

**ENVIRONMENT**

August 4, 2018

# NM water boss dismisses Augustin Plains Ranch water application as 'speculative'

By **Laura Paskus**



*Laura Paskus*

State Engineer Tom Blaine at a meeting on Augustin Plains Ranch's plans last year

When Carol Pittman heard that New Mexico's top water official denied a company's application to pump groundwater from below the valley where she lives, she was thrilled.

"What could be better?" she said. "That project would have just destroyed the place."

For 11 years, Pittman and her neighbors fought plans by Augustin Plains Ranch, LLC to pump 54,000 acre feet of water each year from the aquifer below the Valley of San Agustin.\* That wide, dramatic valley lies west of the Rio Grande Valley and is flanked by volcanic fields and mountains. Most of the valley is in Catron County, whose total population tops out at about 3,500 people.

For more than 20 years, Pittman and her husband have lived near the community of Datil, on land that borders the Augustin Plains Ranch. As part of a coalition, she and hundreds of others protested the proposal, which called for pumping about 17 billion gallons of water each year and piping it away from ranches and rural residents.

"We all hung in, we didn't give up," Pittman said, adding that the fight wasn't just about her community, but rural places around New Mexico. "I think we all should be working together to try to [to solve] this problem all over the state of New Mexico: we need to keep groundwater in the ground for times of drought, and then when we have an emergency situation, we have something to draw on."

## **Battle over 'speculation'**

In the order denying the application ([http://www.ose.state.nm.us/HU/AugPlains/17\\_005/2018/2018-08-01%20Report%20%20Recommendation%20Granting%20Motions%20for%20Summary%20Judgment.pdf](http://www.ose.state.nm.us/HU/AugPlains/17_005/2018/2018-08-01%20Report%20%20Recommendation%20Granting%20Motions%20for%20Summary%20Judgment.pdf)), State Engineer Tom Blaine agreed that granting the application would “deprive the public of its right to appropriate water for beneficial use.”

Under the New Mexico Constitution, people or entities with water rights must put water to “beneficial use.” And when evaluating water rights applications, the state must consider public welfare, conservation and whether the proposed project would hurt existing water rights holders.

According to the state’s order, APR failed to explain how it would put the water to beneficial use, who would use it and for what purposes. It had only established “that it wants to appropriate and convey water to uncommitted municipalities or entities in unknown quantities.” That “striking absence of information” defeated the company’s denial that it was engaging in water speculation.



Laura Paskus

Near the town of Magdalena, signs protest the proposed San Augustin Ranch water project

The order lines up with what state water rights experts said at a hearing (<http://nmpoliticalreport.com/787229/state-water-rights-experts-say-san-augustin-plains-ranch-project-is-speculative-en/>) in Reserve, N.M. last December. At that time, a state official described speculation as monopolizing or hoarding water.

Michel Jichlinski, Augustin Plains Ranch Project Director, called the state’s decision “short-sighted” and a “win for ignorance.” He also said it only benefits a “small group of dedicated opponents” and was driven by “political expediency.”

In a statement to reporters, he wrote: “Much is made of the issue of speculation. But anybody who cares to study the recently published New Mexico Water plan, presumably the most important document guiding the future of water resources in the State, will note that no entity, except for APR, has any intention to put this resource to use. How can we ‘tie up’ a resource that nobody cares about?”

He added: “While it will get some politicians more comfortably reelected, it is a continuation of decades of mismanagement which put the State way behind the rest of the country in terms of poverty, growth and job opportunities.”

The Office of the State Engineer also emailed a statement to *NM Political Report* about its decision: “After carefully considering all aspects of the application, the State Engineer determined that the applicant failed to identify specific quantities of water for specific identified beneficial uses which are requirements under state law for a water right to be developed.”

This is APR’s third application to be rejected. Then-State Engineer Scott Verhines also rejected one in 2012, and another in 2014.

## Local control over local water

New Mexico Environmental Law Center attorney Jaimie Park was happy about the decision, particularly since the state acknowledged APR is not entitled to the same 40-year planning horizon that cities and water utilities have under state statute. Those entities can hold onto unused water rights to plan for future growth, the order noted, but a private company cannot.

But she was cautious, too.

“We do have to wait,” Park said. “The ranch does have 30 days to file an appeal of the decision, or they could come back and submit another application that does identify beneficial use, an end user and a place of use.”

As people represented by the law center and others proved over the course of more than a decade, communities must be vigilant. “And public participation is key,” she said. “These applications are the most highly protested applications in the history of the State Engineer’s hearing proceedings, and because so many people got involved, filed protests and challenged this gross appropriation of water, it ensures that the State Engineer is going to follow procedure, and that the State Engineer is going to be held accountable.”

However New Mexico needs a legislative solution to interbasin transfers of water, Park said.

In other western states, including Colorado and Arizona, local county boards and commissions have more control over proposed water transfers. “There has to be some buy-in and approval from the area of origin for the water to be transferred to another area,” she said. “It’s being done in other states, we just don’t have that yet in New Mexico.”

State Rep. Gail Armstrong, R-Magdalena, would like to change that.

“I’m going to be working on legislation to try to incorporate county commissioners so they are able to weigh in on this type of decision,” she told *NM Political Report*.

It was Catron County Commissioner Anita Hand’s brother and father who first spotted the legal notice (<http://nmpoliticalreport.com/358679/fearing-theyll-lose-their-water-rural-new-mexicans-continue-decade-long-battle-against-san-augustin-ranch-plane-en/>), in the newspaper more than a decade ago, announcing that the ranch next door planned to drill 37 wells into the aquifer.

“It’s been a long battle,” Hand said. “If there’s one lesson we have learned, it’s we need to start looking at water law so big entities can’t come in and take water for monetary purposes.”

She also advised people throughout New Mexico to diligently read the legal notices, where proposals and protest periods must be listed, and to stay involved.

If the application had been approved and the drilling undertaken, Hand said it would have had “monumental” impacts, including to their family ranch.

“I’m glad we won that battle,” she said. “But I just don’t think it’s over.”

*\*Geologically, the area is the Plains of San Agustin or the Valley of San Agustin. The ranch, however, is spelled differently: Augustin Plains Ranch.*

**Correction: In the original version of the story, we misspelled Michel Jichlinski’s last name. The author regrets the error.**

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