

War over old water By [Scott Turner / Journal Staff Writer](#) Monday, June 17th, 2019
<https://www.abqjournal.com/1329273/war-over-old-water-ex-legal-battle-about-use-of-aquifer-stretches-back-12-years.html>

The grassland of the San Agustin Plains is home to picturesque cattle ranches, guest ranches and one of the world's largest radio telescope arrays.

It borders a small community famous worldwide for its pies, forests known for elk hunting, and the Continental Divide Trail that draws hikers and bikers from around the globe.

Travelers along U.S. 60, which stretches across the grassland, probably aren't aware that the remains of a lake that existed thousands of years ago now lie below the surface.

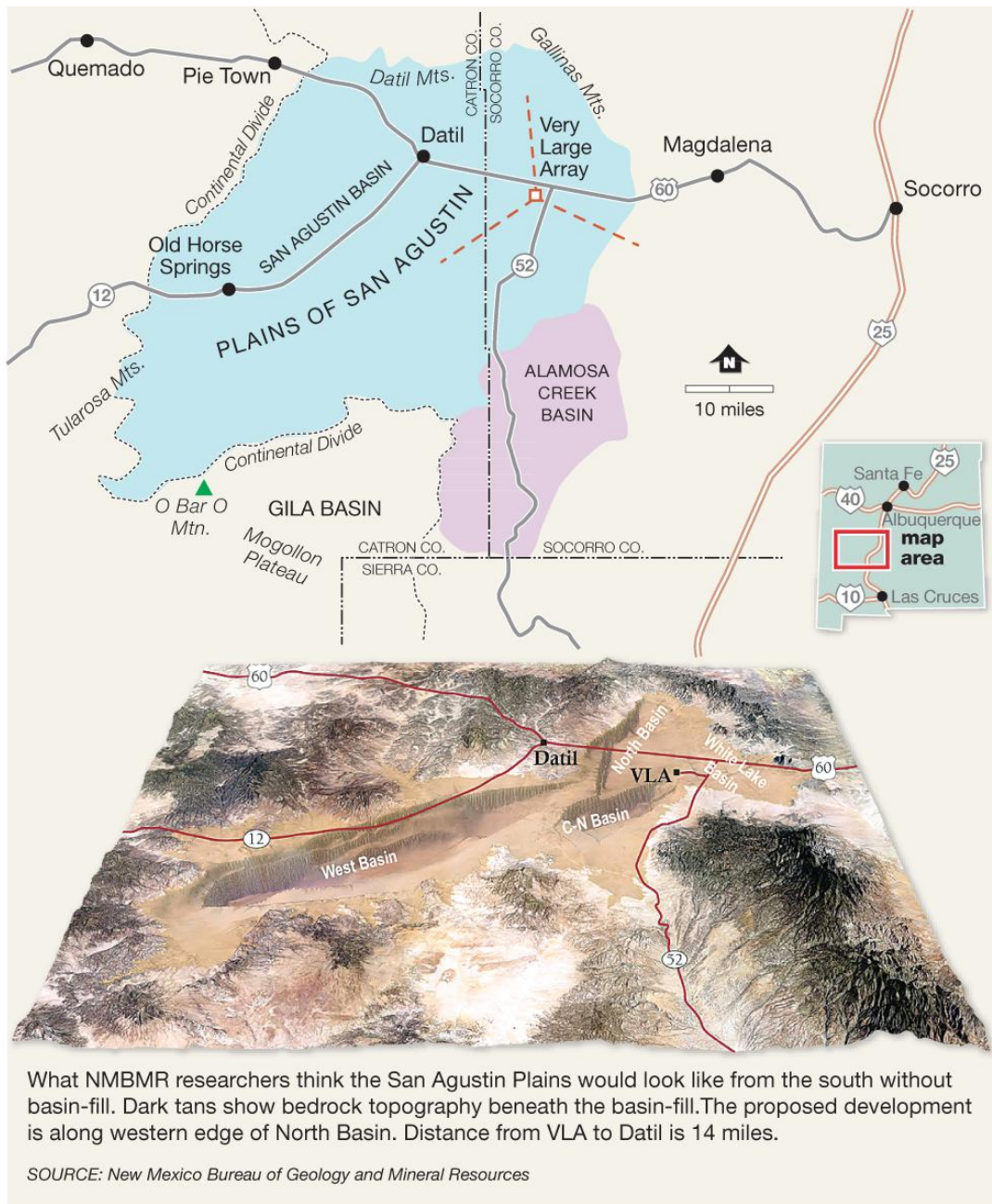
Water from that old lake is the subject of a 12-year legal battle that has bounced between the New Mexico state engineer's office and state courtrooms. The 7th Judicial District courthouse in Reserve will be the site of another round on June 26.

