

Speech of Mr. Tom Blaine, State Engineer, at the annual meeting of the San Augustin Water Coalition, April 16, 2016, Datil Elementary School Gymnasium

Mr. Blaine's theme, throughout his talk, was "We always need to be talking about things. As a public servant I know how important it is to keep the lines of communication open." He continued, "I understand the connection between water and life ... by that I mean not just being able to have a drink of water, but being able to maintain a lifestyle. That is critical in New Mexico."

Having set that tone, he made the following points:

In 1907 the State Engineer took control of the State of New Mexico's waters – surface water at that time. Mr. Blaine stated that managerial control was needed and that the choice was made to assign that management control to engineers, not attorneys, as at the time attorneys were assigning more water to applicants than was available. He explained that attorneys might not understand the engineering principles of water allocation, while engineers would.

It wasn't until the 1930s that the groundwater laws were enacted, based on the surface water laws. The State Engineer recognized that "managerial control was needed over water". The initiating circumstance was that in and around Roswell the artesian water was being used in a way that was not sustainable. Mr. Blaine pointed out that "the rules are here to protect water rights."

Mr. Blaine then discussed the meaning of "beneficial use". He pointed out that the courts have never specifically defined what beneficial use is, but, he said, beneficial uses for water in New Mexico are many. Appropriating water to irrigate crops or appropriating water for municipal use are examples of beneficial uses, with a "whole litany of uses in between those things."

At this point Mr. Blaine went into a discussion of the Forest Service (FS), whom he described as "over-reaching". He told the audience of a situation in Ruidoso where the town was being denied water from a well that had been in use by the village for a long time, but was on FS land. Mr. Blaine intervened, asking the FS to "back off", which, he said, the FS did. He talked of other situations where cattle are being "prevented from getting to water" through the FS' use of "exclosures" and that he is "trying to help the ranchers out." (And here he mentioned a meeting with New Mexico legislators and with ranchers to discuss this issue.) He indicated that there is a "need to push back on Federal over-reach on our water."

He went on to explain that all of New Mexico is "an underground water basin", meaning that the State has divided its entire territory into declared underground water basins. As a result, he said, "There is no place in New Mexico that doesn't require a permit when it comes to moving water." He told the audience that for a while the State administered underground basins so that an applicant for water had to assure a 40-year life for the water in order to have a "reasonable rate of return on his investment, and I look back today and say Was that the right thing? or should we be looking at a sustainable supply of water?"

Then, Mr. Blaine addressed the Augustin Plains issue directly. He said that when the Augustin Plains Ranch LLC (APR LLC) filed its first application, the previous State Engineer rejected it as being “vague, incomplete, and speculative”.

The current status of the application by the APR LLC is “incomplete” Mr. Blaine said. He further said that the Office of the State Engineer has told the applicant to “make the application complete or withdraw it.” He said that the APR LLC is now in the process of making the application complete, and when it is it will be reviewed by the OSE. The OSE will then ask “Is there water available for appropriation? Statutorily, that is a question that has to be answered before we can accept that application.” Mr. Blaine explained that there doesn’t have to be water available in the amount requested on the application. “If 10 acre feet are available for appropriation, then we can’t reject the application,” he said. “So I anticipate that a revised application will be filed and I anticipate accepting that application because our hydrology department has determined that there is water available for appropriation.”

Continuing his discussion of appropriation, Mr. Blaine said, “Do I know how much water is available for appropriation? No, I don’t, and I won’t speculate on that. But one of the most important things and critical things that I need to be mindful of is that I walk down that path and I stay in my lane ... and I can’t get out of my lane when it comes to State statutes, because if I make a wrong or bad decision ... it’s appealed to District Court and that does a lot of things. It hurts the reputation of the State Engineer, but it also costs people a lot of money and so I’m very careful in making decisions like is there water available on an application that’s acceptable for filing.

“So the thing that will happen, the process that will happen, after an application is filed, is acceptable for filing ... is the issuance for notice of publication.

Ending his remarks, Mr. Blaine told the audience that they could call his office with any questions and gave phone numbers for the appropriate people to contact. “We’re here to help,” he said.

