." But to apply it to individual wells, "we would have real problems with that," said Kinnear.

Kinnear said there were four flaws with the model: data on pumping included information from "illegal" or out-of-priority wells; there was no convergence; the model was not calibrated; and there was no sensitivity analysis done.

Earlier, Paddock described the model as a work in progress.

Attorney Glenn Porzak blamed state for the basin's water situation. "The ladder out of the hole is enforcement of the prior appropriation doctrine," he charged. The state had failed to enforce the priority system in Water Division III, he said.

Hale called the groundwater management sub-district being formed in the Valley irrelevant and unnecessary to solving the problem. They should have been in place years ago, he said, and now only pit neighbor against neighbor, have against have-not.

In rebuttal, David Robbins warned going immediately to enforcement of the prior appropriation doctrine would shut down wells, bringing lengthy and expensive litigation, and push many into bankruptcy. The sub-districts are an economic solution to avoid driving people out of business, Robbins said.

"It would be wrongheaded to shut off all wells unless they have an augmentation plan," Robbins told the court. "Then the protesters would get what they want, more water to export out of the Valley."

"I don't intend to make promises as to a date for issuance of a decision," Kuenhold said at the end of the session. He gave attorneys 45 days to submit findings of fact. His decision in the case will follow.