

Judge likely to shoot down most of Duarte's case against Azusa's mining plan

Ben Baeder, Los Angeles Newspaper Group, 3-25-11

A judge on Thursday seemed to all but shut the door on Duarte's legal efforts to stop a rock mining operation from moving closer to the city.

At the start of the hearing at Norwalk Superior Court, Judge Thomas McKnew tentatively ruled against Duarte's argument to nullify an environmental-review document prepared for the mining project by Azusa.

After the tentative ruling, McKnew heard arguments from attorneys on both sides of the case, and he said he planned to review his notes for a few days before making a final decision.

If McKnew does reverse his tentative ruling and decide against Azusa, it would throw the project's legality into question. And that could stall the plan by Vulcan Materials Co. to move its mining operation to 80 acres of its property near the Duarte border.

Despite shooting down most of Duarte City Attorney Jeff Melching's contentions, McKnew left the door open regarding a few points of law.

Melching said Azusa failed to correctly review alternative mining plans, an issue McKnew said was worth exploring. Specifically, McKnew said there wasn't much case law regarding how alternative plans had to be compared.

"That is a good issue to bring up in an appellate court, because I could stand to use some clarity," he said.

McKnew also expressed interest in Melching's argument that the project could push air-pollution levels higher than legally allowed.

But during his remarks, McKnew concluded that Azusa made an honest effort to account for the impacts of moving the mining operation.

Azusa City Attorney Sonia Carvalho said she was happy with the judge's tentative ruling. She was especially pleased that McKnew rejected Melching's arguments that Azusa had violated open-meeting laws.

The environmental review document regarding the proposal is 22,000 pages and filled with technical language. The sheer size of the review made it susceptible to nit picking, McKnew said.

"All the way through these types of cases, the court uses common sense," he said. "And that's what I'm trying to do, use common sense."

During the three-hour hearing, the attorneys traded barbs, with lawyers representing Vulcan and Azusa accusing Melching of distorting and twisting the facts.

For his part, Melching accused Vulcan and Azusa of using misleading assumptions in the environmental review.

Several times, McKnew referenced the combative tone taken by the two cities.

"There's an undercurrent of animosity not frequently seen during a (California Environmental Quality Act) hearing," he said.

The day's hearing was part of a long battle between the two foothill cities.

The Azusa City Council in July approved the plan by Vulcan to move mining to the western part of its property, which is near Fish Canyon. Then the city's voters in January reaffirmed the decision after it was put to a popular vote through an initiative.

During the entire affair, Duarte officials fought tooth and nail against Vulcan and Azusa. Along with an information campaign against the project, Duarte sued Azusa regarding the environmental review in August.

Azusans also attacked Duarte. Former Azusa Mayor Diane Chagnon accused Duarte of misusing public funds to support those opposed to the project, an allegation denied by Duarte officials. The matter is still under investigation, according to the District Attorney's Office.