

## **Hopi Land and Water Rights under Spain and Mexico**

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Prepared for the Hopi Tribe

For

General Adjudication of All Rights to Use Water in the  
Little Colorado River System and Source  
Superior Court of Arizona  
Case NO. CV-6417

March 2009

## CONTENTS

Introduction	p. 3
The Sources	p. 7
Author's Qualifications	p. 8
1. Spanish Law Regarding the Land and Water Rights of Sedentary Indians	p. 10
2. Application of Spanish Law to Sedentary Indians in New Spain	p. 15
3. Application of Spanish Law to New Mexico Pueblos, 1598-1821	p. 23
4. Spanish Land and Water Law in New Mexico during the Mexican Regime, 1821-1846	p. 28
5. Hopis under Spanish Sovereignty	p. 35
6. Hopis under Independent Mexico, 1821-46	p. 43
7. Hopi Land and Water under Spanish and Mexican Law: The Pueblo League	p. 45
Conclusion	p. 50
Sources Cited	p. 56
Exhibits	p. 64
Author's Curriculum Vitae	p. 69

## Introduction

Scholars recognize the Hopis are the westernmost of the Pueblo Indian people. Modern-day Hopis see themselves that way, and scholars identify them as such. Despite cultural and linguistic differences, Pueblos from Hopi and Pueblos from the Río Grande have mingled with and resided with one another in historic times.<sup>1</sup>

Hopis lived in the plateau country of present-day northeastern Arizona long before the arrival of Europeans. Archaeological evidence, chiefly in the form of substantial ruins and pottery fragments, suggests that they lived in year-around pueblos, or villages, bounded by Black Mesa to the north and the drainage of the Little Colorado River to the south. Within the drainage of the Little Colorado, their pueblos extended from the river's headwaters near Springerville to the Grand Canyon. Their "cultural landscape" had more extensive boundaries, as denoted by Hopi identification of sites occupied by their ancestors, and by their historic and religious identification with land marks.<sup>2</sup>

The written historical record establishes Hopi presence in this region in 1540, when members of Coronado's expedition visited the province of "Tusayán," a place that probably consisted of seven inhabited Hopi pueblos—or perhaps as many as thirty pueblos, depending on the Spanish source one chooses to believe and the interpretation

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<sup>1</sup> For an informed Hopi statement of Hopis as Pueblos, see Hartman H. Lomawaima, "Hopification, a Strategy for Cultural Preservation," Columbian Consequences. Vol. I: Archaeological and Historical Perspectives on the Spanish Borderlands West, ed. David Hurst Thomas (Washington, D.C.: Smithsonian Institution Press, 1989), 93-99.

<sup>2</sup> For the difference between Hopi reservation land, judicially determined aboriginal land, and cultural landscape, see T. J. Ferguson and Roger Anyon, "Hopi and Zuni Cultural Landscapes: Implications of History and Scale for Cultural Resources Management," Native Peoples of the Southwest. Negotiating Land, Water, and Ethnicities, ed. Laurie Weinstein (Westport, CT: Bergin & Garvey, 2001), 108-111. See, too, Leigh Kuwanwifwima and T. J. Ferguson, "Ang Kuktota, Hopi ancestral Sites and Cultural Landscapes," Expedition 46, no. 2 (2004), 24-29.

one chooses to put on it.<sup>3</sup> Scholars might argue over the number of pueblos at the time of the first Hopi-European contact and the extent of the lands that Hopis occupied, but no serious scholar questions the fact that Hopis have lived at or near their present-day pueblos in pre-historic and historic times.<sup>4</sup>

Although they occupied a harsh, dry land, Hopis farmed with remarkable success. They developed drought-resistant varieties of corn, beans, and cotton and techniques for managing water that lessened their dependence on hunting and gathering. These innovations gave them the means to live in the permanent villages, or pueblos, that Spaniards regarded as civilized and orderly, rather than to live as nomads or semi-nomads whom Spaniards classified as “wild” or “barbarous” (*indios bravos* or *indios bárbaros*).<sup>5</sup>

In 1848 the United States acquired sovereignty over the Hopi pueblos when Mexico ceded its northern territories to the U.S. in the Treaty of Guadalupe Hidalgo. Northern Mexico at that time included all of what would become the American Southwest, as far north as the 42<sup>nd</sup> parallel. It embraced present-day California, Arizona,

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<sup>3</sup> For the number seven, and the case for thirty, see Henry F. Dobyns, "Sixteenth-century Tusayan," *American Indian Quarterly* 15, no. 2 (1991), 187-200; Albert H. Schroeder, "Comments on Henry Dobyns' Sixteenth-century Tusayan," *American Indian Quarterly* 17, no. 3 (1993), 379-83, and Henry F. Dobyns, "Response: Superhuman Hearing, Superhuman Horses, Miraculous Maize," *American Indian Quarterly* 17, no. 3 (1993), 384-91.

<sup>4</sup> See, for example, Elliot G. McIntire, "Changing Patterns of Hopi Indian Settlement," *Annals of the Association of American Geographers* 61, no. 3 (1971), 510-21, Andrew Duff, *Western Pueblo Identities: Regional Interaction, Migration, and Transformation* (Tucson: University of Arizona Press, 2002), 37-38, 40-41. The Hopis have been the subject of a remarkable number of specialized studies. W. David Laird, *Hopi Bibliography: Comprehensive and Annotated* (Tucson: University of Arizona Press, 1977), contains 2935 titles, and many more have appeared since then! Good book-length overviews of Hopi history include Harry C. James, *Pages from Hopi History* (Tucson: University of Arizona Press, 1974), and Frederick J. Dockstader, *The Kachina and the White Man: The Influences of White Culture on the Hopi Kachina Cult* (1st ed., 1954; rev. ed., Albuquerque: University of New Mexico Press, 1985), with a remarkable table of "Hopi-White Contacts, 1540-1850," pp. 161-72.

<sup>5</sup> J. O. Brew, "The History of Awatovi," in Ross Gordon Montgomery, Watson Smith, and John Otis Brew, *Franciscan Awatovi: The Excavation and Conjectural Reconstruction of a Seventeenth-Century Spanish Mission Establishment at a Hopi Indian Town in Northeastern Arizona*. Papers of the Peabody Museum, Harvard, vol. 36 (Cambridge: Peabody Museum of American Archaeology and Ethnology, 1949), 37-39; J. O. Brew, "Hopi Prehistory and History to 1850," *Handbook of North American Indians, vol. 9: Southwest*, ed. Alfonso Ortiz (Washington: Smithsonian Institution, 1979), 514-516.

New Mexico, and Texas as well as what are today Nevada and Utah, and parts of Wyoming and Colorado. Mexico had inherited that territory from Spain, along with a clear boundary with its northern neighbor, the United States. In 1819, the Adams-Onís Treaty (or Transcontinental Treaty) had established that boundary and on becoming independent from Spain in 1821, Mexico claimed itself heir to that boundary. In 1828, in a formal treaty with Mexico, the United States recognized the validity of that Mexican claim.<sup>6</sup>

Thus, in 1848 the Hopi villages fell squarely in lands that the United States acquired from Mexico. That year the Hopis lived in seven mesa-top villages. Years before, after the coming of Spaniards, and then the arrival of Navajo and Ute raiders, Hopis had moved from their vulnerable village sites below the mesas and relocated atop three mesas on the southern edge of Black Mesa. In 1848, First Mesa held the pueblos of Tewa (Hano), Sichomovi, and Walpi. Second Mesa also held three villages: Mishongnovi, Shipaulovi, and Songopovi. One village, Oraibi, stood alone on Third Mesa.<sup>7</sup>

Like other Pueblo Indians living in the territory that Mexico ceded to the United States in 1848, then, Hopis had lived in Mexican territory and Mexican laws applied to them. In the matter of the land and water rights, however, as this report makes clear, Spanish law still applied to Indian peoples in northern Mexico at the time of the U.S.-Mexico War. Thus, to understand the land and water rights that Hopis held when the

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<sup>6</sup> The Adams-Onís Treaty was signed at Washington on February 22, 1819, and the two countries exchanged ratifications in Washington on February 22, 1821, before Mexico achieved independence. The Mexico-U.S. treaty was signed on January 12, 1828 in Mexico City and ratified by both nations by April, but the two nations did not exchange ratifications until April 5, 1832. Philip Coolidge Brooks, *Diplomacy and the Borderlands: The Adams-Onís Treaty of 1819* (Berkeley: University of California Press, 1939), 193, 205. Luis G. Zorrilla, *Historia de las relaciones entre México y los Estados Unidos de América, 1800-1958*. Biblioteca Porrúa, 29-30 (2 vols. Mexico: Editorial Porrúa, 1965-1966), 1:65-66, 111.

<sup>7</sup> McIntire, 1971, 512.

United States acquired sovereignty over them and their lands in 1848, it is important to understand the rights that Hopis and other sedentary Indians had before 1821 in the Spanish viceroyalty of New Spain, which embraced all of what is today Mexico and the American Southwest. It is also important to understand the Hopis' rights in the province of New Mexico. Although Hopis live in Arizona today, prior to the creation of Arizona Territory in 1863 the Hopis fell under the jurisdiction of New Mexico (that is, when New Mexico was part of New Spain, 1598-1821, part of independent Mexico, 1821-1846, and part of the United States, 1846-1863).

## The Sources

Over the last four decades, North American scholars have expanded our knowledge of the land and water rights of sedentary Indians in New Mexico, largely in response to demands for more information by parties in litigation. The historical research of attorneys and historians alike has given us a better understanding of Spanish laws regarding land and water and, perhaps of greater importance, an understanding of customary law as revealed in law suits and official pronouncements in the years when the Southwest belonged to Spain and Mexico.<sup>8</sup> Scholars who have worked in this area have very few disagreements about the major issues.

This report summarizes the current state of this field of scholarship, most of which has appeared in print in historical journals or in monographs that are available in substantial scholarly libraries. Section 1 describes Spanish laws that aimed to protect the land and water of sedentary Indians. Sections 2 & 3 examine the application of those laws in New Spain and in Spanish New Mexico respectively. Section 4 looks at the continued application of Spanish laws in New Mexico in the Mexican era, 1821-1846. Sections 5, 6, and 7 explain how those laws were applied to the Hopis.

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<sup>8</sup> Malcolm Ebricht, "Frontier Land Litigation in Colonial New Mexico: A Determinant of Spanish Custom and Law," Western Legal History 8 (Summer 1995-Fall 1995), 199-200, makes this point vigorously and reviews the literature. I elaborate on this later in the report.

