

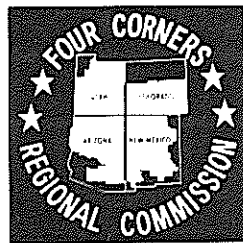
LAS ACEQUIAS DEL NORTE^{1/}

By

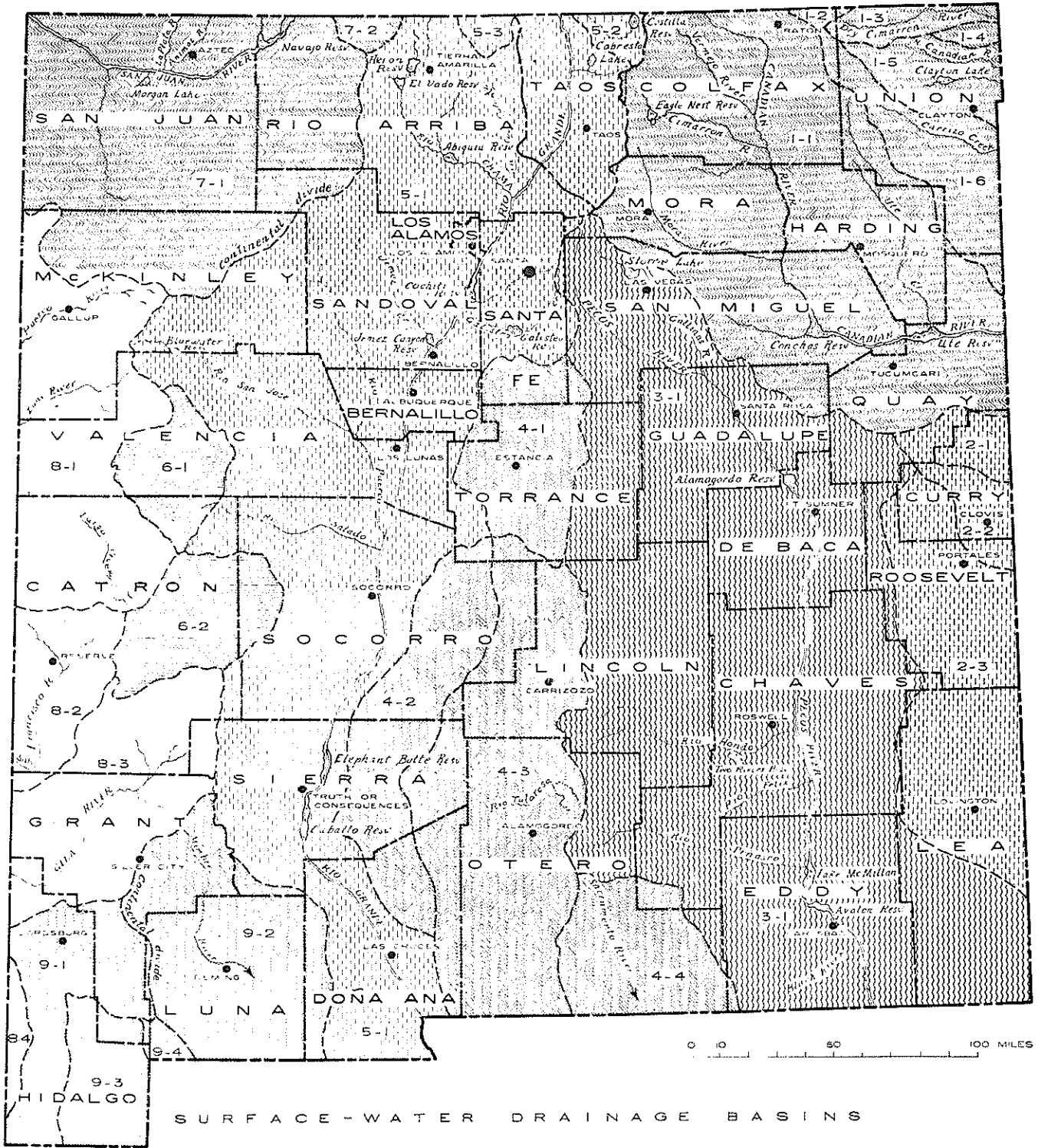
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TECHNICAL REPORT NUMBER 1

In cooperation with
FOUR CORNERS REGIONAL COMMISSION
NEW MEXICO STATE PLANNING OFFICE
KIT CARSON MEMORIAL FOUNDATION, INC.
Taos, New Mexico
1974



1/ THE COMMUNITY DITCH SYSTEMS OF NORTHERN NEW MEXICO



SURFACE-WATER DRAINAGE BASINS

FOREWORD

This report is the first of a series on New Mexico water resources law. It includes a brief background on the development and some of the basic points of the state water laws. However, it deals primarily with the laws of acequias and other information of interest to these organizations.

Other phases will include a summary-digest of all state water laws and a documentation of the history and development of acequias in northern New Mexico; their impact on the socio-economic structure of the region; and material for consideration in making decisions for the present and future use of the water resources.

The main purpose of the study and publications is to help bring about a better understanding and knowledge of the present water laws by acequia organizations, water users and the general public. The discussion that follows is intended to serve only as an outline and digest of the laws and other applicable information.

IT SHOULD BE REMEMBERED THAT IN CASES FOR WHICH MORE LEGAL DETAILS AND INTERPRETATIONS ARE NEEDED, THE READER SHOULD PROCEED ONLY AFTER A CAREFUL REVIEW AND STUDY OF ALL THE PERTINENT WATER LAWS WITH ASSISTANCE OF COMPETENT LEGAL COUNSEL.

The publication of this report was made possible by a grant from the Four Corners Regional Commission through the New Mexico State Planning Office. Other organizations cooperated by making funds available for the printing of a substantial number of extra copies. Their names are listed on Page 76.

Material for the series entitled "Las Acequias del Norte" is being compiled by the Kit Carson Memorial Foundation as a public service. It may be reproduced freely. The customary credit of the source is suggested.

Jack K. Boyer
Director

ACKNOWLEDGEMENTS

Many persons and organizations contributed to this report.

Special credit is given to the local acequia officials and others who furnished material and information about their individual communities. A large number of acequia meetings and interviews with mayordomos, commissioners and others were tape-recorded with their permission. A detailed account of the information obtained will be included in a separate publication. The names are too many to list here so we take this means to express our thanks and appreciation to everyone who participated and helped.

Representatives of the New Mexico State Engineer Office, State Planning Office, State Records Center, Museum of New Mexico, Four Corners Regional Commission and the sponsors of the Northern Rio Grande Resource Conservation and Development Project were most helpful in providing resource data and guidance. Their help is appreciated.

The author researched and consolidated data and information from a large number of documents, publications, court cases and laws. The source is credited accordingly.

Special thanks to our many friends who counseled with us on the legal and historical aspects of the report. They were kind enough to review the material and offer suggestions for changes and corrections which are included in the final draft. Special credit is due Paul Bloom who contributed significantly of his time and talents to the entire manuscript.

We express our gratitude to all who helped.

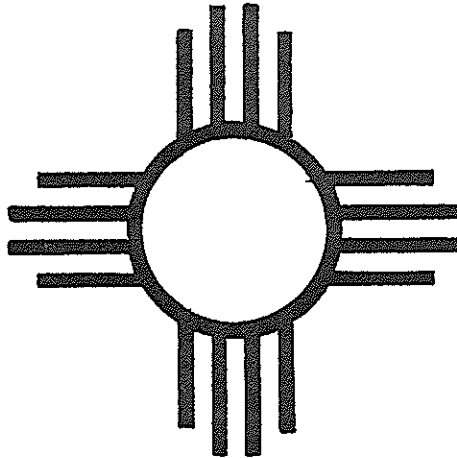
Phil Lovato
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LA ACEQLIA MADRE

INTRODUCTION 1/

Water is one of the most important natural resources in northern New Mexico. It has been, and will continue to be, the lifeblood of the region. It enabled the development of the uplands villages. It has meant their survival. Its system of use and management has been a dominant factor in the socio-economic life of the people.

The laws of New Mexico recognize various types of organizations for developing and administering the water resources for irrigation. Among the most important, and certainly the oldest, are the community acequia associations. They have been in existence since the early Spanish Colonization period of the 17th and 18th centuries. Historically, they have been the principal local units of government responsible for the distribution and use of irrigation water. Some of the present laws under which they operate date back to 1851.

Research indicates that there are about one thousand acequia associations, both of a formal and informal nature, in the entire state. Approximately seven hundred are within State Planning and Development District No. 2 in north-central New Mexico with the greatest number concentrated in the counties of Mora, Rio Arriba, Santa Fe, San Miguel and Taos. They provide irrigation water to about 160,000 acres on an estimated 12,000 farms, seventy percent of which average less than twenty acres in size. The irrigated acreage on the individual farms varies from less than one acre to over five hundred. A large number are in the ten to twenty acre range.

The number of water users under each acequia varies considerably too. The following are examples of the general pattern in northern New Mexico. One acequia serves twenty-two water right owners on two hundred and sixty acres. Another provides water to about six hundred and forty acres owned by seventy water users. One serves over three hundred owners of water rights. Some furnish water to over twelve hundred acres. A few serve only three to ten water users.

Community acequias are uniquely important in northern New Mexico. The region's residents have long depended on the water from the acequias for growing food, for income and social satisfactions. They are

1/ The material is part of a manuscript by the author entitled "Las Acequias Del Norte -- History and Development". Scheduled for publication.

an integral part of the culture and heritage of the area. Even their names are descriptive of the region and its people--La Acequia Madre de Chamisal y Ojito...La Acequia del Llano Frio...del Cajon Grande...de la Otra Banda...La Acequia de San Francisco de Assisi...del Finado Francisco Martinez...del Tio Gervacio...La Acequia de Los Lovatos. The Muchmore Ditch and the Byron Witt Ditch, too. These and many more.

Many of the irrigation terms are heard daily too--tapancos, estanques, compuertas, desagues, el reparto o la porrata del agua, el Mayordomo... small ditch dams, tanks, headgates, drainage outlets, water distribution, the ditch boss.

The origin of acequias as an institution has been traced by archaeologists and historians to Moorish, Spanish and Indian sources. The Pueblo Indians were practicing irrigation and growing crops when the Spanish explorers and colonists first came to the area. The settlers brought with them the experience and technology of irrigation and its institution developed to a great extent in Spain during the Moorish period of the Middle Ages. They combined their customs and knowledge with those of the Pueblos and out of it resulted the acequia institution on the new continent.

The settlers built the acequias for the benefit of all the villagers. Labor for the construction and upkeep of the ditch was contributed by the water users according to the amount of water use and land irrigated. Water was distributed impartially and in proportion to the land farmed. Ownership of the acequia was shared by all the settlers but each individual owned and cultivated enough land to provide for the needs of the family. Water was available not only for irrigation but for livestock and domestic use as well.

Their method of operation and use is very much the same today as when they were first established. The cost is generally low since upkeep and repairs are done for the most part by the members themselves. Modern improvements such as permanent diversion dams and concrete-lined ditches have required larger cash outlays. However, these too have been relatively small to the members, a large percentage of the cost having been shared by various state and federal resource programs in recent years.

The acequia organizations are relatively simple and this perhaps is their strongest point. They have served as a most useful tool in the development of irrigation in New Mexico. They have demonstrated a capability for resolving physical and human problems in a sympathetic and thoughtful way. While their primary purpose has been the delivery and equitable distribution of the available water, they have been a vital force in bringing about genuine cooperative efforts and participation by its members.

Their impact in northern New Mexico throughout its long history has been most significant. What the people have done to keep their acequias and their land under cultivation since the first settlers came to the area makes them central figures in the history of the oldest quasi-cooperatives in the United States. What they have done makes them a real part of the development of the region.

But, while water has been the lifeblood of the region and acequias have been the principal tools for its use, historically there have been conflicts, disputes and misunderstandings. It has resulted in much legal argument, judicial decision and legislation which has been incorporated into the water laws we have in use in New Mexico today.

Legislation on Acequias---

Sections 75-14-1 through 75-14-61 and 75-15-1 through 75-15-10, New Mexico Statutes Annotated, 1953 Compilation, deal with and govern acequia associations. Other sections in Chapter 75 pertain to the general water laws. A number of them affect acequias. The legislation spans the period from 1851 to the present.

The laws recognize acequias as public and political subdivisions of the state. They have the power to assess the holders of water rights for services and improvements. They can borrow money and contract for the maintenance and improvement of the acequia in order to supply and distribute irrigation water to its members.

They are exempt from certain provisions of the 1907 surface-water laws. Their method of operation, management and elections are set out in the statutes. Traditionally, they have managed their affairs with a great deal of autonomy by local customs and traditions. Legal experts point out that when the law is silent on acequias, local rules and regulations prevail and will usually have the force of law. However, while these are recognized, they cannot be contrary to the law itself.

Some Possible Considerations---

Times, values and conditions change. The laws include the customs that govern acequias. Many were enacted nearly 125 years ago. Most have served their purpose well. They will no doubt continue to do so. Some may need to be changed to better cope with the realities of the times. Interviews conducted with local acequia officials, water users, legal experts, administrators and others during the preparation of this report bear out the fact that revisions are needed. Some felt that over ninety percent of the acequia statutes could be eliminated and condensed into fewer sections. All of them indicated that a great deal of simplification and updating is needed. They may be right.

As an example, certain sections of the statutes apply only to specific counties. Parts of the provisions are different. Information in the annotations indicates that some of the sections may be in conflict with others or have been repealed for certain counties. A legal opinion states that "...it is an established rule of statutory construction that all of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent. Particular words, phrases and provisions must be construed with reference to the leading idea or purpose derived from the whole statute. Thus, each part should be construed in connection with every other part so as to produce a harmonious whole..."

The experts tell us this is correct from a legal standpoint. To the average layman--to the acequia official and the water user--it may appear confusing, sometimes not easily understood.

As another example, a law passed by the Territorial Legislature in 1860-61 appears to refer to Indians as non-citizens and without rights to participate in the nomination and election of acequia officials. There is another law requiring the posting of at least six notices along the course of the acequia five days in advance for any special election of officers. Many communities have found it more convenient and effective to make such announcements through the rural radio stations which they do as a public service. This method is used extensively but the pronunciation of the names sometimes presents a real problem.

If you are a radio announcer and a newcomer to the area, try saying--
La Acequia Madre de Llano San Juan de Nepumuseno...de La Tierra Azul...La Acequia del Marrano...de San Rafael del Guique...La Acequia del Llano de la Yegua...del Saucito...La Acequia de La Zorra...the San-cochada Ditch...et al.

Another law prohibits the fixing of fatigue or task work, when such is required, at a price not to exceed \$1.50 per day for a person's labor or \$3.00 per wagon, scraper or plow with a team of horses and a man per day. At today's prices? One section says it is prohibited to elect or appoint as mayordomo a person of notable malady, of ill-health, or who is demented, of unsound mind, or is lame. There are other laws that state the mayordomo may be put in jail if he fails to carry out the duties of that office! Some of the laws still refer to the already abolished justice of the peace courts.

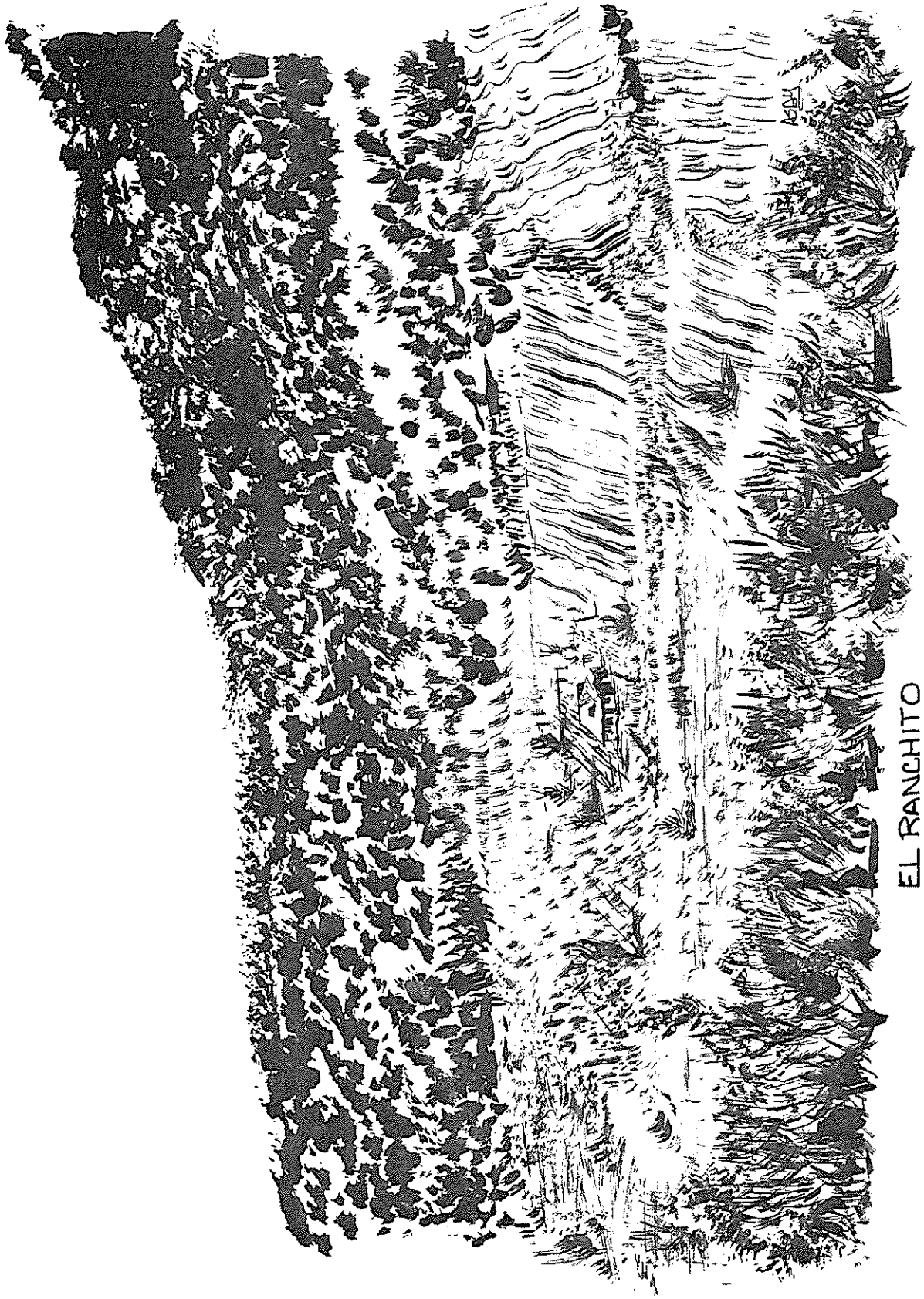
These are a few of the acequia laws which may need revision or perhaps elimination. There may be others.

