

Challenge filed to invalidate AMA repeal ends before it begins - Porier (Herald Review) (20 July 2023)

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Challenge filed to invalidate AMA repeal ends before it begins

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BISBEE — A national nonprofit organization that has an office in Arizona has led a challenge for a special action to prevent the repeal of the Douglas basin Active Management Area from reaching the ballot in the November election.

However, the effort is now moot as County Attorney Brian McIntyre met with County Recorder David Stevens and told him the suit led by Environmental Defense Fund Action, the advocacy partner of the Environmental Defense Fund, had “merit” and recommended the measure not be placed on the ballot.

Elections Department Director Bob Bartelsmeyer said he was not in on the discussion, but was told of the decision to pull the recall petition. He said the petition was taken out before he started with the county on May 30 and the organizers of the repeal met with Stevens. He also said he was not familiar with the rule governing petitions that all signatures sheets had to be turned in on the same day.

Though Stevens and Bartelsmeyer gave the petition their blessing and accepted 1,658 signatures, the folks at EDF Action dove into the details and alleged Bartelsmeyer and Stevens should have declared the petition null and void from the beginning.

When asked for comments, McIntyre said, “The legal advice given to clients is subject to attorney client privilege and we cannot reveal that without consent of the client or clients involved.”

Chris Kuzdas, senior water program manager at EDF Action, heard the news and said, “EDF Action is thrilled that the county officials swiftly rejected the attempt to roll back critical water protections in the Douglas basin. This is great news for the community and for their ght to protect their groundwater supply.

“Now Douglas basin residents and stakeholders can get back to implementing the AMA in a way that best addresses the community needs in the face of finite water supplies. But there are a growing number of other rural communities across the state that face serious groundwater challenges while the Legislature sits on their hands.

“It’s important that we roll up our sleeves using every avenue to secure water resources for all rural communities. This means leaving no stone unturned, including the opportunity for Gov. (Katie) Hobbs to take executive action if the Legislature continues to drag their feet.”

EDF Action challenged the repeal petition on behalf of Ashley Dahlke from Bisbee and Michael Gregory and Alice Hamers from McNeal, who live within the Douglas basin AMA and have been vocal about the need to preserve the groundwater in the aquifer.

The complaint filed on July 18 stated, “There are numerous deficiencies on the face of the petition forms and the accompanying title and text sufficient to disqualify every signature in support of the measure.”

One of the issues with the petition is organizers of Save Our Water turned in the signatures on July 6 and on July 7, which is against Arizona statute. Signatures have to be turned in at the same time. On July 6, only 634 signatures were submitted by Susan Waters, well under the required number of 1,310. Ruth Cowan, Naomi Vasquez, Chris Upchurch and Vincent Wheeler submitted 1,483 signatures on July 7.

Bartelsmeyer should not have accepted the second batch or issued a receipt for it, EDF Action stated, saying he is required to review petition sheets turned into him and to “treat as invalid any that meet any one of the criteria in state statute and invalidate any individual signature that meet any one of the criteria listed,” which he did not.

EDF Action alleges the petition sheets circulated by Save Our Water contained “a different, albeit more complete, 200–word description.” Therefore, because not all of the pages matched the same statement given when the petition number was issued, none of the signatures were valid.

There also was a problem with the oath the people who signed the petition took, which only claimed they were qualified electors of the county of Cochise in the state of Arizona. But since most of Cochise County is outside the Douglas Groundwater Basin, the oath should have included that the signers lived within the Douglas basin AMA.

“This cannot be remedied after the fact by demonstrating that the signers are or are not residents of the Douglas Groundwater Basin,” the suit stated.

Also according to the suit, one cannot de–establish an AMA and return to the Irrigation Nonexpansion Area that was in effect prior to the successful, legal passage of the proposition in November.

The suit further stated, “A proposition is not subject to repeal. There is no authority for one proposition to repeal another. Nor is there is any authority to ‘de-establish’ an AMA by way of local initiative.”

EDF Action seeks an injunctive and declaratory relief through a special action which they say is

“appropriate because there is no equally plain, speedy and adequate remedy for the plaintiffs and contests the validity of an initiative based on the actions of the filing officer nor noncompliance state statute.”

It requested an order from the Cochise County Superior Court for the defendants “to perform a duty which the law specially imposes as a duty” on them which they have “thus far failed to perform” and invalidate the petition.

