

The Wildwood Highlander is a periodic newsletter providing information to property owners in Wildwood Highlands, near Datil, New Mexico. It is published in Datil, NM by the Wildwood Highlands Landowners' Association (WHLA), Post Office Box 87, Datil NM 87821-0087. For further information, please contact any member of the WHLA Board of Directors, listed below. Alternately, you may visit the WHLA website on the Internet: www.wildwoodhighlands.org.

2019 Annual General Meeting

The 2019 WHLA annual general meeting was held on May 18th, 2019 at the Datil Well Campground Pavilion. Thirty-one (31) members presented ballots. Highlights of the meeting were:

- The 2019 WHLA budget includes \$5,000 for road improvements and \$4,000 for road maintenance.
- Kathy Kanely, Alma McCarty, and Rob Sanders were elected as Directors of the Association.

Full details are in the meeting minutes, posted on the website. Landowners are encouraged to put their names forward to serve as WHLA directors. A sample nomination form is available on the website.

Board of Directors

The Board of Directors met immediately following the general meeting on May 18th, 2019, to elect officers:

- | | |
|-------------------|---------------|
| ▪ President: | Rob Sanders |
| ▪ Vice-President: | Fred Shepherd |
| ▪ Treasurer: | Kathy Kanely |
| ▪ Secretary: | Alma McCarty |
| ▪ At-Large: | John Kell |

Minutes from the meetings of the Board of Directors are posted on the website. In 2019, meetings were held on March 16th, May 18th, October 17th, and December 16th. At the December 16th meeting, the Directors set the assessment for 2020 at \$74.00 per lot. Payment is due by 2020-Jan-31.

Message from the President of the WHLA

Greetings Highlanders,

Thank you for allowing myself and our fellow LOA members to represent our Board of Directors. It is without question I have inherited a position and the bylaws that my predecessors have so carefully and thoughtfully crafted over the years. I was so proud when our subdivision adopted the policies of the New Mexico Dark Sky Act and protested the San Agustin Water Grab ... both fantastic moves on behalf of our former board members.

A very warm welcome to our new residents, you have found an amazing place in these mountains. Epic views aside, we have preserved the quaint twisting roads and natural beauty of the area which is, in my opinion, what resonates the enchantment, isolation, and value of our location.

Not much else to say, I'm following on the coat tails of a well-managed BOD, and plan to keep all status quo. If there are ever any suggestions, problems, or candidates for BOD positions, please feel free to contact us via the WHLA website.

Best wishes in 2020!

Sincerely,

Rob Sanders

WHLA President 2019

Wildwood Highlands Weather Review – by Chuck Baker**January to September 2019**

The temperatures of the past winter fluctuated slightly from the 20-year average with January and February a little colder and March a little warmer. Precipitation for those months was almost exactly average with 1.57" (including 12" of snow) vs. the 1.56" 20-year average.

The spring months of April, May and June of 2019 were wetter and colder than usual with total precipitation of 2.38" (including ½" of snow on May 20th !!!), almost an inch above the 20-year average of 1.48" for those three months. Temperatures were well below the 20-year average with the daily high averages ranging from 3 to 8 degrees below normal during those months.

Summer 2019, nominally the monsoon season, was drier and warmer than normal. Total rainfall for those three months was 5.46" vs the 20-year average of 7.81". The rains were also late arriving and especially minimal in July and August resulting in a poor showing of wildflowers this summer. We didn't get our first real "frog strangler" downpour until mid-September (when over 2" fell late Saturday into Sunday), and the above-average accumulation in September (2.73" vs 1.97") was the only thing that saved the summer monsoon from being even worse. Whether coincidental or not to the much drier summer, the Rufous Hummingbird migration was later in arriving and fewer in numbers than typical.

Summer temperatures were warmer than average, possibly because of the absence of cooling rains most days. Noticeably, August's daily low and high averages were almost 4 degrees above the 20-year average.