**AT THIS POINT THE ENGINEER TURNED THE MEETING OVER TO THE AUDIENCE TO ASK QUESTIONS. THE QUESTIONS WERE SUBMITTED IN WRITING, AND I AM REPORTING THEM IN THE ORDER IN WHICH THEY WERE ASKED WITHOUT REGARD TO COHERENCE OR CONTINUITY.**

**Questions:** *(Note that the answers (A) are summaries of what the State Engineer said, unless shown in quotation marks, when they are direct quotes.)*

1) Does the Office of the State Engineer review the contract between the applicant and the buyer, and can the end user back out?

A: Any contract can be broken. As to the possible speculative proposal for the use of water: “It will take a lot to satisfy me.”

2) Does the Office of the State Engineer check out the financial backing of the application? Does it have \$600 million?

A. There must be assurances that there is a buildable project and I don't know what form those assurances will take. If there are no assurances that this is a buildable project, then the application is speculative. I don't know if we will or if we can require a bond; I don't know. I need to be very careful in coming up with criteria about an application that hasn't been filed yet. I need to look at the merits when they come in.

3) The exploratory well that was drilled to 1,510 feet and pumped for nine days yielding 2000 gallons per minute with a drop in the water table of 87 feet: was there a recovery time recorded?

A. *[The State Engineer did not have the answer. He promised to get back to us and I will try to keep track of that.]*

4) When you (the State Engineer) determine the amount of water available, is impairment considered?

A. In order for water to be available, it can't cause impairment. That doesn't mean if the water table drops that constitutes impairment. Replacement by deepening a well or "replacement by some other source" is considered. That's kind of a conditional yes.

5) Why is water in this area more important to development in suburban areas than to development where the water is actually located?

A. There is no beneficial use that is more important than another. So the water that is appropriated out of the San Augustin Plains – it isn't more important to use it in Albuquerque than to use it here. "Water is a market-driven resource," Mr. Blaine said. "I love ag. Ag. Producers are the heart and soul of this state. Without the ag producers, what have we got?" He continued, "There are two million acre feet of surface water and two million acre feet of groundwater. Ag uses 2.8 million acre feet of the available water, or about 70%. If we take 10% of that water and use it for M&I (municipal and industrial, we could double the population of New Mexico. ... What if we took it all? What would that do culturally to our State? It's hard for me to picture because it's so repugnant.

"How do you keep a basin whole, or an area whole, that water is being transferred out of? ... You transfer water from ag.- to municipal, and part of that ag industry dies, how is that ever replaced, repaired? Do we need to be looking at a severance tax on that water? If water is taken out of an area then you need to be putting money back in that area because the economy of that area has no way of economic recovery. There's no water there's no life. An area with no water won't exist, can't recover economically."

Continuing the discussion of the Augustin Plains, Mr. Blaine said, "Water on the Plains – we need to talk about it, we need to figure out what a path forward is. The solution is somewhere in the middle. I am highly encouraged by this organization because you are here to solve problems and to figure out how this can be of benefit to your community. And if you aren't going to back off ... you aren't going to hurt my feelings. I don't take that personally. I respect that. If there is some movement on both sides of the boundary, that's when we can start looking at solutions that can happen.

6) Are there limits on moving water across basins?

A. We have been moving water around New Mexico for a long time, even prior to New Mexico being a state. *[Mr. Blaine gave several examples of water movement, but so far as I know, none referred to movement of groundwater.]* The criteria that have to be looked at is --does it impair anybody's water rights?

**Jim Nelson's remarks** (Jim is a semi-retired plant genetics/statistics/computer geek/editor developing a few acres and greenhouse water-frugally in Magdalena):

My main impressions were

- The SE emphasizes that he's bound by statute.
- He is not a knee-jerk proponent of urban development in NM and respects the needs of farming and ranching.
- The final question (Carol's point 6) was submitted anonymously by me, but I missed a key point bearing on the SA Plains question: yes, the Ute Lake and Navajo pipeline and Taos and Chama projects move water across basins, but it's surface water. Surface water that isn't being beneficially used might as well be moved elsewhere for beneficial use. But fossil groundwater can sit where it is indefinitely; there's no hurry to consume it.