

---

Posted on Fri, Dec. 30, 2005

## Aquifer control trial finishes

Judge to decide outcome in January

By JULIA REYNOLDS  
Herald Staff Writer

A trial to decide control of water rights in the Seaside basin ended Thursday after a half-dozen lawyers threw their final punches.

The two-week trial stemmed from a water rights lawsuit filed by California American Water two years ago. An intervening suit filed by the Monterey Peninsula Water Management District has pitted the two water heavyweights against each other.

In closing arguments Thursday, one attorney accused the water district of "rampant elitism," while the district's lawyer, Craig Parton, challenged the truthfulness of Cal Am and its expert witnesses.

Steven Hoch, representing the city of Seaside, which is a party to the suit, said he took Parton's "below the belt" comments personally.

"He called us water junkies," Hoch said. "We're not here to grow rice... to suck the water dry."

Judge Roger Randall plans to deliver a decision in mid-January, when he will issue a far-reaching document that could govern Peninsula water policies and procedures for the foreseeable future.

One attorney compared the judge's upcoming ruling to the Magna Carta, the 13th century document that permanently changed England's system of government.

"If it's the Magna Carta, am I King John or the nobles?" Randall said. England's rebelling nobles were successful in stripping King John of his unlimited powers.

Told he was the king, Randall quipped, "Then I'm on the losing side."

But the comparison to a document that forever changed government's role was not lost on the 11 attorneys present, who have been awaiting guidance on whether industry or government should dominate a proposed board to oversee the basin's water.

Cal Am's lawyers hoped the judge would accept their plan, which is supported by several real estate developers, cities, golf courses and other water users.

But at trial's end, the attorneys seemed to accept the likelihood that Randall would reject their proposal and fashion his own plan. As Hoch offered the judge a computer disk with files of Cal Am's proposal, he said the judge could cut and paste passages into his own judgment.

Randall took up Hoch on the offer, but asked for a similar file from the water management district.

The convoluted case began when Cal Am filed a lawsuit in August 2003, asking for a judge's help in deciding who has control over water rights in the Seaside basin.

The water district soon filed suit to intervene in the case. The case has been further complicated by a morass of cross-motions filed by cities, developers, golf courses and other interested parties.

As the trial drew to a close, however, most of those parties said issues raised in their cross-motions became moot when they signed on to the proposed settlement.

In Cal Am's settlement plan, a "watermaster" board would govern water use in the basin. Voting would be weighted toward two board members: Cal Am would have three votes and the city of Seaside would have two. Seven other parties, including two developers or landowners, the water district, the county and the cities of Del Rey Oaks, Monterey and Sand City, would have one vote each.

Attorneys for the water management district have continued to argue that the district has overriding legal jurisdiction over the aquifer, and that it should be the sole watermaster.

Cal Am's plan includes a start-up budget for a monitoring and management program. The \$1 million tab would be passed on to Cal Am's customers, with charges estimated at \$20 each, the company's counsel Stuart Somach said.

Cal Am is the largest pumper in the basin, which provides about a third of the water the company supplies to Monterey Peninsula homes and businesses. Two golf courses, Graniterock Co., York School, a cement plant, a cemetery and four cities tap the basin's water, according to the settlement document.

Together, users are pumping more water than is being replaced naturally, creating a risk that ocean water could seep in and foul the water supply.

Although experts for both sides testified as to how much water can be safely pumped, their conclusions differed dramatically. Randall is expected to settle that issue in his January ruling.

While it agrees the basin is in overdraft, Cal Am has insisted it can keep drawing water for seven to 10 years before it must cut back. The water district says the science behind the Cal Am claim is flawed. The district says pumping reductions should begin as soon as possible to avoid damaging the aquifer.

The judge has several options: he can accept Cal Am's proposal, cobble together his own plan or reject the watermaster concept.

The judge will consider how water pumped from the basin can be replaced. Cal Am's plan calls for adding water after its proposed desalination plant is up and running. But Randall discounted that option, saying the plant is not within the "rosy future."

During the final days of trial, the judge repeatedly pressed Cal Am and Seaside's lawyers to explain whether their plan has incentives for restoring the water balance of the aquifer.

Several times, attorneys answered that there is a "natural economic incentive" for pumpers to take care of the basin because as consumers, they don't want the water to run out.

Apparently unsatisfied, Randall said the Cal Am plan was "light" on concrete incentives, and hinted he may craft his own.

As a former lawyer, he said, he was trying to close holes that lawyers might later exploit.

A retired visiting judge from Bakersfield, Randall said he is likely to stay in the area for two years to continue working on the issue. He commended all those involved for "very good lawyering."

---

*Julia Reynolds can be reached at 648-1187 or [jreynolds@montereyherald.com](mailto:jreynolds@montereyherald.com).*

---

© 2005 Monterey County Herald and wire service sources. All Rights Reserved.  
<http://www.montereyherald.com>