However, if changes are needed and desired, the people affected are the ones who can make them through legislation with the help and guidance of others who have an intimate knowledge of the subject. This report presents only the laws as they exist. Hopefully, it may be useful in understanding and administering them and, if appropriate, for any revision that may be considered.

It is noted that the full text of New Mexico's water resources law is contained in over 700 pages of statutes and annotations. In addition, there are numerous court cases, rules, regulations and forms on the subject.

Consequently, the summary-digest that follows must of necessity concentrate on the basic principles and laws with more detail only on the main laws of acequias and other pertinent information which may be useful to these associations and individual water users. It may also be of interest to the general public.





EL RANCHITO

CHAPTER I

NEW MEXICO WATER RESOURCES LAW

BASIS

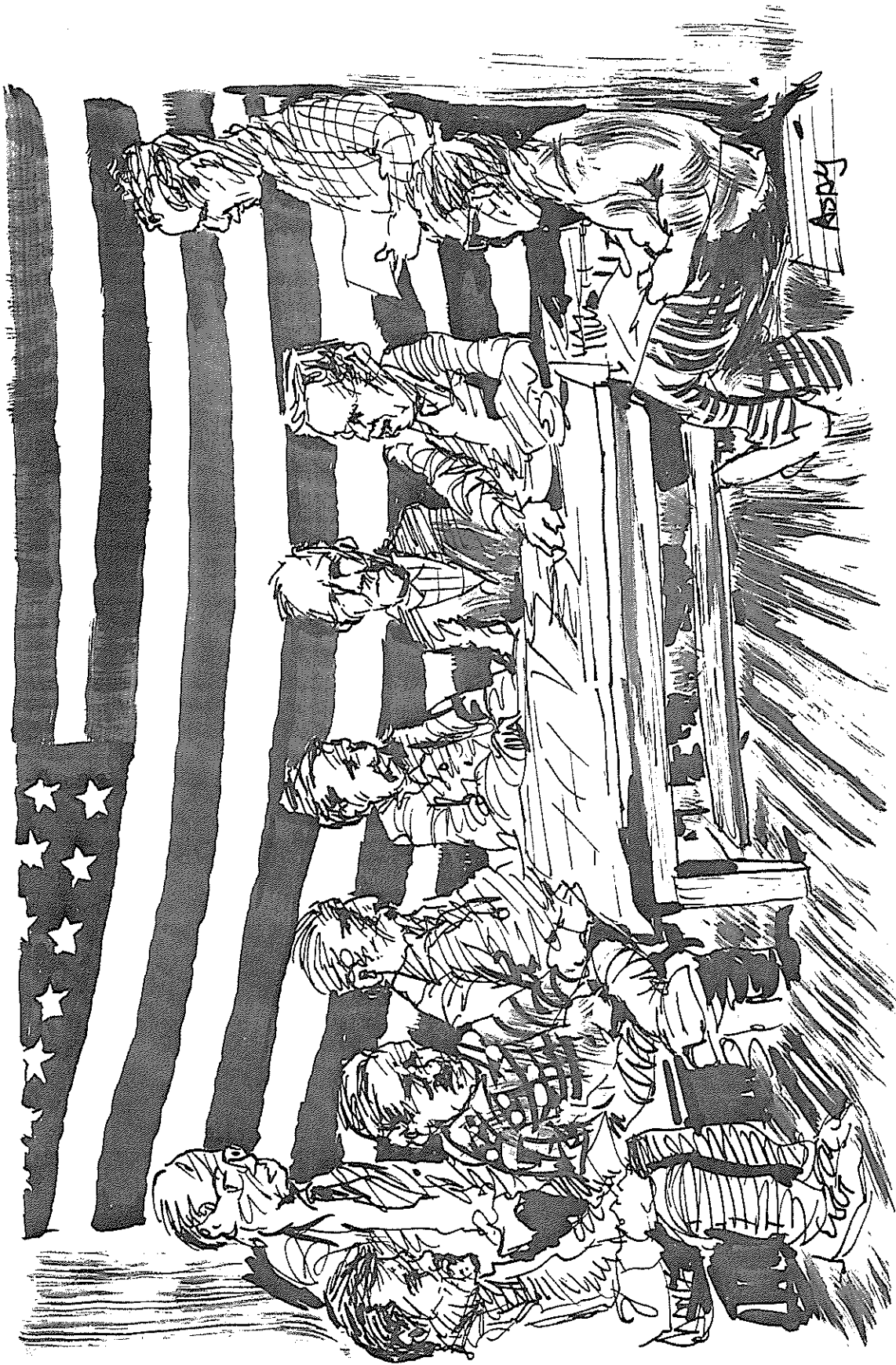
HISTORY AND DEVELOPMENT

BASIC POINTS

. . . The law of water , like the law of crimes or of commerce , has not stood still. It has grown like Topsy; it has grown by proliferation , by correction of details , by judicial grafting , by concern for special situations , by yielding to narrow pressures , and by resisting others . The result is about 500 ((700)) pages of statutes and annotations on the subject , plus numerous cases , all of which would benefit from analysis , synthesis , simplification , and less waste of paper . . . The subject demands examination in view of new and emerging public and private rights and responsibilities and community changes . . .

Although New Mexico has a framework of water resources law that is more advanced and has been demonstrably more workable than the law of many other states , it is clear that improvements can and should be made . . . These improvements will facilitate economic development , encourage wiser uses and transfers of rights , and promote more efficiency and productivity in the private and public sectors of New Mexico's economic life .

Robert Emmet Clark
New Mexico Water Resources Law
State Resources Development Plan
Phase I, p. 82 - 1965



LOS COMISIONADOS

NEW MEXICO WATER RESOURCES LAW 1/

BASIS---

The laws relating to the appropriation and use of water in New Mexico are based fundamentally on what is commonly called the "doctrine of prior appropriation of water rights". Essentially it means that the first in time to apply water to a beneficial use has a first right to the water as long as it continues to be used beneficially. This creates a property right to the use of water. The principle was followed first by custom and colonial law, then by territorial legislation. It was subsequently affirmed by judicial decision and later incorporated in Article XVI of the New Mexico Constitution.

The customs and traditions and essentially the laws were followed long before New Mexico was a state, a territory, and, in fact, before the Mexican Republic controlled the area. Their roots are traced back to the days of the Spanish Colonization period and to the cultural, institutional and legal sources of Mexico, Spain and ancient Rome.

The courts have consistently held that the doctrine of prior appropriation is the law governing water rights in New Mexico and that this doctrine was "established or founded by the custom of the people and grew out of the condition of the country and the necessities of its citizens... that it had been recognized by the courts and became the settled law of the land...that the judicial decision did not make the law; it only recognized the law as it had been established and applied by the people, and as it always existed from the first settlement of this portion of the country." 2/

HISTORY AND DEVELOPMENT---

September 22, 1846 - The Kearny Code, issued during the Mexican War, provided that the laws which were in effect previous to that date concerning watercourses would continue in force except that such regulation as was required was transferred from the governing officials of the villages to those of the counties. 3/

September 9, 1850 - Territory of New Mexico established. 4/

1851-1852 - The Territorial Legislature enacted the first legislation on acequias. 5/

1851-1852-through 1903 - Legislation enacted during the period and amended in subsequent years relate to the management and operation of acequias. 6/

Through 1907 - The Territorial Legislature enacted various water legislative acts followed by the 1907 surface-water laws. 7/

1911 - The New Mexico Constitution was adopted on January 21.

1912 - President Taft signed the proclamation on January 6 admitting New Mexico to statehood. 8/

1931 - The State Legislature enacted the underground-water laws. 9/

SOME BASIC POINTS---

1. Constitutional Provisions 10/

Section 1. All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.

Section 2. The unappropriated water of every natural stream, perennial or torrential, within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use in accordance with the laws of the state. Priority of appropriation shall give the better right.

Section 3. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

2. Surface Waters 11/

The Territorial Legislature passed the comprehensive surface-water control act of 1907 which, with subsequent amendments and additions, is the basic law in New Mexico today governing the appropriation and use of water from a watercourse.

The provisions of the act were as later confirmed by the Constitution in 1911, namely, that the waters belong to

the public; they are subject to appropriation; beneficial use is the basis, the measure and the limit of the right to the use of water; and, priority in time gives the better right.

Provision is made for the method of acquiring water rights, protection, restrictions and transfers; nature and limit of the rights; types of use recognized; distribution, adjudication and administration, and other matters relating to the use of surface waters.

3. Underground Waters 12/

The State Legislature passed the first underground-water control act in 1927. However, it was declared unconstitutional due to certain technical defects in the act.

New legislation was enacted in 1931 which, with subsequent amendments and additions, is the basic law in New Mexico today for the appropriation and use of underground waters. In enacting the underground-water law, the legislature reaffirmed and extended the principles of the surface-water control act of 1907 with respect to the doctrine of prior appropriation and beneficial use of water. The act provides that:

All underground waters in the state belong to the public and are subject to appropriation for beneficial use; all existing rights were recognized; certain domestic and stock watering uses are exempt from the general administrative requirements of the act; no license or permit is required to appropriate underground waters except in basins declared by the State Engineer, and the removal of underground waters for use outside the state is prohibited.

Provision is made for the method and procedures of appropriation, establishment of underground basins, supervision, administration and other matters relating to the use of underground waters.

4. Administration of Water Rights 13/

At the State Level--

The State Engineer is the state officer charged with the general supervision of the waters of the state and of their measurement, appropriation and distribution and such other duties as are required by the laws of the state. 14/

The Interstate Stream Commission is authorized to negotiate compacts with other states to secure equitable distribution of the waters of interstate streams and to investigate, develop and conserve the waters of the state. 15/

The Water Quality Control Commission was established by the 1967 State Legislature. The act provides for control, prevention and abatement of pollution of surface and underground waters of the state under the administration of the Commission. 16/

At the Local Level--

There are a number of local public agencies and private organizations in New Mexico which have responsibilities and authority for the development and administration of the water resources.

See Pages 61 to 68.

5. Adjudication of Water Rights 17/

The 1907 surface-water laws contain provisions for the adjudication of water rights.

For details on procedures on adjudication and other pertinent information see Pages 51 to 54.

6. Sale, Transfer and Lease of Water Rights 18/

Under New Mexico law, water rights can be bought, sold, leased and transferred from one place or purpose to another provided that the changes can be made without detriment to the rights of other water users.

For details on procedures and other pertinent information see Pages 55 to 60.

7. Nature and Extent of Water Rights

The surface and underground waters belong to the public and are subject to appropriation for beneficial use. 19/ In order for the appropriation to be valid, there must be a diversion of public waters by man-made works with intent to and actually apply water to beneficial use. In addition, the use to which the water is to be put must be legally recognized as "beneficial", for example, uses for irrigation, industrial and recreation purposes and for municipal and domestic supplies. 20/

The appropriator's right is the right to appropriate so much water as is actually used for some beneficial and legal purpose. 21/ He acquires only the right to take from the stream that quantity of water which he is entitled to use. 22/ While the right acquired is only a right to the use of the water, nevertheless "a water right is property and in fact it is held to be real property by most authorities 23/ ...it is a property right of high order". 24/

All waters appropriated for irrigation purposes are appurtenant to--belong with--the land irrigated which means that the water rights are legally tied to the land until they are legally separated in accordance with the law. 25/

Water rights may be forfeited--lost--if the owner has failed to use the water for a period of four years and such failure continues one year after being notified in writing by the State Engineer. However, the loss may not necessarily occur if circumstances beyond the control of the owner have caused the nonuse. Prior to 1965 no notice from the State Engineer was required. 26/

The duty of water is based on beneficial use in accordance with good agricultural practices which will result in the most effective use of the available water in order to prevent waste. 27/ The unauthorized use or the willful waste of water is unlawful 28/ and no person shall divert water to land or use it for other purposes for which no valid right exists. 29/

Priority--the earliest time of beneficial use of the water--is one of the most important elements of a water right. The State Constitution and laws state that: "Priority of appropriation shall give the better right." 30/ The date of priority of an appropriation under the present laws is the date of receipt of the application in the office of the State Engineer

subject to compliance with provisions of the statutes and rules and regulations established. 31/

The priority of the rights initiated before 1907 goes back to the time when the water was first used beneficially. 32/ This is one of the reasons why it is important for community acequias which have not done so to officially record "Declaration of Ownership of Water Rights". 33/ (See Pages 49 & 50 for procedures.) In times of water-short years which are common in Northern New Mexico, the acequias with the oldest adjudicated priority date--the oldest water rights--are entitled to the water first.

Notes to NEW MEXICO WATER RESOURCES LAW

- 1/ A summary-digest of the state statutes will be included in the second phase of the "Las Acequias del Norte". Scheduled for publication.
- 2/ Snow v. Abalos, 18 NM 681, 693 (1914). See also Albuquerque Land & Irr. Co. v. Gutierrez, 10 NM 177, 240 (1900), Hagerman Irr. Co. v. McMurray, 16 NM 172, 181, 182 (1911), Yeo v. Tweedy, 34 NM 611, 615 (1929-30), & State ex rel. State Game Comm. v. Red River Valley Co., 51 NM 207 (1945-47)
- 3/ Kearney Code, Sec. 1, Watercourses, etc.
- 4/ 9 Stat. L. 446, ch. 49
- 5/ N. Mex. Stats., 1953 Ann., Secs. 75-14-4..6..9..10, Laws 1851-52
- 6/ Existing statutes as of 1974...See Pages 13 to 39, "The Laws of Acequias"
- 7/ N. Mex. Stats., 1953 Ann., Secs. 75-1-1 et seq., Laws 1907
- 8/ 37 Stat. L. 1723
- 9/ Ibid., Secs. 75-11-1 et seq., Laws 1931
- 10/ N. Mex. Constitution, Art. XVI
- 11/ N. Mex. Stats., 1953 Ann., Secs 75-1-1 through 75-8-1 et seq., Laws 1907
- 12/ Ibid., Secs. 75-11-1 to 75-11-40, Laws 1931
- 13/ More detailed information is included in the section on "Administration of Water Rights" (Pages 61 to 68)
- 14/ N. Mex. Stats. See Sec. 75-2-1 and Page 61
- 15/ Ibid., Secs. 75-34-1 et seq., Laws 1935
- 16/ Ibid., Secs. 75-39-1 to 75-39-12, Laws 1967
- 17/ Ibid., Secs. 75-4-2 to 75-4-11, Laws 1907
- 18/ Ibid. See Pages 55 to 60 for specific Sections
- 19/ Ibid., Secs. 75-1-1 & 75-11-1. See also N. M. Constitution, Art. XVI, Sec. 2

- 20/ The following are some of the court cases dealing with appropriation of water and beneficial use:
 Albuquerque Land & Irr. Co. v. Gutierrez, 10 NM 177 (1900)
 Millheiser v. Long, 10 NM 99 (1900)
 Snow v. Abalos 18 NM 681 (1914)
 Farmers Development Co. v. Rayado Land & Irr. Co., 28 NM 357 (1923)
 Harkey v. Smith, 31 NM 521 (1926)
 Lindsey v. McClure, 136 Fed. (2d) 65, (C. C. A. 10th, 1943)
 State ex rel. State Game Commission v. Red River Valley Co., 51 NM 207 (1945-1947)
 State ex rel. Reynolds v. Miranda, 83 NM 443 (1972)
- 21/ Albuquerque Land & Irr. Co. v. Gutierrez, 10 NM 177 (1900)
- 22/ Snow v. Abalos, 18 NM 681-693-695 (1914)
- 23/ N. M. Products Co. v. N. M. Power Co., 42 NM 311, 321 (1937-1938)
- 24/ Posey v. Dove, 57 NM 200, 210 (1953)
- 25/ N. M. Stats., 1953 Ann., Secs. 75-1-2, 75-5-21,..22,..23, Laws 1907 and 75-11-7, Laws 1931
- 26/ Ibid., Secs. 75-5-26, Laws 1907 & 75-11-8, Laws 1931
- 27/ Ibid., Sec. 75-5-17, Laws 1907
- 28/ Ibid., Sec. 75-7-4, Laws 1907
- 29/ Ibid., Sec. 75-5-37, Laws 1965
- 30/ Ibid., Sec. 75-1-2, Laws 1907. See also N. M. Constitution, Art. XVI, Sec. 2
- 31/ Ibid., Secs. 75-5-1 to 75-5-13, Laws 1907. See also 75-11-1 et seq., Laws 1931
- 32/ Ibid., Sec. 75-1-2, Laws 1907
- 33/ Ibid., Secs. 75-1-2.1 & 75-1-2.2, Laws 1959



CHAPTER II

THE LAWS OF ACEQUIAS

EL
MAYORDOMO



THE LAWS OF ACEQUIAS

The laws that govern acequias today resulted, in large measure, from the long-established Spanish, Mexican and Indian customs and traditions.

Legislation pertaining to these organizations in New Mexico has been in effect since 1851 after the establishment of the territorial government.

In a 1914 decision the New Mexico Supreme Court discussed the history and character of acequias, stating: "The community irrigation ditch or acequia is an institution peculiar to the native people in that portion of the Southwest which was acquired by the United States from Mexico. It was a part of their system of agriculture and community life long before the American occupation. After the Territory of New Mexico was organized, the legislature, by act of January 7, 1852 (Laws 1851-51 ((1851-52)), p. 276), provided for the government of community acequias and doubtless incorporated into the written law of the Territory the customs theretofore governing such communities." 1/

Changes and additions have been made since then by both the Territorial and State Legislatures. The existing statutes relating to the management and affairs of acequias, as of 1974, are a part of the state laws on WATER AND IRRIGATION, Chapter 75, New Mexico Statutes, 1953 compilation. 2/

A summary-digest of the statutes and references or quotations from Supreme Court decisions, Attorney General Opinions and other sources follow. A WORD OF CAUTION AGAIN. When more legal details and interpretations are necessary, review and study all the pertinent water laws with assistance of legal counsel.

The term acequia used in this report refers to community ditch associations.

I - GENERAL PROVISIONS

The laws of acequias pertain to ditches which are not private or

incorporated under the laws of the state and which are owned by three or more persons as tenants in common. 3/ They are the property of the persons who construct them. Others can use them with the consent of the majority of the owners and by payment for "ditch rights". The law provides that payment is to be made in proportion to the primary cost of the acequia to the amount of land irrigated or water used. 4/

...As the community acequia is a cooperative enterprise, the ditch and the right to the use of the water belong to the owners of the land irrigated by the ditch. The interests of the individuals are frequently referred to as "rights", sometimes as "shares"...The right or share may vary (1) in respect to the area to be irrigated in any season, (2) refer to a fixed area of land, or (3) be based upon a definite flow of water or on a percentage of the total flow... 5/

However, there is a difference between the individual's "ditch right" and the water right...a community irrigation ditch is only the carrier and rights of ownership in the ditch are separate and apart from the ownership of the water that the ditch conveys. 6/ While a ditch is owned...by the constructors...as tenants in common, the water rights acquired by the parties are appurtenant to--belong with--the land irrigated and are owned by them (individually and separately). 7/ Nevertheless, water rights can be leased, sold or transferred to other lands or purposes by the owner. 8/ (See Pages 55 to 60 for procedures.)

