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4. WATER: Ariz. utility resorts to eminent domain to secure supply for power plant

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An Arizona judge has scheduled a July trial date for a case in which Arizona Public Service Co. is trying to acquire through condemnation some 7,000 acres of land from the Aztec Land and Cattle Co. While the undeveloped property itself has a relatively modest value, the real issue is APS's attempt to secure groundwater for its Cholla coal-fired power plant near Joseph City.

PacifiCorp owns one unit at the facility, while APS owns three others and operates the plant.

For nearly 35 years, Aztec has leased well water rights to the utility to cool the turbines of the massive 995 megawatt facility under a contract that equates to about \$6 per acre-foot of water, a little more than 11,000 acre-feet per year or 3.5 billion gallons (an acre-foot contains about 325,850 gallons). With that lease expiring next August, Aztec wants to increase the fee to current market rates, which company President Steve Brophy said was about \$150 to \$200 per acre-foot.

APS has its own land that supplies another 1.5 billion gallons for the plant. While Lake Cholla is adjacent to the plant, the utility says it is really just a shallow retention pond that would dry up without the continued flow of groundwater.

The utility claims such a price increase would harm its ratepayers, said APS spokesman Steven Gotfried. "We tried to negotiate, to purchase the property or even do a land swap," he said. When those offers were rejected, the utility filed an eminent domain action to acquire the land.

"We were negotiating for a new lease that is fair and reasonable," Gotfried told *Land Letter*. "Now we've asked a judge to set a fair market price for the land. Whatever price we pay for the land will go back to the ratepayers," he said.

Aztec's attorney, Douglas Brown, however, claimed the utility is trying to low-ball the property's value by putting forth an appraisal for undeveloped grazing land that does not take into account any value for the water beneath. The appraisal, which Brown said was about \$635 per acre, "was high for grazing land but ludicrous for water rights."

Brophy said he remains willing to renegotiate a lease but has no intentions of selling the property, which is part of the company's holdings of nearly 230,000 acres in the Little Colorado River Basin. The company, founded in 1884, at one time owned over 1 million acres before selling off much of that. In more recent decades, Brophy explained, Aztec has acquired new lands to fill in its holdings, with the intent of managing them for the future. "We've owned this land since 1884 and have vigorously preserved and defended our water rights," he said. "We do not want to sell our land."

Brophy said that just south of the contested property lies about 140,000 acres of land that could be developed in the future, except for the fact that it has a poor water supply. "We'll need that water for our land at some point in the future," he said. "If they want it, they can have it, but they will have to pay a fair price for it."

According to the Navajo County Superior Court, the case has been set for a jury trial beginning July 10 before Judge Thomas Wing [*APS v. Aztec Land & Cattle Co.*; CV 2006;0339].



The Cholla power station, operated by Arizona Public Service, uses up to 5 billion gallons of water each year for cooling. Photo courtesy of APS.