

# WATER IN NEW MEXICO: A HISTORY OF ITS MANAGEMENT AND USE

IRA G. CLARK

Albuquerque: University of New Mexico Press, 1987.

Pp. 839. \$50.00, h.c.

Someone has said that whiskey is for drinking and water is for fighting. Certainly, this saying seems to carry some truth for the arid southwest where the central reality is the intense competition for every drop of water in each river. This book documents the history of competition for water in New Mexico from its earliest days. The book is a much awaited and welcome addition for everyone interested in New Mexico water issues. Even more broadly, in fact, one would have to say that anyone interested in the history of New Mexico would want to have this book on the library shelf. It provides a perspective for understanding the history of this water thirsty state.

For example, the chapter on The Spanish Period provides a fascinating insight into the relations between the Spanish colonizers and the Indians. Dr. Clark observes that the Spanish institutions asserted a profound influence on New Mexico due to the fact that New Mexico lived under Spanish and Mexican law for 250 years before becoming a part of the United States. The Spanish water law was well-developed, drawing heavily on the tradition of the Moors and the Roman code, but treatment of the Indians in the New World presented a special challenge. The Spanish law itself was really quite progressive and tried hard to protect the Indians. Queen Isabella, on her death bed, enjoined her Spanish subjects to treat the natives justly and to remedy any injury done to their goods. The Spanish colonists were directed to settle on vacant lands and not to interfere with those being cultivated by the natives. However, as Dr. Clark points out, the actual application of these well-intentioned laws left much to be desired "because it ran counter to the basic purpose of exploiting newly acquired lands in the interest of the Spanish empire, and of the pioneers who make the occupation possible." Then, after the area of New Mexico passed from Spanish sovereignty to Mexican rule, officials in the national capital in Mexico City "gave little attention to the affairs of the remote northern province of New Mexico, whose governors and lesser public officials operated virtually free of external checks in their handling of Indian relations. Under these conditions self-interest and local pressures frequently dictated administrative decisions: the consequences of which were disastrous to the pueblos."

Competition for precious water in this arid land of New Mexico was a constant theme in the relations between the Spanish colonists and the natives. As Professor Clark points out, the colonization of New Mexico

provided a severe test for the effectiveness of Spain's benevolent policy towards sedentary Indians. The Pueblo Indians were hemmed in by warlike nomads and occupied much of the better land having access to water. The incoming Spanish colonists also settled in the valleys close to the precious water supply, and as the number of the colonists increased, friction grew. Diego De Vargas and Pedro Rodriguez Cubero, the first governors, following the reconquest of New Mexico after the pueblo rebellion, promoted the interest of newly arrived colonists at the expense of the Indians. For example, Governor Diego De Vargas, in creating the Villa de Santa Cruz, dispossessed the Indians of their cultivated lands and gave the land to settlers in the form of a community grant. De Vargas and Cubero parcelled out to individuals the land of the permanently abandoned pueblos of Jacona and Cuyamungue, and in so doing established boundaries abutting on existing pueblos. This concentration of newcomers impacted on the Pueblos of San Juan, San Ildefonso, Santa Clara, Pojoaque, Nambe, and Tesuque. Pojoaque particularly suffered considerable loss. The pueblo protested through Alfonso Rael de Aguilar, the Protector of the Indians, that one Captain Ignacio de Roybal, who had secured a permit to pasture stock west of the Rio Grande across from San Ildefonso had taken land that they had farmed. The Protector requested that Roybal be forced to evacuate and that the Indians be given a square league of agricultural land.

Some governors were more sensitive to the Indian protests than others, but the governors were reluctant to honor too many of the Indian claims for fear that this would result in other pueblos demanding restoration of their lost lands. The pattern of conflict between the pueblos and the new colonists continued throughout the area. This early Spanish period is a revealing study of the tensions between the colonists and the Indians, and the attempts of a frontier society to accommodate competing claims to land and water.

The chapter on the history of the negotiations for interstate compacts on the various rivers that New Mexico shares with other states is an important contribution to the understanding of modern New Mexico. The history of international and interstate conflict over the Rio Grande is illustrative of the intense and often bitter competition that has occurred on other interstate rivers such as the Pecos, the Canadian, and the San Juan and Gila tributaries to the Colorado River.

In the Rio Grande River Basin, rapid increases in irrigated agriculture in the latter half of the last century began to pit state against state and country against country. Upstream in Colorado's San Luis Valley, the acreage under cultivation increased from 50,000 acres in 1870 to 300,000 acres in 1890.

Farmers in New Mexico became alarmed about the diminishing flow

of the river. They had always assumed that there would be ample water, because they had settled their region first and had used water resources that were developed by Indians who had practiced irrigation for hundreds of years.

The rapid expansion of Colorado farming caused even more serious problems downstream. As water for the El Paso-Juarez Valley declined, rivalry among the border peoples was intensified. The thirsty Texas farmers accused the Mexicans of diverting the water, and the Mexicans accused the Americans upriver of bringing on the shortage. After charges and countercharges, came threats of violence.

