

## 2016 AUGUSTIN PLAINS WATER GRAB SUMMARY

### CONTENTS

2016 Augustin Plains Water Grab Summary .....	1
17 Aug 2016, Albuquerque Journal .....	1
18 Aug 2016, El Defensor Chieftain .....	2
7 Sep 2016, Legal Notice of New Application .....	4
22 Sep 2016, Motion To Stop New Application Failed .....	4
30 Sep 2016, Text of Full Application .....	5
11 Oct 2016, TV Panel Discussion .....	5
13 Oct 2016, Letter to the Editor of the El Defensor Chieftain .....	5
Q and A in the El Defensor Chieftain .....	6
11 Oct 2016 Client Meeting .....	9

### 17 AUG 2016, ALBUQUERQUE JOURNAL

<http://www.abqjournal.com/827667/notice-ordered-for-augustin-water-plan.html>

#### **Public notice ordered for Augustin Plain water plan**

**By Ollie Reed Jr. / Journal Staff Writer**

***Wednesday, August 17th, 2016 at 12:02am***

ALBUQUERQUE, N.M. — A controversial proposal to pump 54,000 acre-feet of water each year from the Augustin Plains of west-central New Mexico up to the Middle Rio Grande Valley is a step closer to public hearings.

The New Mexico Office of the State Engineer has notified the Augustin Plains Ranch, the commercial venture behind the water-transfer plan, to publish a public notice of its application to pump and transport the water. That sets the stage for public hearings to be held after the public has had the opportunity to object to the plan.

That plan calls for Augustin Plains Ranch to drill 37 wells on the 17,000 acres of property it owns near Datil. The company says the property sits atop an aquifer with a volume of about 50 million acre-feet of water. An acre-foot is the amount of water it takes to cover an acre at a depth of one foot.

According to the company, water pumped from the aquifer would be delivered via a 140-mile-long pipeline to Bernalillo County and available for purchase by all users along the way to supplement water shortages, enhance stream flows and benefit fish and wildlife, including such endangered species as the silvery minnow.

Augustin Plains Ranch proposes to sustain the aquifer by building structures to capture rain runoff and snow melt from nearby mountains.

But many ranchers on the Augustin Plains are opposed to the project because they fear it will suck all the groundwater out of the basin, rendering their own wells useless and killing their livelihoods. Some environmentalists don't care for the plan either.

"This project is just another way to exploit our rivers and underground water sources in the same manner that has occurred for the past century," said Jen Pelz, director of the wild rivers program for WildEarth Guardians, a Santa Fe-based environmental organization. "While this project bills itself as increasing stream flows and ensuring water for endangered species on the Rio Grande, we do not support stealing water from another region to do so."

Instead, Pelz said water managers should concentrate on water conservation, agricultural efficiencies and reducing diversions.

In a statement released on Tuesday, project director Michel Jichlinski said the plan "will provide a sustainable source of water for generations of New Mexicans while securing habitats for protected endangered species and creating solid, economic benefits to local communities."

Jichlinski said it is also an incredible opportunity to make New Mexico a world leader in innovative water-resources development technologies.

The hearing phase, which could last a couple of years, will include a full and comprehensive study of the project area's hydrology and a presentation of plan outlining the project's benefit to local communities.

Augustin Plains Ranch must publish notice of its permit application within 60 days and publish it at least once a week for three consecutive weeks. The public can file objections up to 10 days after the final notice by writing to the Office of the State Engineer, 5550 San Antonio Drive NE, Albuquerque, NM 87109-4127, or faxing 505-383-4030.

18 AUG 2016, EL DEFENSOR CHIEFTAIN

[http://www.dchieftain.com/news/ranch-refiles-petition-to-pump-water-from-plains/article\\_9ed9f21c-649a-11e6-8784-3b53bcf8d1cf.html](http://www.dchieftain.com/news/ranch-refiles-petition-to-pump-water-from-plains/article_9ed9f21c-649a-11e6-8784-3b53bcf8d1cf.html)

## **Ranch refiles petition to pump water from plains**

Scott Turner – El Defensor Chieftain Editor

A benefit to Rio Grande communities in need of water, or a water grab that could threaten ranches in Catron and Socorro counties and the environment?

Those are questions in a battle that may eventually be fought in court.

And another step in that process has already begun.

The Augustin Plains Ranch, LLC announced Tuesday the New Mexico Office of the State Engineer has instructed it to publish notice of its application for a permit to pump, reclaim, and then transport 54,000 acre-feet of water per year from its location near Datil to those Rio Grande River communities that are most in need.

