

Dealing with Aging Tribal Water Infrastructure

Derrick Lente, Middle Rio Grande Conservancy District, Pueblo of Sandia



Derrick is a son of two Pueblos in New Mexico, Sandia and Isleta. He holds two bachelor's degrees and a JD degree, all from the University of New Mexico. Derrick is the owner of Lente & Associates, a Native American consulting firm and is also an adjunct professor at UNM where he teaches federal Indian law and business law courses. Derrick grew up in an agricultural family and has over ten years of professional experience working on water issues in the Middle Rio Grande Valley of New Mexico. In 2009, Lente was elected to the Middle Rio Grande Conservancy District Board of Directors, unseating the incumbent whose family had held the seat for more than 30 years. He makes his home in Sandia Pueblo with his eight-year-old daughter, Jade, where they continue a ranching and farming lifestyle.

Good morning ladies and gentlemen. It is a pleasure to be here to talk about tribal infrastructure. As a disclaimer, I want to make sure that it is clear that I am not here on behalf of the Middle Rio Grande Conservancy District (MRGCD), although I am a board member, nor am I here as a spokesperson or representative for the Pueblo of Sandia; although I live there and am a tribal member.

I am here to give my perspective on practical matters as a farmer who has farmed for his entire life on both the Sandia and Isleta pueblos. I'll provide perspectives from my educational background and professional experiences as an attorney. The discussion this morning has been very 'scientific', and I am not a scientist. I am an attorney and have worked with water policy and laws with respect to pueblos. My perspective has a lot to do with the six Middle Rio Grande pueblos in the Middle Rio Grande valley of New Mexico.

When we talk about dealing with aging tribal water infrastructure, I think it is most important to go back to the history of who exactly we are discussing. If you don't know that history, it makes it hard to assume things about the culture. It is easy enough for the Corps to talk about its aging water infrastructure; but realistically, on pueblo lands, we are talking about a lot of different entities and a lot of different jurisdictions.

Those of us who have lived in the state for any length of time know that the pueblos have resided in this area for centuries. The pueblo name came from early Spanish languages meaning stone-

masonry village dweller. The pueblos primarily made their homes in the four corners area of Utah, Colorado, Arizona, and New Mexico. In the beginning, they were very nomadic and followed the herds as hunters, but eventually they formed farming communities and raised corn, squash, beans, and other agricultural products. In the 1500s, when Coronado eventually wandered up the Rio Grande valley, he found farming pueblos with extensive ditch infrastructures on their lands. The pueblos had been farming these lands far beyond what we can imagine. The best way to begin a presentation about pueblos is by describing their infrastructure history.

Bruce Jordan, who is with the Bureau of Reclamation, and who just spoke, talked about the history of the MRGCD and a timeline. In the early 1920s, there was a movement to help control the water logged lands of the Middle Rio Grande valley so that it could support agriculture and development. In 1923, the MRGCD was changing the valley by digging ditches and building the El Vado Dam. By 1935, El Vado Dam was completed and other diversion structures established the Cochiti area. Angostura and Isleta had dug hundreds of miles of ditches, canals, and riverside levees. A lot of work was being done at that time, but we can't forget that the pueblos were already there.

On March 13, 1928, the U.S. Congress passed an act to protect the pueblo's water rights. These rights included protection of what are called "prior and paramount rights" for the pueblos. All

the lands that were being farmed at the time the district was installed were included. The rights to those lands were going to be protected and would have a seniority right regarding their water. Today, it is calculated that pueblos now have a right to irrigate 8,847 acres of prior and paramount lands. Moreover, the pueblos, too, have a right to irrigate what are called newly reclaimed lands. Those are essentially lands that the district installed as ditches and structures that have the ability to become irrigated at some point in time. So in addition to those prior and paramount lands, pueblos have the reclaimed lands as well. Both of those together amount to over 20,000 irrigated acres on the six Middle Rio Grande pueblo land.

When we talk about how to help deal with aging tribal water infrastructures for the pueblos, it is a little bit different because the pueblos have many different organizations that have either a right-of-way, a property right, or some type of interaction on their lands. I would note that the MRGCD has miles of ditches on pueblo lands. Secondly, there are federal structures on pueblo lands as well that were built by the Department of the Interior, or installed by Bureau of Indian Affairs, the Bureau of Reclamation, or others. Nonetheless, pueblos are pueblos, it is their land-grant, it is their reservation. They have their aboriginal ditches that continue to be used to this day.

So what do we do to help better the system? Is there a solution? How do we get to a solution? What is the definition of a solution? Are we trying to, in fact, conserve water? In other words, should the pueblos conserve water so they can funnel it further down the system, or should they take full benefit of that water? A solution has yet to be identified.

Moreover, if there is a solution, who is responsible to help provide it? Potential solutions include dealing with all of the parties involved, collaborating on ideas, and networking so that a solution can be found if there is one. A solution for the pueblos water infrastructure could be: "I want to make sure that I can water all of my crops, period." But for somebody else, a solution could mean making sure that they get their water downstream. Thus, the other pueblos need to make sure to send the water downstream. In reality, the solution might be different to different people.

Obviously, collaboration among parties is easier said than done because especially in the Middle Rio Grande Valley, it is not an adjudicated area

and we have six different forms of government. The federal government is present, the MRGCD is there; the interested parties are a mishmash of a bunch of different people. Proper management might mean conservation. If so, in system-wide terms, should that mean that we concrete-line ditches to help water get down the system faster with less seepage? Does it mean that entities like the MRGCD or the BIA, who have a trust responsibility to the pueblos, should mow more often so that there is less debris in the water and so it is cleaner? Should they dredge more often? Or, does the water management and improving the infrastructure on the pueblo lands mean on-the-ground improvements? Does that mean concrete-lined ditches on farmlands? Does that mean laser leveled fields? Does it mean larger turnouts at each farmer's field so that they can irrigate more effectively and more efficiently thereby pushing water downstream or down the ditch?

With that being said, I'll try to come to a solution. Obviously you can't do much unless you have funding. This is the crux of the problem because no one has money. If you want to make improvements on tribal water infrastructure, you need a money tree, you need a lot of money, period. Who will fund this? Who is going to pay for all of these improvements? Coming from somebody who farms on the pueblos, and somebody who has worked for a pueblo for many years, and from an attorney's perspective, it is easier said than done. At the same time, does the BIA have the responsibility to ensure that the pueblos have the right capacity and updated water infrastructure so they can make sure that they use the water for the best benefit? Or does it go back to the MRGCD, whose right-of-way that water runs through? Or, does it go back to the pueblos? Some are of the opinion that if these ditches are on pueblo land, the pueblos are benefiting from them and should have the responsibility to pay for any upgrades to their system. Or, does it come from other interested parties that simply want to see the pueblos use water and then push the water down stream? These are all just ideas and hypotheticals because no one really knows what the solution is.

Luckily, there are existing programs like one through the Natural Resources Conservation Service that many pueblo farmers take advantage of to help them pay for upgrades in their systems, and any little bit obviously does help. When we talk about pueblo water infrastructure and upgrades to truly aboriginal structures, one thing is important—

and I stress this not only because I am from a pueblo but I also teach federal Indian law at the University of New Mexico—that is that we always must remember that there is an acknowledgement of rights that the pueblos were first, that they do have prior and paramount water rights. They have the right to ensure that they obtain water with their surface water rights each year. Pueblo land and water are a part of our heritage, they are a part of who we are, and of our culture as farmers. When we talk about tribal water infrastructure, improvements, and upgrades, it is a fluid notion of what exactly that means, because, again, you have so many actors on the pueblo lands.