### The Author's Qualifications

DAVID J. WEBER (<http://faculty.smu.edu/dweber>) specializes in the American Southwest and Mexico. He earned a Ph.D. at the University of New Mexico in Latin American History in 1967 and has taught at San Diego State University (1967-76) and SMU (1976-present), where he chaired the department of history (1979-1986) and where he holds the Robert and Nancy Dedman Chair in History and directs the William P. Clements Center for Southwest Studies at SMU ([www.smu.edu/swcenter](http://www.smu.edu/swcenter)). He has also taught at the Universidad de Costa Rica as a Fulbright Lecturer (1970) and at Harvard as a visiting professor (2002).

He is author or editor of over sixty scholarly articles and twenty-two books.

Many of these bear on the years covered in this report, including:

New Spain's Far Northern Frontier: Essays on Spain in the American West, 1540-1821 (University of New Mexico Press, 1979).

The Mexican Frontier, 1821-1846: The American Southwest Under Mexico (University of New Mexico Press, 1982).

Myth and the History of the Hispanic Southwest: Essays by David J. Weber (University of New Mexico Press, 1988).

The Spanish Frontier in North America (Yale University Press, 1992).

Bárbaros: Spaniards and Their Savages in the Age of Enlightenment (Yale University Press, 2005)

His books and articles have won several honors. For example, The Mexican Frontier won half a dozen awards, including the Ray Allen Billington prize from the premier scholarly society in American history, the Organization of American Historians. The Spanish Frontier, named one of the notable books of 1992 by the New York Times, won several awards, among them the "Spain and America" prize from the Spanish Ministry of Culture. The Spanish Frontier and Bárbaros were both History Book Club Selections.

He has held fellowships from the Huntington Library (Times Mirror Distinguished Fellow), American Philosophical Society, National Endowment for the Humanities, American Council of Learned Societies, and the Center for Advanced Study in the Behavioral Sciences at Stanford. He is a member of the Mexican Academy of History (elected in 1983, then 1 of 6 North American scholars), and of the Society of American Historians (in 1986: 1 of 200), and is the only historian elected to both. He is past president of the Western History Association (1990-91) and of the Conference of U.S.-Mexico historians (1990). In 2002 King Juan Carlos of Spain honored Weber for his scholarship on Spanish America by naming him to membership in the Real Orden de Isabel la Católica, the Spanish equivalent of a knighthood and the highest honor Spain bestows upon a foreigner; in 2005 Weber received the highest award the Mexican government bestows on foreign nationals, the Orden Mexicana del Águila Azteca (the Order of the Aztec Eagle), for his contributions to Mexican history.

A full resumé is attached to this report.

## 1.

## Spanish Law Regarding the Land and Water Rights of Sedentary Indians

The classic compendium and condensation of Spain's laws (*leyes*) and ordinances (*cédulas*) for its New World empire, the Recopilación de Leyes de las Indias, published in 1681, makes clear that the Spanish Crown regarded Indians as legal minors in need of special protection.<sup>9</sup> The Crown required officials in the Indies, or *las indias* as it called its American empire, to look out "always for the welfare of the Indians," to keep non-Indians from settling in their villages, to hear their complaints in special Indian courts, to avoid prolonged litigation so that Indians would not be burdened with the costs, and to provide legal aid for Indians in the form of a special Protector of Indians or some other suitable official.<sup>10</sup>

In regard to land and water, most scholars agree that the Recopilación gave village-dwelling Indians what historian William Taylor has characterized as "a special, sometimes preferential, status."<sup>11</sup> Or, as Mexican legal scholar Guillermo Margadant put

<sup>9</sup> Recopilación de leyes de los Reynos de las Indias . . . (4 vols.; 1st ed., Madrid: 1681; facsimile reprint, Madrid : Editorial Cultural Hispánica, 1973).

<sup>10</sup> William B. Taylor, "Land and Water Rights in the Viceroyalty of New Spain," New Mexico Historical Review 50 (July 1975), 191-92 (quotation on p. 191), who summarized the well-known special status of Indians. On laws requiring the residential separation of Indians and non-Indians throughout the Spanish empire, we have the classic and well-accepted study: Magnus Morner, La corona española y los foráneos en los pueblos de indios de América (1st ed., 1970; Madrid: Ediciones de Cultura Hispánica, 1999), and on Indians' special legal status, we have studies such as Woodrow Borah, Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real (Berkeley: University of California Press, 1983). See, in particular, pp. 371-72.

<sup>11</sup> Taylor, 1975, 191. In an argument that seems to me too precious, Meyer, 1984, 142, qualifies Taylor's statement by suggesting that Spanish law was not designed to give Indians "a special legal standing in the community; rather it was the attempt to assure that they would not be at such a decided disadvantage at the hands of those who wielded such enormous power and who often wielded it capriciously." Meyer observes that "each example of preferential treatment for Indians can be countered with an example of prejudicial treatment against them" (p. 42), but none of his seven examples relate to water; one relates to land, and it is designed to protect the Indians' land base by prohibiting Indians from selling their land without permission

it: “The Crown adopted a clear paternalistic policy as to the Indians, which implied its willingness to treat them in a privileged way in relation to land and water.”<sup>12</sup> Several laws from Book IV, Title 12, of the Recopilación make it clear that the Crown sought in particular to protect the lands, waters, and crops of *sedentary* Indians. (*Indians who wandered from place to place as nomads or semi-nomads had no discrete piece of land or specific source of water to protect. Hence, the Recopilación is silent on the issue of protecting the lands and waters of non-sedentary Indians like Apaches and Navajos, whom Spaniards regarded as “savages”--in contrast to “civilized” village-dwelling Indians like the Hopis*).<sup>13</sup> Book IV, Title 12, Law 5 of the Recopilación required that officials who apportioned lands and waters in the name of the Crown “shall leave the lands, cultivated properties, and pastures of the Indians, for the Indians, in such a way that the Indians may not lack what they need, and that they may have all the relief and

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from an appropriate Spanish authority. See, too, my discussion of Meyer’s position in section 2 of this report. Charles T. DuMars, Marilyn O’Leary, and Albert E. Utton, Pueblo Indian Water Rights: Struggle for a Precious Resource (Tucson: University of Arizona Press, 1984), which provides translations of relevant parts of the Recopilación in appendices B and C: “Laws Relating to Indian Preference,” and “Rights of Indians.”

<sup>12</sup> Guillermo F. Margadant S., “Mexican Colonial Land Law,” Spanish and Mexican Land Grants and the Law, ed. Malcolm Ebright (Manhattan, KS: Sunflower University Press, 1989), 86. See, too, Guillermo F. Margadant, “El régimen de aguas en el derecho indiano,” Recopilación de leyes de los reynos de las indias: Estudios histórico-jurídicos, ed. Francisco de Icaza Dufour (Mexico: Miguel Ángel Porrúa, 1987), 504-05. Legal scholars seem in agreement on this point. One finds it made in nineteenth-century works, like Frederick Hall, The Laws of Mexico: A Compilation and Treatise Relating to Real Property, Mines, Water Rights, Personal Rights, Contracts, and Inheritances (San Francisco: A. L. Bancroft and Company, 1885), 62: “It is clear from the whole tenor of the Spanish and Mexican laws, whether in the form of pueblos or ranchos, that the Indians are entitled in equity and good conscience, and even according to the strict rigor of the laws, to all the lands they have or have had in actual possession for cultivation, pasture, or habitation, when such domain can be ascertained to have had any tolerably well defined boundaries.”

<sup>13</sup> That Spanish law distinguished between “civilized” and “barbaric” Indians is important and clear. See, for example, Taylor, 1975, 190, and Hans W. Baade, “The Historical Background of Texas Water Law,” St. Mary’s Law Journal 18 (1986), 75-76, 77, Margadant, 1987, 504. For the various Apache groups, including Navajos, as “savage Indians,” see for example an account written in 1799: José Cortés, Views from the Apache Frontier: Report on the Northern Provinces of New Spain by José Cortés, Lieutenant in the Royal Corps of Engineers, 1799, ed. and trans. Elizabeth A. H. John and John Wheat (Norman: University of Oklahoma Press, 1989), 49, who describes the Hopis, in contrast, as farmers who “harvest the same grains as among all the civilized peoples of our provinces; they take care never to lack vegetables.” He goes on to note their abundant fruit trees, livestock, and textile (99). Emphasis added. Cortés did not visit the Hopis, but built his narrative from the descriptive materials available in Spanish archives at the time. In that respect, his views represent the conventional wisdom of his day.

repose possible for the support of their homes and families.”<sup>14</sup> Book IV, Title 12, Law 9 contained the Crown’s command “that farms and lands that are given to the Spaniards shall not be given in a way that is prejudicial to the Indians; and that those that are given in a way that is prejudicial or offensive to the Indians shall be returned to whomever they rightfully belong.”<sup>15</sup> Book IV, Title 12, Law 12 noted the damage that livestock caused to Indian cornfields, and commanded that grazing lands (*estancias*) be granted “far from the Indian towns and their planted fields.”<sup>16</sup> Book IV, Title 12, Law 18 specified that lands that Indians had watered or irrigated, or “in which they have created ditches . . . shall be reserved for them above all; and in no case may they be sold or given away.”<sup>17</sup> Indians land, water, and irrigated land should be left to the Indian communities “*con sobra*,” Law 18 said (“*se les dejen con sobra*”). “*Sobra*” meant, and still means today, more than is necessary--surplus, excess, or abundance. Among its meaning is the food that remains on the table after everyone has eaten, and its use in Law 18 is clear: Indian

<sup>14</sup> *Recopilación*, lib. 4, tit. 12, ley 5 (“y á los Indios se les dejen sus tierras, heredades, y pastos, de forma, que no les falte lo necesario, y tengan todo el alivio y descanso possible para el sustento de sus casas, y familias”). In this, and the other quotations from the *Recopilación* that follow, I have modernized Spanish characters to make the language more transparent for modern readers. I am using the translation in S. Lyman Tyler, ed. and trans. *Spanish Laws Concerning Discoveries, Pacifications, and Settlements Among the Indians*. Occasional Papers vol. 17 (Salt Lake City: University of Utah American West Center, 1980), 158.

<sup>15</sup> *Recopilación*, lib. 4, tit. 12, ley 9 (“Mandamos, Que las estancias, y tierras, que se dieran á los Españoles, sean sin perjuizio de los Indios, y que las dadas en su perjuizio y agravio, se vuelvan á quien de derecho pertenezcan”). Translation from Tyler, 1980, 160.

<sup>16</sup> *Recopilación*, lib. 4, tit. 12, ley 12 (“sean lejos de los Pueblos de Indios, y sus sementeras”). Translation from Tyler, 1980, 162.

