

Water grab app sent back

by [John Larson](#) | December 11, 2014 | Filed under: [News](#)

The Office of the State Engineer (OSE) has given San Augustin Plains Ranch LLC (APR) until Christmas Eve to be more specific on what it plans to do with the 54,000 acre-feet of water per year it wants to pump from the San Agustin aquifer under Socorro and Catron counties.

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In a letter dated Nov. 25 to Draper & Draper LLC, litigators for APR in the matter, the OSE said the application had not fulfilled the requirements for the granting of a permit. The OSE made it clear that the application was not being rejected, but returned to APR because it is incomplete regarding the purpose of use and place of use for the proposed appropriation.

The letter states that if the application is corrected with more specific information and returned to the OSE within 30 days from the date of the letter, it will be treated as a new application.

The current application states that APR seeks to appropriate groundwater for municipal, industrial, commercial, offset surface water depletions, replacement, sale and/or leasing purposes. However, according to the state engineer's letter, "replacement, leasing and the offset of surface water depletions are not 'purposes of use' for new appropriations, but means of transferring existing water rights."

Further, in order for the permit to be considered the application must "provide the names and service areas of the municipal entities on behalf of which APR seeks to appropriate water," and "identify the specific industrial or commercial enterprises and the specific locations at which the water will be placed to beneficial use by APR or the enterprises on behalf of which APR seeks to appropriate water."

The state engineer's letter further states that if APR's intent is to "engage in commercial water sales," it must provide a legal description of the areas in which it plans to sell the water and a description of the delivery system. APR must also provide a list of the entities it will sell the water to, as well as a description of the type of business arrangement by which APR intends to deliver the water.

Attorney Bruce Frederick, of the New Mexico Environmental Law Center who represents approximately 80 protestants, said the letter is an improvement over the state engineer's prior silence on the application.

"But the State engineer apparently intends to allow San Augustin Ranch to speculate in water by attempting to create a new pseudo-beneficial use called 'commercial sales,'" Frederick said.

"Although the OSE will require some additional information regarding commercial sales, it is not requiring the Ranch to identify the actual end users. This leads to the same legal problem as before, that there's no way to evaluate the application because the amount requested – 54,000 acre-feet per year – is not based on any particular need for water."

Frederick claims that this "violates the state Constitution, which states that 'beneficial use shall be the measure, the basis, and the limit of the right to use water.'"

It's been seven years since San Augustin Plains Ranch LLC first applied for a permit to drill 37 wells on the San Agustin Plains, that flat expanse straddling Socorro and Catron counties that was once called the "sea of grass."

Two test wells were drilled by the company in 2008, and a cursory study was done on the aquifer itself. The company's study showed that 50 million acre-feet per year was available.

However, Stacy Timmons, interim manager of the Aquifer Mapping Program the Bureau of Geology, said earlier this year that she has been collecting data for five years, focusing on annual water level measurements, and that final results of the studies will include groundwater elevation contour map, detailed geologic maps and a technical summary report describing the nature of the groundwater system in the area.

Timmons said preliminary results of a groundwater sampling campaign by hydrologists at the Bureau of Geology suggest that there is limited recharge occurring in the region of the San Agustin Basin.

"The ages of groundwater that we have collected within the San Agustin Plains, based on carbon-14 dates on groundwater, is on average about 12,000 years old," Timmons said in a July, 2014 interview.

Another analysis done on the water is "examining the tritium content, which shows an average less than .5 tritium units," she said. "This indicates that there was likely no recharge in the the last 50-plus years in the area where we have sampled."

The New Mexico Legislature's Interim Committee on Water and Natural Resources met Dec. 4 with representatives of Augustin Plains Ranch LLC, as well as members of the San Augustin Water Coalition, the group opposing the permit.

Eileen Dodds, of the coalition, told the committee the Vittorio Modena family of Italy bought the 18,000 acres on the San Agustin Plains in 1969 through a holding company with a New York City law firm but, to her knowledge, has never been to New Mexico.

"We understand that their original plan was to subdivide the land for residential use. That never happened," Dodds said. "The family has never ranned, or hunted, or farmed, or even met with the people of Catron County. They did, however, lease grazing rights to a local rancher, and have leased the hunting rights to a local outfitter."

Catron County Commissioner Anita Hand also addressed the committee.