This action by the State Engineer will allow the project to move forward to the hearing phase, where the details and benefits of the proposal will be thoroughly evaluated. The potential harm to the community will also be evaluated.

“This project, much like the San Juan-Chama before it, will provide a sustainable source of water for generations of New Mexicans while securing habitats for protected endangered species and creating solid, economic benefits to local communities,” said Project Director Michel Jichlinski. “Equally important is the incredible opportunity before us of working with the state’s institutions to make

New Mexico a world leader in innovative water resources development technologies. This is a very exciting time and we are very pleased with the State Engineer’s moving forward with our application.”

“We are back to where we were in 2007, no end user is identified in this release,” Catron County Commissioner Anita Hand said. The ‘Rio Grande River Communities’ is pretty ambiguous. The Augustin Plains Ranch is standing on the idea that removing 54,000 acre feet of water from the San Augustin Plains will provide economic benefit to ‘local communities’ along the Rio Grande River and at the same time be removing natural resources from Catron County and any potential future development. Until we have the filing documents in our possession the County is reticent to make additional comments.”

The move comes as no surprise.

New Mexico State Engineer Tom Blaine told the San Augustin Water Coalition at its annual meeting last spring in Datil that the latest application was going to be refiled, and had a better chance at succeeding than the previous attempt, which was rejected by the courts.

“I expect there to be a lot of protests,” New Mexico Speaker of the House Don Tripp said at that meeting.

Tripp and others at the meeting expressed concerns about the impact on pumping the water from the San Augustin Plains on farmers and ranchers in the area.

“We need to keep the ag community healthy,” Tripp said at the meeting. “And a lot of that depends on water. We have real issues about running water from this area. If we want this area to grow and prosper, we need water.”

Critics have voiced concerns that there isn’t enough water to do as Augustin Plains wants. There is also a concern that pumping water from the area could make the land unstable and threaten places in the area such as the Very Large Array, which is located just across the border in Socorro County.

Blaine said last spring the next step in the process after the application is filed is for the notice of publication to be advertised in the newspaper where the application is filed. Blaine expected the publication to be advertised in either El Defensor Chieftain or the Albuquerque Journal, which is considered a state newspaper.

It must be published for three consecutive weeks. Protests can be filed against the application from the time of the first publication until 10 days after the third publication.

The hearing phase will include a full and comprehensive study of the area’s hydrology and the presentation of the plan.

The protests will be heard during hearings following the notice publications.

Blaine said he will then make a decision on the application. One of the things he must determine is whether such a system is buildable or just “speculative,” which could lead to the rejection of the permit

Even then, that is not expected to be the last word on the issue.

As with the case with previous applications, San Augustin Water Coalition Board Member Eileen Dodds said last spring she expects the fate of the application to be determined by the courts.

“It’s a lengthy process,” Dodds said.

## 7 SEP 2016, LEGAL NOTICE OF NEW APPLICATION

The Augustin Plains Ranch LLC (APR LLC) has just published the legal notice of its “new” application to mine water in the Plains of San Augustin

## 22 SEP 2016, MOTION TO STOP NEW APPLICATION FAILED

Dear Clients,

Our effort to stop the new application has failed. Below is the message from Doug, and attached is the Order from Judge Reynolds. Sorry everyone:

looks like we begin the entire process over again.

Carol

-----Original Message-----

From: Douglas Meiklejohn

Sent: Thursday, September 22, 2016 2:36 PM

Subject: Denial of our motion to re-open

Good afternoon,

I am sorry to have to inform you that Judge Reynolds denied our Motion to Re-Open the case in his Court. I have attached his Order denying the Motion; as you can see, it does not explain his reasoning.

My view is that this means that we must present our arguments about the flaws in the amended application to the State Engineer first.

Douglas Meiklejohn

Attorney

NM Environmental Law Center

### 30 SEP 2016, TEXT OF FULL APPLICATION

The Augustin Plains water grab FULL application is available on [www.informedcynic.com](http://www.informedcynic.com) 168 pages. Scan through it to familiar yourself the parts you may be interested in. Example, the pipeline through Magdalena down the highway with a branch to the water tanks.

### 11 OCT 2016, TV PANEL DISCUSSION

<https://www.youtube.com/watch?v=uAGPIXeCRBg>

### 13 OCT 2016, LETTER TO THE EDITOR OF THE EL DEFENSOR CHIEFTAIN

Protesting ranch's water application

I am writing to lodge a protest against application RG-89943, which has been resubmitted at the invitation of the State Engineer by Augustin Plains Ranch, LLC, despite having been disallowed several times in the past by various authorities, including the Catron County Seventh Judicial District Court, and the OSE itself.