The Mexican Minister Matias Romero represented his country vigorously and declared the time had come "to remedy the evils . . . suffered by the Mexican bank of the Rio Grande" where land values had fallen and the population of 20,000 had declined by one-half. Mexicans and Americans both were being hurt by shortages. U.S. Secretary of State Olney decided the situation had reached an intolerable stage, and the International Boundary Commission was asked to study the problem. The official report confirmed that diversions upriver, especially in the San Luis Valley of Colorado, had greatly reduced the flow of the river and that the diversions had seriously hurt farmers in New Mexico as well as in Texas and Mexico.

After further discussions and delays over where the storage works should be located, the requirements of international law and Mexican claims for compensation for damages suffered, the American Secretary of State informed Mexico that the United States was eager "to deal with the question on principles of highest equity and comity." On May 21, 1906, the Treaty was signed. It covered that reach of the Rio Grande above Ft. Quitman, Texas to the headwaters in the Colorado Rockies and allocated 60,000 acre-feet per year to Mexico. The diversion and storage works would be built and paid for by the United States, and Mexico would waive its claim to compensation for damages.

The Elephant Butte Dam in New Mexico, 100 miles upstream from El Paso and Juarez, would not only provide the storage for deliveries to Mexico, but would provide water for extensive irrigation in Texas and New Mexico. The Treaty and accompanying storage works amicably settled the dispute between Mexico and the United States as well as benefitting farmers in southern New Mexico and in Texas. However, yet to be resolved were the internicine disputes of the three states of the Upper Rio Grande: Colorado, New Mexico, and Texas. This was done by the Rio Grande Compact of 1938. The interstate situation was becoming increasingly aggravated, and after repeated lawsuits, extended engineering studies, and prolonged negotiations, the 1938 Compact was agreed upon by the signatory states. Through a complicated series of

delivery schedules Colorado is required to deliver specified quantities to New Mexico and, in turn, New Mexico to Texas. The signing of the Compact has not ended the competition, and repeated lawsuits have been brought in the U.S. Supreme Court by downstream states to enforce the Compact. Water use in New Mexico is strictly limited by the Compact and enforced by state law, and recently litigation has significantly restricted groundwater use in the San Luis Valley in Colorado.

In times of shortage, states have to strain to meet the delivery requirements. Thirsty users chafe at the restrictions; but, by and large, the Compact has worked with the help of the not infrequent prodding of the federal courts and careful monitoring.

One of those important questions in New Mexico water management is: Why was New Mexico able to come forward with a progressive water law for underground water resources over a half century ago while its neighbors, such as Arizona and Texas have not? New Mexico established a groundwater law in 1927 which allowed the State Engineer authority to limit withdrawals from groundwater basins so as to avoid overpumping and thereby to protect existing water rights. By contrast Texas still follows the ancient English law of capture which ignores the migratory nature of groundwater. Under Texas law, with some limitations, a neighbor can capture by pumping on his property even though that may withdraw the water from his neighbor's property, thereby damaging him severely.

After a heroic struggle Arizona has only recently been able to roll-up a comprehensive groundwater law and is attempting to bring its groundwater withdrawals into balance with recharge in critical areas in Arizona.

One has to ask, why was New Mexico fortunate enough to act before the crisis arrived and why were Arizona and Texas not? Dr. Ira Clark recounts how New Mexico's law did not come into being by mere accident or altruism. The Pecos Valley, between Roswell and Artesia, was particularly blessed. It was only one of two extensive flowing-well artesian basins in the United States and one did not have to pump. One simply put down a well and the water flowed out freely—the arid equivalent to the tropical paradise where one neither has to cultivate nor plant, but simply pluck the ripened fruit from the tree provided by nature. However, by 1909 the sheen of this Pecos paradise was beginning to dim. The Territorial Engineer, Sullivan, reported that the pressure was declining during the irrigation season. By 1916, there was a pronounced decline and some wells were going out of production. A key catalytic factor came in 1917 when the newly formed Federal Land Bank in Wichita refused to make loans to farmers in the area because the declining water table was regarded “as rendering the farmlands insufficient security to insure repayment.” Professor Robert Emmet Clark adds in a separate study that

virtually the entire Pecos Valley was in receivership and that "by 1925 there were mortgage foreclosures by the thousands on good farmland." With this external pressure from the Federal Land Bank all of the farmers in the basin saw clearly that they needed secure water rights and the 1927 Groundwater Law was passed with the Roswell Chamber of Commerce playing a strong leadership role. The legislation was enacted in 1927 and refined in 1931. The law has served as a model for other states, has provided security to groundwater-rights holders, and has allowed New Mexico to live within its groundwater budget, balancing withdrawals with recharge.

One constant theme shines through from the pages of this book, and that is the competition for the vital resource of water in a thirsty land. The book illustrates how the society has struggled to resolve the conflicts resulting from this competition, whether it be between Spanish colonists and the resident Indians or between states relying upon the life giving ribbons of water flowing across state lines, or between individuals developing precious waters lying out of sight underground. The entire book is full of illuminating accounts which are necessary to understand the complex history of New Mexico in the larger sense, far beyond the narrower subject of water history.

Albert E. Utton  
Professor of Law  
The University of New Mexico