Overall for 2019 through September, we are 1.45" below the 20-year average for precipitation (and the shortfall would be greater without the wetter than normal spring months). The cooler spring months were offset by the warmer summer months, so I would expect by the end of 2019, depending on what happens with the rest of the year, the yearly temperature average for 2019 will be close to normal.

Fall Update

Although my weather stats for October are incomplete, I can say that the temperatures were above average until there was a brief very cold spell the last few days of the month, with overnight lows dipping into the teens. November also had above average temperatures the first three weeks of the month, along with above average precipitation of 2.12" (a record for November). This included 8.5" of snow during the last week of the month, giving us a White Thanksgiving, and very muddy roads into December. Overnight temperatures mostly above freezing and an unusual rain on December 8th of 0.43" have contributed to the roads remaining soft throughout the days and nights early in the month.

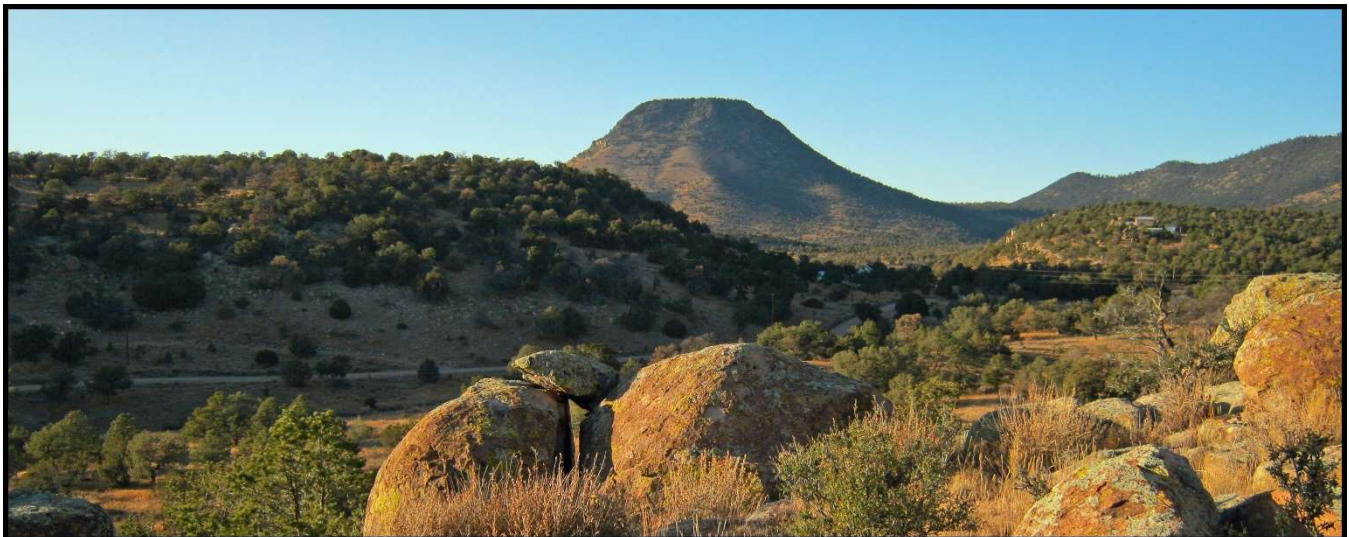


Photo Credit: John Kell

Water Matters

Background

Early in August, 2018, the New Mexico State Engineer rejected the third application that an Italian-owned company, Augustin Plains Ranch LLC, had submitted to the State of New Mexico for permission to drill 37 water wells on the San Agustin Plains in western Socorro County, to pump 54,000 acre-feet of water (approximately 17 billion gallons) each year from the aquifer beneath the Plains, and to pipe it to unspecified water customers many miles away.

Later that year, unsurprisingly, Augustin Plains Ranch filed an appeal against the State Engineer's decision in the Seventh Judicial District Court in Catron County. Briefs in opposition to the appeal were filed by the Hands Living Trust, the Catron County Board of County Commissioners, the Isleta Pueblo, the Sandia Pueblo, the Santa Ana Pueblo, the Navajo Nation, Wild Earth Guardians, the San Augustin Water Coalition, the Pecos Valley Artesian Conservancy District, and the Water Rights Division of the Office of the State Engineer.

