



Acequias, city duke it out in court

City seeks earlier priority date

By Martin Salazar

Las Vegas Optic, December 17, 2013

Attorneys for the city and area acequias fired their opening shots Monday morning during a trial that will ultimately resolve who has priority over use of water on the Gallinas.

Both sides conceded during their opening arguments in state District Court in Las Vegas that there's a lot at stake.

The city of Las Vegas gets most of its water from the Gallinas River, and city reservoirs could go dry if the city isn't given the earlier priority date it is asking for, argued Rebecca Dempsey, one of the Santa Fe water attorneys representing the city. In fact, Dempsey, and later City Manager Timothy Dodge, told the special master hearing the case that consultants were advising the city earlier this year that its reservoirs could go dry by October. That didn't happen because of the record rainfall that ensued, Dempsey said.

Daniel A. Sanchez, one of the attorneys representing the Rio Gallinas Acequia Association, argued that giving the city what it wants would amount to giving it the ability to take the water it wants whenever it wants without regard to how that will impact area farmers, some of whom have water rights that are older than the city's. Sanchez told the special master that what the city is requesting is neither equitable nor fair and that it could result in the loss of a way of life for many people in this area.

The dispute over the city's water rights goes back to the 1950s.

The city had claimed a pueblo water right, an assertion that it had the right to take as much water from the Gallinas River as it needed. The pueblo water right was upheld by the state Supreme Court in 1959 when PNM owned the city's water system. Decades of litigation followed, and in 2004, the state Supreme Court came back and rejected the city's claim to a pueblo water right.

But because the city had relied on the Pueblo Water Rights Doctrine for such a long time, the high court remanded the case back to the district court and asked it to come up with an equitable remedy for all parties.

The acequias have long insisted that they have priority to the water in the Gallinas because of their senior water rights.

But the city is requesting that 1,200 of the 2,600 acre feet it is entitled to each year have an 1835 priority date, which would give it a senior right on the Gallinas River. The city's current priority date is 1881.

An acre foot of water is roughly enough to serve two to three average households for a year.

Some area farmers have said that if the city gets what it is seeking, it will mean that area agriculture operations won't have a steady water source, making production of agricultural products impossible.

Dempsey told the special master that the city should be granted the earlier priority date because of its reliance on the earlier court ruling. If not for that ruling, she said, the city and PNM would have operated the water system differently, acquiring more water rights decades ago. Once the Supreme Court shot down the city's pueblo claim, she said, it immediately began taking steps to address its heavy reliance on the Gallinas River, implementing major water restrictions and instituting hefty rate hikes. But she noted that the Gallinas will always be the city's primary water source.

She said the city has barely been able to squeak by and needs the earlier priority date to operate its system safely. The city has 18,000 water customers.

Sanchez argued that if the city gets its 1835 priority date, it could insist on taking all water in the Gallinas.

"Farmers wouldn't be able to rely on water during the irrigation season," he said. "The agricultural community would essentially die."

He said the acequias are proposing that the city get the water in times of drought, but that during other periods, the city and acequias share the water. He said their proposal balances the needs of the city with the needs of the acequias.

Sanchez noted that the city has been able to provide water to its customers without a new priority date since 2004 — when the supreme court rejected its pueblo claim.