I am deeply concerned that the State Engineer, whose charge it is to manage water resources for the benefit of the citizens of the state, appears to be facilitating this application by a private corporation to remove and sell a huge amount of water from the ancient aquifer which underlies the San Augustin Plains.

There is little doubt that this world, in short order, begin to dry up private wells belonging to families who have, in some cases for generations, practiced extreme water conservation in order to preserve this precious shared resource.

In the slightly longer term, this action would reduce or eliminate flow into the Gila River system, which would have a devastating effect on one of New Mexico's most treasured wilderness areas. Additionally, hydrologists have reason to believe that the San Augustin system also provides flow into the Rio Grande River, which supports agricultural communities throughout the Rio Grande valley.

Another critical issue is land subsidence. The water in an aquifer is not like water in a bottle, which occupies the same space whether the bottle is empty or full.

An aquifer, as the State Engineer well knows, is a complex system of streams, pools, and various strata which vary from impermeable (holds water like a bucket) to permeable (more like a sponge).

When water is removed from a permeable stratum, the result is often collapse of that stratum. In other words, portions of the land surface sink.

Without extensive mapping of the aquifer, it is nearly impossible to predict precisely where subsidence might occur.

So one day, your house, or maybe one of the VLA antennae, might simply disappear into a hole in the ground.

A significant potential side-effect of subsidence is water pollution. Imagine putting your fist down in the middle of a layer cake. All the layers get pretty mixed up. Now imagine subsidence occurring under a water treatment plant. Maybe you'd rather not.

Given the already critical shortage of water in New Mexico, it would be hard to imagine a single action that would have a more deleterious impact on the public welfare than the state's approval of this application.

Water, unlike some other natural resources like timber or minerals, is by its very nature a shared resource. In New Mexico, this is affirmed by the principle of "beneficial use", which means "take what you need but no more."

This intended to prevent one individual's taking more than his share, just because he can.

If the Augustin Plains Ranch application is approved, I fear it will set a horrifying precedent, namely that anywhere you can stick your straw in, you may take out as much water as you want.

This is not only counter to "beneficial use", it could reduce the population of our state to corporations.

Private profit is not need, but greed, and is about as antithetical to public welfare as one can get.

For the record, our well, RG-62834, sits on the west slope of the Magdalena Mountains and is likely one of the first that would dry up if Augustin Plains Ranch has its way.

However, it is not our own well that is my primary concern. For many years, New Mexico has resisted the sellout of the west for profit. We recognize that we have a unique way of life in this state that confers intangible benefits on us all. I would hate to see that change.

Sincerely,

Emily Johnson

## Q AND A IN THE EL DEFENSOR CHIEFTAIN

Q&A: Augustin Plains Ranch

Project manager Michel Jichlinski answers questions about application

▣ Scott Turner - El Defensor Chieftain Editor October 13, 2016

Question: Now that the application has been publicized, have any of the hearings been set?

Answer: The schedule of the hearing hasn't been established yet. The hearing is designed to answer four fundamental questions about the application. As stated on the Office of the State Engineer's website: "When evaluating an application for a new appropriation or to change the place and/or purpose of use of an existing water right, the State Engineer must:

- Determine that water is available
- The appropriation will not impair existing rights
- The intended use meets state water conservation efforts, and that

- The intended use is not detrimental to the public welfare.

The law also requires the applicant to publish the application in a newspaper and give anyone with a legitimate objection the opportunity to protest the application.”

Our application has been published and those who wish to protest are now in the process of doing that. To make it easier on the opponents the notice of application stipulates that “In the event that a party filed a timely written protest or objection to the original Application to Appropriate RG-89943, filed with the State Engineer on October 12, 2007 and May 5, 2008, it is not necessary to file an additional written protest. Those protests or objections are considered timely for this corrected application and notice of publication.”

Q: Is there enough water under the San Augustin Plains to do what the project proposes? And how do you respond to concerns that this project could cause the basin to dry up?

A: The first question to be determined in the hearing is the question you are asking. The last major study of the hydrology of the plains is the US Geological Survey’s Water Resources Investigations Report 94-4125 published over 20 years ago in 1994. This report characterizes the size of the San Augustin Aquifer to be very large, at close to 54 million acre feet of freshwater. This estimate was incorporated in the 2003 State Water Plan published by the Interstate Stream Commission.