All inhabitants of New Mexico have a right to construct a private or common acequia. The law provides for procedures and just payment to the owner through whose land the acequia shall pass. 9/

New acequias constructed after 1907 must apply to the State Engineer for permit to appropriate water for beneficial use. It is unlawful to begin construction until such a permit has been issued. 10/ Acequias which were constructed and in operation before 1907 are exempt from this provision. 11/

All rivers and streams of water known as public acequias were established and declared to be public by the Territorial Legislature in 1852. 12/

The Territorial Supreme Court held that...this section

does not apply to streams like the Rio Grande but refers to ditches or natural watercourses used as acequias as have been subjected to ownership and upon which labor has been expended for appropriating and using water to irrigate. 13/ Community acequias are public acequias within the meaning of this section. If this were not true, then we would have no statutory regulation for such ditches but for many years and without question, community ditches have been regulated and their affairs conducted in accordance with the statutes of this state. 14/

Acequias are political subdivisions of the state 15/ and their property is exempt from taxation. 16/ They are considered as corporations with power to sue and be sued. 17/

Prior to 1965, there was no statutory answer to the question of whether the acequias were political subdivisions of the State of New Mexico. A 1963 Attorney General Opinion states that "...community acequias have been serving as "political subdivisions" in the area that now comprises the State of New Mexico since at least 1851. Laws enacted by the Territorial Legislature and subsequently the State Legislature have merely confirmed this status. 18/

The legislation declaring community ditch associations as political subdivisions of the state is relatively new. State laws provide for certain procedures in such areas as public purchasing, contracting and other similar matters pertaining to legal entities. Whether or not acequias must follow these procedures is not clearly known. It is presumed that the question remains to be settled by the courts.

In 1905 the Territorial Supreme Court held that acequias are involuntary public quasi-corporations with no powers except those expressly conferred by statute or such as are impliedly necessary to the performance of those statutory powers. 19/ The act which created acequia corporations...was administrative only and for convenience gave a legal status to such organizations in order to facilitate the distribution of water and the maintenance of the ditches and laterals. It did not confer on them the power to acquire or hold title to

water rights or interfere with the rights owned by the individuals. 20/

While acequias are considered as corporations for certain purposes, community ditch associations are encouraged to study carefully the possible implications before incorporating formally under the laws of the state. By doing so, they may lose the protection of some of the acequia laws such as exemption from taxation. 21/

There may be other disadvantages. Assistance from competent legal counsel and others is suggested if any acequia organization wishes to incorporate to make certain it is to the best interests of the members.

Acequias are authorized to borrow money and otherwise contract indebtedness for the purposes of the organization. They can guarantee payment of such debts by mortgage, revenues, assessments or other means permitted by law. 22/

This section was passed by the State Legislature the same year (1965) that acequias were declared by statute as political subdivisions of the state. It made it easier for them to obtain loans and grants to improve their community irrigation systems. 23/ A total of over \$3.9 million has been borrowed from the Interstate Stream Commission since 1959 by acequias and other irrigation organizations. With minor exceptions the loan repayments have been kept current. There have been no defaults. 24/

These loans and cost-sharing assistance by the state and federal government have served a most useful purpose. An example--Over 100 acequias in three northern counties, Rio Arriba, Santa Fe and Taos, have carried out an estimated \$2.0 million worth of ditch improvement since 1965. This compares with an average of \$5000 annually for a similar period prior to that year. 25/ (See Pages 69 & 70 for additional information and procedures on loans and cost-sharing).

In 1907 the Territorial Legislature enacted comprehensive legislation on surface-waters which is the basic law in effect today. Acequias which

were established and in operation prior to March 19 of that year were exempted from certain of its provisions as follows:

They are not required to apply for permit to the State Engineer to appropriate water for beneficial use or pay the required fees for filing such application. 26/ In addition, all existing rights were recognized and confirmed at the time the New Mexico Constitution was adopted in 1911. 27/ This protects the rights of most acequias. However, acequia organizations which have not done so are encouraged to file with the State Engineer Office declarations of ownership of old water rights acquired before 1907. Procedures are listed on Pages 49 & 50.

Before adjudication, they are not required to obtain a permit from the State Engineer to change the place of diversion of the acequia provided the change will not increase the amount of water to which the acequia was formerly entitled. 28/

They govern the distribution of water where local customs, rules and regulations have been adopted by a majority of the water users and are in force. However, the State Engineer has authority to regulate the distribution of water from the various streams to the acequias. 29/

All acequias are managed according to local custom. While local customs and traditions are recognized under the law they cannot be inconsistent with the law itself. They are not designed to take precedence over the law, but just to fill in the gaps--the empty spaces of the laws. 30/

The courts have ruled that any by-laws tending to impose undue hardship on certain members of the acequia are invalid and of no effect. For example, a provision requiring those farther from the ditch inlet to contribute a greater portion for repairs than those near the inlet is invalid. 31/

(See also Pages 31 & 32 for a discussion of water distribution to acequia members.)

The laws protect acequias from interference with their irrigation works or water.

The Territorial Legislature provided that the course of ancient acequias established prior to July 20, 1851 shall not be disturbed. 32/ The Territorial Supreme Court held that this section was enacted primarily for the protection of ditches from trespassers and was intended as a guarantee against the destruction and disturbance of ditches then in existence and has no application to ditches constructed after that time. 33/

However, legislation enacted in 1923 provides that any person who, without permission from the mayordomo, commissioner or other person in charge, uses irrigation water or interferes with the acequia or laterals in any manner shall be guilty of a misdemeanor. The law requires the acequia association to prosecute any violation. Upon conviction, the violator may be fined and if the fine is not paid he can be put in jail! 34/ The law also prohibits any person from constructing a building such as a mill or other property which would obstruct the irrigation of lands as the latter should be preferable to all other uses of the water. 35/

The acequia commissioners, with the consent of the majority of the water users, may change the location, enlarge or reconstruct the ditch when it has been damaged by floods or in any other manner. The work to be done must not injure the rights of prior water users in the acequia. The expenses incurred are paid proportionally by those beneficially interested in the acequia.

The laws provide procedures for obtaining and paying for the land to be used in the new location of the acequia. In case the value of the land cannot be agreed upon, appraisers are appointed by the courts to appraise the land. On payment of the appraised value, the acequia association shall possess the right of property. The owner of the land has a right to appeal for any damages sustained. 36/

Power of Eminent Domain--Easements--Rights of Way

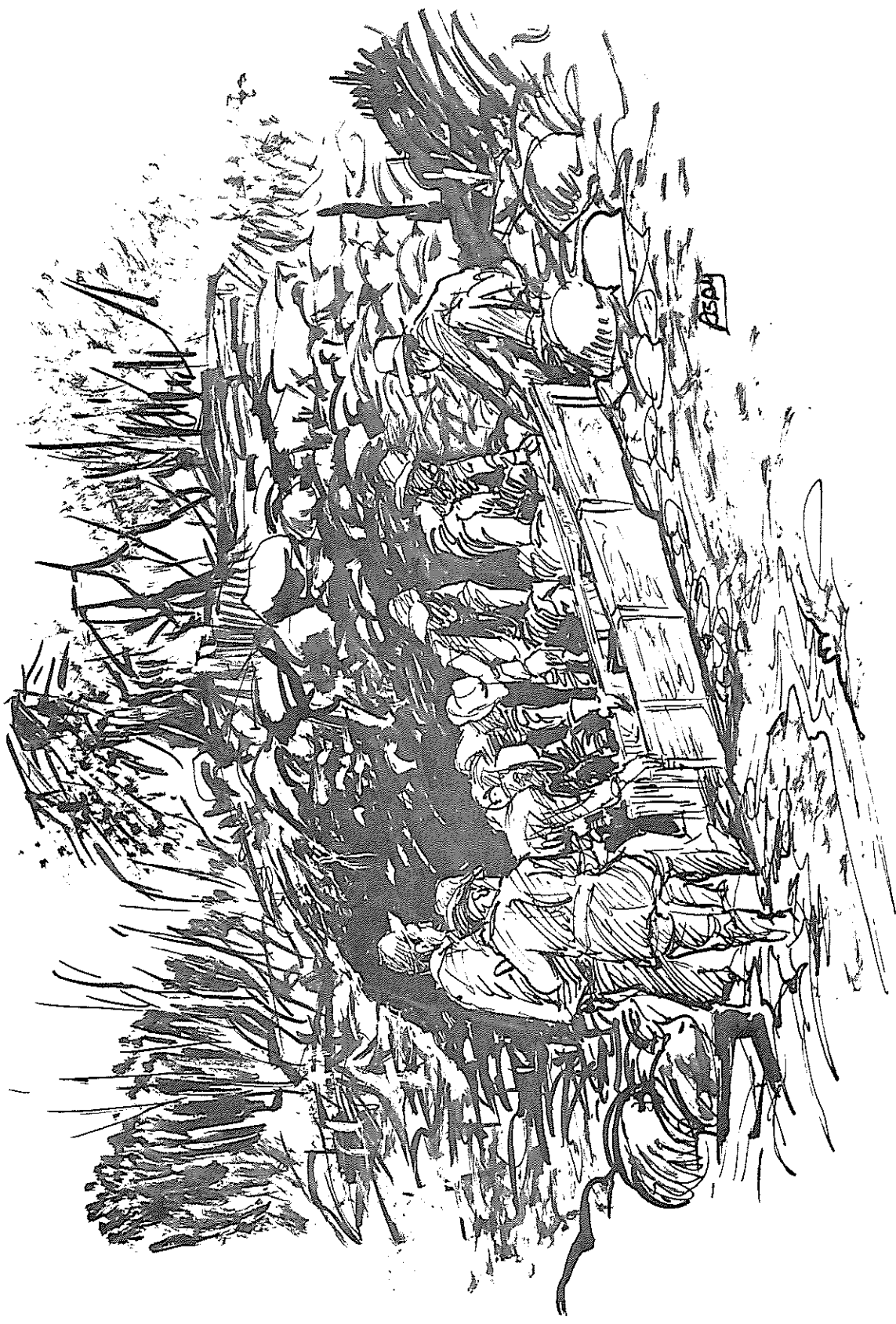
The laws recognize acequias as political subdivisions of the State of New Mexico and as such, under the power of eminent domain, they can condemn land for the construction of ditches. But...private property cannot be taken for a ditch without just compensation. 37/

...New Mexico being in the arid region, the early settlements were established along the banks of the perennial rivers, or in the mountain valleys where water from springs and creeks was reasonably certain to be available for irrigation at the needed times.

As a protection against the Indians, settlements were made in communities, and the people built their houses and established their towns and plazas close together, and cultivated the lands in small tracts adjacent to the settlement.

When a settlement was established, the people by their joint efforts would construct an irrigation ditch, sufficiently large to convey water to their lands for the irrigation of crops...

Snow v. Abalos
18 NM 681, 692 (1914)



LOS PARCIANTES

The laws also recognize that an acequia association has an easement on the land upon which the acequia is located if it has been used continuously for irrigation for five or more years. However, the owner of the land may change the location of the ditch on his land provided the change does not interfere with its use by the owners of the acequia. 38/

The acequia association has, in effect, an easement for the purpose of transporting water. 39/ The easement...is a vested property right and cannot be altered or changed without the consent of the owners. 40/ On the other hand, the owners of the easement can make no changes in its dimensions or use which will increase the burden on or damages the owner's land without his consent. 41/

While the law says the acequia has an easement it does not specify the width. 42/

This question cannot be answered with certainty on the basis of the existing statute and case law. The general rule is that the right of way is the amount of land historically used for maintenance on both banks of the ditch. Where an easement of this kind is based on continuous use, and not on contract or deed, the most reliable method of determining the extent of the easement is by basing it on the access needed to allow reasonable and necessary operation and maintenance of the acequia.

However, in cases of major changes of the course of the acequia, the consent of the landowner must be obtained. In addition, the acequia association could probably not be able to make temporary use of an easement larger than that historically required, without the consent of the landowner, if the use of heavy equipment, etc. involved any substantial burden on or injury to the owner.

In all probability, the elimination of trees or plants, the removal of fences, or the relocation of structures, for example, could expose the acequia association to some liability for damages. It is pointed out that the law states that all plants growing on the banks of public acequias belong to the owner through which the ditch passes. 43/

Community acequias, in recent years, in carrying out extensive ditch improvement work have followed a variety of courses in handling this problem. Some have ignored

the threat of damages; some have taken steps to reduce or eliminate injury to the landowners; some have obtained written consent of the landowners before construction; and some have attempted to lay a legally sufficient claim to an easement large enough to take care of the project in advance. In following this course, an acequia association sought to establish a recognized easement of 12 feet from either bank of the ditch by filing a declaration in the office of the County Clerk in 1907. 44/ More recently, the association did improvement work with large equipment. The owner of the land through which the acequia passes sued for damages. The association presented the old declaration as evidence of its right to do the work. The court ruled in favor of the association and the decision was not appealed. 45/

A suggested way to establish the width of the right of way legally is for the acequia association and the landowners to sign written agreements. Most of the owners of the land through which the acequia passes are users of the water. Agreement can be made on the width of the easement. A written agreement would give the association a clear title and thus prevent any legal challenge in the future. For lands which the ditch goes through but do not have water rights, the association can negotiate with the owners on a basis that will be satisfactory to both.

Miscellaneous--

For the convenience of public travel, the laws require acequias to construct bridges wherever the ditch crosses a public road. Any violation is a misdemeanor. The County Commissioners are authorized to construct the bridges if the owners of the acequia fail to do so. The cost is recovered from the owners. 46/ The laws also provide that persons shall not allow irrigation water, when being used, to overflow on public roads so as to hinder, delay or obstruct travel. Violation is a misdemeanor and subject to penalty under the law. 47/

Some of the laws apply only to certain acequias. They include the following:

Where two or more acequias are constructed on and obtain water from the same source or river within the limits of a precinct, the commissioners will meet on the first Monday of April of each year to make equitable distribution and apportionment of the water for their respective acequias. The mayordomos of each acequia will distribute the water among those entitled

to it in accordance with the apportionment agreed upon by the commissioners. 48/ This statute does not apply to acequias which obtain their water from the Rio Grande. 49/

Where two or more acequias drain their excess waters at the same drainage they are joint owners of such drainage. The mayordomos of the respective acequias are authorized to make arrangements with the owners of the lands on either side of the drainage for the use of the water. 50/

When 10 or more owners of an acequia find it necessary to open an outlet near the acequia dam to draw excess water or regulate it to protect the dam from floods, the commissioners are authorized to determine the place of such works. The work shall be done under the supervision of the mayordomo and taxed in proportion to each owner's irrigable land. 51/

Acequias which pass from within the limits of one county to another shall be under the exclusive control and management of the officers of such precincts and counties. 52/

The Territorial Legislature enacted a law in 1860-61 which required Indians to work on acequias within the limits of their reservations in which they had a common interest with the citizens who lived there. The Pueblo Governor and the commissioners are charged with the responsibility of regulating the amount and manner of work by all who have water rights in the acequia in the same manner. The distribution of the water shall be based on the customs practiced and recognized in the past.

The law does not permit the Indians to participate in the election of acequia officers unless they have paid their proportionate share of the whole cost of construction of the acequia and unless the lands to be voted by them have been assessed for taxation in accordance with the law. 53/

Any acequia in which an Indian Tribe is involved would be well advised to reach a satisfactory agreement with the Tribe for the maintenance of the ditch and the distribution of the water. 54/

Notes to THE LAWS OF ACEQUIAS - General Provisions

- 1/ Snow v. Abalos, 18 NM 681, 691 (1914)
See also Hutchins, The N. Mex. Law of Water Rights, 1955, p. 5
- 2/ N. Mex. Stats., 1953 Ann., Secs. 75-14-1 to 61 & 75-15-1 to 10
- 3/ Ibid., Sec. 75-14-25, Laws 1895
- 4/ Ibid., Sec. 75-14-7, Laws 1882
- 5/ Hutchins, 8th Biennial Report, State Engineer, 1926-28, p. 231
- 6/ Holmberg v. Bradford, 56 NM 401, 404 (1952)
- 7/ Snow v. Abalos, 18 NM 681, 682, 695, 696 (1914)
- 8/ N. Mex. Stats., 1953 Ann., Secs. 75-5-21 & 22, Laws 1907 & 75-40-3, Laws 1967
- 9/ Ibid., Secs. 75-14-1 ..2 ..3, Laws 1874, 1851-1852
- 10/ Ibid., Secs. 75-5-1 & 75-7-4, Laws 1907
- 11/ Ibid., Sec. 75-5-2, Laws 1913
- 12/ Ibid., Sec. 75-14-9, Laws 1851-1852
- 13/ Albuquerque Land & Irr. Co. v. Gutierrez, 10 NM 177, 253 (1900)
- 14/ State ex rel. Black v. Aztec Ditch Co., 25 NM 590, 598 (1919)
- 15/ N. Mex. Stats., 1953 Ann., Sec. 75-14-25.1, Laws 1965
- 16/ N. Mex. Constitution, Art. VIII, Sec. 3
- 17/ N. Mex. Stats., 1953 Ann., Sec. 75-14-11, Laws 1895
- 18/ N. Mex. Attorney General Opinions, No. 70-46, p. 78, (1970) and No. 63-112, p. 249 (1963)
- 19/ Candelaria v. Vallejos, 13 NM 146, 147, 161, 162 (1905)
- 20/ Snow v. Abalos, 18 NM 681, 692, 699 (1914)
- 21/ See Storrie Project Water Users Association v. Gonzales, 53 NM 421 (1949). See also N. Mex. Attorney General Opinion No. 63-112, p. 249 (1963)
- 22/ N. Mex. Stats., 1953 Ann., Sec. 75-14-21.1, Laws 1965
- 23/ P. L. Bloom, General Counsel, State Engineer Office. Oral presentation at Hondo-Seco Development Association meeting, March 4, 1973
- 24/ Phil Mutz, ISC, to author and Biennial Reports, State Engineer
- 25/ Northern Rio Grande RC&D report, 1973
- 26/ N. Mex. Stats., 1953 Ann., Sec. 75-5-2, Laws 1913
- 27/ N. Mex. Constitution, Art. XVI, Sec. 1
- 28/ N. Mex. Stats., 1953 Ann., Sec. 75-14-60, Laws 1912
See also Pueblo of Isleta v. Tondre, 18 NM 388, 395, 396 (1913)
- 29/ Ibid., Sec. 75-8-2, Laws 1907
- 30/ Bloom, Hondo-Seco presentation, 1973
- 31/ State ex rel. Black v. Aztec Ditch Co., 25 NM 590, 591, 597, 598, 599 (1919)
See also McCarthy, The Community Acequia in N. Mex., p 11 (1958) unpublished)
- 32/ N. Mex. Stats., 1953 Ann., Sec. 75-14-6, Laws 1851-1852