<sup>17</sup> *Recopilación*, lib. 4, tit. 12, ley 18 (“Ordenamos, Que la venta, beneficio y composicion de tierras, se haga con tal atencion, que á los Indios se les dejen con sobra todas las que les pertenecieren, assi[sic] en particular, como por Comunidades, y las aguas, y riegos: y las tierras en que hubieren hecho acequias, ó otro qualquier beneficio, con que por industria personal suya se hayan fertilizado, se reserven en primer lugar, y por ningun case no se les puedan vender, ni enajenar . . .”). I have modernized Spanish characters to make this more transparent for modern readers. I am using the translation in Tyler, 1980, 166. See, too, the *Recopilación*, lib. 4, tit. 12, leyes 14 & 19.

communities should have surplus land and water, enough for future as well as present needs.<sup>18</sup>

Additional laws in the Recopilación could be cited as evidence of the Crown's interest in protecting the land and water of sedentary Indians.<sup>19</sup> The Recopilación, however, was not intended to be complete or comprehensive. It specified that the Laws of Castile covered matters it did not specifically address, and as William Taylor observed, the Recopilación was "not always explicit and consistent on every important topic, and it did not preclude other royal and viceregal laws on matters such as water rights or the application of traditional and pragmatic principles not directly provided for in this compilation of law."<sup>20</sup> (I discuss the application of tradition or pragmatic principles in parts 2 and 3 of this report).

Spain's paternalistic legislation in favor of Indians, and laws defending the lands and waters of sedentary Indians, remained in force or were re-enforced by new iterations of the law in the late 1700s.<sup>21</sup> On this point, scholars of colonial land and water policy

<sup>18</sup> The meaning of *sobra* is not only clear in the modern dictionary of the Spanish Royal Academy (Spain's linguistic bible), but the word also meant an excess at least as early as the 1600s. See Sebastián de Covarrubias, Tesoro de la lengua castellana o española, según la impresión de 1611, con las adiciones de Benito Remigio Noydens publicadas en la de 1674. ed. Martín de Riquer (1st ed., 1611; Barcelona: S. A. Horta, 1943), 942. Baade, 1986, 76-77, confused the issue by mis-transcribing the word as "*sobre*" instead of "*sobra*" and then suggesting that the meaning of "*con sobre*" was "obscure."

<sup>19</sup> Iris Wilson Engstrand, "Land Grant Problems in the Southwest: The Spanish and Mexican Heritage," New Mexico Historical Review 53 (Oct. 1978), 322-323.

<sup>20</sup> Taylor, 1975, 189. See, too, Richard E. Greenleaf, "Land and Water in Mexico and New Mexico, 1700-1821," New Mexico Historical Review 47 (Apr. 1972), 85-86.

<sup>21</sup> See, for example, section 2 of the royal cédula of October 15, 1754, in Francisco de Solano, ed. Cedulario de tierras. Compilación de legislación agraria colonial (1497-1820) (Mexico: Universidad Nacional Autónoma de México, 1984), 449-50, the Relación of the Intendente de Nueva Galicia don Jacobo Ugarte Loyola . . . December 18, 1792, in Solano, 1984, 506-07, and the Plan of Pític, ca. 1783, which Meyer, 1984, 37, rightly sees as "a codification of water practice prior to and at the time of its promulgation." A 1789 copy of the Plan is reproduced in Joseph P. Sánchez, ed. "El Plan de Pític de 1789 [1783] y las nuevas poblaciones proyectadas en las Provincias Internas de la Nueva España," Colonial Latin American Historical Review 2 (Fall 1993), 449-67. See, too, Jane C. Sánchez, "The Plan of Pític: Galindo Navarro's Letter to Teodoro de Croix, Comandante General de las Provincias Internas," Colonial Latin American Historical Review 3 (Winter 1994), 79-89.

also agree.<sup>22</sup> In practice, of course, unscrupulous individuals might divest Indians of their land and water, and Indians might lack a special Protector or find obstacles to taking their cases to court, but there could be no mistaking the Crown's intentions. I agree with distinguished legal scholar Felix Cohen, who once observed that if Indians were "oppressed under Spanish rule . . . the oppression was in defiance of, rather than pursuant to, the laws of Spain."<sup>23</sup>

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<sup>22</sup> Greenleaf, 1972, 89-91; Michael C. Meyer, Water in the Hispanic Southwest: A Social and Legal History, 1550-1850 (Tucson: University of Arizona Press, 1984), 158, who also provides a useful summary of the historical sources of Spanish water law, going back to the Iberian peninsula (pp. 105-13).

<sup>23</sup> Felix S. Cohen, "The Spanish Origin of Indian Rights in the Law of the United States," The Legal Conscience: Selected Papers of Felix S. Cohen, ed. Lucy Kramer Cohen (New Haven: Yale University Press, 1960), 243.

## 2.

**Application of Spanish Law to Sedentary Indians in New Spain.**

If Spanish law expressed the Crown's intention to provide legal guarantees that Indian communities have sufficient land and water for farming and ranching, the acts of responsible Spanish officials demonstrate their interest in properly applying the law. This is apparent in the viceroyalty of New Spain, which included all of today's Mexico and the American Southwest.

In granting lands to Spaniards, government officials in New Spain generally took measures to avoid infringing on the property rights of Indian communities. This was not altruistic. Local officials, like the Crown itself, understood the need to assure that Indians had the means to become productive vassals of the Crown who would produce a surplus of food, pay taxes, support their priest, and serve as a labor pool. Hence, officials saw to it that lands granted to Spaniards did not infringe on Indian lands and thus deprive Indians of the very basis of their livelihood.<sup>24</sup>

More often than not, it would appear, grants of land to Indians or non-Indians did not specify rights to water. Absent specific mention of water and the widespread use of water, Taylor concluded from a study of over 4,000 cases that in New Spain formal grants of water "were not essential to the establishment of water rights and that land ownership carried with it an implied right to available water."<sup>25</sup> That statement, historian Michael Meyer argued, oversimplified a more complex reality. Meyer agreed in general

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<sup>24</sup> Taylor, 1975, 192-200.

<sup>25</sup> Taylor, 1975, 207, who discusses the size of his sample on pp. 194-95.

with Taylor, finding “certain merit in Professor Taylor’s hypothesis.”<sup>26</sup> Meyer also agreed with Taylor’s conclusion that land came with a right to subsurface water, which comes from springs and wells.<sup>27</sup> On the other hand, Meyer argued that the rights to surface water, which generally comes from streams or rivers, depended on the type of land grant. Was it, for example, grazing land (*tierra de pasto*) or farm land (*tierra de labor*)? If the later, was it land for dry farming (*tierra de temporal*) or irrigable land (*tierra de regadio* or *tierra de riego*)?<sup>28</sup> Meyer suggests that the amount of water one might draw from a water course depended on the purpose for which the land grant was given.

Certainly all land came with an implied right to water, otherwise grazing land would itself be useless. Owners of grazing land that abutted streams, for example, customarily watered their stock in those streams with or without an express right to

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<sup>26</sup> Meyer, 1984, 127, who also agreed with Taylor that “in innumerable cases, water is not mentioned in the grant of farmland nor is it subsequently added by other kind of legislative or judicial action” (p. 126). As a result, users of water would appear to have an implied right. See, too, Michael C. Meyer, “The Legal Relationship of Land to Water in Northern Mexico and the Hispanic Southwest,” *New Mexico Historical Review* 60 (Jan. 1985), 61-79, which covers the same ground as his book, and John O. Baxter, *Dividing New Mexico's Waters, 1700-1912* (Albuquerque: University of New Mexico Press, 1997), 4, 17. DuMars, O’Leary, and Utton, 1984, 33-34, make much of the fact that historian Thomas Glick did not find at land came with an implied right to water in Spain, but that may not be relevant to New Spain or to New Mexico, where many grants of land made no mention of water and hence implied some right to use it, and where, in contrast to Spain, most of the land was part of the Royal domain. Baade, 1986, 67-68.

<sup>27</sup> Taylor, 1975, 205; William B. Taylor, “Colonial Land and Water Rights of New Mexican Indian Pueblos (with special reference to the Tewa Region)” (manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], [1979]), 29-30. Meyer, 1984, 120.

<sup>28</sup> Meyer, 1984, 122-31. According to legal scholar Hans Baade, “the view of historical Spanish and Mexican irrigation water rights now prevailing in Texas [courts] is, quite simply, that such rights existed as vested property rights currently entitled to recognition only where expressly granted by Spanish or Mexican authority.” Baade, 1986, 75. Baade generalizes from this to conclude, rather narrowly and without considering the evidence presented by Taylor, that “The water law of New Spain and of the Mexican North recognized irrigation water rights only if expressly granted” (p. 98). Moreover, Margadant, 1987, n. 17, reports that Baade clarified his position “in a private conversation.” Namely that “rights to water have been conceded if the grant refers specifically to ‘*tierras de regadio*,’ “‘*tierras de pan llevar*’ etc.” That is, if the land grant was to irrigable farmland then no express grant of water rights need accompany it. The same should apply to lands that the Crown recognized as Indian farmland.

water.<sup>29</sup> The compelling question, then, has to do with riparian irrigation rights—by what right does one draw water from streams for irrigation, and in what quantities.

Meyer's distinctions between types of land grants and implied or explicit rights to water are important for understanding the water rights attached to lands granted to Spaniards, but appear to have little relevance to the water rights of sedentary Indians. Indians represented a special case and Spanish law required that they be left in possession of land and water sufficient to their needs. That is, their land came with an express right to water by virtue of their existence as Indian communities. As a law of 1713 put it, in New Spain "Indian towns shall be given a site with sufficient water, arable lands, woodlands, and access routes so they can cultivate their lands, plus an ejido [common land] of one league for the grazing of their cattle."<sup>30</sup>

When Indians and non-Indians quarreled over the use of the same stream or river, local officials sought pragmatic ways to share water and avoid lawsuits. When there was no specific grant of water (*merced de agua*) to an individual or community (and usually there was not), and when no previous official distribution of water had been made, authorities initiated "an investigation to determine the amount of water available, who had traditionally used the disputed water, and for how long." Then authorities would make an official distribution of water (a *repartimiento de aguas*) to the various users. The distribution, as historian William Taylor concluded after sampling "twenty-two lengthy cases of water litigation" in central Mexico, was "generally based on prior use, need, availability of water, and protection of Indian communities."<sup>31</sup>

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<sup>29</sup> Baade, 1986, 57, is particularly good on this point.

<sup>30</sup> Quoted in Taylor, 1975, 194. See, too, *ibid.*, 206. Meaning one square league. A league measured about 2.6 miles.

<sup>31</sup> Taylor, 1975, 200, 201, the sample comes from the *Audiencia* of Mexico.

When a claimant lacked a written legal right to surface water, then, Taylor tells us that officials in New Spain “generally” allocated water between contending parties based on four criteria. One of those criteria, the availability of water, seems to speak for itself because availability was and is essential to any division of water. The other three criteria identified by Taylor—prior use, need, and protection of Indians--merit elaboration because of their importance for Indian communities in general and Hopis in particular.