The Appeal

The appeal was finally heard before Seventh Judicial District Judge Matthew Reynolds on June 26, 2019 at the Catron County Courthouse in Reserve. The Augustin Plains Ranch application had requested a two-stage hearing: the first an evidentiary hearing to establish the aquifer's hydrology, and a second to determine appropriate beneficial use.

The attorney for **Augustin Plains Ranch** alleged that the Office of the State Engineer had made several errors in rejecting the application:

- Refusing to hold an evidentiary hearing,
- Claiming the purposes of use were not defined, and
- Categorizing the application as speculative.

Several spoke in rebuttal.

The **Office of the State Engineer** reiterated that:

- The application is indeed speculative,
- The application does not identify a specific end-user, and
- New Mexico law does not encourage such speculative appropriations.

The attorney for **Catron County** characterized the two-stage hearing request as "antithetical to the New Mexico constitution." Noting that repeated hearings on the same application (over 12 years, in this case) are not in keeping with the spirit of the law, he requested that the application be dismissed with prejudice (i.e. permanently).

Attorneys for the **Environmental Law Center** (representing 80 **Community Protestants**) reinforced the arguments of the Office of the State Engineer:

- The application does not specify who will use the water,
- The application does not specify where the water will be used,
- A two-stage hearing is in violation of Office of the State Engineer regulations,
- In 2012, Judge Reynolds ruled that Augustin Plains Ranch weren't entitled to an evidentiary hearing.

The representative for the **Hand Family Trust** noted that, according to statute, commercial sales are not, as alleged by Augustin Plains Ranch, a "beneficial use."

The representative for **Wild Earth Guardians** noted the impossibility of conducting impact studies (as required by the Office of the State Engineer) in the absence of a specified "place of use".

The attorney for the **Isleta Pueblo** noted that Augustin Plains Ranch has never contacted Isleta Pueblo with respect to negotiations for a "compensatory right-of-way" for the proposed pipeline across the sovereign land of the Pueblo and asked that the application be dismissed with prejudice.

Judge Reynolds reserved judgment but promised a decision by July 31, 2019.

Judge Reynold's Decision

On July 24, 2019, Judge Reynolds handed down his decision. The Judge:

- denied the appeal from Augustin Plains Ranch.
- asked the Community Protestants and Catron County to prepare a final order for summary judgment.

Here are some excerpts from his decision:

- "The state, as owner of water, has the right to prescribe how it may be used."
- "The principle of beneficial use aims fundamentally at definiteness and certainty."
- "New Mexico courts have long considered specificity to be a statutory requirement for an underground water permit."
- "The application contradicts beneficial use as the basis of a water right and the public ownership of water, as declared in the New Mexico Constitution."
- "The application fails to specify the beneficial purpose and the place of water."
- "The application does not reveal a present intent to appropriate water, but merely to divert it and explore specific appropriations later."
- "The people of New Mexico should not have their water tied up any longer with possibilities."

On August 23th, 2019, Judge Reynolds issued the final order:

- "The motions for summary judgment filed by the Community Protestants and Catron County Board of Commissioners are granted;"
- "All other motions for summary judgment are denied as moot; and"
- "The Augustin Plains Ranch's application to appropriate ground water from the San Agustin Basin is dismissed with prejudice."

Another Appeal ...

But again, unsurprisingly, on September 20th, 2019, Augustin Plains Ranch submitted an appeal to the New Mexico Court of Appeals for relief from Judge Reynolds final order. And so the saga continues.



Photo Credit: John Kell

Editor's Note: The *Highlander* encourages feedback from its readers. Opinions, observations, reminiscences, concerns, and photographs are all welcome. [The *Highlander* reserves the right to edit submissions for brevity and clarity]. Feel free to email me at: johndawsonkell@gmail.com