The battle pits the Italian owners of a ranch on the Catron County-Socorro County line against an unlikely alliance of conservative ranchers and environmentalists.

Augustin Plains Ranch LLC has been trying since 2007 to get a permit to pump water from the aquifer that remains from the lake to municipalities and businesses along the Rio Grande, including communities in the Albuquerque area.

Hydrologists estimate the water in the aquifer to be between 8,000 and 14,000 years old based on carbon dating.

The proposed project's manager, Michel Jichlinski, believes the effort is a solution in a state where water is a precious commodity.



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He points to the state's recent history with drought, including last year, when water reserves were depleted after one of the driest winters on record. Rivers around the state, including the Rio Grande, were dry or hardly flowing at some points. The Rio Grande was dry for a 17-mile stretch in Socorro County for several months in the spring and summer of 2018.

"Things are going well now," Jichlinksi said of conditions this year, with the Rio Grande experiencing its highest flows in years. "But it's going to happen again."

Opponents of the ranch's proposal – there have been more than 600 protests against the permit – believe such a project would make matters worse long term.

They believe there isn't enough water in the closed aquifer. It isn't part of any river system, not the Rio Grande, not the Colorado and not the nearby Gila.

Application dismissed

Then-State Engineer Tom Blaine dismissed APR's application in late summer 2018, saying it did not meet the legal requirements for a permit to be granted.

The ranch appealed the decision to the 7th Judicial District Court.

District Judge Matthew Reynolds will be considering motions for summary judgment in a June 26 hearing for parties involved in the case, including the Catron County Board of Commissioners and the New Mexico Environmental Law Center, which represents about 80 clients fighting the application.

Jichlinksi would like a hearing that would allow APR to plead its case. The opponents want Reynolds to dismiss the appeal entirely.

Environmental Law Center attorney Doug Meiklejohn said the ranch isn't entitled to an evidentiary hearing, agreeing with Blaine that the permit didn't meet the requirements, which include stating a beneficial use and end users, and that it doesn't cause impairment.

Jichlinksi disagrees.

"All we want is a chance to prove the concept," he said. "It requires more demonstration."

Jichlinksi said the ranch has had discussions with several potential end users, including the city of Rio Rancho. The application also mentions Magdalena, Socorro, Belen, Los Lunas and the Albuquerque Bernalillo County Water Utility Authority as potential users.

"We've had varying degrees of interest," Jichlinksi said. He said the officials want proof the project would work before they would be ready "to go forward with it."

In its dismissal of the application last year, the state engineer's office said mere negotiations with other municipalities did not rise to the level of definite commitment for use required by law.

And two of the communities named as potential users – nearby Magdalena and Socorro – are among the protesters.

"I know at one point we were put down as possibly buying water from them," Magdalena Mayor Richard Rumpf said. "The (village) board agreed it wasn't a good idea."

The village's water problems are well documented. Before Rumpf's time, Magdalena made national news in 2013 when its well failed, leaving the community without water.

The village doesn't pull water from the San Agustin aquifer, and the mayor said the village is looking into building a new well.

Augustin Plains Ranch is proposing to pump 54,000 acre-feet of water per year (48 million gallons per day) from the aquifer via 37 wells and deliver it to end users along the Rio Grande through a 140-mile pipeline, a project estimated to cost \$600 million.

According to John Fleck, director of the University of New Mexico Water Resources Program, 54,000 acre-feet per year is a little more than the annual "consumptive use" of the Albuquerque Bernalillo County Water Utility Authority.

Socorro, a city of about 10,000 people, uses about 1,200 acre-feet per year, Socorro Mayor Ravi Bhasker said. But he said the city doesn't have any major industries that use a lot of water.

Meiklejohn said there simply isn't enough rainfall to "sustain the aquifer" with the amount of water APR proposes to pump out, which he said amounts to 17 billion gallons a year.

APR is proposing to have a system in place to capture the snowfall and rainfall in monsoon season to recharge the aquifer that would otherwise evaporate, Jichlinski said.

How much water is there?

The area averages less than 14 inches of precipitation a year, according to a 1994 U.S. Geological Survey's Water Resources Investigations Report cited by APR.

And whether there is enough water in the aquifer to sustain such releases is at the heart of the debate. That report estimated the aquifer contained 54 million acre-feet of fresh water.

The report conceded, however, that determining the amount of water is difficult.

Another study on the amount of water in the aquifer is due out later this summer thanks to a team of hydrologists from New Mexico Tech. Hydrologist Alex Rinehart, the lead author of the report, said he couldn't release the numbers from the report pending a peer review.