First, prior use carried considerable weight for Indian communities, both in law and in fact. Taylor found that in three cases in Oaxaca, where river water was especially scarce, prior use constituted legal grounds for granting Indian communities exclusive rights to water.<sup>32</sup> These seem to be rare cases. Historian Michael Meyer, ignoring Taylor’s evidence from Oaxaca and indirectly challenging Taylor, argued that “prior use could not sustain a claim to exclusivity even when water was scarce.”<sup>33</sup> Nonetheless, Meyer agreed in essence with Taylor that prior use was “a very important consideration in the allocation of water and one which the Indians of northern New Spain used to their advantage in water disputes. It could help sustain a right in the absence of title or other legal documentation and could help assure a favorable allocation in a repartimiento de aguas.”<sup>34</sup>

Second, need also entered into the equation in resolving disputes over water in New Spain. “Prior use,” as Taylor concluded, “was a type of superior right but it did not usually serve to establish exclusive rights for the oldest user, especially if there were surplus waters.”<sup>35</sup> In that case, need entered the picture and pragmatic officials sought to

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<sup>32</sup> Taylor, 1975, 202.

<sup>33</sup> Meyer, 1984, 150.

<sup>34</sup> Meyer, 1984, 148. Historians seems to agree on this point.

<sup>35</sup> Taylor, 1975, 203, 207. Meyer, 1984, 150.

determine need. Scholars of Spanish water law appear to agree on this point.<sup>36</sup> Thus, Indian communities were not limited to a set amount of water, but rather to what they needed. This assured resources to sustain expanding Indian populations, although the needs of Indian communities had to be balanced against the needs of non-Indians. Conversely, where an Indian community's need for water had dwindled along with its population, surplus water might go to other users with demonstrable need. An official distribution of water, then, might be altered and superseded by a new distribution as needs changed.<sup>37</sup> Flexibility, scholars have emphasized, was a hallmark of the Spanish system.<sup>38</sup> On the Spanish island of Gran Canaria, the Crown even permitted the extraordinary measure of transporting water from one lightly populated watershed to a more populous watershed in order to meet a pressing need.<sup>39</sup>

Another of William Taylor's criterion for determining how to distribute water in New Spain was the "protection of Indian communities." Michael Meyer appears to disagree with Taylor on this point. Meyer argues that Indians, "by virtue of their ethnicity" did not enjoy a "preferred status" and that "water was a means to an end, and it was not to be distributed on an ethnic basis."<sup>40</sup> But whereas Taylor based his conclusions on the study of a substantial number of cases, Meyer failed to provide evidence to support his suggestion that sedentary Indian communities did not have a preferred legal status by

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<sup>36</sup> Meyer, 1984, 150-52, often at odds with Taylor on fine points, agrees with the importance of need as a criterion for the distribution of water, as do specialists on New Mexico discussed later in this report.

<sup>37</sup> Taylor, [1979], 62-64.

<sup>38</sup> Margadant, 1987, 501-04, 511, makes that a central theme in his essay.

<sup>39</sup> In 1501 the Crown granted the coastal city of Las Palmas water from the royal domain in the island's mountainous interior, even though a mountain had to be tunneled to move the water into the watershed of the Guiniguada River, that carried it to Las Palmas. Thomas F. Glick, The Old World Background of the Irrigation System of San Antonio, Texas. Southwestern Studies, Monograph no. 35 (El Paso: Texas Western Press, 1972), 20.

<sup>40</sup> Meyer, 1984, 143.

dint of their existence as Indian communities.<sup>41</sup> To the contrary, Meyer offers evidence in support of Taylor's position when he points to the Spanish legal principle that allocations of water should not injure a third party. Meyer cites two cases in which petitioners for water pointed out that an allocation in their favor would not injure any third party or Indians. Had the petitioners not regarded Indians as having special protection, they would have had no reason to mention them separately from other third parties. Indians simply would have been subsumed by the term "third party."<sup>42</sup>

To Taylor's four criteria for resolving disputes in the absence of legal title to water, Meyer considered three additional criteria. One of these was the "intent" or purpose for which the water was to be used--a criteria that might be subsumed under the larger question of need.<sup>43</sup> A second was "legal right," a category that Meyer used to distinguish between the rights of the individual and the community. Meyer took pains to argue that neither the community nor the individual had absolute rights, and that "legal rights, whether they be corporate or individual, did not constitute a single overbearing

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<sup>41</sup> Meyer points to the tradition that Indians and non-Indians each had rights to water. No one would dispute this and that is not the issue when it comes to water for sedentary Indians. The issue centers on prior rights and preferred status. To support his point that Indian communities lacked preferred status, Meyer cites the plan of Pitic of 1783, which contained regulations for laying out new towns. Specifically, he points to article 6 of that Plan, but I do not find it supporting his argument if read in conjunction with article 2 of the Plan. Article 2 specifically said that the new town of Pitic (the future Hermosillo) should "not prejudice a private person nor any Pueblo of Indians" ("*no resultar perjuicio a persona particular, ni a ningun Pueblo de Ynidos*"). The Pueblo of Indians in question was a group of Seris, who had surrendered, were moved to a mission across the river from the site of Pitic, and were being given rations to keep them at peace even though this annoyed other Indians who believed the Seris were receiving special treatment. Sánchez, 1994, 82-85; Cynthia Radding, *Wandering Peoples: Colonialism, Ethnic Spaces, and Ecological Frontiers in Northwestern Mexico, 1700-1850* (Durham: Duke University Press, 1997), 213. Thus, this Seri pueblo was not an ordinary group of Indians inhabiting a long-standing village. Nonetheless, the Plan of Pitic expresses concern for the Seri community and for Indians who are living in Pitic itself (presumably Pimas), and alludes to various articles of the *Recopilación*, which remained very much in force.

<sup>42</sup> Meyer, 1984, 153, quoting from a petition in Chihuahua in 1672, where Tarahumaras were the Indians in question, and a petition from El Paso in 1754, where he did not specify the Indians.

<sup>43</sup> Meyer, 1984, 154-56, whose "intent," or purpose seems to me to fall under the larger category of "need."

consideration in the adjudication of water disputes.”<sup>44</sup> He did, however, conclude: “There is no question that in the Spanish and Mexican judicial systems the rights of the corporate community weighed more heavily than those of the individual.”<sup>45</sup> This, of course, would favor Indian as well as Spanish communities. Meyer’s third additional criterion was “the doctrine of equity and the common good, extremely important theoretical principles in Spanish colonial and Mexican law.”<sup>46</sup> In allocating water, Meyer argued, it was not sufficient to follow laws or legal principles if they did not lead to the common good. The ethical consideration of rendering a decision that contributed to the best interest of society trumped the narrower question of law.<sup>47</sup>

Meyer concludes from his third criterion that “equity did not recognize ethnicity.”<sup>48</sup> This, it seems to me, is the only serious disagreement between the published views of Taylor and Meyer.<sup>49</sup> It also seems to me that Meyer is manifestly wrong. Equity did recognize ethnicity in cases involving land and water. Spanish law did grant Indians special protections and Spanish authorities took pains to invoke those protections. The other scholars I cite in this report subscribe to this position and offer supporting evidence from Spanish and Mexican legal decisions. As with all of the criteria that Meyer and Taylor identified, equity had to be determined within the larger context of

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<sup>44</sup> Meyer, 1984, 161.

<sup>45</sup> Meyer, 1984, 156-57.

<sup>46</sup> *Ibid.*, 161.

<sup>47</sup> Meyer, 1984, 163.

<sup>48</sup> Meyer, 1984, 161.

<sup>49</sup> DuMars, O’Leary, and Utton, 1984, 34-41, summarize the writing of Meyer and Taylor prior to 1980 and also summarize and quote from their testimony in the Special Master’s Hearing, Jan. 3, 1980, in *New Mexico v. Aamodt*. DuMars, O’Leary, and Utton, 1984, 34, find that the two historians, who represented opposite sides in the case, “came to remarkably similar conclusions.” In his now classic study of water in the Hispanic Southwest, published in 1984, Meyer modulated his views on the importance of corporations, bringing them even closer to Taylor’s. The significant disagreement, it seems to me, is over the question of special protections for Indians, and Meyer qualifies his statement that “equity did not recognize ethnicity” to the point that he comes very close to agreeing with Taylor. In addition to Meyer’s books, see his caveats during testimony as quoted in DuMars, O’Leary, and Utton, 1984, 38-39, and 164, n. 62.

other criteria, and those criteria included the superior rights of communities and the Crown's special protections for Indian communities in particular. This is evident from the cases involving Pueblo Indians in New Mexico, which I characterize in the next section.

## 3.

**Application of Spanish Law to New Mexico Pueblos, 1598-1821**

Scholars of New Mexico legal history agree that laws were not the sole measure of how Spanish officials resolved legal questions. As in central New Spain, local custom also played a role in determining the outcomes of disputes over water. It is as important, then, to understand how the law was applied as it is to understand the laws themselves. Law and custom are not, of course, mutually exclusive, but the way they work in tandem reveals how the law is interpreted and administered.

Much of the research into the application of Spanish law in New Mexico has been in the area of land and water rights, including the land and water rights of Pueblo Indians. With the possible exception of historian Michael Meyer,<sup>50</sup> scholars agree that local officials in New Mexico understood that Pueblo communities had a senior and therefore superior right to water, and that responsible officials respected that right in allocating lands and water and in adjudicating disputes. There were, of course, officials (governors and *alcaldes*) who broke the law and individual Spaniards who encroached on Pueblo lands.<sup>51</sup> There were also officials who favored Indians more strongly than non-Indians, and vice-versa. In general, however, it appears that when responsible officials applied

<sup>50</sup> See above, p. 17 at n. 39.

<sup>51</sup> In perhaps the darkest interpretation of Spanish practice in New Mexico, Myra Ellen Jenkins, "The Baltasar Baca 'Grant': History of an Encroachment," *El Palacio* 68 (Spring 1961), 52, argued that "the most serious problem of the New Mexico pueblos from the Spanish Colonial Period to the present has been that of white trespass." From her point of view, in New Mexico "laws were honored more in the breach than in the observance" (*ibid.*, 53). But Spanish officials in New Mexico were not all cut from the same cloth. A more nuanced interpretation, however, would look at the varying roles of individual Spanish authorities, as does Malcolm Ebricht, "Breaking New Ground: A Reappraisal of Governors Vélez Cachupín and Mendinueta and Their Land Grant Policies," *Colonial Latin American Historical Review* 5 (Spring 1996), 195-233, who finds Vélez Cachupín more zealous than Mendinueta.

the law in New Mexico they took action to protect the Pueblo communities' superior rights to land and water.<sup>52</sup>

Like responsible officials elsewhere in New Spain, authorities in New Mexico supported the principle that Indian communities should have sufficient land and water for their needs, but also recognized that those needs might change.<sup>53</sup> Local officials ruled that excess water (*aguas sobrantes*) from Pueblo lands might be utilized by non-Indians, but the use of water by non-Indians should not damage Indian communities. In dividing water, local officials showed particular regard for the welfare of communities, both Pueblo Indian and non-Indian. On these points, scholars appear to agree.<sup>54</sup> As in New Spain, New Mexico officials who had to resolve water disputes in cases where no specific grant (*merced de agua*) or prior allocation of water (*repartimiento de aguas*) had been made, sought to balance the principles of equity and need with the principle of prior rights and special protections to Indian communities.<sup>55</sup>

Pueblo Indians clearly received the special protections of the law in New Mexico and, from time-to-time, the aid of a special Protector of Indians, or his surrogate, who

<sup>52</sup> Numerous case studies support this position, and no studies appear to dispute it. See, for example, Myra Ellen Jenkins, "Taos Pueblo and its Neighbors, 1540-1847," *New Mexico Historical Review* 41 (Apr. 1966), 93-97, 100-103; Myra Ellen Jenkins, "Spanish Land Grants in the Tewa Area," *New Mexico Historical Review* 47 (Apr. 1972), 113, 115, 120-21, 126-29, 132; Ira G. Clark, *Water in New Mexico. A History of its Management and Use* (Albuquerque: University of New Mexico Press, 1987), 17-23, who ably summarizes much of the literature available at that time.

