BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE APPLICATION OF AQUIFER SCIENCE, LLC FOR A PERMIT TO APPROPRIATE GROUNDWATER WITHIN THE SANDIA UNDERGROUND WATER BASIN IN THE STATE OF NEW MEXICO

Hearing No. 10-020

OSE File No. S-2618

RESPONSE TO APPLICANT'S MOTION FOR AUTHORIZATION TO AMEND APPLICATION, TO FILE SUPPLEMENTAL HYDROLOGY REPORT, AND TO AMEND SCHEDULING ORDER

The Protestants identified below concur in the responses filed by Bernalillo County and Old Sandia Party Service Cooperative regarding the motion of Aquifer Science, LLC (ASL), requesting authorization to amend its application and to file a supplemental hydrology report. In further response, Protestants state the following:

1. There is no provision in the regulations of the Office of the State Engineer (OSE) for amending applications to appropriate water. This is not an oversight. A permit authorizes the applicant to establish a specific water right through beneficial use in accordance with the permit. An important purpose of the permit application is to provide notice of the applicant's intent to appropriate water for a specific purpose, in a specific amount, and at a specific place, etc. NMSA 1978, § 72-12-3(A)(2001); § 19.26.2.7 (EE) NMAC; § 19.26.2.7 (W) NMAC. If ASL is now proposing to substantively change its application,[1] then it is also changing its original intent to appropriate water. In this event, the public notice of its application is now misleading and there will no longer be any basis for relating the priority date of any subsequent water right back to ASL's original application. Accordingly, ASL's only remedy under OSE regulations and the law of prior appropriation is to withdraw its current application and file a new application.

[1] However, Protestants agree that ASL could reduce the amount of water requested without amending its application. § 19.27.1.10 NMAC.

2. Unless and until ASL discloses its amended application, it is impossible for OSE or Protestants to determine whether ASL is proposing substantive changes requiring a new application or simply requesting less water. Therefore, the Hearing Examiner should deny ASL's motion, but with leave to file a new motion that includes the proposed amended application.

3. Protestants object to ASL's "40-year pumping schedule" as vague. If ASL is suggesting that the OSE need only model impairment of water rights and depletion of surface flows 40 years into the future, ASL is mistaken. Analyses of impairment and surface flow depletion (especially on interstate streams) should extend out at least 100 years into the future.

WHEREFORE, Protestants request that the Hearing Examiner deny ASL's motion.

NEW MEXICO ENVIRONMENTAL LAW CENTER

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CERTIFICATE OF SERVICE: I certify that on 29th of July 2011, a copy of the forgoing was served on all parties of record who request service by email and mailed to all others on August 2, 2011.

_____/S/_____
R. Bruce Frederick