But he said the amount of water in the aquifer is likely lower than the 1994 estimate. He said that number was based on the volume of the aquifer as a whole, whereas the aquifer is actually cut into four basins.

APR sits on the same basin as the community of Datil and the Karl G. Jansky Very Large Array, one of the world's largest radio astronomy observatories. Just to the west is Pie Town, famous for the desserts that give the town its name.

"Effectively, the development would likely draw from 20%-30% of the volume of the total San Agustin Plains, with greatest effects nearest the proposed development," Rinehart said.

Jichlinski said the APR project could be a boost to the local economies in Catron and Socorro counties, and said he hopes to have discussions with leaders of those communities about the possibilities.

Residents concerned

But property owners with land bordering Augustin Plains Ranch in Datil said they've had little communication with representatives from APR over the years.

James Hall, whose land borders APR on all four sides, said he has never heard from APR. He has owned his property, an old homestead, for 32 years.

Ray Pittman said he and his wife Carol were approached by representatives of the ranch's owners years ago, who "vaguely" gauged the possibility of buying them out. He also said APR representatives talked with community leaders a couple of years after the first petition was filed in 2007.

"They realized their talk wouldn't pay off," Ray Pittman said. "There wasn't any common ground. What they would do would dry up the plains."

The Pittmans and Hall believe the project would have a devastating effect on the communities in the area if it runs the aquifer completely dry. Short-term, many believe the project would affect wells the ranchers use.

The sentiment is also expressed on billboards put up by the San Augustin Plains Water Coalition: "NO MORE WATER MEANS NO HUNTING, NO RANCHING. STOP THE DRILLING."

Coalition member Eileen Dodds said she believes that if APR is allowed to pump water from the plains, "we'll lose our way of life."

“All of us who live here have the same concern,” adds Kathy Knapp, who owns Pie-O-Neer Pies in Pie Town. “Will I have enough water? If our water can be sold to the highest bidder, our future becomes even more uncertain.”

Dodds and her husband own 85 acres with wells just two miles off the plains, where they’ve raised cattle and horses. She worries the aquifer would be out of water within 10 years if APR is granted a permit.

In past interviews, Jichlinski has said ranchers would be compensated if their wells were affected by the ranch’s pumping water from the plains.

Dodds said ranchers have been told APR would supply them with water if their wells run dry.

“But where are they going to get the water?” she asked.

Jichlinski said in previous interviews that if ranchers’ wells become impaired, the project would not be allowed to proceed.

He told the Journal he doesn’t believe ranchers’ wells would be impacted.

“Our wells would be at a much lower depth,” he said.

That is something Hall disputes. Hall and his wife raise Arabian horses on their property, and supply water for elk and antelope with water tanks.

“They hit water at 500 feet, but continued drilling down to 1,500 feet and installed 20-inch casing,” he said of testing by APR. “(They) then pumped 2,000 gallons per minute for nine days, dropping the water table down 87 feet.”

Jichlinski said many ranches and farms in the area draw water from aquifers other than the San Agustin Aquifer and would not be affected.

He said he wasn’t aware of any large cattle operations on the plains, pointing out the plains are sparsely populated.

Carol Pittman said APR’s application to mine water “is speculation in water for the sole benefit of profiting a corporation of foreign origin.”

Because of such sentiment, Jichlinski wonders if some of the opposition is related to the foreign ownership of APR. APR is a New York-based company owned by Bruno Modena, an Italian billionaire.

Jichlinski also voiced frustration at the political opposition APR has faced.

Former New Mexico Speaker of the House Don Tripp, a Republican, and Democratic U.S. Sen. Martin Heinrich have both labeled the proposal “a water grab.”

Heinrich calls the proposal a threat to rural water rights, wildlife and the ranching community.

“I do not believe natural resources and ecosystems in rural areas should be commodified in this manner to benefit areas with higher populations or wealth,” the senator said. “This is an endangered cultural property and its resources are not for sale. Plain and simple.”

Augustin Plains Ranch application timeline

2007: Augustin Plains Ranch files for a permit to pump 54,000 acre-feet of water per year from the San Agustin Plains to entities along the Rio Grande.

March 30, 2012: State Engineer Scott Verhines dismisses the permit application. Jan. 3, 2013: District Court

affirms state engineer's denial of a permit.

July 14, 2014: APR files corrected application.

Nov. 25, 2014: State engineer rejects application as incomplete.

Dec. 23, 2014: APR files amendment to application.

April 28, 2016: APR files revised application.

Aug. 1, 2018: State Engineer Tom Blaine dismisses permit application; APR appeals decision.

June 26, 2019: 7th District Court Judge Matthew Reynolds to hear motions for summary judgment at 10 a.m. in Reserve.