<sup>53</sup> Taylor, [1979], 37; Elizabeth Nelson Patrick, "Land Grants during the Administration of Governor Mendinueta," *New Mexico Historical Review* 51 (Jan. 1976), 9-10, recounting Mendinueta's protection of Jémez lands and his augmentation of the lands of Santo Domingo and San Felipe pueblos.

<sup>54</sup> Taylor, [1979], 13-22; 26-37; 42-43. Daniel Tyler, *The Mythical Pueblo Rights Doctrine: Water Administration in Hispanic New Mexico*, intro Iris W. Engstrand (El Paso: Texas Western Press, 1990), 33, 39-40; Baxter, 1997, 8, 14, 19, 21. Jenkins, 1972, 132, describing a case involving Tesuque Pueblo in 1752; G. Emlen Hall, "The Pueblo Land Grant Labyrinth," *Land, Water, and Culture: New Perspectives on Hispanic Land Grants*, eds. Charles L. Briggs and John R. Van Ness (Albuquerque: University of New Mexico Press, 1987), 79-83, on San Ildefonso Pueblo vs. Ignacio Roybal, 1704, and San Ildefonso vs. the heirs of Juana Luján, 1763.

<sup>55</sup> Tyler, 1990, demolishes the so-called "pueblo rights doctrine," a fictional re-imagining of Spanish law that emerged first in an American court in California and was then applied to New Mexico. As Tyler notes, "no municipal entity, Indian or non-Indian, had a right to enlarge its claim to water without consideration of the legitimate needs of other users, individuals, or communities."

represented Indians in legal matters.<sup>56</sup> Of equal importance, Pueblo Indians knew how and when to appeal to the Protector of Indians, or to other officials who might best represent their interests as they used the legal system to preserve their land base.<sup>57</sup>

Scholars of New Mexico land and water litigation have also stressed that frontier conditions, including poverty, the difficulty of taking a case to a distant appellate court, the lack of trained lawyers, and the possible lack of some law books, encouraged if not demanded flexibility and compromise in applying the law.<sup>58</sup> When disputes arose, local officials aimed at achieving a compromise satisfactory to all parties. As elsewhere in New Spain, equity, or fairness, was more important than the strict application of law. Nonetheless, as lawyer/historian Malcolm Ebright has pointed out, customary law in New Mexico generally followed the “accepted principles of codified law.”<sup>59</sup> In one sample of cases determined by two governors in the late eighteenth-century, Ebright found that neither governor cited a single law as a basis for a decision, but both applied sound legal principles.<sup>60</sup>

At times, however, local conditions in New Mexico might argue for the bending of law. For example, although the Recopilación prohibited non-Indians from living in Indian villages and at least one New Mexico governor had ordered compliance with that

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<sup>56</sup> Charles R. Cutter, The Protector de Indios in Colonial New Mexico, 1659-1821 (Albuquerque: University of New Mexico, 1986). Charles R. Cutter, The Legal Culture of Northern New Spain, 1700-1810 (Albuquerque: University of New Mexico Press, 1995), 143.

<sup>57</sup> Cutter, 1995, 145.

<sup>58</sup> Daniel Tyler, "The Spanish Colonial Legacy and the Role of Hispanic Custom in Defining New Mexico Land and Water Rights," Colonial Latin American Historical Review 4 (Spring 1995), 149-65, and Ebright, 1995, 199-226, are especially eloquent in developing this theme.

<sup>59</sup> Ebright, 1995, 201; Tyler, 1995, 162, agrees: "New Mexico's customary law tended to be in conformity with the general principles of Hispanic law . . ."

<sup>60</sup> Ebright, 1995, 202. Ebright notes that no copy of the Siete Partidas existed in New Mexico, but there it appears that there was at least one copy of the Recopilación, which governors may have consulted. A copy of the Recopilación is noted in an inventory of the New Mexico archives, made in 1827, and it seems likely that the four-volume set had been in Santa Fe for some time. David J. Weber, "The New Mexico Archives in 1827," New Mexico Historical Review 61 (Jan. 1986), 55.

rule, New Mexico officials tacitly if not explicitly permitted Hispanics in the Taos Valley to live in Taos Pueblo where they would have the safety of numbers in the face of Comanche attacks.<sup>61</sup> Or, to take another example, although Spanish jurists did not regard Indians as credible witnesses in court, New Mexico judges commonly permitted Indians to offer eyewitness testimony, “whether testifying against other Indians or against *españoles* [Spaniards].”<sup>62</sup>

As Ebright has summed it up, “The New Mexico legal system was not a system based on rigid procedural rules and it sometimes lacked the virtue of consistency.”<sup>63</sup> Indeed, Spanish officials in New Mexico would not have regarded consistency as a virtue. Historian Charles Cutter, who has written the best overview of the “legal culture” of Spanish New Mexico and Texas (an overview based on the study of over 600 civil and criminal cases), put it this way:

Because of the non-adversarial nature of the legal system, the primary aim of the judiciary was to provide justice, not to determine courtroom winners and losers. In a corporatist world where unbridled individualism was not a virtue, the idea of community well-being took precedence over personal gain. Magistrates consistently exercised their *arbitrio judicial* [judicial discretion, or judicial will] to push for compromise and harmony between

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<sup>61</sup> Jenkins, 1966, 98-100. In 1705, after Spaniards had returned to New Mexico following the Pueblo Revolt, one New Mexico governor had reiterated the law that Spaniards should not live in Indian Pueblos. Later in the century Spaniards lived at Taos Pueblo. See Marc Simmons, Spanish Government in New Mexico (Albuquerque: University of New Mexico, 1968), 79-80.

<sup>62</sup> Cutter, 1995, 117.

<sup>63</sup> Ebright, “Lawsuits, Litigants, and Custom in Hispanic New Mexico,” in Malcolm Ebright, Land Grants and Lawsuits in Northern New Mexico (Albuquerque: University of New Mexico Press, 1994), 57-70, quotation on 67.

contending parties—solutions that, implicitly, conformed to community expectations of fairness.<sup>64</sup>

In the cases of land and water specifically, historian Daniel Tyler has expressed a view shared by his fellow historians of New Mexico: “In conflicts dealing with both land and water, it was understood that everyone benefited when disputes could be resolved with a compromise rather than through costly and time-consuming litigation.”<sup>65</sup>

Flexibility and attention to supply and demand, however, did not mean abandoning basic principles. One of those principles, understood by New Mexico officials from governors to local *alcaldes*, was that Indian pueblos dating back to first contact had superior rights to water not just because of their ethnicity but due to their “prior existence and usage of water.”<sup>66</sup>

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<sup>64</sup> Cutter, 1995, 145. Cutter defines *arbitrio judicial* on p. 35, explaining that: “Through this device, law became a living, organic entity that the local population . . . might mold to meet situations peculiar to the region. This mechanism, as well as others, empowered Spanish subjects to modify legislation that they deemed to be unreasonable, unjust, or harmful to the community.”

<sup>65</sup> Daniel Tyler, “Ejido Lands in New Mexico,” *Spanish and Mexican Land Grants and the Law*, ed. Malcolm Ebright (Manhattan, KS: Sunflower University Press, 1989), 34. The next year, Daniel Tyler made the same point in different words in his study of the administration of water in Hispanic New Mexico: “Equitable, or proportional distribution was the objective . . . both Spaniards and Mexicans developed a system of sharing which they hoped would function in avoidance of costly litigation.” Tyler, 1990, 45. See, too, Cutter, 1995, 143.

<sup>66</sup> Gov. Juan Bautista de Anza, 1786, referring to the Indian pueblos of Zia and Jémez, as quoted in Tyler, 1990, 40) (“*primacia y uso de agua*”). Tyler’s translation. Tyler, citing decisions in favor of Indian pueblos by governors Anza and Narbona, argues this point vigorously. He suggests that in matters of both land and water that “The earliest settlers could claim, and were acknowledged by officials to have, a better right” (ibid.). By that criterion, pueblo communities represented the “earliest settlers.”

## 4.

**Spanish Land and Water Law in New Mexico  
during the Mexican Regime, 1821-1846**

In the first years of Mexican independence, Mexican liberals tried to define Indians out of existence by declaring the equality of all Mexicans. On Feb. 24, 1821, the Mexican declaration of independence, the Plan of Iguala, proclaimed that all inhabitants of Mexico, "without any distinction other than their merit and virtues, are citizens . . . ."<sup>67</sup> In 1822, the new government made it clear that equality meant the elimination of racial distinctions.<sup>68</sup> Mexico's first constitution, drawn up in 1824, implicitly reaffirmed the equality of all Mexicans without mentioning Indians specifically.<sup>69</sup>

Rendering all inhabitants of Mexico equal under the law might have had profound effects on Pueblo Indian rights to land and water.<sup>70</sup> It could have led the new government to declare invalid those Spanish laws that granted special protections to Indian communities and to allow the sale of their lands to non-Indians. As one historian has put it, at the time Mexico became independent there was "an official atmosphere favorable to the disappearance of the communal property of Indians."<sup>71</sup>

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<sup>67</sup> Article 12 of the Plan of Iguala, in Felipe Tena Ramírez, *Leyes fundamentales de México, 1808-1978* (1st ed., 1957; 8th edition, Mexico: Editorial Porrúa, 1978), 115 ("*Todos los habitantes de él [México], sin otra distinción que su mérito y virtudes, son ciudadanos idóneos para optar cualquier empleo*").

<sup>68</sup> Orden of Sept. 17, 1822, in Manuel Dublán and José María Lozano, eds. *Legislación mexicana, o colección completa de las disposiciones legislativas expedidas desde la independencia de la República [1821-1912]* (42 vols. México: Imprenta del Comercio, 1876-1912), 1:628 ("*se prohíbe clasificar á los ciudadanos mexicanos por su origen*").

