

Memo to: Santa Fe County Commissioner Anna Hansen
From: Joni Arends, CCNS
Date: July 31, 2020
Re: DOE/LAC/BNM Application to SEO to Transfer 679 AFY to
Chromium-VI Plume Interim Measures activities - Legal #87346

Below are some issues about the DOE, Los Alamos County, and Bandelier National Monument January 2019 application to the SEO to transfer 679 acre feet a year (afy) to the Interim Measure for Chromium-VI Plume Control and Chromium-VI Plume-Center Characterization activities.

There are three objections and/or protests to the approval of the application that may be made to the SEO. They are (1) Impairment - you must specifically identify the water right; (2) Public welfare; and (3) Conservation of Water.

The County has water rights. I am not familiar with the nature and extent of them. As a result, I will discuss the other two objections.

Public welfare.

1. The public notice is contrary to the public welfare.
 - a. It does not mention that Bandelier National Monument is
 - b. It references the former State Engineer, Tom Blaine, and not the current State Engineer, John D'Antonio.
 - c. It was published after the BDDDB met on July 2, 2020 and the end of the public comment period (August 5, 2020), which is prior to the BDDDB's next meeting on August 6, 2020. There has been no opportunity for elected officials and the public to discuss the application to the SEO in public.
2. The application is contrary to the public welfare. It is incomplete, inconsistent, and there are errors.
 - a. p. 1 of 7. In some places, the boxes for both "Groundwater" and "Surface Water" are checked. In others, only the "Groundwater" box is checked. Cf. p. 1 of 7, with p. 2 of 7. It is unclear whether the "Mother Lift" is the source of surface water.
 - b. p. 1 of 7, No. 1. The name of the applicant does not include Bandelier National Monument. Cf. p. 1 of 7, No. 1, with p. 2 of 7, No. 6 and p. 3 of 7, No. 7.

Also see the signature acknowledgement that does not include BNM, one of the owners of property impacted by the application. p. 6 of 7.

3. The Applicants did not answer Question No. 9 on p. 4 of 7.
4. It is uncertain who made handwritten changes to the application. See p. 4 of 7, No. 9; Att. 1 – form WR-08 - on 5 pages at (b); and Att. 3 – *Sec. 9 of the Application continued: Move-to Points of Diversion (POD)*.

5. The Applicants did not answer Question No. 10 on p. 5 of 7 – even if the response to the question is “Not Applicable.”
6. Applicants state that they “intend to seek approval of a return flow credit plan at a later date. Impacts to the Rio Grande will be offset in an amount and manner approved by the State Engineer.” p. 5 of 7, No. 11.

Such a statement is contrary to the public welfare. In order to determine the impacts of the proposed transfer would be on the Rio Grande, the public must see the return flow credit plan now.

7. The application omits a pumping schedule.

Conservation of Water.

1. Applicants have not provided information as to whether their existing water rights have been used.
2. Applicants state that they “intend to seek approval of a return flow credit plan at a later date. Impacts to the Rio Grande will be offset in an amount and manner approved by the State Engineer.” p. 5 of 7, No. 11.

Such a statement is contrary to the need for conservation. In order to determine the impacts of the proposed transfer application on the Rio Grande, the SEO, water right owners and the public must see the return flow credit plan now.

Further, in order to evaluate the application, the SEO, owners of water rights, and the public need to know the historic beneficial use of the proposed moved-from points of diversion.

In addition, in order to evaluate the application, the SEO, owners of water rights, and the public need to know about the effects on the Rio Grande, and about the possible depletions of native flows.

The SEO, water rights owners and the public need to see the data of the consumptive use of the move-from wells to determine the existing impacts to the surface water and groundwater.

3. The application does not mention the possibility of snowmaking at the *assumed* “Mother Lift” site.

Recommendation.

The Applicants must withdraw their incomplete application and establish negotiations with those objecting to the application.