



June 5, 2009

Jack Kolkmeier
Land Use Administrator
Santa Fe County
P.O. Box 276
Santa Fe, NM 87504-0276

Re: Report on Santa Fe Canyon Ranch Mediation

Dear Jack:

I was retained by Santa Fe County to mediate among the parties regarding the issue of County water service for Santa Fe Canyon Ranch (SFCR). I began the process by reviewing a number of background documents and materials and convening sessions with parties individually: with County staff on April 30, with Santa Fe Canyon Ranch on May 5, and with members of the La Cienega community on May 5. (Community representatives involved in the meetings included members of the La Cienega-La Cieneguilla Development Review Committee, La Cienega-La Cieneguilla Planning Committee, Acequias El Guicu and La Capilla and the La Cienega Valley Association.)

Mediation sessions involving all three of the parties were held on May 7, May 18, May 27, and June 2. As a result of initial progress made in the mediation process, Santa Fe Canyon Ranch postponed their BCC hearing from May 12 to June 9.

All parties made a good faith effort to resolve their differences; however, in the end it was not possible to reach an agreement. It should be noted that the settlement offers made by the parties during the mediation process are no longer valid and should not be placed into evidence or otherwise considered by the BCC. In the balance of this letter, I summarize my understanding of the positions of the parties, based on letters received from each of the parties after the final mediation session.

Position of Santa Fe Canyon Ranch

SFCR interprets the La Cienega Code to require connection to the County Utility system when the system is within 200 feet of the development and the County is able to serve. In this case, the County Utility line is within the borders of the property, and the County is able to serve. The intent of the requirement is to eliminate the future mining of the aquifer, protect the underground water source and to encourage the continued rural agricultural lifestyle found in La Cienega.

In addition, the County's Conjunctive Water Management Plan encourages use of water from the Buckman Direct Diversion, with the use of wells only as an emergency back-up system.

Furthermore, the County has an affirmative duty to serve at least the affordable units, pursuant to the Affordable Housing Ordinance. SFCR believes that when the BCC made its initial requests to SFCR to serve the development, and when conversation between SFCR and the County began anew on service of the affordable units, it was done in furtherance of the intent of La Cienega's requirement and, simply put, made common sense. Why allow a 174-unit subdivision to pull water from the aquifer, an aquifer that La Cienega has fought so hard to protect through its Ordinance?

While La Cienega and SFCR differ on legal interpretations of the Code, SFCR believes that the follow facts play into this discussion:

1. SFCR has an approved master plan for 174 units, which Santa Fe County recommended approval of.
2. Even though assertions have been made by La Cienega that the master plan is not in conformance with La Cienega's Code and Plan, they never appealed the BCC's approval of the master plan.
3. SFCR has the watershed condition imposed on the master plan.
4. SFCR has obtained approval of the return flow plan by the Office of State Engineer (OSE). SFCR need only submit data to back up the model which has been approved by OSE. La Cienega has waived their right to challenge the return flow plan on the basis of impairment.
5. Based on such approval by the OSE, the development, if not provided with water from Santa Fe County, will serve the units with the wells.
6. To service the development, the wells will be pumped continuously and will eventually be pumped to a total of 32.32 acre-feet of water per year.
7. Santa Fe County has an obligation to serve the affordable units within the development.

SFCR believes La Cienega's Code requires service of the subdivision by the County Utility system. SFCR believes the Code articulates the best interest of La Cienega as written and set forth by its own citizens. Had SFCR's Master Plan not met the best interests of the La Cienega, as articulated by its Code, Santa Fe County would not have recommended approval, the BCC would not have requested the development be served by the County Utility, and the County would not have initially recommended approval of its most recent request for extension of service to the development. Had SFCR not proven adequate water availability through their geo-hydro report, the OSE would not have granted approval of the return flow plan and the development; nor would the County hydrologist have done the same.

SFCR's request is that the utility boundary line be extended to Alamo Creek (i.e., for 156 units). Such extension would be in accordance with the Tier map designation, La Cienega's Code and the recently approved Conjunctive Water Management plan which emphasizes use of Buckman Direct Diversion over the mining of the aquifer. SFCR will comply with all the requirements of the Utility Line Extension Resolution, i.e., provide water rights in exchange for such service. SFCR would like to begin negotiations with the County for purchase of the licensed rights on the property. With due respect to the concern set forth by La Cienega that such water rights not be used by the County at Valle Vista, SFCR would discuss certain conditions in such negotiations of the use of such water rights.

SFCR believes that, in the end, it is the BCC that must interpret the Code, the Conjunctive Water Management Plan, the Watershed Conditions, weigh the OSE approval of the return flow plan, and decide what is in the best interest of the Community, both La Cienega and SFCR. Ultimately, the decision to be made by the BCC is whether SFCR should be served by the County Utility from the Buckman Direct Diversion or should move forward on wells with the water that they own and approved by the OSE. SFCR will abide by any decision made by the Board and will move forward accordingly.

Postion of La Cienega Community

The La Cienega participants believe that the BCC's decision to allow a potential of 174 homes to be built on the property, by proving the maximum return flow credit, was a prudent outcome given the reality of the OSE plan, and the on-site rights that were proven in the SFCR licensing agreement. Therefore, they do not see the implementation of the master plan conditions as part of future development plans to be particularly injurious to the community at large. The issue of immediate impact on surrounding property owners must still be addressed as the development moves forward with plans for individual phases.

An overarching concern centers around issues that resulted from the developers' request to obtain water service from Santa Fe County. Those issues include the sale and movement of the on-site water rights to another area in the basin where pumping could be detrimental to the springs and other water resources of La Cienega.

The issue of the retirement of their 14.55 acre-feet per year (AFY) of on-site water rights is one of ultimately protecting the valley's water resources. IF SFCR goes onto County water without some restriction as to the future disposition of its 14.55 AFY, there is a very good chance that those water rights will be sold to someone else.

If the County acquired the SFCR rights, they would be hard pressed not to consider a transfer to the Valle Vista well field or the penitentiary well. Either of these choices could have a devastating long term effect on the valley's water supply, as more water was pumped from the headwaters area where these County wells are located. There may be other solutions to this dilemma, but retirement of the 14.55 AFY is the only one that has been identified that will truly protect the valley.

The issue of return flow has been a critical one. The standard by which SFCR can expand its size beyond approximately 80 homes is entirely defined by return flow credit. Under the OSE ruling, SFCR must prove return flow over an extended period of time and under rigorous, scientifically sound conditions. SFCR seeks to avoid this standard and expand the size of its development, basically with no standard for control of its size. This violates La Cienega ordinance 2002-9 and should not be allowed, whether SFCR goes onto the County water system or not. On County water, SFCR could grow in size, potentially without limit, so long as the County agreed to supply the water.

Additional issues include whether the County should extend water service to a non-growth area, and

whether County water service should first be extended to existing residents in the community, particularly in the Las Estrellas/racetrack area, where significant negative impact to the valley's water resources has already occurred. These additional issues are somewhat less about SFCR and more about the County's commitment to protect and support the community.

La Cienega representatives understand that the concept of utilizing imported water to support growth in Santa Fe County can be desirable on many levels. However, in this particular situation, it is believed the use of the Santa Fe County Water Utility to service Santa Fe Canyon Ranch would be significantly more detrimental to the La Cienega Valley than that of requiring SFCR to develop the property in accordance with the previously approved master plan.

Thank you for the opportunity to work with you. Please let me know if you have any questions.

Yours truly,

Bruce Poster

Bruce Poster
President