<sup>69</sup> Moisés González Navarro, "Instituciones indígenas en el México independiente," *La política indigenista en México*, eds. Alfonso Caso, Silvio Zavala, José Miranda, and Moisés González Navarro (1st ed., 1954; 1st new edition, 2 vols. México: Instituto Nacional Indigenista, 1991), 1:209-18, explains the internal debates in Mexico and the Indians' ambiguous position in practice.

<sup>70</sup> It apparently did in some parts of Mexico. See Baade, 1986, 79-80, for Coahuila and Texas.

<sup>71</sup> González Navarro, 1991, 1:219.

The “official atmosphere” reached as far as remote New Mexico, where the new liberal legislation seemed to threaten the integrity of the communal lands that had served as the foundation of Pueblo Indian societies. Although the Spanish Crown had insisted on the inviolability of the communal lands of Indians for over two centuries, in the late 1700s some liberal Spanish administrators tried to separate mission Indians from their communities and turn them into private landowners. In general, they had little success, and none in New Mexico of which I am aware.<sup>72</sup> A more moderate approach emerged very late in the colonial period when legislators authorized local authorities to place surplus communal land into the public domain and sell it to private parties. The framers of this legislation, who were representatives to the liberal parliament (*cortes*) of Cádiz in 1813, hoped to bring unused lands into production, but they did not wish to damage the agricultural production of Indian communities. Hence, the law was clear. Officials should seize and distribute only those lands that communities no longer needed (“*tierras sobrantes*”); “necessary” communal land was not to be distributed.<sup>73</sup>

Mexican officials in New Mexico honored the spirit and the letter of this Spanish law, which remained in force in New Mexico in the years immediately following Mexican independence. In the singular case in New Mexico where non-Indians invoked the new liberal legislation to obtain surplus Pueblo land—that of the pueblo of Pecos, Pueblos fought back by appealing to the protections afforded them by new status as “citizens” rather than appealing to their earlier rights as Indians. That argument

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<sup>72</sup> Radding, 1997, 179, provides an example of this from Sonora. For the general trend, and its failure, see David J. Weber, *Bárbaros: Spaniards and Their Savages in the Age of Enlightenment* (New Haven: Yale University Press, 2005), chap. 3.

<sup>73</sup> Decreto of January 4, 1813, in *Dublán*, 1:397-99, quotation on p. 397 (“*escepto los egidos necesarios á los pueblos*”). The New Mexico context that I rely on here and in the paragraph that follows is outlined in G. Emlen Hall and David J. Weber, “Mexican Liberals and the Pueblo Indians, 1821-1829,” *New Mexico Historical Review* 59 (1984), 5-22.

prevailed, and it was as citizens, not as Indians, that Pueblos from Pecos protected their surplus lands from seizure. Because the New Mexico legislature (the *diputación*), accepted the fact that Pueblos were citizens under Mexican law, however, it also permitted Pueblos to sell parcels of communal real estate—something that Spanish law would not have permitted them to do during most of the colonial era. Non-Indians did begin to purchase some Pueblo-owned lands in the 1820s, but that was largely limited to the special case of Pecos, a pueblo with a dramatically declining population. In the relatively few other cases where non-Indians purchased Pueblo lands, those lands were generally not within the pueblos' four-square-league boundary, the unit that New Mexicans had adopted as a customary boundary for each pueblo.<sup>74</sup>

In the 1830s liberal efforts to privatize Indian lands came to an end in Mexico as conservatives eclipsed liberals in national politics and Mexico moved into a prolonged period of political chaos. Nonetheless, in theory all Indians living in Mexico—even those hostile to the Mexican state--remained citizens. In 1834, the commanding general in Chihuahua asked the Mexican secretary of war to clarify the status of Apaches and other “rebellious tribes.” “Should they be considered as children of the great Mexican family or as enemies to be driven beyond the boundaries of this state?” The secretary of war consulted with the Mexican president himself, then Antonio López de Santa Anna, and reported Santa Anna’s position: these Indians were Mexicans “because they were born and live in the Republic. . . . The state of barbarity in which they are raised prevents

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<sup>74</sup> As Tyler, 1983, 59, rightly noted, “The Pecos situation was unique,” and Taylor, 1983, 3-4, agreed. For question of the locations of the purchased land, see Taylor, 1983, 13. I discuss the “Pueblo league” in part 7.

them from knowing their universal obligations, and those that belong to them as Mexicans.”<sup>75</sup>

In practice, however, Mexicans continued to make war on the “rebellious tribes,” whom the Secretary of War called “wild men,”<sup>76</sup> and to treat them as separate nations by entering into treaties with them. That was the case with Comanches, for example, with whom a Mexican representative signed a treaty in Coahuila in 1843, and a group of Apaches, with whom Chihuahua officials signed a treaty in 1850. As one Mexican historian has explained, however, “Surely practical necessities obliged the Mexican government to enter into this legal fiction of treating groups of its own citizens as if they were independent nations.”<sup>77</sup> New Mexicans also regarded it as a “necessity” to make war on Indians like Comanches, Apaches, Navajos, and Utes when members of these tribes raided Mexican settlements. Meanwhile, they continued to treat most of the Pueblos as distinctive communities within the New Mexico polity.<sup>78</sup>

Regardless of the rhetoric that declared the equality of all Mexicans, Pueblo communities in New Mexico continued to enjoy the aboriginal rights to their land and

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<sup>75</sup> Circular of the Secretaría de Guerra, January 5, 1835, responding to an inquiry of November 21, 1834 from the comandante general in Chihuahua, in Dublán and Lozano, 1876-1912, 3:10 (“*tribus sublevadas*”; “*¿Deben ser considerados como hijos de la gran familia mexicana, ó como sus enemigos, para lanzarlos en el segundo caso, de los límites de ese Estado? ; “son mexicanos, porque nacieron y viven en la República . . . El estado de barbarie en que yacen, les impide conocer los deberes universales, y los que les pertenecen como mexicanos*”). For context see David J. Weber, The Mexican Frontier, 1821-1846: The American Southwest Under Mexico (Albuquerque: University of New Mexico Press, 1982), 103, and González Navarro, 1991, 1:264.

<sup>76</sup> Circular of the Secretaría de Guerra, January 5, 1835, responding to an inquiry of November 21, 1834 from the comandante general in Chihuahua, in Dublán and Lozano, 1876-1912, 3:9 (“*hombres selváticos*”).

<sup>77</sup> González Navarro, 1991, 1:265 (“*Seguramente las necesidades prácticas obligaron al Gobierno mexicano a establecer esta ficción jurídica, de reconocer como naciones independientes a grupos de sus propios ciudadanos*”).

<sup>78</sup> See, for example, H. Bailey Carroll and J. Villasana Haggard, eds. and trans. Three New Mexico Chronicles (Albuquerque: The Quivira Society, 1942), 48-49, 87-93, Daniel Tyler, “Mexican Indian Policy in New Mexico,” New Mexico Historical Review 55 (Apr. 1980), 106-116, and Weber, 1982, chaps. 5 & 6. As a practical matter, of course, officials did not treat everyone who resided in Mexico as citizens. Legal equality did not remove distinctions based on class, literacy, gender, age, or race.

water just as they had under Spain.<sup>79</sup> Moreover, Mexico's laws, locally and nationally, continued to recognize the sanctity of private property, whether it belonged to individuals or to communities.<sup>80</sup> Spanish laws regarding land and water continued to function in New Mexico because no Mexican laws superseded them and because Spanish law did not violate Mexican law.<sup>81</sup> Indeed, a compendium of Spanish land and water law was published in Mexico City at least as late as 1851.<sup>82</sup>

As William B. Taylor summed it up, "Even with changes in Indian status and a shift toward private property after 1821, the property rights of New Mexico Indian Pueblos generally were preserved during the period of Mexican sovereignty."<sup>83</sup> No one has challenged Taylor's assertion, and the evidence in support of it seems incontrovertible. In 1848 the boundaries of individual pueblos remained largely intact

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<sup>79</sup> As under Spain, the degree of enforcement of the laws varied with individual authorities. See, for example, Jenkins, 1961, 60, who contrasts the actions of governors Antonio Narbona and Manuel Armijo in regard to Laguna Pueblo land holdings. Although he was unaware of the significance of the exceptional case of land sales at Pecos, Herbert Brayer, Pueblo Indian Land Grants of the "Rio Abajo," New Mexico (Albuquerque: University of New Mexico Press, 1939), 19, had it right when he concluded that Spanish laws in regard to land remained in force in New Mexico and that in practice the Pueblo Indians "were still considered wards of the government even though they were given the title "citizens."

<sup>80</sup> Hall and Weber, 1984, 21-22.

<sup>81</sup> Weber, 1982, 18, 27-28.

<sup>82</sup> Mariano Galvan [Rivera], ed. Ordenanzas de tierras y aguas . . . vigentes hasta el día en la República Mexicana (1st ed., 1842; 4th ed., corrected and expanded; Mexico: Librería del Portal de Mercaderes, 1851), explicitly cites laws going back to the Recopilación and before.

<sup>83</sup> William B. Taylor, "Memorandum to Herbert A. Becker, Assistant U.S. Attorney, District of New Mexico, re: Daniel Tyler, 'Land and Water Tenure in New Mexico, 1821-1846' [July 21, 1983]" (manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], 1983), 1. See, too Taylor, [1979], 51-53. Working independently of Taylor, Hall and Weber, 1984, came to the same conclusion as Taylor. Daniel Tyler, "Land and Water Tenure in New Mexico, 1821-1846" (manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], 1983), 55-60; 63-64, would appear to agree with Taylor. Hall, 1987, 87, however, suggests that "the number of real property transfers from Pueblo Indians to non-Indians increased markedly during the period of Mexican rule," but goes on to say that these "usually involved the small, irrigated farming plots that Pueblo families had held within the external boundaries of the Pueblo grants." Hall sees considerable mixing of Hispanics and Pueblos within Pueblo lands, most of it near urban areas rather than in outlying areas (*ibid.*, 91, 94).

even though Pueblos had sold some land to non-Indians. No major redistribution of Pueblo lands occurred in the Mexican period.<sup>84</sup>

Water rights in New Mexico's Mexican era remained attached to the Pueblos' rights to land, as they had in the Spanish era, although a new institution became involved in the allocation of water. Early in this era the revival of town councils, or *cabildos*, brought these bodies into the adjudication of water disputes (whereas *alcaldes* and governors alone had that responsibility before). After 1837, *cabildos* were abolished except for one in Santa Fe and justices of the peace (*juezes de paz*) replaced them and presided over water disputes. Throughout these administrative changes, however, New Mexicans resolved water problems as they had in the Spanish era and the basic principles remained the same.<sup>85</sup> Water rights of communities remained senior to those of individuals, the principles of equity and need continued to operate, and local authorities continued to regard Pueblo Indians as holding a superior right to water based on aboriginal usage, or priority.<sup>86</sup>

In short, as historian Michael Meyer observed: "When individual citizens appeared before local magistrates to contest water allocations, they found that Mexican independence had not subverted Spanish judicial principle or procedure."<sup>87</sup> On this point, scholars of New Mexico land and water agree. Indeed, in the area of land and water the continuity between the Spanish and Mexican periods of New Mexico is so clear that specialists on this subject often make no distinction between them. Rather, they draw

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<sup>84</sup> Hall, 1987, 91-92.