We have conducted a preliminary analysis, including the drilling of test wells, which confirmed the findings of the above study. We will be producing a complete, definitive study, including additional field testing during the hearing. Concerning the basin “drying up,” it is a very dry area to begin with. The aquifer is several hundred feet deep. Plant and wildlife in the plains are supported by rainfall, not by the aquifer.

Q: How much water are you proposing to be pumped per year (and the per day equivalent) for users in the Rio Grande Valley?

A: Our application is for 54,000 acre-feet per year (1/1000 of the estimated water in storage). This is equivalent to 48 million gallons per day.

Q: How are you planning on doing this? How would the water be transported to potential users?

A: We propose to build a well field and convey the water to the Middle Rio Grande Valley through a 140 miles pipeline.

Q: Have you been in contact with potential users (municipalities or companies), who are they and what has been their response?

A: We have contacted and initiated conversations with several municipalities and companies located along the proposed pipeline right of way. The response has generally been that future sources of water supply are of great concern, and that they would be interested in the project’s water if economically and environmentally sound. Some municipalities however are currently opposing the project. We are confident that many of them will review their position once the project is better understood.

Q: This is related to the second question. There has been a concern that the project could cause wells on nearby ranches and farms to dry up, that the ranchers and farmers would have to dig new wells to find water. What is your response to that?

A: The study I referred to in response to your second question, identified several aquifers in the area. Many ranches and farms draw water from aquifers other than the San Augustin Aquifer and will not be affected. The plains themselves are sparsely populated and there aren't many operating wells. Nevertheless, should someone's wells be affected by the project, the law is very clear. If an alternative solution to provide the water that the rancher or farmer is entitled to can be found, the project must pay for the costs involved. If there is no feasible solution, it is called impairment and the project cannot proceed.

Q: There has also been a concern that this project could make the ground unstable on ranches and nearby facilities such as the VLA. Do you believe that will be the case?

A: While subsidence in groundwater extraction projects has occurred, our initial analysis is that it is not likely to be significant in the Augustin Plains. There are many groundwater well fields throughout the state, including the Albuquerque metro area, and they have generally not caused the ground in those cities and areas to be "unstable." This issue will be included in the scientific studies that will be part of the hearing.

Q: Because the basin is a closed basin, and the area only receives about 14 inches of rain per year, how do you propose to replenish the basin to replace the water the project would take out?

A: The closed basin is about 2,000 square miles in extent or 1.3 million acres. At 14 inches of rainfall per year, total rainfall over the basin is approximately 1.5 million acre feet per year, 30 times more than what we have applied for. Our preliminary studies indicate that recharge of the aquifer can be enhanced through the construction of dedicated structures. This is part of our application and will be investigated in detail during the hearing.

Q: In the initial press release, it stated that this project could potentially benefit the economies of Catron and Socorro counties. How do you feel this is possible?

A: The local community will benefit in several ways. First, there will be a direct benefit through additional tax revenues. Secondly, more water will be available for local communities than presently. The area will also benefit through job creation from the construction of the project infrastructure and the development of new industries and technologies in the project area. Specifically, we can imagine a high tech cluster developing from the world class expertise already present at New Mexico Tech in Socorro. Knowledge areas could include enhanced aquifer recharge discussed above, aquifer management, the use of solar and hydropower energy to power well fields, energy storage and more. Finally and perhaps most importantly, we believe that the local community should receive a direct contribution from the project either through a share in equity, royalties or some other mechanism. We have attempted to reach out to the local community through the San Augustin Water Coalition to discuss our proposal, but to date our efforts at promoting a dialogue have been rebuffed.

Q: The release also mentions the project potentially helping endangered species along the Rio Grande such as the silvery minnow. How is this the case?

A: By providing an alternative source of water to the Middle Rio Grande, the project will allow to decrease the takings from the river, leaving more water for "in stream" environmental purposes. Additionally, our design incorporates turn offs from the main pipe line to use project water to augment water in specific wildlife refugia in the river during periods of extreme drought, which are sure to occur again.

Refugia are designated areas in the river which must never dry out to ensure the survival of endangered species.

Q: To clear up the confusion, how many applications has Augustin Plains Ranch LLC filed, and what was the outcome?



A: Two applications were filed. The initial application was filed in October 2007, followed by an amendment. This application was eventually dismissed without prejudice to the filing of a new application. That case is closed. The new application was filed in July 2014, and subsequently amended and corrected as per requests of the Office of the State Engineer.

Q: It has been claimed by opponents that no members of the Modena family have been to New Mexico. Have the owners been to New Mexico, and have they been to the ranch?