- 33/ Candelaria v. Vallejos, 13 NM 146, 164 (1905)
- 34/ N. Mex. Stats., 1953 Ann., Secs. 75-14-61, Laws 1923. See also 75-7-3, Laws 1907
- 35/ Ibid., Sec. 75-14-4, Laws 1851-1852
- 36/ Ibid., Secs. 75-14-53 through 75-14-59, Laws 1919. See also Attorney General Opinions Nos. 64-95 (1964) & 67-47 (1967)
- 37/ Ibid., Secs. 75-14-25.1, Laws 1965, 75-1-3, Laws 1907 & N. Mex. Constitution, Art. II, Sec. 20. See also Attorney General Opinion, No. 69-96
- 38/ Ibid., Sec. 75-14-5, Laws 1933
- 39/ Holmberg v. Bradford, 56 NM 401, 407 (1952)
- 40/ Archibeck v. Mongiello, 58 NM 749, 753 (1954)
- 41/ Posey v. Dove, 57 NM 200, 212, 214 (1953). See also Marjon v. Quintana, 82 NM 496 (1971)
- 42/ Information for the following paragraphs was obtained from Bloom, Hondo-Seco presentation, 1971 and Bloom 1/16/73 letter to Soil Conservation Service
- 43/ N. Mex. Stats., 1953 Ann., Sec. 75-14-10, Laws 1851-1852
- 44/ Book M-17, p. 291-292, Taos County Clerk Office and author's interview with Don David Abeyta, Mayordomo, Acequia Madre de Chamisal y Ojito
- 45/ Cases Nos. 7392 & 7570 (1965, 1966), 8th Judicial District of New Mexico
- 46/ N. Mex. Stats., 1953 Ann., Sec. 75-7-2, Laws 1907. See also 75-14-40 through 75-14-43, Laws 1897 and 55-6-9 ..10, Laws 1860-61 & 1905
- 47/ Ibid., Secs. 55-6-7 and 55-6-8, Laws 1917
- 48/ Ibid., Secs. 75-14-44 through 75-14-47, Laws 1903
- 49/ Ibid., Sec. 75-14-48, Laws 1903
- 50/ Ibid., Secs. 75-14-51 and 75-14-52, Laws 1903
- 51/ Ibid., Sec. 75-14-49 and 75-14-50, Laws 1903
- 52/ Ibid., Sec. 75-14-8, Laws 1882
- 53/ Ibid., Sec. 75-14-38, Laws 1860-1861
- 54/ There is general agreement that at least parts of the statute referred to above should be revised.
 Author's interviews with acequia officials and others pertaining to agreements and cooperation between Indian and non-Indian water users on acequia operations will be included in the final report of the series, "Las Acequias Del Norte". Scheduled for publication.

The commissioners assess fatigue work--"trabajo"--of all water right owners--"parciantes"--for the maintenance and repair of the acequia.

A major portion of this activity occurs in the early spring during the annual cleaning of the acequia. It is a custom which has been followed in northern New Mexico and other parts of the state for over two hundred years.

The methods vary somewhat among communities. Generally, under the direction of the Mayordomo, the water users meet at the head of the ditch at the appointed time to begin the work. There the Mayordomo usually selects three or four persons to be in charge of the groups, the number in each depending on how many water users or their representatives--"peones"--are present. Some acequias may have as many as seventy-five and more available for the acequia cleaning.

To begin the work, the Mayordomo marks out lengths of ditch--"tareas"--usually between five to eight feet for each individual. By laying out these tasks on the ground each man has as much work to do as his neighbor. As sections are completed the workers move down the ditch and the process is repeated.

When the annual cleaning is completed--some acequias take as many as three days--the water is diverted from the river into the main acequia and thus begins another year of water distribution by the Mayordomo and irrigation of the crops by the "parciantes".*

*Above based on interviews with Mayordomos and recollections of author.



EL TRABAJO

II - MANAGEMENT AND OPERATION

Election of Officers and Organization --

Acequias are under the general control and supervision of three commissioners and a mayordomo elected for a one-year term. The election is to be held on the first Monday of December. Each officer must be an owner of "rights" in the acequia.

They assume the duties of their office not later than the first Monday of the following January. The commissioners organize by electing from among themselves a chairman, a secretary and a treasurer. The treasurer and the mayordomo shall be bonded in a sum to be fixed by the commissioners. The purpose of the bonds is for the accounting of any funds they may collect and for the faithful performance of their duties. 1/

The New Mexico Supreme Court has held that...officers of such a corporation (acequia) become such only by strict compliance...with the law which provides for their election. If pretended officers are elected in a...way not authorized by law they do not become the (lawful) officers. 2/

NOTE: In 1903 the Territorial Legislature modified the law on operation and management of acequias in certain counties. The counties and the changes made are listed on Pages 35 to 39 "Special Provisions". 3/

Special Elections --

If no election is held on the first Monday of December, the commissioners holding office during the preceding year shall call an election as soon as practical after that date. A five day notice must be given to the members. Not less than six notices are required to be posted on the course of the acequia stating the time and place. The election shall be conducted in the manner provided for the regular annual election.

If the commissioners refuse or neglect to call an election within a reasonable time, then any three or more members entitled to vote may call and hold an election in the same manner as provided above. The three persons receiving the highest number shall be the commissioners until their successors are regularly elected and qualified. 4/

Publication of meeting notice in a newspaper can also be done instead of posting notices on the acequia. 5/

Who Can Vote -- Method of Voting --

The outgoing commissioners hold the annual election under rules and regulations established by them. Only those persons who have water rights in the acequia and who are not delinquent in their ditch dues, or pay at the time of the election, are allowed to vote. Votes may be cast by proxy.

A member's vote shall be in proportion to his share in the acequia or water, or in the amount and number of his water rights. 6/

Vacancies --

If a vacancy occurs in the office of the commissioners, the remaining commissioners shall appoint another acequia member to hold office until his successor is regularly elected and qualified. 7/

The commissioners have the power to appoint a mayordomo, if a vacancy occurs, to hold office until his successor is elected at the annual election and has qualified. 8/ It is prohibited to elect or appoint as mayordomo a person of a notable malady, of ill-health, of unsound mind or who is lame. 9/

Powers -- Duties -- Responsibilities --

Commissioners --

The commissioners are in general charge and control of the management and operation of the acequia. They adopt by-laws, rules and regulations for the management of the acequia and provide a copy to each owner of a water right. The by-laws and rules shall not be in conflict with the laws of the state.

The commissioners assess fatigue work--"trabajo"--or tasks of all water right owners and can receive money instead of such work at a price to be fixed by them. They make assessments--"ditch dues"--to raise funds for payment of the mayordomo and other expenses necessary for the operation and maintenance of the acequia. They have the power to enter into contracts for the improvement of the acequia. They also have the power to contract for obtaining water for irrigation purposes but such contracts must be approved by a vote of the majority of the water right owners.

The commissioners receive and review the reports of the mayordomo

and treasurer. The reports include funds collected, how spent and of any other activities which they may require. They must approve or reject the reports before their terms expire. A written record of all their proceedings must be kept and all books, records and papers must be available for inspection by all acequia members and other persons concerned. The law requires that all acequia records and accounts must be audited at least once a year by an auditor approved by the state. 10/

The commissioners are responsible for holding the annual election of officers 11/ and, if vacancies occur during the year in one of the offices, for appointing another acequia member to fill the vacancy. 12/

The law requires the commissioners, when called upon to do so, to furnish the County Assessor the amount of acreage of each parcel of land under the acequia and the name of the owner. Failure to do so is a misdemeanor. 13/

In actual practice this information is rarely, if at all, requested. County officials interviewed by the author do not recall this being done at any time. They depend instead on the acequia member to provide the information and/or use of reassessment survey maps and data if available.

The commissioners at their discretion may allow any blind persons or their surviving spouses to irrigate free of charge a portion of their land up to three acres. The persons must be owners of water rights in the acequia and must obtain permission from the mayordomo for the use of the water. 14/

The law sets a maximum amount which the commissioners can charge for payment in lieu of fatigue or task work by the members. It cannot be greater than \$1.50 per day for one person's labor nor more than \$3.00 per wagon, scraper or plow with a team of horses and man per day. This section does not apply to the counties of Rio Arriba, San Miguel, Taos, Torraine, Lincoln, Otero and Quay. 15/

Treasurer --

The treasurer, as a member of the commission, submits reports of all funds received and how spent for the review and approval of the commissioners. 16/

Secretary --

The acequia laws do not specifically state the duties of the secretary except as a commissioner. However, they do require the election of one of the commissioners as secretary and that a written record of the proceedings of the association be kept. 17/ In actual practice, as in most organizations, the secretary is the official recorder and this is the case with most of the acequias. 18/

Mayordomo --

El Mayordomo, under the direction of the commissioners, is the chief executive officer of the acequia. He is in charge of the work and operation of the acequia, distributes the water to the users and collects any amounts paid instead of fatigue work--"trabajo"--and fines, if any. 19/

The mayordomo is in charge of the laborers assigned to work on the acequia and if any person fails to comply with the duties assigned, the mayordomo shall impose a fine which the law permits. 20/ He is required to construct lumber bridges across all acequias under his charge which cross public roads and to collect from the water users the cost of the work in proportion to their rights in the acequia. If the user fails to pay, the mayordomo shall deny him the use of the water until his share is paid. The law also provides for penalties for the mayordomo if he fails to comply with his duties relating to bridges. 21/ He is authorized to make arrangements with other mayordomos for the use and distribution of water where two or more acequias have joint drainage outlets. 22/

The mayordomo must make written reports to the commissioners of all funds received by him, how spent and of all his work as mayordomo. The reports are to be made twice a year on the first Monday of June and the last Monday of September. He shall make further reports as may be required by the commissioners and perform other duties as prescribed by the rules and regulations of the acequia or as directed by the commissioners. 23/

One of the most important duties of the mayordomo is to distribute the water to the owners of water rights. The law requires that he shall prosecute any person who interferes with the acequia in any manner or takes and uses water without his permission. Failure to do so is deemed a misdemeanor. Upon conviction, the mayordomo may be fined not less than \$25 nor more than \$50 or by imprisonment in the county jail for not

less than 10 days nor more than 30 days. 24/

The laws place certain restrictions on the mayordomo. It is unlawful for him to care for, take on shares or rent any lands irrigated by the acequia of which he is in charge. It does not prevent him from using water on his own land. Violation is a misdemeanor and upon conviction he may be fined or jailed or both at the discretion of the court. 25/

The mayordomo's position is highly respected in the community. He is considered a fair and conscientious individual in carrying out his duties. Generally he is one of the older residents of the area. Interviews with a large number of acequia officials and research by the author have failed to reveal any cases where El Mayordomo has been put in jail for such offenses as mentioned above!! 26/

Members --

It is the duty of the association members to provide work on the acequia in proportion to their land whether they cultivate the tillable land or not. 27/ They shall furnish the number of workers required by the mayordomo at the time and place he may designate and for the time he may deem necessary. 28/

All persons once they have started the work on the acequia shall continue until the cleaning or repairs have been completed and hold at all times the number of laborers assigned to them at the disposal and order of the mayordomo. An owner who has rented his land, reserving a part for himself, is not exempt from working on the acequia. 29/

All owners of water rights must pay the "ditch dues" assessed by the commissioners for the payment of the mayordomo and other expenses necessary for the operation and maintenance of the acequia. 30/ When bridges are required where the acequia crosses public roads, all members shall pay for the cost of construction in proportion to their interests in the acequia. 31/

Any member may pay in cash instead of providing fatigue or task work assigned at a rate to be fixed by the commissioners. 32/ Members who farm only a small piece of land may receive consideration from the mayordomo on the amount of labor to be furnished on the acequia. 33/

The law provides that labor on the acequia must be furnished in proportion to the land irrigated. 34/ Most acequias have a minimum charge per member. The rates vary from as low as \$1.00 or a day's labor to \$6.00 or more, particularly for those members with --"hortalizas"--small gardens. Cash assessments for major improvement work are usually based on a set amount per acre. 35/

Miscellaneous --

Penalties --

Provisions are made for penalties to enable acequia officials to enforce the laws and their rules and regulations. Some have already been discussed. Others follow.

An owner of land in the acequia who, after due notice, neglects or refuses to furnish the number of workers required by the mayordomo shall be fined in a sum not to exceed \$10. 36/ Any persons who abandon their co-workers before the cleaning of the acequia is completed shall pay a fine of not less than \$5 nor more than \$10. 37/

The mayordomo shall impose a penalty or fine which the law authorizes on persons who fail to perform work on the acequia. 38/ Failure to respond to the mayordomo's call to repair the acequia is deemed a misdemeanor. Upon conviction, the defendant shall be fined not less than \$5 nor more than \$15 and shall be denied the use of the water until the costs or fines are paid. 39/

No person who fails or refuses to work or pay the amount assessed against him for fatigue work--"trabajo"--or pay his share of the cost of bridges constructed shall be allowed the use of the water from the acequia while in default. 40/ Any person who allows irrigation water to overflow on public roads so as to hinder, delay or obstruct travel is subject to a penalty under the law. Upon conviction, he may be fined in a sum not to exceed \$25. 41/

Any person who interferes with the acequia in any manner or who uses irrigation water without the permission of the mayordomo may, upon conviction, be fined not less than \$10 nor more than \$50. If he does not pay the fine, he may be put in jail for not less than 5 days nor more than 30 days. 42/

Collection of Assessments --

The mayordomo may file a civil action in the courts of the state to collect the delinquencies if any persons who, after due notice, have failed to do their work or pay any amount assessed against them on the acequia. 43/

The New Mexico Supreme Court has ruled that...no remedy is provided for the collection...of assessments levied except the (denial) of the delinquent party's right to the use of the water until payment is made and the (acequia) officers are necessarily confined to the remedy given. This would appear to be adequate remedy, for the member of the (acequia) must have water for the irrigation of his lands. 44/ This court decision was reaffirmed in a later case. 45/

However, the New Mexico Attorney General has stated that...after enactment in 1963 of Sec. 75-14-24.1 ... the mayordomo may bring civil action to recover the amount assessed...any assessment prior to that time (1963) will have to be collected by refusing the water to the delinquent user. 46/

Improper Conduct of Acequia Officers --

Any commissioner or mayordomo who neglects or refuses to perform the duties required of him, takes bribes as an inducement to act improperly, or fails to conduct himself with propriety or justice in his office shall be removed from office. Action to do so can be brought before the district court by any water user of the acequia. The cost of such action cannot be charged to the acequia.

If an officer is removed as provided above, the district judge shall appoint a successor to serve until the next election. 47/ Provisions for removal of public officers are also included in other sections of the New Mexico laws. 48/

Compensation of Acequia Officers --

Commissioners are entitled to actual expenses in carrying out their duties and responsibilities. The law allows eight (8) cents a mile for travel in a privately-owned car, but, if two or more commissioners travel together in one car, mileage can be charged only once. 49/

The pay of the mayordomo is determined by the majority of the owners of lands irrigated by the acequia. 50/

Commissioners of most acequias serve without pay. They consider their work a part of their community service. In some cases they may receive small fees or water equivalent to a "right". The custom varies in each area. The pay of the mayordomo also varies by communities. Some get free "rights" to the water. Others are paid on a fixed monthly or annual salary or on a set charge per acre assessed on the water users. 51/

Distribution of Irrigation Water --

Information for the discussion that follows is quoted from an Opinion of the New Mexico Attorney General 52/ on the question--

Does the law require that acequia organizations distribute their available water supply as nearly as practicable in proportion to the lands with water rights owned by each member of the ditch? 53/

With regard to the apportionment of water among ditch owners, the laws provide in part that the mayordomo shall, under the direction of the commissioners, be in charge of the distribution of the water. 54/ These sections do not specifically designate the manner in which the mayordomo is to apportion the water.

However, the New Mexico Constitution states that "beneficial use shall be the basis, the measure and the limit of the right to the use of water." 55/ Thus, the mayordomo must distribute the acequia water on the basis of beneficial use by the owners. Beneficial use of water is to be determined by the ultimate use to which the water is to be put rather than by distribution of the water among the people. 56/ Determination of beneficial use will necessarily depend to an extent on the proportionate lands with water rights of the ditch owners.

Although acreage is not mentioned in the laws dealing with water rights as the method of water distribution, many sections imply that it is the primary factor since other rights are so apportioned. For example, one section provides that for the election of acequia officers the votes...shall be in proportion to the interest of the voter in the ditch or water, or in proportion to the number or amount of his water rights. 57/

Evidently the framers of the laws relating to acequias assumed that water would be apportioned according to acreage irrigated plus other factors. A law requires that any person who is not an original ditch owner may use the water with the consent of the majority of the owners and by payment for "ditch rights". Payment is to be made in proportion to the primary cost of the acequia to the amount of land irrigated or water to be used. 58/

Other sections tie labor requirements to the amount of land, namely, all persons interested in an acequia shall work on it in proportion to their land. 59/

In addition, when apportioning waters among ditches which are constructed from and supply waters from the same source or river, the apportionment and distribution must be made in accordance with the rights of each acequia and in proportion to lands irrigated by each ditch. 60/

It appears that though the acreage of land with water rights is the controlling factor in apportioning the water to the acequia association members, the law does not prohibit the taking into consideration of other matters. However, these other matters must be factors in determining need or beneficial use.

For example, acequia officials, in determining their schedules for rotation of water among the owners of water rights, must take into account such practical considerations as the relative location of the irrigated lands, the varying demands of different crops, the need to reduce ditch losses, etc., within the framework of a general allocation system geared to each water user's proportionate interest in the acequia.

Therefore, the opinion concludes, the law requires that acequia organizations distribute their water supply as nearly as practicable in proportion to the lands with water rights owned by the members of the acequia. This, of course, the mayordomo does with absolute impartiality.

