



DURANT JOINS BATTLE OVER WATER

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The Durant City Council voted to submit a legal brief in support of the City of Tishomingo which is being sued by two mining companies over a city ordinance related to groundwater. Councilmember Oden Grube voted against the action which she called "moral support" for Tishomingo. However, Durant's city attorney and those involved in the lawsuit say nothing less than both city's water rights are at stake.

At the council's regular meeting this past Tuesday, city attorney Thomas Marcum asked the council to approve his involvement in the case of Vulcan Construction Materials, LLC v City of Tishomingo as a friend of the court and to prepare a brief on the issues of the case from Durant's point of view.

"If (the lawsuit against Tishomingo) goes the way it probably should then those issues will already have been decided," Marcum said. "It may reduce the chances that we'll have to actually get involved in a lawsuit."

Marcum said the Choctaw nation has agreed to cover part of the cost up to \$5,000.

Grube said she and her constituents reviewed the item at a meeting the previous night. They decided it wasn't worth the cost and that Grube should vote against it, she said.

"I felt like we're not a part of it and it doesn't affect us," Grube said. "If it didn't cost us anything I'd be for loading up 3 or 4 cars and going to there to provide moral support."

Marcum told Grube that the action would very likely impact Durant. "The way it's decided is going to directly affect us and our water rights," Marcum said.

At issue is a Tishomingo city ordinance that classifies any action that inhibits or reduces the flow of water from the Arbuckle Simpson Aquifer to Pennington Creek, Tishomingo's sole water supply, a public nuisance. The city passed the ordinance because under current state law mining companies are exempt from limits on how much groundwater can be pumped from the aquifer.

Under the ordinance if a business, or individual draws so much water that it inhibits Pennington Creek, the city can declare that a nuisance and take legal action. This includes suing in District Court. The City of Durant has a similar ordinance pertaining to the Blue River, which is also fed by the Arbuckle Simpson Aquifer and is the city's main water supply.

Neither city has enforced its ordinance yet.

Two mining companies, Vulcan Construction Materials of Birmingham, Ala., and Arbuckle Aggregates based in Frisco City, Texas, sued Tishomingo over its ordinance. The companies claim enforcement of the ordinance would be an unconstitutional taking of their property. They contend that they are properly permitted and in compliance with all applicable laws. Therefore, the city would have no right to stop their work.

No one from Vulcan returned calls seeking comment. Peter Dawson, president of Arbuckle Aggregates said he had no comment. "It is not my practice to comment on pending litigation," he said.

The suit is set to go to trial in September.

Durant resident Amy Anne Ford is president of Citizens for the Protection of the Arbuckle Simpson Aquifer (CPASA). She disagrees with Grube. Ford and a group of citizens formed CPASA in 2001 when Oklahoma City and other metropolitan areas to the north tried to pump water from the aquifer.

Their efforts resulted in a hydrological study by the Oklahoma Water Resources Board (OWRB) which resulted in a limit of .2-acre feet of water per acre that could be pumped from the aquifer annually. However, Ford said a law to protect coal miners exempts mining companies from such limits.

According to Ford, the law was to protect coal mines from being flooded by allowing the miners to pump the water out. But today's miners don't have that issue. To get to the limestone, sand and gravel these companies are after requires the miners to dig a pit approximately one quarter mile wide and up to several hundred feet deep. As the pit is dug the miners often encounter groundwater which is pumped either into nearby creeks, onto the ground or into recharge ponds where it is held until it can be pumped into a nearby water source.

But Ford said studies don't indicate that returning the water means it will go back to the watershed it came from. So, even if a company pumps water back into a creek the damage may already be done.

Krystina Phillips is an attorney based in Ada and is representing Tishomingo. She said that the case isn't about environmentalism or stopping mining. She said it comes down to a matter of fairness and ensuring that everyone gets the water they need.

"Pennington Creek is all they've got," she said. "If Pennington Creek goes away they're in a world of hurt."

Ford said that mining interests are already eyeing the Blue River north of Durant. She said what happens in Tishomingo will determine what happens in Durant. "If Tishomingo wins this case it will be really, really good for the city of Durant," Ford said.