

Well users fight state water rights limits

By Staci Matlock

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The piles of legal papers stacked in the windows of Arsenio Trujillo's custom adobe house overlooking the Nambé Valley all relate to an expensive, time-consuming water-rights battle that he's pretty sure he'll lose.

But he's fighting anyway. He says he has to. "What would our future generations say if I didn't?" Trujillo said. "Grandpa just rolled over and played dead?"

Darren Quintana, a Cuyamungue resident, and Mary Habeeb of Tesuque are joining him in the uphill fight. All say it is about fairness.

They are protesting the permanent limits proposed by the State Engineer's Office on the amount of water they can use from their private wells. They claim their well permits represent a valuable property right, and that the state is trying to take those rights. The state says under the law, the state engineer can reduce water rights unless a well owner can prove they are using more.

Trujillo, Quintana and Habeeb are among more than 2,200 nonpueblo domestic well owners in the Nambé-Pojoaque-Tesuque basin north of Santa Fe. They're all party to the Aamodt case, the state's oldest water-rights case, which is likely to impact how they use their wells.

As one step in resolving the Aamodt case, the State Engineer's Office has sent letters to owners with post-1983 private domestic wells, offering to adjudicate the rights at half an acre-foot. (An acre-foot of water is the amount sufficient to cover an acre to a depth of 1 foot, or approximately 325,851 gallons.)

The state says its proposals are based on a 1982 court order in the Aamodt case and reflect what well owners have been using from the wells. The State Engineer's Office also says there is evidence that well water use has to be restricted in the basin because past well pumping has impacted surface water and groundwater in the basin.

Quintana, Trujillo and Habeeb don't agree. They think their permits grant them more water rights. They have already spent more than \$20,000 each to fight the state's proposals in federal District Court. "I'm paying mine out of my retirement funds," Trujillo said.

The state hasn't shown that the use of domestic wells to irrigate gardens and fruit trees has caused "irreparable harm" to other water-rights holders, said Lorenzo Atencio, an attorney for the three

well users. He argues that if the State Engineer's Office wants to limit the use of water from their wells, it needs to prove why that's necessary.

Settling a historic water case

In a state currently in the grip of drought, the issue of water, and who gets it first, is critical.

Filed in 1966, the Aamodt case sought to settle the water-rights claims of four pueblos and all the nonpueblo residents in the basin. Under the state's Constitution, the pueblos in the Pojoaque basin automatically had the oldest and highest-priority water rights. Longtime Hispanic farmers were next in line.

The decades-old fight has been over how many water rights everyone should get and what would happen when there wasn't enough water to go around.

The pueblos, the state of New Mexico and the federal government finally reached a settlement in Aamodt that Congress approved in 2010. Some nonpueblo residents, while supporting the pueblos' first rights to water, were unhappy with the way the settlement was reached and with proposed restrictions on their own water use. They're also unhappy with a regional water system that is a key, but expensive, piece of the Aamodt settlement.

Congressional approval of the settlement set in motion the next steps for the Aamodt case. Those steps are the ones that most directly affect nonpueblo well owners in the basin.

Long way to go before deal done

The Aamodt litigation is complex. Millions of taxpayer dollars have gone into resolving the case, and millions more will go into building the regional water system.

The Office of the State Engineer has spent the last four years determining the water rights of the individual irrigation ditches in the basin. They're in the midst of doing the same for the nonpueblo domestic well owners. All that has to be finished before the Aamodt settlement can move forward in court.

And until the Aamodt settlement is signed, sealed and delivered out of the federal court, the deal isn't done. If the settlement falls apart, all the parties will end up back in court fighting over water rights.

Normally, domestic well permits in the state allow people to use up to 3 acre-feet of water, just shy of a million gallons a year, for both indoor and outdoor uses. In the Pojoaque basin, there are four types of well permits, allowing owners to use from half an acre-foot to 3 acre-feet of water. For the several hundred wells built after 1983, use is supposed to be limited to indoors, and the total amount is set at less than an acre-foot.

Trujillo, Quintana and Habeeb all have wells built after 1983. Attorneys for the State Engineer's Office have sent letters to them and well owners, proposing permanent limits on water use. People who received the letters had 21 days to agree to the proposal or to refuse and file a reply on why they don't agree. At least four, including the three protesters, have refused.

None of those letters officially have to do with the Aamodt settlement, which will require yet another set of decisions from well owners when it is finally before the federal court.

But it is those letters and the state's proposed well permit limits that Trujillo, Quintana and Habeeb are protesting in court.

Well owners who did nothing automatically had their well use limited. The limits become their legal, adjudicated water rights.