Notes to LAWS OF ACEQUIAS - Management and Operation

- 1/ N. Mex. Stats., 1953 Ann., Sec. 75-14-12, Laws 1895
- 2/ State ex rel. Comm. Ditches v. Tularosa Comm. Ditch, 19 NM 352, 369 (1914)
- 3/ N. Mex. Stats., 1953 Ann., Secs. 75-15-1 to 75-15-10, Laws 1903
- 4/ Ibid., Sec. 75-14-15, Laws 1919
- 5/ Ibid., Sec. 10-2-2, Laws 1937
- 6/ Ibid., Sec. 75-14-14, Laws 1895
- 7/ Ibid., Sec. 75-14-13, Laws 1919
- 8/ Ibid., Sec. 75-14-12, Laws 1895
- 9/ Ibid., Secs. 75-14-16 and 75-14-17, Laws 1891
- 10/ Ibid., Sec. 75-14-21, Laws 1895
- 11/ Ibid., Sec. 75-14-14, Laws 1895
- 12/ Ibid., Secs. 75-14-12 and 75-14-13, Laws 1895
- 13/ Ibid., Sec. 72-2-23, Laws 1921
- 14/ Ibid., Sec. 75-14-39, Laws 1912
- 15/ Ibid., Sec. 75-14-23, Laws 1921
- 16/ Ibid., Sec. 75-14-21, Laws 1895
- 17/ Ibid., Secs. 75-14-12 and 75-14-21, Laws 1895, 75-15-3 and 75-15-4, Laws 1903
- 18/ Author's interviews with acequia officials. Scheduled for publication.
- 19/ N. Mex. Stats., 1953 Ann., Secs. 75-14-21, Laws 1895 & 75-14-29, 1851-52
- 20/ Ibid., Secs. 75-14-36 and 75-14-37, Laws 1880
- 21/ Ibid., Secs. 75-14-40 to 75-14-43, Laws 1897
- 22/ Ibid., Secs. 75-14-49 to 75-14-52, Laws 1903
- 23/ Ibid., Sec. 75-14-21, Laws 1895
- 24/ Ibid., Sec. 75-14-61, Laws 1923
- 25/ Ibid., Secs. 75-14-19 and 75-14-20, Laws 1899
- 26/ Author's interviews with acequia officials. Scheduled for publication.
- 27/ N. Mex. Stats., 1953 Ann., Secs. 75-14-30 and 75-14-31, Laws 1851-1852
- 28/ Ibid., Sec. 75-14-27, Laws 1851-1852
- 29/ Ibid., Sec. 75-14-36, Laws 1880. See also 75-14-32 & 75-14-33, 1860-61
- 30/ Ibid., Sec. 75-14-21, Laws 1895
- 31/ Ibid., Sec. 75-14-41, Laws 1897
- 32/ Ibid., Sec. 75-14-21, Laws 1895
- 33/ Ibid., Sec. 75-14-35, Laws 1860-1861
- 34/ Ibid., Secs. 75-14-30 and 75-14-31, Laws 1851-1852
- 35/ Author's interviews with acequia officials and review of a number of their by-laws. Scheduled for publication.
- 36/ N. Mex. Stats., 1953 Ann., Sec. 75-14-28, Laws 1851-1852
- 37/ Ibid., Sec. 75-14-34, Laws 1860-1861
- 38/ Ibid., Sec. 75-14-36 and 75-14-37, Laws 1880
- 39/ Ibid., Sec. 75-14-31, Laws 1851-1852
- 40/ Ibid., Secs. 75-14-24, Laws 1895 and 75-14-42, Laws 1897

- 41/ Ibid., Secs. 55-6-7 and 55-6-8, Laws 1917
- 42/ Ibid., Sec. 75-14-61, Laws 1923. See also 75-7-3, Laws 1907
- 43/ Ibid., Sec. 75-14-24.1, Laws 1963. See also 75-14-37, Laws 1880
- 44/ La Mesa Comm. Ditch v. Appelzoeller, 19 NM 75, 81, 82 (1914)
- 45/ La Acequia de San Rafael del Guique v. Lopez, 72 NM 349, 351 (1963)
- 46/ N. Mex. Attorney General Opinion No. 67-47, pp 61,62, March 16, 1967
at the request of Jose Benito Chavez, State Rep., Rio Arriba County
- 47/ N. Mex. Stats., 1953 Ann., 75-14-26, Laws 1945. See also 75-14-43 & ..61
- 48/ Ibid., Secs. 5-3-3 et seq., Laws 1909
- 49/ Ibid., Sec. 75-14-22, Laws 1945
- 50/ Ibid., Sec. 75-14-18, Laws 1851-1852
- 51/ Author's interviews with Don Procopio H. Roybal, Mayordomo de la
Acequia del Caño (Nambe), Don David Abeyta, Mayordomo de la
Acequia de Chamisal y Ojito and others. Scheduled for publication.
- 52/ N. Mex. Attorney General Opinion No. 74-23, July 2, 1974
- 53/ Bobby Duran, State Representative, District 42, Taos County,
May 21, 1974 letter to Attorney General
- 54/ N. Mex. Stats., 1953 Ann., Secs. 75-14-21, Laws 1895 and
75-15-4, Laws 1903
- 55/ N. Mex. Constitution, Art. XVI, Sec. 3. See also Sec. 75-1-2,
Laws 1907
- 56/ W. S. Ranch v. Kaiser Steel Corp., 388 F.2d 257 (10th Cir. 1967)
- 57/ N. Mex. Stats., 1953 Ann., Sec. 75-14-14, Laws 1895
- 58/ Ibid., Sec. 75-14-7, Laws 1882
- 59/ Ibid., Sec. 75-14-31, Laws 1851-1852. See also 75-14-35,
Laws 1860-1861
- 60/ Ibid., Sec. 75-14-46, Laws 1903
For additional information see also Snow v. Abalos, 18 NM 681, 691,
695 (1914) and N. Mex. Attorney General Opinion No. 3210, p 106,
Dec. 10, 1921.

SPECIAL PROVISIONS GOVERNING CERTAIN COUNTIES

In 1903 the Territorial Legislature modified the laws on the management and operation of acequias. These amendments apply only to acequia associations in the following counties:

Bernalillo, Catron, Curry, De Baca, Harding, Hidalgo, Lea, Los Alamos, Mora, Sandoval, San Miguel, Sierra, Socorro, Taos, Torrance, and Valencia. 1/

The Laws in Chapter 75-14 apply to all counties in New Mexico. When a provision in Chapter 75-15 clearly contradicts a provision in Chapter 75-14, then the (latter) does not apply in the above counties. 2/ An additional interpretation states that "...the 1903 legislature enacted Section 75-15-1, et seq., NMSA, 1953 Compilation, which purportedly amended comparable provisions found in Section 75-14-1, et. seq. ... (but the latter)...is in force and effect in every county in New Mexico except that the amendments in Section 75-15-1, et seq. (apply only to the counties listed above.)" 3/

Thus, the reader should refer to the previous chapter on the Laws of Acequias - Management and Operation, Pages 24 to 34 for details on the laws that apply to all counties.

Election of Officers and Organization --

Election of three commissioners and a mayordomo is to be held annually on the first Monday of October. Each officer must be an owner of rights in the acequia. They shall assume office not later than the first Monday of the following November. The three commissioners shall organize by electing from their group a chairman, a secretary and a treasurer. Two commissioners constitute a quorum for the transaction of business at all times.

The treasurer and mayordomo shall give bond in a sum to be fixed by the commissioners. 4/

Who Can Vote -- Method of Voting --

The outgoing commissioners shall hold the election under written rules

and regulations established by them. Only those owners having water rights in the acequia and who are not delinquent in their ditch dues are allowed to vote. Votes may be cast by written proxy.

A member's vote shall be in proportion to his share in the ditch or water, or in the amount or number of his water rights. For election purposes, the voter shall not vote his water rights in excess of the lands he had under irrigation during the past year.

The commissioners shall canvass the votes cast, record and publicly announce them within 24 hours after the close of the election. Contests, if any, shall be conducted in the same manner as provided for in general elections of county officers. Notice of contest must be filed within 15 days after the results of the election have been announced. 5/

Vacancies--

Commissioners...If a vacancy occurs, the other two commissioners and the mayordomo or any two of them shall appoint another acequia member to hold office until his successor is elected and qualified. In case of a joint vacancy, a majority of the owners of water rights shall immediately appoint their successors.

Mayordomo...If a vacancy occurs, the commissioners shall immediately appoint a mayordomo to hold office until his successor is elected and qualified. 6/

Powers -- Duties -- Responsibilities --

Commissioners-

The commissioners are in general charge of the affairs pertaining to the acequia. They assess fatigue work or tasks of all water right owners and establish the amount to be paid in lieu of fatigue work. They receive and pass upon reports of the mayordomo and treasurer and approve them or reject them if not correct before their term expires.

The commissioners are required to keep a written record of all their proceedings. All books, papers and reports required shall be kept by them and remain public property and open for inspection by acequia members and other persons concerned. The commissioners are authorized to represent the acequia in all civil cases. 7/

Treasurer-

The treasurer, as a member of the commission, submits reports of all funds received and how spent for review and approval of the commissioners. He pays any expenses approved by the commissioners. 8/

Secretary-

Information on Page 27 applies also to these officers in the above counties. 9/

Mayordomo-

El Mayordomo is the chief executive officer of the acequia. He is in charge of the work and operation of the acequia and directs the distribution of the water to the users. He collects fines, if any, and amounts paid instead of fatigue or work tasks assigned to the members and turns them over to the treasurer. However, with the approval of the Commission Chairman, he may retain such funds for repairs of the acequia or for the construction of bridges, flood gates or dams which may be needed.

He makes full and written reports to the commissioners of all funds received, how spent and of all his work as mayordomo. The reports are due twice a year on the first Monday of June and the last Monday of September. He also makes further reports as may be required by the commissioners. 10/

Members-

All owners or their representatives shall work on the acequia in proportion to their lands under cultivation. They shall furnish the number of workers required by the mayordomo at the time and place he may designate and for the time he may deem necessary. 11/

Any member may be excused from these requirements at the discretion of the commissioners if he has lost his crops on the lands under cultivation due to continued drought or floods. Such action by the commission must be in writing and become a part of the acequia records. 12/

Miscellaneous--

Penalties-

Any person who neglects or refuses to furnish the number of workers

required by the mayordomo, after due notice, shall be fined for each offense not to exceed \$5. If not paid, the mayordomo shall sue for the payment of the fine in magistrate court within 15 days after default. 13/ Any person who, after written notice, has failed to do his work or pay the ditch dues shall not be allowed to use the water from the acequia while in default. 14/

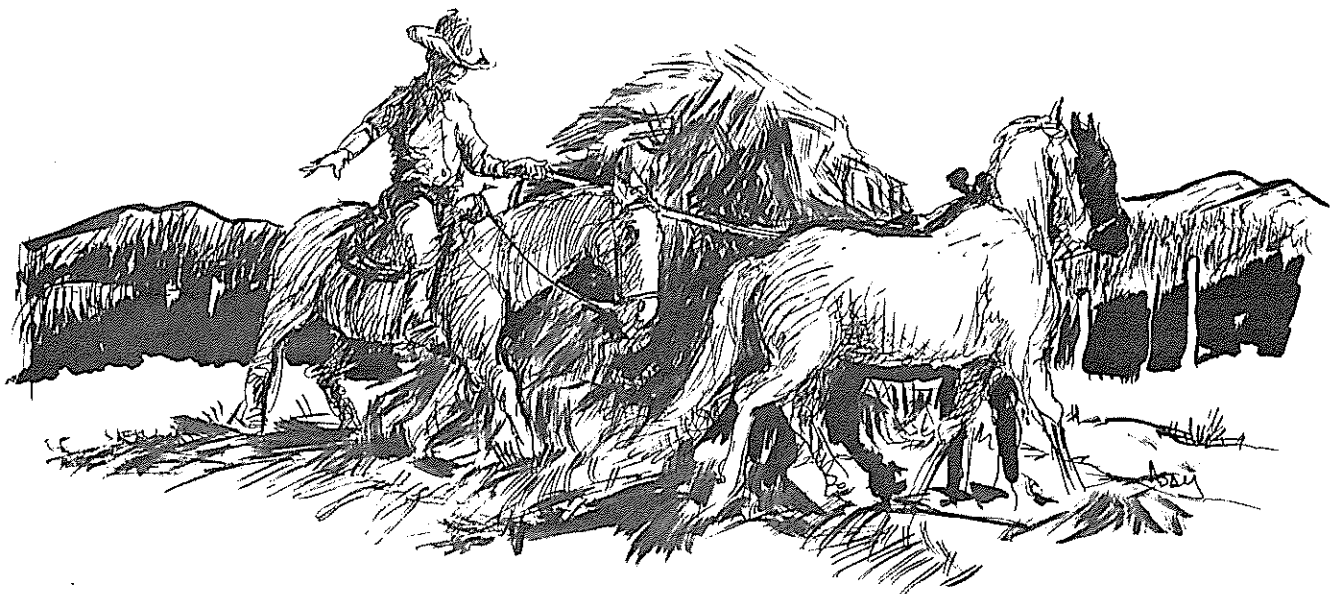
Improper Conduct of Acequia Officers-

Any willful neglect of his duties or abuse of his powers by any commissioner shall be deemed a misdemeanor. Upon conviction in magistrate court the commissioner shall be fined in a sum not exceeding \$25. 15/

If the mayordomo neglects or refuses to perform the duties of his office, conducts himself with impropriety or injustice, or takes bribes as an inducement to act improperly, he is subject to penalties. Upon conviction in magistrate court, he shall be fined in a sum not to exceed \$50 or put in jail or both at the discretion of the court or jury trying the case. 16/

Compensation of Acequia Officers-

The compensation for the services of the commissioners and the mayordomo may be mutually agreed upon by them and a majority of the owners of the acequia. 17/ (See Page 31 for customs followed in many communities.)



LA COSECHA ANTIGUA

Notes to Special Provisions Governing Certain Counties

- 1/ N. Mex. Stats., 1953 Ann., Secs. 75-15-1 to 75-15-10, Laws 1903
No acequia organizations are listed for the counties of Bernalillo, Curry, Harding, Lea, and Los Alamos in Special Report, Roster-County Organizations, Surface Water Irrigation, State Engineer Office, 1969.
- 2/ Letter from P. T. White, Associate Counsel, State Engineer Office, to Acequia Madre de el Cerrito, Villanueva, 3/22/74
- 3/ Letter from Attorney General to Senator C. B. Trujillo, Taos-Mora-San Miguel, 4/18/74
- 4/ N. Mex. Stats., 1953 Ann., Sec. 75-15-1, Laws 1903
- 5/ Ibid., Sec. 75-15-3, Laws 1903
- 6/ Ibid., Sec. 75-15-1, Laws 1903
- 7/ Ibid., Sec. 75-15-4, Laws 1903
- 8/ Ibid., Sec. 75-15-4, Laws 1903
- 9/ Ibid., Secs. 75-15-1 and 75-15-4, Laws 1903
- 10/ Ibid., Sec. 75-15-4, Laws 1903
- 11/ Ibid., Sec. 75-15-5, Laws 1903
- 12/ Ibid., Sec. 75-15-6, Laws 1903
- 13/ Ibid., Sec. 75-15-5, Laws 1903
- 14/ Ibid., Sec. 75-15-5.1, Laws 1961
- 15/ Ibid., Secs. 75-15-8 and 75-15-9, Laws 1903
- 16/ Ibid., Sec. 75-15-7, Laws 1903
- 17/ Ibid., Sec. 75-15-2, Laws 1903

The funding to reprint this report was provided in part through the New Mexico Water Resources Research Institute by the United States Department of the Interior, Office of Water Research and Technology, as authorized under the Water Resources Research Act of 1964, Public Law 88-379 as amended.

Sepan todos por éstos presentes qua noso Comisionados, electos el primer lunes de desde ésta fecha hasta el primer lunes d siendo el ano corriente para nuestro gob aprobamos las siguientes reglas y enforas bijentes en pleno fuerza a ésta fecha.

The new Commissioners (hereafter indicated by C) indicated by H), who are elcted on the first Mond sworn in and bonded before a Notary Public before In the event that no new officers are elected -- sworn and bonded, the former officer--

Nosotros los abajo firmados en sesion re conferido a nosotros por dicha ley y por las siguientes reglas, para el gobierno de individuos que tengan que hacé

The C are responsi... owner is obligated to contribute The C are responsi... owner is obligated to contribute Each water right owner is obligated to contribute to the construction of the ditch every year and also contribute funds for materials needed on the ditch. The amount ne... never be equally contribu...

These are the mayordomo's duties:

1. He takes his orders from the commissione
2. The ditch is under his care.
3. He will guide the work being done
4. He will keep a work record for owner.
5. He must not let any member (2) two days of work.
6. He will divide the work
7. He shall have his annual

requiring all water users to assist in the maintenance of the ditch, and section 3 of the statute that "all persons interested in a comm... acequia, be they owners or lessees, shall lab... in proportion to their land," the question... determined is as to whether it is competent for th... of a community ditch system to adopt a by-l... adopted by a municipal corporation, or an ordin... valid must be consistent with the law of the... by-law or ordinance in contravention of the... state is invalid

SECCION 3. Sera el deber del Mayordomo de suvir al reparto de la agua a las Sies de la Tarde todos los días durante el tiempo del Regadio. y los que sean asinados por el Mayordomo para regar hese dia seran los que ocupen la agua por el tiempo designado a ellos por el Mayordomo, y ellos tomar o haran uso de la agua el dia siguiente a las Seis de la Manana. SECCION 4. Cuation of water will start at the end of the Ditch. Since wat Cuando ber... are released at 6:00 pm Saturday, the time of arrival at the Madre... will normally be early Sunday morning. The amount of time per acr... be determined.

6. It is the responsibility of the shareholder, when using the wa the next shareholder as to when he should take his turn for water done ahead of time, and if he cannot be reached, then notify If failure to do so is malicious you will be fined \$5.00.

AFROBADAS POR LA MAYORIA DE LOS DUENOS DE PRO. DENTRO DEL DISTRICTO DE REGADIO DE DICHA ASEQUIA FIRMADAS POR LOS COMISIONADOS DE LA ASEQUIA MADRE DE

Se tasara por ortaliseros 7 dia por la asequia del raba un dia por la asequia de la cuichill tambien de un acre a un dia en el raba a a asequia de la...

SECTION No. 9 THE SALARY OF THE MAYOR Ditch Commission the Defarent every own for

APPENDICES

Acequia By-Laws - Sample

Declaration of Ownership of Water Rights

Adjudication

Sales, Transfers, Leases

Administration

Loans and Grants

SAVE THOSE WATER RIGHTS

New Mexico Statutes - Chapter 75
Articles 14 & 15
Acequias

...Each individual owned and cultivated a specific tract of land, sufficient to provide food for the needs of his family, and from the main ditch laterals were run to the various tracts of land to be watered.

The distribution of the water and the repair of the ditch was in charge of a mayordomo, or officer elected by the water users under the ditch. This official would require the water users to contribute labor towards the repair of the ditch and its maintenance, and also distributed the water to the various irrigators equitably, in proportion to the land to be irrigated, as his necessities required...

