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Bloomfield-Navajo water fight continues
By Jim Snyder/The Daily Times
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AZTEC — Attorneys representing the Navajo Nation and the Office of State Engineer began round two Wednesday in a heavy-weight dispute over a small water right with an attorney representing the city of Bloomfield.

At issue is whether Bloomfield should be allowed to obtain a 48-acre-feet of water rights transferred from the Pine River Sub Division above Navajo Reservoir to a diversion point more than 25 miles south at the Citizens Ditch on the San Juan River. The Pine River flows into the San Juan River above Navajo Dam.

Bloomfield purchased the water right, located off a lateral ditch on the Pine River, from co-owners B.J. Resources Inc. and Constar Co. for \$72,000 in February 2001 to use for its municipality. The former co-owners had agreed, as part of the sale, to be responsible for transferring the water right.

Navajo Nation water attorney Stanley Pollack filed a protest against the transfer in December 2001, citing it would impair the proposed 606,060 acre-feet Navajo Nation water rights settlement on the San Juan Basin.

Robert Genualadi, state engineer Aztec district supervisor, subsequently denied the transfer citing non use because the Pine River water right has not been used since at least 1965. Genualadi added his office did not need to send a forfeiture letter to the water right's owners after it had not been used for four years in order to deny the transfer for non use.

Attorney Gary Horner, representing Bloomfield, argued Tuesday and Wednesday at a conference room at the San Juan County Fire Operations Center in Aztec the transfer would not have any affect on the Navajo settlement.

Horner accused Pollack of playing "dirty pool," because many of his witnesses and exhibits were objected to by Pollack during the pre-hearing and subsequently disqualified. Pollack accused Horner of trying to stifle his case, saying, "We are the one's caught in the noose here."

Hearing Examiner Louis O'Dell was quick to respond.

"I had a feeling if I would allow it you'd probably go at each other all day long," he said.

Pollack, who presented his case Wednesday, argued against the transfer citing, among other reasons, that the water right had no storage rights in the reservoir and it would impair the Navajo settlement.

"You should not be able to take water out of storage to make up the right," John Leeper, Navajo Nation Water Management Branch supervisor testified, because the 48-acre feet of water would otherwise come out of someone else's water right since the San Juan River was already fully appropriated. "The right does not have a contract with the Secretary of the Interior."

Horner said, "Downstream users have a right to water in the reservoir over and above the amount of water flowing into the reservoir at a particular time."

The attorneys to date have called Bloomfield City Manager Robert Campbell, state engineer Aztec District water rights specialist Bill Emenback, B.J. Resources President Bob Oxford, Leeper and Genualadi as witnesses.

Pollack asked Oxford Wednesday about the water transfer. "When you change from an agricultural right to a municipal right ... are you not affecting other water users during the non-irrigation season?"

Oxford answered, "It's possible."

Horner asked Oxford, "If there are no appropriations, doesn't it (the 48-acre feet of water) flow down the river and out of state to Arizona and California?"

Oxford answered, "Yes."

Pollack said later there was a "question of bias" allowing Oxford to be a witness when he had a financial interest in the outcome of the case.

"Under Mr. Oxford's view of the world, there isn't any change in the point of division that could have an impact," Pollack said, adding, "Springing this water back to life when it hasn't been used in 40 years is going to have an impact on other water users."

Horner disagreed, saying, "There is no issue there regarding water availability. The current uses in the San Juan Basin are 400,000 acre feet. The limits of the compact are 838,000 acre-feet per year.

State engineer attorney Hilary Lamberton will present the state's case against the transfer during today's hearing.

The three attorneys and O'Dell are using five-inch thick exhibit notebooks to refer to documents and maps. O'Dell will ultimately make a recommendation to State Engineer John D'Antonio about whether to approve the transfer or not.

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