<sup>85</sup> This is best described in Baxter, 1997, 31-32, 44-48; quotation on p. 48. For water rights remaining attached to land, see Tyler, 1983, 61, 64.

<sup>86</sup> Tyler, 1983 61-62; Taylor, 1983, 15-16

<sup>87</sup> Meyer, 1984, xii. DuMars, O'Leary, and Utton, 1984, 25, elaborate: "Legal patterns established during the colonial period continued to govern water cases tried during the Mexican period. Intent, need, and no injury to third parties played a central role in the adjudicatory process."

examples from the Mexican period to illustrate practices of the Spanish era or conflate these two historic periods under the general rubric of “Hispanic New Mexico.”<sup>88</sup> As historian Myra Ellen Jenkins put it, “the long period of official protection of Pueblos Indian land and water right[s]” endured until the U.S. occupation of New Mexico in 1846.<sup>89</sup>

Several case studies from the Mexican era make it clear that Indian Pueblos continued to enjoy a superior right to water based on prior use. Two of those cases involved Taos Pueblo and its neighbors, one from 1823 and one from 1837. In both cases, which involved drawing water from the Río Lucero, local authorities ruled that ancient use gave the pueblo of Taos first rights to use the river water for irrigation. As the town council of Taos declared when it ruled in favor of Taos Pueblo in 1823, “these natives from time immemorial have been the sole owners and have complete right to the water of the Río de Lucero.”<sup>90</sup> At the same time, the town council took need into account by awarding the Hispanic community of Arroyo Seco a specific measure of water from the Lucero when the river flowed abundantly, and proportionately less water when the flow was weak.<sup>91</sup>

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<sup>88</sup> Among the students of New Mexico water and land law who move back and forth between the two periods as if they were one, are Jenkins, 1966, 85-114, Taylor, [1979], 27-29, 37-41, and DuMars, O’Leary, and Utton, 1984, 29-41. For “Hispanic New Mexico” in this context see Ebright, “Lawsuits, Litigants, and Custom in Hispanic New Mexico,” in Ebright, 1994, 57-70. Glick, 1972, 31, similarly conflated the Spanish and Mexican periods in attempting to understand the irrigation system of Spanish San Antonio, Texas: “As a working method, I have regarded any relevant document in the Spanish and Mexican periods as fair game, utilizing the later references on the assumption that they may well provide information describing institutional arrangements put into effect considerably earlier.”

<sup>89</sup> Myra Ellen Jenkins, “The Pueblo of Nambé and Its Lands,” *The Changing Ways of Southwestern Indians: A Historic Perspective*, ed. Albert H. Schroeder (Glorieta, NM: The Rio Grande Press, 1973), 96.

<sup>90</sup> December 30, 1823, quoted in Jenkins, 1966, 105, who discusses both cases. See, too, Meyer, 1984, 54-55; Tyler, 1990, 35-36; Baxter, 1997, 34-35;

<sup>91</sup> Jenkins, 1966, 105, and Meyer, 1984, 55, paraphrase this, but Meyer supplies the original Spanish quotation on p. 55, n. 23.

## 5.

## Hopis under Spanish Sovereignty

All of the Pueblos lived within land claimed by the Spanish monarchs, and most, including the Hopis—whom Spaniards called Moquis, swore allegiance to the Spanish Crown—or so Spaniards wished to believe. In 1540, the first group of Spaniards to visit the Hopis (a contingent of Coronado’s party led by Pedro de Tovar), contended that they had established Spanish authority over the Hopis. At the first Hopi pueblo the Spaniards came to, apparently Awatovi, one of Coronado’s men read the notorious *requerimiento*, which required Indians “to acknowledge the Church as the ruler and superior of the whole world, and the high priest called Pope, and in his name the king and queen Doña Juana our lords, in his place, as superiors and lords and kings of these islands and this mainland . . . .”<sup>92</sup> Then, following a small skirmish, the people of that Hopi pueblo, according to one chronicler, “came in peace, saying that they were coming to render obedience on behalf of the whole *provincia*”—a province that Spaniards called Tusayán.<sup>93</sup>

In 1598, when Juan de Oñate reclaimed New Mexico for the Spanish Crown and established an enduring Spanish presence there, he also required the Hopis to submit to the Spanish Crown. On November 15, 1598, he summoned the “chieftains” of various Hopi pueblos to assemble for what his scribe recorded as the “Act of Obedience and Vassalage by the Indians of Mohoqui [sic].” In the formulaic language of such Spanish

<sup>92</sup> Charles Gibson, ed. *The Spanish Tradition in America* (New York: Harper & Row, 1968), 59. The *requerimiento* was drawn up around 1512. Coronado’s reader would have substituted the name of Carlos V for that of Juana.

<sup>93</sup> Pedro de Castañeda’s *Relación*, in Richard Flint and Shirley Cushing Flint, eds. and trans. *Documents of the Coronado Expedition, 1539-1542. ‘They Were Not Familiar with His Majesty, nor Did They Wish to Be His Subjects’* (Dallas: SMU Press, 2005), 397. Certainly no single pueblo could speak for all of the *provincia*, that is, for all of the Hopis.

documents, the Hopi chiefs “having heard, understood, and discussed among themselves all the aforesaid, replied, with signs of spontaneous contentment and agreement, that they wished to become vassals of the most Christian king our lord. . . . for themselves and in the name of their nations.”<sup>94</sup> Whatever the Hopis thought of their relationship to the Spaniards, the Spaniards believed that the Hopis had become subjects of the Spanish Crown and treated them as such thereafter.

Spanish colonists who came to New Mexico with Oñate in 1598, and those who followed in the years thereafter, established themselves amidst the Rio Grande pueblos. The Hopi pueblos, some 250 miles west of the Rio Grande, existed far beyond the Spanish sphere of settlement.<sup>95</sup> It remained, then, for Spanish missionaries rather than colonists to establish a presence among the Hopis. Franciscan missionaries began that work in 1629, when reinforcements from Mexico allowed them to spare resident priests for the western pueblos of Acoma, Zuni, and Hopi. The missionaries established a presence at five of the Hopi pueblos, Oraibi, Shongopavi, Walpi, Mishongnovi, and

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<sup>94</sup> “Act of Obedience and Vassalage by the Indians of Mohoqui [sic],” translated in George P. Hammond and Agapito Rey, eds. and trans. Don Juan de Oñate: Colonizer of New Mexico, 1595-1628 (2 vols.; Albuquerque: University of New Mexico Press, 1953), 1:360-62 (quotation on p. 361).

<sup>95</sup> E. Charles Adams, “Passive Resistance: Hopi Responses to Spanish Contact and Conquest,” Columbian Consequences. Vol. I: Archaeological and Historical Perspectives on the Spanish Borderlands West, ed. David Hurst Thomas (Washington, D.C.: Smithsonian Institution Press, 1989), 82, argues that Spaniards could not “establish a satisfactory subsistence base for their program at Hopi,” because “99 percent of the agriculture depended on floodwater farming or dry farming [and] Spanish domesticates, especially wheat, fared poorly under these conditions.” (For that description, he cites an unpublished manuscript by Gordon B. Page. Page, however, describes Hopis as efficiently utilizing water to raise an abundance of crops, with corn as the staple. Gordon B. Page, “Hopi Agricultural Notes” (Ms., on file, USDA Soil Conservation Service, Washington, D.C., 1940), 48-76. For their part, Spaniards established themselves in other places in the western hemisphere where wheat did not grow, as on Florida’s Atlantic coast. Water and familiar foods, it seems to me, had less to do with Spaniards failure to settle in the Hopi area than did distance and danger and lack of a compelling motive. An attempt in the 1750s by Hispanics to settle in the valley of New Mexico’s Puerco River, for example, fizzled in the 1770s in the face of Navajo resistance. Not until 1800 did Hispanics settle as far west as Cubero, northwest of Laguna Pueblo, and they had to fortify their village to survive. Baxter, 1997, 9-11, 12-13, tells these stories in brief.

Awatovi, but only the latter thrived. There, under the direction of the Franciscans, Hopis built a substantial church and friary.<sup>96</sup>

In 1680, Hopis joined other Pueblo peoples in rising up against the Spaniards, killing them or sending them fleeing down the Rio Grande. Most of the pueblos won a short-lived freedom. In 1692 and 1693, Diego de Vargas marched into the Pueblo country and through diplomacy or force, won the submission of the individual pueblos, including the Hopi pueblos of Awatovi, Walpi, Mishongnavi, and Shongopavi, where, in his words, he “renewed possession of those Indians and pueblos” in November of 1692.<sup>97</sup> At all four pueblos, in the words of one contemporary chronicler, the Hopis “swore allegiance to their lord and king.”<sup>98</sup>

Although Vargas retook possession of the Hopi pueblos for the Crown, Spaniards did not reestablish a permanent presence in the Hopi country. When Awatovi welcomed missionaries back in 1700, neighboring pueblos destroyed the village.<sup>99</sup> Franciscans’ subsequent attempts to replant missions in the Hopi pueblos failed to take root. The Spanish Crown responded by briefly transferring authority over the Hopis to the Jesuits, but soon restored that authority to the Franciscans when the Jesuits, operating out of Sonora, failed to reach the Hopi villages, much less convert them.<sup>100</sup> The Franciscans, still approaching the Hopi pueblos from New Mexico, had no better luck the second time

<sup>96</sup> David J. Weber, *The Spanish Frontier in North America* (New Haven: Yale University Press, 1992), 97; Brew, 1979, 519-21; Brew, “The History of Awatovi,” in Montgomery, Smith, and Brew, 1949, 9-18.

<sup>97</sup> Vargas to the king, Zacatecas, May 16, 1693, in John L. Kessell, Rick Hendricks, and Meredith D. Dodge, eds. and trans. *To the Royal Crown Restored: The Journals of don Diego de Vargas, New Mexico, 1692-1694* (Albuquerque: University of New Mexico Press, 1995), 209-14; quotation on p. 214.

<sup>98</sup> Irving Albert Leonard, ed. and trans. *The Mercurio Volante of Don Carlos de Sigüenza y Góngora: An Account of the First Expedition of Don Diego de Vargas into New Mexico in 1692* (Los Angeles: Quivira Society, 1932), 85.