Snow v. Abalos
18 NM 681, 692 (1914)



EL REGADOR

ACEQUIA BY-LAWS, RULES AND REGULATIONS

Traditionally, acequias have been managed by local customs. Most authorities agree that when the law does not state to the contrary, local customs and traditions prevail and will usually have the force of law. In such a way, acequias have a great deal of autonomy in their day to day operations.

However, the laws of the state contain provisions for the management and operation of acequias. One of the requirements is that acequias adopt by-laws, rules and regulations which shall not be in conflict with the laws of the state. In addition, a printed copy is to be made available to each water right owner.

The author, with the consent and cooperation of acequia officials, has had an opportunity to review a large number of their rules of management and by-laws. They have been developed to meet the local needs and conditions. They vary considerably. Some go into great detail. Others deal primarily with the dues charged to the water users and the method of distributing the water. A number of them have requirements which appear to be in conflict with the laws of the state. Occasionally, specific provisions of the state laws are included in some of the by-laws.

A few acequias apparently do not have written rules and regulations and manage their operations by long-established and accepted customs and traditions. Many of those that have written by-laws do not distribute them to all the members. They depend instead on each individual water user to become acquainted with the rules or to attend the annual meeting when they are discussed and sometimes revised.

In some cases, acequias have filed a record of their by-laws in the office of the County Clerk where they can be reviewed by all members and others. Many have been written in Spanish. Some, no doubt, have been prepared with assistance from legal counsel. Most of them, however, were developed by the members themselves. They are all designed to meet the local needs and conditions.

During the last few years, many acequias have felt the need to revise their by-laws, rules and regulations, some of which were developed over twenty-five years ago or more. In many cases, their methods of operation and management have changed considerably.

The sample that follows may be useful as a guide for those acequias which desire to either develop by-laws where not available or to revise the existing ones. Local customs which vary among all acequias and which are not in conflict with state laws should be included.

S A M P L E

BY-LAWS, RULES AND REGULATIONS

These By-Laws, Rules and Regulations supercede any existing or previously adopted By-Laws for the Acequia Madre de Los Vecinos.

ARTICLE I. Name, Objects, Purposes and Definitions

Section 1. Name:

The name of this association shall be La Acequia de Los Vecinos.

Section 2. Objects and Purposes:

The objects and purposes of this association shall be to promote the agricultural industry for the benefit of the members; to improve and maintain the main ditch and laterals to provide the most efficient use and distribution of the water; to protect the irrigation and water rights as adjudicated by the courts and/or as otherwise provided by law; and, to manage and operate the acequia in accordance with the laws of the state and the provisions of these By-Laws, Rules and Regulations.

Section 3. Membership:

Members of the association are those persons who own land entitled to irrigation water from said acequia.

The rights, privileges and obligations of all members shall be in proportion to the number of acres with water rights owned by each member.

Section 4. Description of Acequia:

(a) Point of Diversion:

The Acequia Madre de Los Vecinos diverts from the north bank of the Rio de La Gente about 1.1 miles southeast from the Arroyo Mojado and there combines with waters from the Arroyo Mojado. From this point the main ditch continues for a distance of 2.1 miles.

Three laterals take out from the Acequia Madre as follows:

Los Toros, El Alamito and Las Espaldas at 0.7 mile, 1.2 miles and 1.7 miles respectively from the crossing of the main ditch on the Arroyo Mojado.

(b) Acreage:

The approximate acreage of lands having water rights with a Duty of Water of 2.5 acre-feet per acre per annum delivered at the farm headgate is as follows:

Acequia Madre-----	645.
Los Toros Lateral-----	196.
El Alamito Lateral-----	185.
Las Espaldas Lateral-----	<u>195.</u>
Total acres-----	1221.

(c) Priority Date: 1747

(See "Declaration of Ownership of Water Right Perfected Prior to March 19, 1907" recorded April 1, 1908 in the Office of the County Clerk, Nombro County, Book M-4, page 10 and in the State Engineer Office, File Number 000X. Confirmed by Final Court Decree dated September 5, 1974, Adjudication Suit, U. S. District Cause No. 000Y, Rio de La Gente Stream System).

The list of individual tracts of land showing ownership, acreage irrigated, and water rights is attached to and made a part of these By-Laws, Rules and Regulations.

NOTE: For acequias on which an adjudication suit has been completed, this information can be obtained from the State Engineer Hydrographic Survey maps and/or the Court Decree issued.

Other acequias have their own records and/or legal surveys. Many have cooperative agreements with the local Natural Resource Conservation District and maps and other data have been prepared by the Soil Conservation Service. This information may be useful in preparing the material for this section.

ARTICLE II. State Law

Section 1. Compliance:

The management and operation of the association will be in compliance with the laws of the State of New Mexico and the provisions of these By-Laws, Rules and Regulations.

NOTE: See particularly The Laws of Acequias, Pages 13 to 39.

ARTICLE III. Management and Operation

Section 1. General:

The affairs of the association are under the general control and supervision of three commissioners.

Under the direction of the commissioners, the mayordomo shall be the executive officer in charge of supervising maintenance and repairs of the acequia, collection of assessments and water distribution.

Section 2. Election of Officers:

Three commissioners and a mayordomo shall be elected annually at a general membership meeting on the first Monday of December. Each officer must be an owner of land with water rights under the acequia.

NOTE: In counties listed on Page 35 the elections are to be held on the first Monday of October.

Only those persons who own water rights on lands under the acequia and who are not delinquent in the payment of their ditch dues shall be allowed to vote. Votes may be cast by written proxy. A member's vote shall be in proportion to his amount of water rights in the acequia.

NOTE: A review of a number of acequia by-laws indicates that various methods are used in determining the member's number of votes. Some show that all members are entitled to only one vote. Others provide for one vote for a specified number of acres, i.e., one vote for every 10 acres.

The following is quoted from the New Mexico Attorney General Opinion No. 3210, December 10, 1921 for guidance in establishing the voting requirements to comply with state law:

"Each acequia or community ditch has some unit or measurement by which the interests of the various members of the community ditch are established and regulated. This unit should be used as the measure of the rights of each water user when he offers to vote.

If the unit of measure is the number of inches of water allowed to each water user during the season, that standard should be applied to the right to vote. If the unit of measurement is the number of days labor required by each water user, that standard should be used.

If the unit of measurement is the number of acres of land to which water is applied by each water user, that standard should be used..."

The annual meeting shall be held at a public place and the election shall be conducted by the commissioners whose terms expire during the year. Nominations of officers may be made by any association member. The nominations and voting shall be conducted separately for each officer. The persons receiving a majority of the votes cast will be declared the officers for the following year.

Section 3. Organization:

The elected officers shall assume office not later than the first Monday of the following January after their election. The commissioners shall elect from among themselves a chairman, a secretary and a treasurer.

NOTE: In counties listed on Page 35 the officers assume office the first Monday of November following the election.

The treasurer and the mayordomo shall be bonded in a sum to be fixed by the commissioners.

Section 4. Notice of Meetings:

Notice of all meetings of the members of the association shall be given by notice mailed to each member of record at least ten (10) days prior to the meeting and/or published in a newspaper of general circulation in the area or announced through the local radio station.

Section 5. Special Meetings:

Special meetings of the members of the association may be called by the commissioners or upon written petition to the commission chairman signed by _____ % of the members.

Section 6. Quorum:

A majority of the total irrigable acres, represented by the owners thereof or by written proxy, shall constitute a quorum for the transaction of business at any meeting of the association.

Section 7. Compensation of Acequia Officers:

The compensation of the commissioners and the mayordomo shall be

determined by the members at the annual membership meeting.

NOTE: See Page 31 for customs followed in various communities.

Section 8. Assessments:

The commissioners, immediately after assuming office or as soon as practicable thereafter, shall determine the amount necessary for the ensuing year for the operation, maintenance, repair and improvement of the ditch system and for payment of the mayordomo and other expenses of the association.

They shall then assess each association member the amount of labor and ditch dues needed to meet the expenses. A general schedule of assessments is attached to and made a part of these By-Laws, Rules and Regulations.

Section 9. Delinquencies:

The officers of the association shall file a civil action in magistrate court for the collection of any assessments which, after due notice, any member has failed to pay. They shall also deny the member the use of the water until the assessment is paid.

Any member who is delinquent for four continuous years shall lose his right to the use of the acequia.

To reestablish the right, all past ditch dues plus _____% interest per year must be paid. Upon payment, the landowner may use the acequia, provided the water rights on the land to be irrigated are still valid. The method and amount of payment shall be figured on the same basis for all individuals.

Section 10. Water Distribution:

The available water in the acequia will be distributed as nearly as practicable in proportion to the lands with water rights owned by each member of the association. The mayordomo shall be in charge of the distribution of the water to the members based on the general schedule established by the commissioners. Said schedule is attached to and made a part of these By-Laws, Rules and Regulations.

Section 11. Interference with the Acequia - Illegal Use of Water:

Any person who interferes with the acequia in any manner or takes

water without the permission of the mayordomo, commissioners or other persons in charge shall be guilty of a misdemeanor and prosecuted in accordance with the laws of the state.

Section 12. Penalties:

It shall be the duty of the officers of the association to impose any penalties authorized by law and/or bring civil action before the magistrate court for any and all violations of the laws of the state relating to acequias and/or these By-Laws, Rules and Regulations.

ARTICLE IV. Miscellaneous

Section 1. Transfer of Title, Water Rights, and Change of Place/Method of Use:

It shall be the responsibility of a new owner who has purchased land from a member to report such transaction promptly to the acequia secretary for recording in the association books. Delinquencies, if any are due on said land, must be paid immediately as per Article III, Section 9 before the new owner may be entitled to the use of the acequia.

It shall also be the responsibility of any member who has transferred, sold or changed the place, purpose and/or method of use of his water rights to report such transactions promptly to the acequia secretary for recording in the association books.

Section 2. Adjudication of Water Rights:

Upon final adjudication of water rights as provided by law, the number of acres, amount of water rights and priority date for each parcel of land as shown on the Court Decree shall be used by the Acequia de Los Vecinos as the official list for purposes of assessments and water distribution.

ARTICLE V. Attachments

The following special rules, regulations and schedules are attached to and made a part of these By-laws:

Section 1. Water Distribution Schedule:

NOTE: Since most acequias use different methods to meet their local needs and conditions, their specific schedules can be outlined in this section.

(See Pages 31 & 32, Distribution of Irrigation Water, which can be used as a guide in preparing the schedule).

Section 2. Schedule of Ditch Dues and Labor Assessments:

NOTE: A review of a number of acequia by-laws shows that different methods are used based on local customs and conditions. One acequia taxes each member one peon per day for every 10 acres or a minimum of one half day for any fraction of 5 acres or less for the annual cleaning of the ditch. In addition, each member is assessed at the rate of sixty cents per acre or a minimum of \$2.00 to pay the mayordomo's salary.

Some acequias provide a specific number of hours or days of "free" use of the water to the mayordomo in payment for his services.

For major improvement work on the acequia, the assessment is usually based on a set rate for the number of acres irrigated by each member.

In completing this section of their by-laws, acequias can make the assessments to best meet their local needs but they should keep in mind that the laws state that labor on the acequia must be based in proportion to the lands irrigated.

See various sections on Pages 24 to 34, Management and Operation, for provisions as set out in the statutes which can be used as a guide.

Section 3. Others:

NOTE: Provisions to meet specific needs and conditions of any acequia can be included in this section.

The following are some examples:

Approval of a majority of the members must be obtained before acequia commissioners may commit the

association for major ditch improvement work. A limitation on the cost and amount of work can be included.

The procedures for paying expenses, signing checks, maintaining of acequia records and similar matters can be spelled out in detail.

The method of settling any disputes or misunderstandings on the use of the water or other acequia matters among the members and/or ditch officers can be considered for this section.

See Pages 71 & 72, SAVE THOSE WATER RIGHTS, for other possibilities.

ARTICLE VI. Enactment

These By-Laws, Rules and Regulations may be amended, altered, added to, suspended or replaced by a simple majority vote of the association members at any regular meeting or at a special meeting called as provided herein.

A printed copy shall be furnished to each water right owner.

ARTICLE VII. Extent of Regulations

Nothing contained within these By-Laws, Rules and Regulations shall be interpreted or construed in conflict with the water laws of the State of New Mexico regulating water, water rights and community acequia associations; and further, any such By-Laws, Rules and Regulations so determined is hereby declared null and void without invalidating the remaining By-Laws, Rules and Regulations.

THE FOREGOING BY-LAWS WERE ADOPTED BY THE OWNERS OF WATER RIGHTS OF THE ACEQUIA MADRE DE LOS VECINOS AT A MEETING DULY CALLED AND HELD ON _____, 19____ AT THE COMMUNITY HALL IN ARROYO MOJADO, COUNTY OF _____, NEW MEXICO.

Secretary

Commissioner

Commissioner

Commissioner



LA CANOVA VIEJA

Acta de Apropriadion de Agua y Acequia de Chamisal

Aviasse por setas dadas: Que nosotros, los abajo firmados propietarios, y ocupantes y poseedores de tierras a lo largo y al traves por la cual pasa la acequia despues aqui mencionada y descrita y meadores de agua flotando por dicha acequia reclamamos y tenemos el derecho exclusivo de toda la agua en corriente por la dicha acequia conocida como la acequia Madre del Chamisal, comenzando del Rio del Pimasco, al lado del sur del dicho Rio de Benasco y corriendo al Poniente por entre las tierras de una parte de los parciantes del Llano, una distancia de seis millas y tres octavos en toda la capacidad de dicha acequia, la cual dicha acequia es de una capacidad de doce pies de ancho, y de fondo, y cuatro yardas de choneros por cada lado, dichas aguas estan reclamadas para propósitos de agricultura y domesticas, dichos reclamos y derechos estan basados sobre la anterior apropiacion de derechos anteriores y asignados de los arriba mencionados reclamantes.

De toda la dicha agua en toda la capacidad de dicha acequia hecha en o cerca del 1800, y el uso continuo de tal agua corriente en dicha acequia por dichos apropiados anteriores o sus sucesores de esa fecha al presente tiempo y conate que dicha acequia pertenece a los abajo firmados y que si en algun tiempo dicha acequia o agua fuese estorbada por alguna persona o personas, los abajo firmados la defenderan hasta ponerla en quietud y pacifica posesion.

En testimonio de lo cual nosotros hemos puesto nuestras manos y firmas hoy este dia 1^{er} de Junio A.D. 1907.

Luis Lopez	Nemesio Lavato	Juan de Dios
Celicio Casados	Juan Siquells	Con
Juan Encinas Lopez	José Luis Pacheco	June 1 st 1907
José David Lopez	Miguel Pacheco	Recorded
Santiago Pacheco	June 1 st 1907	Dammel Pacheco
Marcos Lopez	en	Recorded
Sabla Lopez	quello	Recorded
Filed for record at 9 a.m.	se. F. Cordova	Recorded
Junio Pacheco	José Victor Cordova	Recorded
	M ^{re} Ramona Martinez	Recorded
		Recorded

 Declaration of Ownership of Water Rights, Acequia Madre de Chamisal. Original signed by 102 owners. Filed June 1, 1907. Book M-17, p 290, 291, Taos County Clerk Office.

DECLARATION OF OWNERSHIP OF WATER RIGHTS

The old community acequias derived their rights from Spanish and Mexican laws and customs. The Territorial, and later, the State Legislatures and the courts consistently continued to protect them in the enjoyment of their water rights. 1/

The New Mexico Constitution states that all existing rights to the use of waters in the state for any useful and beneficial purpose were recognized and confirmed at the time of its adoption. 2/ The laws provide that all claims to the use of water which were initiated before March 19, 1907 would be given a priority date relating back to the date when use of the water was started. They further provide that the users must have diligently carried out to completion the necessary construction for the application of water to a beneficial use. Priority in time gives the better right. 3/

Provision is made for the recording of these pre-1907 rights. Such records will serve as evidence of the rights claimed. 4/

With few exceptions, community acequias in New Mexico were built and were in operation before 1907. As a result their water rights and priorities are protected. However, all water rights at all times are subject to regulation, adjudication and can be lost for nonuse. 5/

Even though their water rights are recognized and protected, acequia organizations may and are urged to file a declaration of these old rights in the office of the State Engineer. They may also be filed in the office of the County Clerk. The records show that many acequias have already done so. 6/

The information is of value to the acequias in establishing their priority date, acreage and historic use of water. It may also be useful in case a proposed project is protested by the owners of such rights. For example, transfer of water rights within a stream basin or to another and/or change of purpose or use may affect existing rights. Acequias can use their declarations as evidence in presenting information for any protests they may wish to make.

The following procedure for filing a declaration of ownership of old rights by acequias is suggested: 7/

1. Declarations should be made in duplicate in forms furnished by the State Engineer or may be typewritten following the general outline of the form.

2. A map may be prepared showing the location of the acequia; point of diversion; storage, if any; irrigated acreage; and any other information which may be pertinent.

A legal survey is not needed. The map can be traced from an aerial photograph available in many local government agency offices. A large number of acequias have cooperative agreements with the local Natural Resource Conservation Districts and maps of the acequia lands have been prepared by the Soil Conservation Service for them. Copies of these maps may be used.

3. Affidavits of residents who have firsthand knowledge of the history of the acequia and any other evidence to substantiate the claim may be filed with the declaration. These affidavits would be most useful, particularly from those who can attest to the use of the acequia and the water before 1907. Old-timers who have personal knowledge of the acequia prior to that time may not be around too much longer.

Acequias for which hydrographic surveys and court adjudication have been completed do not have to file such declarations as the water rights are adjudicated and recorded.

Guidance and assistance in preparing the declarations for others can be obtained from several sources including the State Engineer Office, local government agencies and legal counsel. The author will be glad to help too.

The procedure outlined above can also be followed by persons wishing to file their individual declarations of ownership of water rights.

Notes to DECLARATION OF OWNERSHIP OF WATER RIGHTS

- 1/ Hutchins, The N. Mex. Law of Water Rights, 1955, pp 5, 6
- 2/ N. Mex. Constitution, Art. XVI, Sec. 1
- 3/ N. Mex. Stats., 1953 Ann., Sec. 75-1-2, Laws 1907
- 4/ Ibid., Secs. 75-1-2.1 and 75-1-2.2, Laws 1959
- 5/ Ibid., Sec. 75-8-1, Laws 1907
- 6/ Research in one county indicates a large number of acequias have filed declarations of ownership of water rights. See Taos County Clerk Office records. Mrs. Anita Gurule and Mr. Robert Montoya provided a great deal of help in the research of the files. No doubt other counties have similar records.
- 7/ Author's interviews with Mr. Brad Compton, Water Rights Division, State Engineer Office, 1974

ADJUDICATION OF WATER RIGHTS 1/

The 1907 surface-water laws governing the appropriation of water for beneficial use contain procedures for adjudication of water rights.