A: This claim is false. But more importantly it is irrelevant and has no place in an administrative and legal proceeding. The project sponsors are acting in full compliance with the laws of the State of New Mexico. The water resource of the Augustin plains belongs to the people of New Mexico. The opponents through such a smear campaign are attempting to deprive the citizens of the State of what is rightfully theirs.

Q: Is there anything else you would like to add, anything you would like the public to know about the project that might ease some concerns that have not been addressed by the above questions?

A: I would like to thank you for providing us with a forum to present our project concepts. We want the hearing to be a transparent, science based process.

I urge your readers to keep an open mind, stay well informed and participate in the hearing and future developments of the project.

I believe that this project is a great opportunity for the area to develop a new and valuable resource and improve its economic and environmental conditions as well as those of the State

## 11 OCT 2016 CLIENT MEETING

### NOTES FROM THE OCTOBER 11, 2016 MEETING OF CLIENTS

The meeting was held at 11 a.m. at the Datil Baptist Church. Present were Pattie Murray-Preston, John Preston, John Schaefer, Ann Boulden, Carol Hegg, Annette Boulden, Robert Watson, Sonia Macdonald, Cheryl Hastings and Carol Pittman

Notes are in agenda order

1. Strategy at Legislative Committee Meeting October 26, 2016. Pattie reported that the meeting agenda will include the Augustin Plains issue and that it would probably be in the afternoon. The place will be in Socorro at the same place as scheduled for the September meeting. Carol will send a reminder and a map to people.

A. Notify media of meeting – deadline October 20 for Catron Courier

The November issue of the Courier will not appear until too late for the meeting. (Note: there was already an announcement in the Courier.) It was decided to send an item to the Defensor Chieftain at the appropriate time.

B. Need to do a scientific study of the Augustin Plains basin (Combine with 2. Need for effort to raise money.)

Doug Meiklejohn told Clients at the March 18, 2016 meeting that it would be necessary for the group to hire its own study of the Plains and that it would cost hundreds of thousands of dollars. The group thought that the lack

of a study should be prominently mentioned at the Legislative Committee Meeting. They also agreed that this project could set a precedent for the destruction of other rural communities. Members stressed that the applicants were foreigners with no stake in New Mexico. Progress:

1. The Southwest Research and Information Center will act as fiscal agent for the large sum of money needed to do a study. The Center is accustomed to administering funds and has worked with the Law Center on numbers of occasions.
2. Paul Davis, hydrologist, has been contacted about doing a study. No contract has been signed, but Mr. Meiklejohn has worked with him in the past and has confidence in him.
3. Two grant proposals are submitted. In addition, see 3. Below.

C. Economy of Catron County – how it is affected. A member stressed that this part of Catron County is becoming a retirement community and that these old people can't just pick up and leave if the water is gone. They will lose everything, their property will be worthless.

D. Ask knowledgeable people to testify for us. We are not well connected, but Joe Stell was mentioned. Members will try to contact him. WildEarth Guardians has filed a protest and will support our effort to defeat this application. Members will try to come up with other prominent water mavens.

3. Outreach – combine with effort to raise money. The group was given a draft of a letter to be sent far and wide asking for donations. That letter will be edited by members of the group for a final draft before sending it out.

Several members of the group are not part of Linda Smiley's MageBoard. Carol will send a note to Linda requesting that their names be added to their list.

In addition to agenda topics, the group discussed tasks that we could do.

Ann Boulden: She will ask Jacquie at the Eagle Guest about putting a jar there for donations. (Note: that task is done and Ann will provide the jar!)

Ann Boulden: Ask Maureen Iles to contact her daughter Carrie who lives in Rio Rancho to see if she might talk to the government of Rio Rancho about the application. (Note: that task is also done! We will check back with Maureen to see if there are any results. Also note that Marshall Adams has offered to contact the Rio Rancho government. No information yet.)

Carol Pittman: Ask Doug Meiklejohn about the following:

1. Will SAWC have a table at the Craft Fair? If not, our group would like to have a donation table.
2. Please ask the SAWC Board to ask Don Tripp to lobby Gov. Susanna Martinez against the Augustin Plains project.
3. Can we combine Southwest Research and Information Center and Go Fund Me?

[Note: It appears that we, the Clients, cannot use Go Fund Me. SAWC may be able to.]

[Note: Doug will ask those questions of the SAWC Board. In addition, it appears that we CANNOT combine Southwest Research and Information Center and Go Fund Me. It may be possible for SAWC to use Go Fund Me. I have reported that to Doug.]

Respectfully submitted,

Carol Pittman