

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

AQUIFER SCIENCE, LLC,

Applicant-Appellant,

v.

No. D-202-CV-2014-07209

SCOTT A. VERHINES,
NEW MEXICO STATE ENGINEER,

Appellee,

and

COUNTY OF BERNALILLO, NEW
MEXICO, et al.,

Protestants-Appellees.

ORDER ON PROTESTANTS' BILL OF COSTS

THIS MATTER, having come before the Court on Protestants'¹ Bill of Costs, and the Court, having reviewed the Bill of Costs and Objections filed by Applicant-Appellant Aquifer Science, LLC ("Aquifer Science") and the Office of the State Engineer ("OSE"), and having held a hearing on this matter on December 4, 2019, hereby finds as follows:

1. Pursuant to NMSA §39-2-10, the Court hereby CERTIFIES that the attendance of more than four witnesses was necessary in this case.
2. Protestants are the prevailing party in this matter and are entitled to the recovery of costs pursuant to NMRA 1-054. Protestants satisfied their burden under NMRA 1-054 and the statutory provisions cited therein by filing the Cost Bill and, specifically, Exhibit B attached to the Cost Bill setting forth an itemized statement of costs seeking to be recovered, which alone satisfies

¹ The complete list of organizations and individuals who comprise the Protestants-Appellees referred to here was attached to Protestants' Bill of Costs as Exhibit A filed on September 5, 2019. Protestant-Appellee Bernalillo County's Bill of Costs will be addressed by separate Order of this Court.

Protestants' burden under Rule 1-054 and the statutes cited therein.

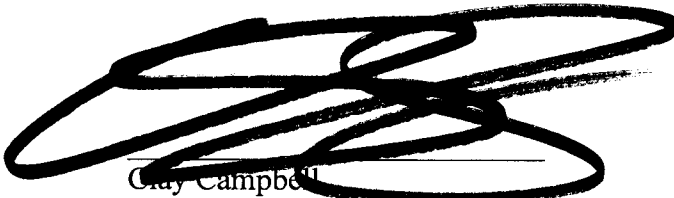
3. Protestants further provided additional details in the form of invoices and time records at the request of Aquifer Science, and those details were provided to all objecting parties before the filing of Aquifer Science's and the OSE's objections and were alluded to by Aquifer Science in the objections Aquifer Science filed; these additional documents were the subject of a Motion to Disregard, filed by Aquifer Science and ultimately denied by the Court by separate order.

4. The Court finds that the Objections filed by Aquifer Science and the OSE fail to rebut the presumption in favor of costs being awarded to Protestants. At the hearing on the motion, Aquifer Science and the OSE requested additional time to provide objections to the documents admitted by the Court at the December 4, 2019 hearing in a line-by-line manner; Aquifer Science also requested additional time to file objections in its Motion to Disregard; the Court did not allow additional time, noting that the invoices were available to Aquifer Science before the filing of Objections and two months before the hearing.

5. The Objections filed by Aquifer Science and the OSE are **OVERRULED IN PART** and **GRANTED IN PART**. The Court acknowledges Protestants' withdrawal during the hearing of the requests relating to recovery of the cost of a videographer (\$724.36) and the cost of expert fees for Ferguson and Chermak (\$15,831.37), and the Court agrees that these costs, objected to by Aquifer Science and OSE, are not to be recovered by Protestants. The Court further finds that all other objections relating to costs outlined in Protestants' Bill of Costs and objections filed by Aquifer Science and the OSE are overruled. The Court further finds that the OSE's objection to Protestants' Bill of Costs premised in part on *Santa Fe Water Res. All., LLC v. D'Antonio*, 2016-NMCA-035, *cert. denied*, No. S-1-SC-35777 (April 14, 2016) and *Lion's Gate Water v. D'Antonio*,

2009–NMSC–057, is not well-taken and overruled and the OSE is jointly and severally liable for costs with Aquifer Science.

6. Pursuant to NMRA 1-054 and NMSA § 56-8-4, and consistent with Protestants' Bill of Costs and the Court's settling of objections outlined above, costs in the amount of **\$379,854.05**, plus post-judgment interest at the rate of 8.75% per year, is to be taxed jointly and severally against Aquifer Science and the Office of the State Engineer.



Clay Campbell
District Judge, Div. XXIII

Submitted by:

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