The adjudication is made exclusively by the courts. The purpose is to determine the nature, amount, location and priority of all water rights.

The law requires the State Engineer to make hydrographic surveys and investigations of each stream system and source of water supply in the state. The Hydrographic Division of the State Engineer Office makes the field surveys and prepares maps and reports of all lands under irrigation as well as other information pertaining to water rights. The cost of the surveys is not charged to the water users.

Upon completion of the survey, the State Engineer requests the Attorney General to enter suit in a court having jurisdiction on behalf of the state to determine the rights. In the adjudication suit all persons who claim water rights are made parties to the suit. The State Engineer will serve an Offer of Judgment which describes the land and the amount of water rights of each known owner based on the hydrographic survey.

Any water right owner has a legal right to contest the offer if he is not satisfied that the information is correct. Such contests are held before a Special Master who is appointed to hold hearings and make recommendations to the Court. The Special Master's decision can be appealed to the Court. The owner can present the necessary evidence to support his claim. The Court's final decision constitutes the adjudication of the owner's water rights.

When an adjudication suit has been initiated in an area, all owners of lands with water rights should make certain that they receive an Offer of Judgment. If not received, the State Engineer Office should be contacted. A representative of that office will make a field inspection and prepare the necessary information for an offer.

It is noted that water adjudication suits in most cases affect a large number of water users. As an example, in one area nearly 2000 individual water rights were involved. In such cases, there are possibilities that many errors will be made both in acreage and ownership in completing the hydrographic surveys. In the event that these errors are not corrected or the offer is not signed and the matter is not contested, the Court will issue the decree based on the information contained in the Offer of Judgment.

Once the adjudication suit has been completed on the individual water rights, the state enters into an agreement with the entire acequia. The agreement gives the right to the association to divert and use public waters from the specified stream; establishes the priority date of the acequia; describes the point of diversion; and lists the names of the land-owners as well as the number of acres with water rights of each owner.

Before the acequia commissioners approve the agreement, they should make sure that all water right owners and lands are included in the list. Owners may have a great deal of legal difficulty and expense in getting their rights established after the final Court Decree is issued.

When the agreement is signed by the acequia commissioners and the Attorney General representative on behalf of the state, it is then submitted to the Court for approval.

After all the individual and acequia claims have been settled with the state, the Court will hold hearings to adjudicate the rights of all parties between and among themselves. This provides an opportunity to settle any differences which individuals or acequias may have between themselves on the amount of water rights or priority dates established.

On the final adjudication of the rights to the use of waters of a stream system, the Court issues a decree containing all the conditions necessary to define the rights and their priorities.

Adjudication suits have been completed or are underway in northern New Mexico in the areas affected by the San Juan-Chama Diversion Project. A landmark case (State of New Mexico v. Aamodt) underway in the Pojoaque Valley of Santa Fe County will eventually result in defining the Indian and non-Indian claims to the water.

The waters of all streams in the state are being or will be adjudicated. The information that follows may be useful to water right owners.

Suggestions -

1. When an Offer of Judgment is received make certain that the following information is correct:
 - (a) Name of owner.
 - (b) Name of acequia or district.
 - (c) Description of property.
 - (d) Amount of land under irrigation.
 - (e) All lands with water rights which belong to the owner are included.

2. If the information is correct and the owner is satisfied with the offer, the two copies should be signed and one returned to the State Engineer Office, Santa Fe, New Mexico, 87501. The Court will then issue a decree and mail it to the owner. The decree, in effect, is a legal title to the water rights described in the Order.

If the information is not correct, the form should not be signed. The owner should contact the State Engineer Office to make the necessary corrections. Experiences in past adjudication suits show that agreement on any changes needed is usually arrived at between the owner and the State Engineer Office representatives.

If agreement cannot be reached, the owner can present his facts and other evidence to the Special Master for a decision. The owner can represent himself or obtain the services of an attorney. However, maps, surveys, deeds and statements from the acequia officials and others in most cases are sufficient to resolve any differences with the State Engineer.

Some of the benefits of adjudication of water rights--

- (a) All owners receive legal title to their water rights by Court Decree.
- (b) Acequias can manage equitably the distribution of water according to the rights of each owner.
- (c) Conflicts and disputes between acequias can be settled on the basis of the Court Decree.
- (d) A historic priority date of each acequia and the amount of water rights are established. When there is a shortage, the oldest rights are entitled to the water first. This is in line with the principles and the doctrine of prior appropriation and beneficial use on which the state water laws are based.

Notes to Adjudication of Water Rights

1/ N. Mex. Stats., 1953 Ann., Secs. 75-4-2 to 75-4-8, Laws 1907
There have been a number of court cases pertaining to adjudication of water rights. A number of these are listed below for reference.

El Paso & R. I. Ry. Co. v. Fifth Judicial District Court,
36 NM 94 (1932)
Bounds v. Carner, 53 NM 234 (1949)
Harkey v. Smith, 31 NM 531 (1926)
Pecos Valley Artesian Conservancy Dist. v. Peters,
52 NM 148 (1943)
Snow v. Abalos, 18 NM 681 (1914)
State ex rel. Reynolds v. Allman, 78 NM 1 (1967)
State ex rel. Reynolds v. Sharp, 66 NM 192 (1959)
State of New Mexico v. Aamodt, U. S. Dist. Court, District of
New Mexico, No. 6639 Civil (underway)
State ex rel. Reynolds v. Luna Irrigation Co. (1969)



EL AGUA

SALE, TRANSFER AND LEASE OF WATER RIGHTS

In many areas of New Mexico there has been an increasing demand for sale, lease or transfer of water rights, particularly from irrigation to other purposes.

Under state law, water rights can be bought, sold and transferred from one place or purpose to another provided that the changes do not injure the rights of other water users. (See Pages 10 & 11 for a discussion on the Nature and Extent of Water Rights).

While water rights are needed for other than agricultural purposes, the general opinion is that they are essential to the rural economy. They are necessary for maintaining northern New Mexico's and the state's rural character. Many people feel that it is to everyone's benefit to continue improving and enhancing the region's way of life. They feel that if water rights must be transferred for other purposes, efforts should be made to do so only from those lands which are not being used to the fullest extent possible and beneficially for agricultural purposes. The author supports this position.

However, water rights are property and in fact held to be real property by most authorities. 1/ Some have been sold and transferred. No doubt many others will be in the future. Any sale, transfer or lease of water rights may affect the rights in the acequias. The discussion that follows may be useful to both the individual owners and the acequia organizations in dealing with such transactions.

1. Transfer -- Sale, Change of Ownership --

The law provides that title to a permit to appropriate water may be assigned or ownership transferred. The transfer must be filed in the office of the State Engineer. It is further provided that transfer of title to land carries with it all water which belongs to it for irrigation purposes unless it has previously been separated from it in a manner provided by law. 2/

The following procedure is used in changing ownership:

The form, Change of Ownership of Water Right, or a certified copy of the actual agreement must be filed for record in the office of the State Engineer.

It will include a description of the land, amount of acre-feet per annum, present use, priority date and the name of the parties involved. In areas where hydrographic surveys and adjudication suits have been completed, the information contained in the Court Order may be used.

Notes to Transfer -- Sale, Change of Ownership

- 1/ N. Mex. Products Co. v. N. Mex. Power Co., 42 NM 311, 321 (1937-1938)
- 2/ N. Mex. Stats., 1953 Ann., Sec. 75-5-21, Laws 1907

2. Transfers -- Change of Point of Diversion and Place and/or Method of Use 1/

The law provides that water appropriated for irrigation purposes belongs with the land on which it is used. The right to the use of the water cannot be separated from the land without the consent of the owner. However, if the owner desires to do so he can transfer all or part of the water right to other lands or for other purposes. The change will not affect the priority of the right but can be allowed only if it does not injure the rights of other water users.

To accomplish the change the owner must file an application with the State Engineer. A notice of the proposed change is published once a week for three consecutive weeks in a newspaper of general circulation in the stream system where the lands are located. 2/ Objections or protests to approval of the application may be filed with the State Engineer within 10 days after the last publication of the notice. 3/

The State Engineer may approve the application, after the necessary hearings, based on the evidence presented by the persons interested, from surveys of water supply, from records and whether or not there is unappropriated water available for the applicant. His approval will state the time which the construction will be completed and the water applied to beneficial use. He may also refuse to consider or approve the application, if in his opinion, approval will be contrary to the public interest. 4/

The applicant or any other person not satisfied with the action or decision of the State Engineer may appeal to the District Court. Procedures for such appeals are outlined in the laws. 5/

If the application is approved by the State Engineer, it becomes a permit and the applicant can proceed with the proposed changes. 6/ When the

changes have been completed, the applicant will file Proof of Completion of Works and Proof of Application to Beneficial Use. The State Engineer will then make a final report after which he will issue a license to appropriate water in the amount approved and beneficially applied. 7/

An important point to remember is that once the permit has been issued to change the place or use, the water right is automatically separated from the land where it was used and is transferred to the new lands to be irrigated or the method of use to which it is to be applied. 8/ Therefore, it is unlawful to apply water on old lands or old use from which the water right has been transferred. 9/ The law states that no person shall divert or apply water to land or other purposes for which no valid right exists. 10/

The following is an example of the procedures followed on sale and transfer of water rights: 11/

An owner has a valid water right on 10 acres of land with a Duty of Water not to exceed 2.5 acre-feet per acre per year delivered at the farm headgate for irrigation purposes. The land is under the Acequia Madre de la Plaza in the Rio Nuestro stream system. The acequia has a priority date of 1816. The historical average water supply available to the water users is 95%.

The owner has sold the water right to the Town of La Plaza. A form, Change of Ownership of Water Right, has been signed and filed in the office of the State Engineer.

The Town wishes to transfer the water right from irrigation to municipal purposes in the same stream system. It submits to the State Engineer a request for approval on a form, Application to Change Point of Diversion And Place/Method Of Use From Surface To Ground Water.

A notice of the proposed transfer is published in a newspaper of general circulation in the county where the land is located. It lists a description of the land, the place and method of proposed use, amount of acre-feet, and other necessary information.

Protests may be filed with the State Engineer by any

persons who may feel the proposed change will injure their existing rights.

The State Engineer will then approve or disapprove the application based on evidence presented and other information available to him. If approved, the Town of La Plaza proceeds with completion of the transfer and beneficial use through its municipal water system. On final inspection, the State Engineer issues a permit or license for use of the approved amount of acre-feet.

Two of the most important factors in a water right transfer to municipal or industrial purposes are the consumptive irrigation requirements and the historical average water supply available in the stream system to the water users.

In the example outlined above, the Duty of Water is 2.5 acre-feet per acre per year. The consumptive irrigation requirement--the amount of irrigation water needed by the crops in that area--is only about 50% of that amount or 1.26 ac-ft/acre/year. This means that the balance--1.24 ac-ft/acre/year--goes into the aquifer or stream system. The historical average water supply available for irrigation in the La Plaza area is 95%.

Thus, based on the example shown, if the water rights from 10 acres of land are transferred to municipal use, the actual amount that can be consumptively used by and approved for the Town of La Plaza is $10 \times 1.26 \times .95$ which equals 11.97 acre-feet per year.

It is pointed out that the example is for a transfer within a specific stream system. Transfers from one stream system to another may affect existing water rights in both systems. A different place and method of use or point of diversion may be required. For instance, wells may have to be drilled in the stream system where the water rights are located and the water transported by pipe to the place of use in the other stream system. There may be other complications. Interested parties should make a thorough study of the matter before proceeding on such transfers.

Furthermore, each case of water right transfers is handled on an individual basis. The crop irrigation requirements, consumptive use and the historical average water supply available are different in most areas. The amounts have been determined by taking into account stream flow records, length of irrigation season, types of soils and crops, average monthly temperatures, precipitation and other factors. 12/

Notes to Transfers -- Change of Point of Diversion & Place/Method of Use

- 1/ For additional details see Rules and Regulations, Ground Water, State Engineer Office, 1966
- 2/ N. Mex. Stats., 1953 Ann., Secs. 75-5-22, 75-5-23 and 75-5-3, Laws 1907. See also 75-14-60, Laws 1912 & 75-11-7, Laws 1931
- 3/ Ibid., Sec. 75-5-4.1, Laws 1953
- 4/ Ibid., Secs. 75-5-5 and 75-5-6, Laws 1907
- 5/ Ibid., Secs. 75-6-1 and 75-5-29, Laws 1907
- 6/ Ibid., Sec. 75-5-5, Laws 1907
- 7/ Ibid., Secs. 75-5-7 to 75-5-12, Laws 1907
- 8/ Ibid., Secs. 75-1-2 and 75-5-22, Laws 1907
- 9/ Rules and Regulations, Surface Waters, State Engineer Office, 1953, p 17
- 10/ N. Mex. Stats., 1953 Ann., Sec. 75-5-37, Laws 1953
- 11/ Information obtained by author from actual case. Names and amounts changed.
- 12/ See various Hydrographic Survey Reports, USGS Stream Flow Records, Blaney & Hanson Technical Report # 32, 1965 and other reports available in the State Engineer office, New Mexico State University and Others.

3. Lease of Water Rights

The laws provide that an owner may lease all or part of the water use due him under his water right. During the term of the lease, the use to which the owner is entitled will be reduced by the amount of water leased. The lease may be effective for immediate or future use but cannot be accumulated or increased in such a manner that it would injure the rights of other water users.

The initial term or any renewal of the lease cannot exceed 10 years and on termination of the lease, the water use and location of use goes back to the owner's original use and location. The water right is not affected by the lease. 1/

It is pointed out, however, that if an owner has failed to beneficially use all or part of his water rights for four years and such failure continues after being notified in writing by the State Engineer, the water right may be lost and is regarded as unappropriated public water. 2/

The person who will lease the water must apply to the State Engineer requesting approval for the proposed location and use to which the water will be put. The application may be approved if any existing right will

not be impaired to any greater degree than it would be by the continued use by the owner in the present location. The proposed change must also be for beneficial use.

A similar procedure as that used for transfer of a water right is followed. A notice of the filing of the application must be published once a week for three consecutive weeks in a newspaper of general circulation where the water right is located.

Objections, if any, to the approval of the lease may be made within ten days after the publication of notice of application. If a protest is filed, the necessary hearings are held. The final ruling of the State Engineer may be appealed. 3/

Possible Considerations -

It was pointed out at the beginning of the discussion on Sale, Transfer and Lease of Water Rights that consideration should be given to transfer of rights only from those lands which are not being used to the fullest extent for agricultural purposes. Lease of water rights by the individual to municipalities or others offers opportunities for temporary "transfers" of the water use. A mutually agreed upon lease price can be arrived at based on the value of crops which could be produced and on other factors.

In this manner, the owner can retain ownership for possible future use and, in the meantime, get income from his water rights. Some owners may want to explore these possibilities.

Notes to Lease of Water Rights

1/ N. Mex. Stats., 1953 Ann., Sec. 75-40-3, Laws 1967

2/ Ibid., Secs. 75-5-26, Laws 1907 and 75-11-8, Laws 1931

3/ Ibid., Secs. 75-40-4 and 75-40-7, Laws 1967

ADMINISTRATION OF WATER RIGHTS

Agencies having water resource responsibilities --

At the State Level--

State Engineer--

The State Engineer is the state officer charged with the general supervision of the waters of the state, and of their measurement, appropriation and distribution. 1/ He carries out the administrative procedures to be followed in the appropriation and use of surface and underground waters. 2/

He is required by law to make hydrographic surveys for use in the adjudication of water rights and to conduct studies to obtain basic hydrologic data and information on water supply and use as needed for the administration of the water resources. He is authorized to cooperate with various agencies in programs of water research and development, conservation and use for the orderly development of the state's water resources. 3/

The State Engineer has the authority to divide the state into water districts as may be necessary for the economical and satisfactory apportionment of water. 4/ He also has the responsibility of reviewing plans and specifications for all dams which impound more than 10 acre-feet of water or exceed 10 feet in height and for making final inspection of the completed structure. 5/

He is a member of the Interstate Stream Commission and serves as its secretary. 6/ He is also a member of the New Mexico Water Quality Control Commission. 7/

The law requires that the State Engineer be a technically qualified and registered professional engineer. He is appointed for a two-year term by the Governor with the approval of the State Senate. The headquarters of the office is in Santa Fe. 8/ Branch offices are located in Roswell, Deming and Albuquerque. The State Engineer Office is made up of three operating divisions: Administrative, Technical and Water Rights. Of necessity, the staff of the office, for the most part, must be made up of highly-trained specialists. The legal staff provides necessary legal services to the State Engineer and the Interstate Stream Commission.

Interstate Stream Commission-- 9/

In 1935 the State Legislature established the Interstate Stream Commission. It is composed of nine members, eight of whom are appointed by the Governor and represent the major irrigation sections of the state. The State Engineer is the ninth member.

The Commission is authorized to negotiate compacts with other states to settle interstate controversies and attempt to obtain equitable division of waters of interstate streams systems. It is also authorized to investigate, develop and conserve the waters of the state and cooperate with the federal government in this regard. The Commission may also, under certain circumstances, undertake the construction of specific projects and finance them through the sale of revenue bonds.

In addition, the Commission has been delegated the responsibility for programming and administering the expenditures from the Improvement of the Rio Grande Income Fund, the Irrigation Works Construction Fund and other funds appropriated by the Legislature. (See Pages 69 & 70 for additional details.)

Water Quality Control Commission-- 10/

The Commission was created by the State Legislature in 1967. It is the State Water Pollution Control agency to carry out provisions of the Water Pollution Control Act, the Water Quality Act of 1965 and the Clean Waters Restoration Act of 1966.

The Commission is composed of nine members. One of the members is appointed as a representative of the public by the Governor. The others are directors of state agencies having water resource responsibilities. The Commission is charged with adopting comprehensive programs and rules and regulations designed to assure the quality of the state's waters and to prevent or reduce their pollution.

Others--

Many other state agencies, commissions and organizations have specific responsibilities and are engaged in the planning, research and educational programs dealing with New Mexico's water resources.

The list includes the following:

State Planning Office, State Natural Resources Conservation Commission,

State Park and Recreation Commission, New Mexico Department of Game and Fish, Environmental Agency Improvement Agency, New Mexico Department of Agriculture, Weather Control and Modification Commission, and the New Mexico Institute of Mining and Technology.

Under the administration of the New Mexico State University are the Agricultural and Engineering Stations, the Cooperative Agricultural Extension Service and Department of Agricultural Services.

At the University of New Mexico, the Bureau of Business and Economic Research, the Division of Government Research, the Bureau of Engineering Research and the School of Law conduct studies and publish material dealing with water resources.

