

January 10, 2008

RESPONSIVENESS SUMMARY **Española Basin Aquifer System Petition**

This document summarizes and responds to written and public hearing comments received by EPA on the petition, submitted by the La Cienega Valley Citizens for Environmental Safeguards, requesting designation of the Española Basin Aquifer System as a Sole Source Aquifer. Comments are combined by type or issue and presented as a single comment. EPA's responses address the consolidated comments.

Written Comments

A total of twelve comment letters were received by EPA during the public comment period, July 27, 2006 to September 12, 2006. Of these letters, five were in favor of designation of the Española Basin Aquifer System as a sole source aquifer. Five letters made comments against the petition and two letters made no comments but requested additional information about the petition and the Sole Source Aquifer program.

Public Hearing

Four individuals registered at the Public Hearing held in Santa Fe on August 15, 2006. A total of 4 speakers made statements during the hearing. Of these, three voiced support for designation of the aquifer and one speaker opposed the measure.

Response to Public Comments

- 1. Issue:** Designation as a Sole Source Aquifer would add another layer of federal regulation.

Comment: Two commenters were concerned that if designation occurred the review process required for federally funded projects would delay projects that would help with economic growth in the area.

Response: Achieving the potential public health benefits that accrue from EPA review does not add another layer of federal regulation to federal assistance programs. EPA's review of proposals for federal financial assistance in sole source aquifer areas occurs as part of interagency review under the National Environmental Policy Act of 1969. Unless a project poses a risk of contamination to a sole source aquifer, there would be no independent delay in the award of federal financial assistance.
- 2. Issue:** Does the Española Basin Aquifer System qualify for designation as a Sole Source Aquifer?

Comment: A few commenters suggested that the petition does not provide information to prove that the area petitioned actually qualifies as a Sole Source Aquifer. Another commenter stated that they believed that the area did comply with the requirements of a Sole Source Aquifer.

Response: Multiple sources of information are utilized in addition to the petition when determining if an area meets the requirements for designation. Please see the Support Document for additional information on the EPA's findings.

3. **Issue:** Designation will not help protect water quality.

Comment: Some commenters suggested that the petition failed to explain or prove that designation would help protect water quality.

Response: Designation is designed to prevent future contamination caused by proposed federal assistance for any project which might contaminate the aquifer through a recharge zone. Thus, such projects are subject to review and potential disapproval by EPA. EPA's review of federally assisted projects in sole source aquifer areas provides additional protection of ground water resources.

4. **Issue:** Petition contains inaccurate information

Comment: Commenters suggested that not all data provided in the petition was accurate and that some statements in the petition were subjective and unsupported.

Response: EPA staff conducts a detailed review/ technical verification prior to making their final recommendation to the Regional Administrator. This review includes verifying that the petitioned area meets the criteria for designation. The petition itself initiates the review process; however, it is not the sole source of information assessed for determination. Comment noted, see Support Document.

5. **Issue:** Area Hydrology

Comment: One commenter suggested that the hydrology of the area is more geologically complex than presented in the petition.

Response: Comment noted, see Support Document: Section II. Hydrogeology.

6. **Issue:** There are alternate sources of water available in the petitioned area.
- Comment:** Many commenters stated that alternative sources of drinking water were available to the area and were concerned that the petitioner did not utilize information from the area's water plan.
- Response:** Comment noted, see Support Document: Section IV: Alternative Sources of Drinking Water.
7. **Issue:** Petitioner has an agenda.
- Comment:** A few commenters expressed concern that the petition may have been written to promote a political agenda or a cause outside of groundwater protection.
- Response:** Comment noted.
8. **Issue:** Can designation restrict water intensive businesses?
- Comment:** One of the commenters wanted to know if designation would help in restricting water intensive business from moving to areas where water is water conservation areas.
- Response:** Building projects occurring in the designated area of a Sole Source Aquifer may be reviewed if they are supported by federal financial assistance and if they pose a contamination threat to the aquifer. The operations of businesses in the designated area would only be deterred if they were funded by the U.S. Government and posed a contamination threat to the aquifer. The EPA focuses on those projects that involve hazardous or toxic substances, and does not review those that do not involve a significant amount of contaminants. The Agency will typically not review individual home construction, for example, but might review projects involving highway construction, application and handling of agricultural, chemicals, projects which generate or treat sewage or organic waste, and assistance for commercial or industrial projects that include hazardous or toxic materials. Projects that are not federally funded or that do not pose a contamination issue would not be evaluated.
9. **Issue:** Other water sources are available.
- Comment:** The commenters suggested water conservation and the possibility of purchasing water rights from current owners as an additional option to current diversion and well projects.

Response: Alternate sources must be capable of supplying sufficient water to replace the aquifer as a source, legally available without other institutional constraints, and the cost of replacement must not impose an economic burden on the population of the area considered for designation. Institutional constraints are legal or administrative restrictions that preclude replacement water delivery and may not be alleviated through administrative procedures or market transactions. Examples of institutional constraints include treaties, agreements among states, or market transactions where limits on the source or amount of water are created by State law. Alternate sources must be able to provide water from a water supply outside of the drinking water supply currently in use by the designated area. The guidance does not classify conservation of water resources as an alternate source because it is generated from the same supply of water that the area currently utilizes for their drinking water.

10. **Issue:** Comments provided by the Government of the Santa Clara Pueblo

Comment: The Santa Clara Pueblo had multiple concerns regarding potential designation of the area as a Sole Source Aquifer.

Response: See attachment containing comment letter from Santa Clara Pueblo and EPA response to Santa Clara Pueblo's comment letter.