

Decision denying water permit appealed

By [Scott Turner / Journal Staff Writer](#)

<https://www.abqjournal.com/1370059/decision-denying-water-permit-appealed.html>

Published: Monday, September 23rd, 2019 at 10:05pm

ALBUQUERQUE, N.M. — The fight over the use of water under the San Agustin Plains in Catron County isn't over.

Augustin Plains Ranch LLC is appealing a 7th Judicial District Court decision denying it a permit to pump billions of gallons of water to municipalities and businesses along the Rio Grande, including in the Albuquerque area.

"We filed our appeal against the legally flawed decision to deny the APR project a proper hearing," Augustin Plains Ranch project manager Michel Jichlinski told the Journal.

Seventh Judicial District Judge Matthew Reynolds in late July approved motions for summary judgment dismissing Augustin Plains Ranch's application for a permit. Jichlinski said the decision has been appealed to the New Mexico Court of Appeals. APR first applied for a permit in 2007, but has been thwarted in a number of decisions in both the State Engineer's Office and through the courts.

The appeal came as no surprise to opponents of the ranch's application.

"Today (Monday) was the APR's deadline to appeal, and we expected them to do so," San Augustin Water Coalition board member Eileen Dodds said. "All I can say is our lawyers are ready for this latest appeal and we're ready to deal with the APR LLC again."

Augustin Plains Ranch is proposing to pump 54,000 acre-feet of water per year (17 billion gallons) from the aquifer under the San Agustin Plains through 37 wells, a little more than the annual "consumptive use" of the Albuquerque Bernalillo County Water Utility Authority, according to John Fleck, director of the University of New Mexico Water Resources Program.

The aquifer is the remnant of a lake that existed over the plains thousands of years ago. Jichlinski believes use of the aquifer is a solution in New Mexico, where water is a precious commodity.

"The decision could not come at a worse time for New Mexico, as APR could also offer the state a remedy for the costly and risky lawsuit against Texas, which could bring huge disruptions to the state's economy," he said, referencing to a lawsuit filed by Texas in the United States Supreme Court against the states of New Mexico and Colorado. It alleges that New Mexico is violating the Rio Grande Compact, which governs the distribution of Rio Grande water among the three states. "And all this to satisfy a small but powerful interest group, that is not using the water currently and has no plans to use it in the future."

The ranch's website said the proposed pipeline project would "help accommodate New Mexico's growing need for water." The latest application filed in 2014 with the Office of the State Engineer said the pipeline water will also be used at "locations along the length of the pipeline."

Opponents of APR's permit application – and Reynolds – said the application doesn't specify what those locations and uses are. More than 600 protests have been filed against the application.

"We have not seen an appeal of Judge Reynolds's decision yet," said Doug Micklejohn, director of the New Mexico Environmental Law Center. "We are disappointed to learn that the Augustin Plains Ranch may have

filed an appeal. We believe that Judge Reynolds's ruling was correct, and if the Ranch has appealed his decision, we will work to persuade the Court of Appeals to affirm it.”

Opponents also argue there isn't enough water in the aquifer – which isn't fed by a river system – to accomplish what the ranch proposes.

“This area will not be able to survive without water, livelihoods depend on this water,” Catron County Commissioner Anita Hand said. Her family's ranch uses water from the aquifer. “We will stay vigilant and continue to fight for our way of life despite the endless appeals and repetitive filing of the same application that does not identify an end user and blatantly ignores the Doctrine of Prior Appropriation.”

The Office of the State Engineer has filed a motion to reconsider in the case, requesting a change of language in Reynold's order, including stating that the State Engineer's appeal has been upheld, rather than the application being dismissed.

Jichlinski cited the motion as proof the decision was flawed.