The Water Resources Research Institute located at the New Mexico State University conducts extensive water resources research and the training of scientists on a state-wide basis. It sponsors the Annual Water Conference held at Las Cruces. The proceedings through the 18th annual conference in 1973 are available.

At the Local Level--

Community Acequias-- 11/

Acequia organizations are the oldest public water control agencies in New Mexico. A summary-digest of the laws and other information on acequias is included in Pages 13 to 39.

Drainage Districts-- 12/

The State Constitution authorized the legislature to provide by law for the organization and operation of drainage districts and systems. In 1912 and 1917 the State Legislature enacted legislation for the creation of such districts. Both types are for the same general purpose of constructing and maintaining drainage systems of lands. The 1917 Act authorizes drainage districts within federal reclamation projects.

One-fourth of the landowners owning at least one-quarter of the lands in the proposed district may petition the district court to organize a drainage district.

The district is controlled by a board of elected commissioners. The board has authority to borrow money, issue bonds and assess the land-owners for the repayment of the cost of operation of the district.

Irrigation Districts-- 13/

The 1919 State Legislature provided for the establishment of two types of irrigation districts. One type involves those districts cooperating with the federal government under the various reclamation acts, the other type those districts which are not. An example of the first is the Pojoaque Irrigation District and of the latter the Santa Cruz Irrigation District.

Many of the provisions of the two types of districts are identical. The laws require for both types that the proposed district be initiated by petition to the board of County Commissioners signed by a majority of the owners of the lands to be included. An election must be called for the formation of the district. Approval by a two-thirds majority of the qualified voters is required.

The districts, through their elected board of directors, have the power to construct or purchase canals, reservoir sites, water rights and rights-of-way to carry out the objectives of the district. They can borrow money and issue bonds after approval by the qualified voters. Repayment is made through tax levies and assessment on the real property within the district.

Artesian Conservancy Districts-- 14/

Legislation for the organization of artesian districts was passed by the State Legislature in 1931. Their purpose is "to conserve the waters of an artesian basin, the boundaries of which have been scientifically determined by investigation and where such waters have been beneficially appropriated". They can be established by petition of the owners of more than one-third of the real property, either in acreage or value, in the proposed district.

An elected board of directors handles the affairs and management of the district. The board determines the tax levy necessary to operate the district and may borrow money in anticipation of such revenue.

Conservancy Districts-- 15/

The 1927 and 1939 State Legislatures provided for the creation of conservancy districts. They are organized to provide flood protection, river

control, drainage and water for irrigation and have much broader powers than other types of districts.

The districts can be organized by petition of owners of more than one-third of the real property either in acreage or value or by a city in the proposed district. The 1939 legislation authorizes conservancy districts to cooperate with the federal government under the federal reclamation laws. Conservancy districts have the power to levy assessments and issue bonds for the operation of the district.

Electric Irrigation Districts-- 16/

Organization of electric irrigation districts was authorized by the State Legislature in 1929. The purpose of the districts is to provide for pumping of water for irrigation. A district can be organized by petition to the Board of County Commissioners by a majority of the landowners owning more than one-half of the lands in the proposed district. Districts have authority to acquire property, oil and gas for power, incur debts and issue bonds.

While such districts could serve a useful purpose in some areas, no electric irrigation districts have been organized in New Mexico to date.

Water and Sanitation Districts-- 17/

The organization of water and sanitation districts was authorized by the State Legislature in 1943. Such districts may be created for the purpose of establishing water supply and sanitary sewer systems.

The districts can be organized by petition to the district court by not less than 25% of the taxpaying electors of the proposed district. They have the power to incur indebtedness, issue bonds, acquire property, water rights, water and sewer works and to levy and collect taxes on the real property in the district.

Counties-- 18/

The State Legislature in 1959 empowered the Boards of County Commissioners to acquire water rights for developing county water systems to supply residents of unincorporated communities with water for domestic and sanitary purposes. The commissioners may issue bonds to pay for the construction but the bonds must be paid only from revenues derived from operation of the system. No general county obligation bonds can be issued for this purpose.

Municipalities-- 19/

A municipality has extensive powers to secure enough water to satisfy its various needs. It can acquire water rights, water sources and rights-of-way. These can be obtained through condemnation, if necessary. A municipality may issue general obligation bonds for securing, enlarging or improving its water system after approval by the qualified voters. It can also issue revenue bonds and pledge the income from the proceeds received from the operation of its water system.

A municipality within a declared underground water basin is subject to the provisions of the 1931 ground-water laws of the state. 20/ (See Page 8, Item 3).

Full details dealing with water and other laws governing municipalities are found in the Municipal Code prepared by the State Legislature.

Miscellaneous Water Organizations--

Community Springs-- 21/

In 1899 the Territorial Legislature provided for the organization of local groups to supply their water needs from springs or tanks of water owned commonly by the community.

The group is authorized to elect three commissioners to protect their water source. Their authority is much like those of acequia commissioners. They can build reservoirs to provide water for the use of the families of the community. To do so, however, a petition must be signed by not less than 100 persons and presented to the Board of County Commissioners to constitute them as a corporation.

The county may furnish the tools, rock and mortar and the community group must furnish the labor for the project.

Domestic Water Consumers Associations-- 22/

The Sanitary Act of 1965 provides for the formation of water consumers associations in unincorporated rural areas. The purpose of the Act is to assist in providing sanitary domestic water facilities and sewage works or both.

An association can be established by local sponsors in any community which has been in existence at least 25 years. Application for financial assistance is made through the State Environmental Improvement Agency. The agency

can furnish financial help up to a maximum of \$7000 where less than 28 families are to be served and \$250 per dwelling in excess of that number. The total state aid is limited to \$12,000 to any one association.

A locally-elected board of directors is in charge of the operation and management of the affairs of the association. The board employs a professionally licensed engineer to prepare the plans and specifications for the system and to supervise the construction of the project. The board is given authority to issue revenue bonds for the extension of the facilities.

Natural Resource Conservation and Watershed Districts-- 23/

Natural Resource Conservation Districts have been in operation since 1937 but their present functions and organization are included in the Soil and Water Conservation District Act of 1965.

These districts have authority to work in the general areas of conservation and use of the land and water resources in cooperation with individual land-owners and governmental agencies engaged in similar activities.

The State Legislature in 1957 provided for the creation of watershed districts to cooperate with the federal government under the Watershed Protection and Flood Prevention Act of 1954. Most are subdistricts of the Natural Resource Conservation Districts. Provisions for the formation, powers and operation are included in the statutes.

Water Users Associations-- 24/

Organization of water users associations was authorized by the Territorial Legislature in 1909. Owners of lands can organize to construct, maintain and operate storage reservoirs, diversion dams and irrigation ditches. They may also combine ditches into one irrigation system. The law specifies the method by which they can assume corporate organization.

Water users associations have the power of eminent domain and may contract and acquire property for carrying out the purposes of the organization.

NOTE: These associations have a different status than acequias and other public water control organizations. They are corporations and are not considered political subdivisions of the state. They may not be eligible for participation for funds available under some federal and state programs as are acequias. 25/

Private Waterworks Corporations-- 26/

The Territorial Legislature in 1887 provided for the formation of a corporation by any group to supply water for irrigation, mining, manufacturing, domestic and other public purposes, including supplying water to towns and cities. The law specifies the method for corporate organization and for description and operation of the proposed works.

Notes to Administration of Water Rights

Material for this section was obtained, in part, from the publication "Administration of Water Resources in New Mexico". Report No. 3, Water Resources Research Institute, June 1968, Ira G. Clark.

- 1/ N. Mex. Stats., 1953 Ann., Sec. 75-2-1, Laws 1907. (Sections 75-2-1 through 75-2-16 deal specifically with the State Engineer but various responsibilities are listed throughout Chapter 75).
- 2/ Ibid., Secs. 75-5-1 to 75-5-37, Laws 1907 & 75-11-1 to 75-11-40, Laws 1931
- 3/ Ibid., Secs. 75-4-2 to 75-4-6, Laws 1907
- 4/ Ibid., Secs. 75-3-1 to 75-3-5, Laws 1907
- 5/ Ibid., Sec. 75-5-30, Laws 1941
- 6/ Ibid., Sec. 75-34-1, Laws 1935
- 7/ Ibid., Sec. 75-39-3, Laws 1967
- 8/ Ibid., Sec. 75-2-1, Laws 1907
- 9/ Ibid., Secs. 75-34-1 to 75-34-39, Laws 1935
- 10/ Ibid., Secs. 75-39-1 to 75-39-12, Laws 1967
- 11/ Ibid., Secs. 75-14-1 to 75-14-61 and 75-15-1 to 75-15-10
- 12/ Ibid., Secs. 75-19-1 to 75-19-44 & 75-20-1 to 75-20-56, Laws 1912 and 75-21-1 to 75-21-60, Laws 1917
- 13/ Ibid., Secs. 75-22 .. 23 .. 24 .. 26, et seq., Laws 1919
- 14/ Ibid., Secs. 75-13-1 to 75-13-25, Laws 1931
- 15/ Ibid., Secs. 75-28 .. 29 .. 30 .. 31, et seq., Laws 1927 and 75-32-1 to 75-32-43, Laws 1939
- 16/ Ibid., Secs. 75-25-1 to 75-25-57, Laws 1929
- 17/ Ibid., Secs. 75-18-1 to 75-18-49, Laws 1943
- 18/ Ibid., Secs. 75-4-1.1 to 75-4-1.11, Laws 1959
- 19/ Ibid., Secs. 14-17-17; 14-26-1 to 14-26-8; 14-27-1 to 14-27-18; 14-29-5 to 14-29-8; 14-30-1.1 to 14-30-11; 14-32-1 to 14-32-6; 14-42-1 to 14-42-5; 14-43-1; and 14-54-1 to 14-54-5. See also Municipal Code.
- 20/ Ibid., Secs. 75-11-1, et seq., Laws 1931
- 21/ Ibid., Secs. 75-9-1 to 75-9-10, Laws 1899
- 22/ Ibid., Secs. 14-28-1 to 14-28-19, Laws 1965
- 23/ Ibid., Secs. 45-5-1 to 45-5-61, Laws 1965
- 24/ Ibid., Secs. 75-17-1 to 75-17-9, Laws 1909
- 25/ David W. King, State Planning Officer, 11/15/73 letter to Francisco Martinez Ditch, c/o Alfonso Vigil and Paul L. Bloom, Special Assistant Attorney General, 10/30/73 letter to D. W. King.
- 26/ N. Mex. Stats., 1953 Ann., Secs. 68-2-1 to 68-2-23, Laws 1887

LOANS AND GRANTS

Under the terms of the Ferguson Act of 1898, New Mexico was granted 500,000 acres of land, the income from which is credited to what is commonly called the "Water Reservoirs Income Fund". 1/ The income is in turn placed in the New Mexico Irrigation Works Construction Fund created by the State Legislature in 1955 to be administered by the Interstate Stream Commission. The legislation also authorized the Commission to make such investigations as might be necessary to carry out a comprehensive state-wide program of water conservation. 2/ In addition, the Commission was given authority by the State Legislature in 1957 to make loans from the Fund for necessary engineering, design, construction and general rehabilitation of existing irrigation projects. 3/

Community acequias and other organizations that distribute irrigation water frequently have need for financial assistance in ditch improvement work. They can request loans from the Interstate Stream Commission for this purpose. The Commission has established a policy that the money advanced from the Fund is to be paid at an interest rate of 2½ percent per annum. The loans can be made for periods of up to 20 years. 4/

The law authorizes acequias to borrow money and otherwise contract for improvement of their irrigation systems. They can guarantee the repayment by pledging revenue, assessments to the owners of water rights, or by other means. They can also accept grants from the federal government to carry out such improvements. 5/ In addition, since acequias are considered as political subdivisions of the state, they are eligible to borrow money from the Irrigation Works Construction Fund for improvement of a community ditch. 6/

Procedures for obtaining the loans are relatively simple. Application for the loan stating the purpose, amount and other necessary information can be made to the Commission in the office of the State Engineer in Santa Fe. The borrowing organizations are responsible for collection of any necessary assessments from the individual water users to repay the loan to the Commission.

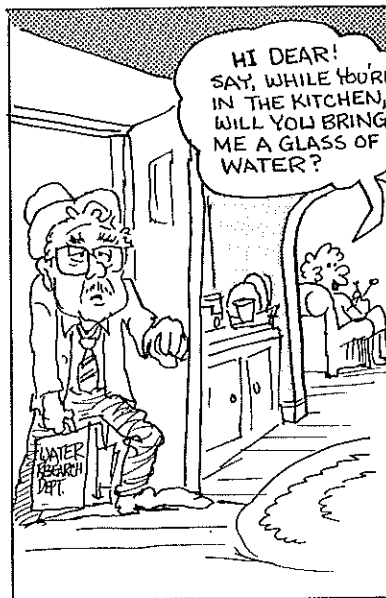
In addition, the State Legislature for a number of years has appropriated funds for acequia rehabilitation work and repair of flood-damaged ditch systems. Since the summer of 1964 these funds, for the most part, have been used to cost-share ditch projects sponsored by acequias under the Agricultural Stabilization and Conservation Service (ASCS) programs. This agency has generally paid up to 70% of the construction costs. The state shares the balance with the acequia on a 15% basis each in most cases. Engineering and inspection of the projects is done by the Soil

Conservation Service--

Information and procedures for participating in these programs can be obtained at the local offices of the Natural Resource Conservation Districts, Soil Conservation Service, Agricultural Stabilization and Conservation Service, County Extension Agent or at the State Engineer Office in Santa Fe.

Notes to LOANS AND GRANTS

- 1/ See N. Mex. Stats., 1953 Ann., Sec. 75-34-19, Laws 1955
 - 2/ Ibid., Sec. 75-34-23, Laws 1955
 - 3/ Ibid., Sec. 75-34-28, Laws 1957
 - 4/ 30th Biennial Report, State Engineer, 7/1/70 to 6/30/72, pp 35, 89, 90
 - 5/ N. Mex. Stats., 1953 Ann., 75-14-21.1, Laws 1965
 - 6/ Ibid., Sec. 75-14-25.1, Laws 1965
- See also N. Mex. Attorney General Opinion No. 64-95, 7/24/64



SAVE THOSE WATER RIGHTS!!

The laws of the state say that water rights may be forfeited--"lost" is the word most commonly used--if the owner has failed to use the water for a period of four consecutive years. However, the owner is protected if circumstances beyond his control have prevented him from using the water. Maybe there hasn't been any water in the acequia during that period. There may be other legitimate reasons.

In addition, the law requires the State Engineer to inform the owner in writing after the four year period of nonuse and if the water is not used for one more year, the water right may be forfeited. However, research by the author has failed to find any cases in which the State Engineer has used this authority. Prior to 1965 no notice as noted above was required.

But water rights have been "lost".

Nobody takes them away from the owner--not the State of New Mexico, not the neighbors, no one. They just fade away, so to speak. The law states that water rights forfeited for nonuse go back to the public and become unappropriated waters. Anybody can claim and use them by following the procedures and obtaining a permit as outlined in the laws. This too, however, is practically impossible to do.

Records indicate that most areas in New Mexico are "over-appropriated". That is, there are more vested rights and claims to the waters than there is water. If everyone used all the water the law allows, there wouldn't be enough to go around. So, in effect, the water rights which may be "lost" simply are used to meet those needs and demands for additional water in any particular stream system.

Nevertheless, there is an increasing demand for the water for other than irrigation purposes. Many rural communities, towns and cities are growing. Domestic, commercial, recreation and industrial uses are becoming greater. The price of water rights is going up too. Some have sold, according to unofficial sources, for as high as \$8000 for the water rights of one acre. That's the exception and perhaps due to unusual circumstances. A number have sold for an average of \$300 an acre-foot. Offers for sale range from \$250 to as much as \$1500. A few have brought the higher prices. Eventually they all may. It's a matter of supply and demand.

So, SAVE THOSE WATER RIGHTS.

There are a number of ways of doing so.

The first and most obvious way is to keep on using them for irrigation or other useful and beneficial purposes as provided by the laws.

In addition, water rights can be leased, sold and transferred to other lands or purposes. (See Pages 55 to 60 for information and procedures.)

Other Possibilities--

Many irrigated lands have been used for houses, parking lots, buildings, streets and other types of construction. In most cases, their water rights no doubt have been forfeited for nonuse or abandonment. In cases of this nature, the rights could have been transferred to legal entities, to other organizations or to other lands before construction was started.

Municipalities can require by ordinance that water rights be transferred to the town when building permits are issued for construction on irrigated lands. Some are encouraging the residents who are not irrigating their small tracts to turn over the water rights to the town. The town in return provides city water on some equitable arrangement and agreement.

Community Domestic Water Associations may also acquire rights from their members. One way to do this is by the member assigning the ownership of the water rights of the irrigated land where the house or other buildings are to be built. Another method is by transferring the member's domestic well rights to the association. That portion of the right used for indoor domestic purposes can be turned over to the association which in turn provides water from its system. The balance can be kept for watering gardens, lawns, trees or for other uses. Each association can work out the details with its members. The office of the State Engineer has assisted communities in the transfers of the rights. Help from that office should be obtained by the association.

Other organizations may be able to do the same thing. Acequia associations may want to explore such possibilities. The least they may want to do is make sure that the members are acquainted with the laws regarding loss of water rights for nonuse. They can also encourage them to transfer the rights to their other lands or uses when irrigated lands are to be used for other purposes.

Acequia associations may also want to consider including in their by-laws provisions which would encourage members to transfer water rights only to other association members and to lands or uses within the acequia system.

Whatever is done, the important thing is to
make certain that water rights are not "lost".
TAKE CARE OF THEM. THEY ARE VALUABLE. THEY ARE NEEDED.

ARTICLE 14

DITCHES OR ACEQUIAS

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ARTICLE 15

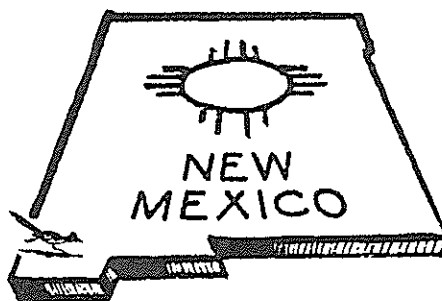
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ILLUSTRATIONS

LA ACEQUIA MADRE	The Mother Ditch
EL RANCHITO	The Small Farm
LOS COMISIONADOS	The Ditch Commissioners
LOS PARCIANTES	The Water Users
EL MAYORDOMO	The Ditch Boss
EL TRABAJO	Fatigue Work - Annual Ditch Cleaning
LA COSECHA ANTIGUA	The Old Harvest
EL REGADOR	The Irrigator
LA CANOVA VIEJA	The Old Flume
EL AGUA	The Water

Northern Rio Grande RC&D Project Measures Nos. 299 & 300