The organization helped Arizona Water Defenders and supported the passage of the local ballot measures with paid media, including seven radio ads, four of which were personal testimonies from locals in Douglas and Willcox, as well as a complementary mail program for both basins.

Though AWD was successful in getting the proposed AMA for the Willcox basin, covering the northern portion of Sulphur Springs Valley, on the ballot, it did not pass.

Dahlke, a resident of the Douglas AMA and former president of AWD, said, “Something needed to be done to protect the water supplies on which we all depend, so we chose to enact an AMA. We overcame deceitful opposition from the same interests that also block legislative proposals from rural communities seeking more options to manage nite local groundwater supplies. Efforts to repeal the AMA are a distraction from the work that lies ahead to cooperatively manage our shared water resources.”

Gregory said, “I’ve been here in the Douglas Basin for over 50 years and have watched the recent decline in the water table, mostly from unconscionable overpumping by large farms that have recently set up operations here because of lax state rules for groundwater use. We passed the AMA as a viable rst step to check that overdraft. I’m sorry to see others work to reverse that step and return us to the unsustainable situation we had before.”

While not a resident of the Douglas AMA, Steve Kisiel, who lives in the Willcox basin, has watched the groundwater in the Willcox aquifer decline for years. He supported the AMA proposal for the Willcox basin.

He said, “Rural communities like mine in Willcox have come to the Legislature with proposals to protect our groundwater with wide bipartisan support from across rural Arizona. But a handful of interests repeatedly stops these proposals. Meanwhile, more and more of my neighbors in the Willcox Basin must deepen our wells at great cost while our only water supply — groundwater — disappears out of reach for more and more of us. Those who cannot afford to deepen wells lose access to water. Others move away. The cycle of bad faith repeats itself with this attempt to repeal the Douglas AMA and this cannot continue. On behalf of my neighbors in the Willcox Basin, we respectfully ask Gov. Hobbs to move forward with executive action to protect our water supplies.”

“EDF Action is proud to have led suit to stop the repeal of the Douglas AMA, standing with communities to protect nite local water supplies,” said Kuzdas. “Voters overwhelmingly want

to see action by elected leaders to protect local groundwater. Gov. Hobbs has a generational opportunity to cut through this disingenuous fog by planning for executive action to secure water supplies for rural communities in need throughout the state.

“This AMA repeal effort attempts to undermine local communities, and it illustrates the cynicism that has stood between rural communities and their water security for too long.” The Arizona Department of Water Resources oversees AMAs and is aware of the attempt to eliminate the Douglas AMA and the new lawsuit. However, due to the suit, ADWR is unable to comment on either subject.

ADWR regulates all groundwater wells in Arizona. Well regulations are vital to the proper management and protection of groundwater. Well construction standards help prevent contamination of the well and the surrounding groundwater.

About EDF Action

EDF Action is the advocacy partner of the Environmental Defense Fund, which builds transformative political power to help protect the environment and the health of American families.

It educates legislators about “new innovative solutions, working across the aisle to build political momentum, mobilizing constituents to advocate for our health and environment, and working to elect pro–environment candidates while holding anti–environment politicians accountable. In addition, we are working to foster the next generation of climate leaders.” The organization has been working for years to get the Arizona Legislature to move on some sort of groundwater control, particularly in the rural areas that have no access to surface water like Tucson and Phoenix and other Central Arizona Project participants in Maricopa, Pinal and Pima counties.

“It’s whoever drills the deepest wells gets the water,” Kuzdas said. “In 2022, after months of negotiations, the Legislature passed a water spending plan with funding for new conservation efforts to address deteriorating water supplies. However, for the fourth year in a row, state leaders failed to pass legislation to address unlimited groundwater pumping, missing an opportunity to enable a water secure future for 1.5 million rural residents and the state as a whole.

“The Legislature continues to sit on their hands. They dropped the ball. We are asking for another option besides establishing an AMA or INA.”

He also said surveys showed three out of every four people stating the state is not doing enough to protect the nite groundwater supply.

Visit the EDF Action website at: <https://www.edfaction.org/> for more information.

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million rural residents and the state as a whole. "The legislature continues to sit on their hands. They dropped the ball."

Chris Kuzdas, EDF Action senior water program manager

"The ideal subject of totalitarian rule is not the convinced Nazi or the convinced Communist, but people for whom the distinction between fact and fiction...between true and false no longer exist."

- Hannah Arendt

Michael Gregory

- www.michaelgregoryaz.net

- www.reddragonflypress.org/2020-titles/pound-laundry