"I guess I could have been one of the people who just said, 'Oh, I'll let them take my water rights away,' but I'm so angry," Quintana said. "It is not fair that they're doing this to us."

Fighting for a purchased right

Each of the three well users say they're fighting the state because they don't think the State Engineer's Office has proved a reason for reducing their well use. They see their well permits as something they paid for along with their land.

Quintana and his wife moved from Española to Cuyamungue 13 years ago. The well was new and came with the property. "The permit said we had up to 3 acre-feet of water and could use it for indoor and outdoor watering," Quintana said.

Last fall, he received a letter from the Office of the State Engineer proposing to limit his well water right to a half acre-foot and to indoor purposes only. "I don't understand why," Quintana said. "They never said why they want to take those water rights away."

Quintana, a volunteer firefighter and employee at Los Alamos National Laboratory, said he knew almost nothing about the Aamodt case. His wife, who is from the area, knew a little more. Even though he is a *parciante*, with surface water rights to an acequia affected by Aamodt, Quintana said the ditch's mayordomo didn't mention the settlement, either.

Quintana claims he called the State Engineer's Office several times and received no reply. He attended a public meeting held last fall by Santa Fe County to explain Aamodt. It still didn't make sense to him how limiting his well use played into the picture. "When I bought the property, why didn't they put the restriction on the well permit then?" he said. "It is not fair this is happening to us."

Actually, his permit should have been restricted earlier. The federal court in 1982 issued a preliminary injunction in the Aamodt case, requiring the State Engineer's Office to limit wells built after 1983 to a half acre-foot of water and indoor use only. In a settlement, some well owners were allowed up to 0.7 acre-feet, but still for indoor use only.

Habeeb, a part-time Mesa, Ariz., resident, bought her Tesuque home in 2008. It came with a 2003 well permit limiting her water use to 0.7 acre-feet indoors. She also received a letter from the State Engineer's Office proposing to make the limitations under the permit permanent.

"I didn't want to do that," she said. "I would like to irrigate trees and bushes on my property. I felt like the restrictions were arbitrary.

"As far as I know, there is no evidence that our wells are impacting anyone, including the pueblos," Habeeb said. "I don't think the government has any accurate or inaccurate water data. They just have statements."

The State Engineer's Office says water models they use "both show effects on surface water and draw down on the aquifer due to groundwater pumping in the Nambé-Pojoaque-Tesuque [basin]."

Trujillo has two wells built after 1982 and three built before 1956. He said giving up the extra water that would normally go with a domestic well permit means his heirs might not have enough water for a garden and fruit trees. His father and grandfather used the older wells to keep fields and crops alive during droughts, when there wasn't enough water off the irrigation ditches. He said he learned the value of having that water available if a family needed to grow food. "That's what got us through," he said.

"If my kids needed to grow a garden, that would be hard on 0.5 acre-feet," he said. "I expect someday, groceries might be expensive, and they could use a garden to supplement their food."

DL Sanders, chief counsel for the State Engineer's Office, said average water use from metered wells in the basin has been less than an acre-foot. A half-acre foot of water would provide a household with 446 gallons a day.

Atencio said he thinks the state is arbitrarily trying to permanently reduce the post-1982 well permits without proving the need to do so. "State law says the permits are for 3 acre-feet of water for indoor and outdoor use," he said.

But he thinks this is an uphill battle. "It's a done deal," he said. "If the court, at this point, were to agree there is insufficient evidence to support a permanent injunction against

outdoor watering, the state would have to go back to the drawing board and start over with their calculations.”

If they won the fight to keep the well permits at 3 acre-feet for all domestic uses, all well owners in the basin would win.

And that would upset the long-sought Aamodt settlement.

Big decisions ahead

Whatever happens with their fight over their well rights, the three protesters have more choices to make once the Aamodt settlement is before the court. According to State Engineer’s Office, notices will be mailed to all nonpueblo well owners, notifying them of their opportunity to make decisions about their wells.

Each well owner will be asked to pick from among four choices for their wells. No matter which one they choose, it will impact the use of their wells, now or in the future.

Even though their fight doesn’t deal directly with the Aamodt settlement, Trujillo, Quintana and Habeeb know the two are intimately linked.

“I don’t think we’ll win this fight,” Trujillo said. “The state, federal government and the pueblos have too much at stake for well owners like us to muck things up.”

But, he says, at least they’ll know they tried.

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On the Web

- *For information about options available to well owners, see reports at www.santafecountynm.gov/county_commissioners/daniel_mayfield/aamodt_outreach.*
- *For help understanding the settlement, see uttoncenter.unm.edu/ombudsman/npt.php.*