<sup>99</sup> This is a famous episode, well documented in Brew, “The History of Awatovi,” in Montgomery, Smith, and Brew, 1949, 20-24.

<sup>100</sup> Alfred B. Thomas, ed. and trans. *Forgotten Frontiers: A Study of the Spanish Indian Policy of Don Juan Bautista de Anza, Governor of New Mexico, 1777-1787* (Norman: University of Oklahoma Press, 1932), 20-21, and Brew, “The History of Awatovi,” in Montgomery, Smith, and Brew, 1949, 26-29.

around. A frustrated Fray Silvestre Vélez de Escalante, who had himself failed on a mission to convert the Hopis in 1775, may have spoken for other friars when he proclaimed that “the conversion of the Moqui [Hopis] cannot be achieved with the means of kindness and persuasion only,” and recommended that Spanish officials use force to bring them down from their mesas so that they could receive Franciscan preachers and choose to become Christians.<sup>101</sup> New Mexico governor Pedro Fermín de Mendinueta, who received that recommendation, argued against it. Spaniards, he said, would be “unjustly declaring war on Indians who were living at peace with us and were giving no cause for complaint.”<sup>102</sup>

In the 1700s, prior to Governor’s Mendinueta’s day, Spaniards had sent a number of military expeditions against the Hopis, but the military had also failed in part because the Hopis had increased their numbers. Following Vargas’s re-conquest of New Mexico, Hopis had welcomed Pueblo refugees from the Rio Grande who found there a safe haven far from Spaniards and thereby enhanced the Hopis’ ability to resist Spanish force.<sup>103</sup> As one student of Hopi society, E. Charles Adams, has summed it up: “The isolation of the Hopi province, the expansion of their population by immigrants, and the weakness of the Spanish position in the northern provinces as a result of increased raiding by Navajo and

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<sup>101</sup> Vélez de Escalante to [Provincial Fray Isidro] Murillo, Zuni, May 16, 1776, copy of original, certified on October 30, 1779, by Juan Bautista de Anza, in Thomas, 1932, 160; Eleanor B. Adams, “Fray Silvestre and the Obstinate Hopi,” New Mexico Historical Review 38 (Apr. 1963), 107. An earlier Spanish copy, made in Mexico City on Aug. 12, 1776, is in Otto Maas, Viajes de misioneros franciscanos á la conquista del Nuevo México. Documentos del Archivo General de Indias (Sevilla) (Sevilla: Imprenta de San Antonio, 1915), 81-88. Quotation on p. 83 (“*no se conseguirá la reduccion de Moqui con solos los medios de la suavidad y persuasion*”).

<sup>102</sup> Mendinueta to Hugo O’Conor, November 9, 1775, quoted in Adams, 1963, 109.

<sup>103</sup> Among the writers who have outlined Spanish-Hopi relations in the 1700s, or looked at aspects of those relations in depth: Thomas, 1932, 19-30; Brew, “The History of Awatovi,” in Montgomery, Smith, and Brew, 1949, 24-40; Brew, 1979, 521-22; Edward K. Flagler, Defensores de la madre tierra. Relaciones interétnicas: Los españoles y los indios de Nuevo México (Palma de Mallorca: Hesperus, 1997), 113-30

Apache made the Hopi in reality, if not in the eyes of the Spanish government, the independent nation that they had asked to become.”<sup>104</sup>

Whatever the reality, Hopis were indeed Spanish subjects “in the eyes of the Spanish government,” even though it failed to reassert its religious and political authority over them.<sup>105</sup> In the 1700s, Spaniards treated the Hopis as Spanish subjects who happened to be in rebellion. Spanish law on this subject, which continued to be invoked until the end of the colonial era, required that Indian rebels be brought back “to our royal service with gentleness and peace, without war, robbery, or deaths.”<sup>106</sup> This was more than a statement of pious intentions, as evidenced from an episode in 1779 when New

<sup>104</sup> Adams, 1989, 84.

<sup>105</sup> The nineteenth-century anthropologist and savant, Adolph Bandelier, makes this point by extracting a story from a documentary source, written it would appear by Fray Silvestre de Escalante. Bandelier says: On October 11, 1700 “one of the leading chiefs of the Oraybe [Oraibi] appeared at Santa Fe with twenty other delegates, and presented themselves to the Governor, Pedro Rodríguez de Cubero, as a formal embassy from the Moquis, not as subjects and vassals of the Crown, but as delegates of a foreign power sent to conclude a treaty of peace and amity. This Cubero could not entertain.” Bandelier goes on to explain the reason that the governor “could not entertain” the idea of a treaty. “It must be remembered,” Bandelier noted, “that the Moquis had given their allegiance to Spain anew in 1629; that consequently Cubero could not regard them in any other light than as vassals and subjects, and that consequently he could not entertain such proposals on their part.” A. F. Bandelier, Final Report of Investigations among the Indians of the Southwestern United States, Carried on Mainly in the Years from 1880 to 1885 (2 vols., Cambridge, MA: Papers of the Archaeological Institute of America, 1890-1892), 2:371-72. Called to my attention by Peter Whiteley. Just what Cubero could “not entertain,” is not as clear as Bandelier supposed. Bandelier was paraphrasing an account that appears in Anonymous, “Relaciones de Nuevo-Mexico,” Documentos para la historia de Méjico. Tercera Serie (Mexico: Imprenta de J.R. Navarro, 1856), a history with documents apparently written and compiled in the late 1770s by Fray Silvestre Vélez de Escalante for Fray Juan Agustín de Morfi. The relevant Spanish-language text says that Francisco Espeleta came to Santa Fe with twenty “*compatriotas . . . solicitando ajustar las paces con los españoles, como si los moquis fueran una nacion totalmente independiente, y que pudiese establecer amistad con la española.*” Espeleta claimed to speak for all of the Hopis, following a “*consulta general,*” and he said that the Hopis would permit ministers to baptize the infants (*párulos*) in each of the pueblos of the Hopi province, one year at a time, until at the end of six years all would be baptized. Then, “*concluidos éstos del modo dicho, se rendirian todos los moquinos y admitirian de asiento á los ministros. Que bien dice esta proposición con la primera. Cubero replicó no agradarle este entretenimiento, y ellos, viéndose en poder de los españoles, fingieron que á todo se avendrian los suyos luego que supiesen la voluntad de Cubero, y se regresaron á su provincia.*” (p.179). It appears to me that Bandelier was wrong to conclude that Cubero was unwilling to entertain the idea of making peace with the Hopis as if they were an independent nation, although that might have informed Cubero’s decision. Rather, it appears that Cubero would not entertain the idea of giving the Hopis six years to have their children baptized before accepting priests to live among them. “*Entretenimiento,*” which Bandelier mistranslated as “entertain,” means “delay” in this context and the account clearly describes Cubero as unwilling to countenance the six-year delay.

<sup>106</sup> Weber, 2005, 145; quotation from the Recopilación, lib. 3, tit. 4, ley 8 (“*a nuestro real servicio con suavidad y paz, sin guerra, robos, ni muertes*”).

Mexico governor Juan Bautista de Anza sought permission to bring about “the conversion of the province of Moqui [Hopi] to God and the king.”<sup>107</sup> Anza asked permission from his superior officer, Teodoro de Croix, to move the Hopis forcibly from their drought-ridden country. Little rain had fallen for the previous two years. Anza wanted to resettle the Hopis on the Río Grande (at Sabinal south of Belen), thus reasserting Spanish control over them. Croix objected for several practical reasons, but he also pointedly warned Anza that the use of force would violate Spanish policy: “it is necessary to utilize kindness, good treatment, and soft actions which his Majesty justly prefers to the greatest and most rapid conquests, [and] the shedding of human blood, even though it may be that of the most barbarous enemies.”<sup>108</sup>

Anza obeyed Croix’s orders, but in the fall of 1780 he traveled to the Hopi country in response to an apparent plea by forty Hopi families to rescue them from the drought and escort them eastward through Navajo country to greener pastures. Before Anza arrived, Navajos apparently massacred the forty families, but Anza stayed at the Hopi pueblos trying to persuade a Hopi cacique at Oraibi to “recognize as the true God, the Creator of man, of the heavens, and of the sun, and of all that is visible, and to recognize also his Majesty as their king and master, it being understood that the recognition of both must be voluntary.” If Anza’s account is to be believed, the cacique responded by declining to recognize the Christian god but did recognize the Spanish king as his sovereign. The cacique, Anza reported, said that “he and all of his nation have

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<sup>107</sup> Anza to Croix, Santa Fe, November 1, 1779, translated in Thomas, 1932, 148 (one of two letters on this subject, written on the same day).

<sup>108</sup> Croix to Anza, Arispe, December 31, 1779, translated in Thomas, 1932, 170.

always recognized and known as their Lord and King the One whom we the Spaniards have as such.”<sup>109</sup>

In the late 1700s, Spanish officials signed treaties with other Indians in New Mexico, including Navajos and Comanches, which brought those independent people under Spanish dominion yet also recognized the autonomy that they enjoyed in fact.<sup>110</sup> Spaniards do not appear, however, to have entered into treaties with Hopis in the 1700s. On a practical level, Hopis had posed no threat to Spanish settlements in New Mexico, as had Navajos or Comanches, so Spanish officials had no need to placate them with treaties of friendship and trade. From a legal standpoint, Spaniards continued to regard Hopis as Spanish subjects who had sworn vassalage in 1598 (through Oñate) and in 1692 (through Vargas), thus obviating a need for treaties. One did not sign treaties with one’s vassals. As Silvestre Vélez de Escalante, a Franciscan who had first-hand experience with the Hopis, explained to the New Mexico governor in 1775, “although rebels” the Hopis “are really vassals of our sovereign.”<sup>111</sup> The next year, Fray Silvestre warmed to that theme in a letter to his superior, explaining more fully that the Hopis could not be included among those Indians “who have never been subjected to his [Majesty’s] Dominion nor sworn to the religion nor to the crown.” The Hopis, he said, were “legitimately vassals of his Majesty and deny for as long a time as they have been in rebellion the obedience which they not only promised but even gave [for] many years. No capitulation [treaty or

<sup>109</sup> Anza, “Diario de la expedición . . .,” translated in Thomas, 1932, 234; Thomas summarizes this on pp. 27-30.

<sup>110</sup> Weber, 1992, 230-31; Weber, 2005, 213.

<sup>111</sup> Vélez de Escalante to Gov. Pedro Fermín de Mendinueta, Zuni, October 28, 1775, copy of original, certified on October 30, 1779, by Juan Bautista de Anza, in Thomas, 1932, 152. Vélez de Escalante had traveled from his mission at Zuni to try to convert the Hopis in June of 1775. Adams, 1963, 105-08, who provides a translation of his report of his venture, pp. 118-38.

contract] has been celebrated with them in which they may have been absolved from the fealty they owe their sovereign.”<sup>112</sup>

Spanish officials in New Mexico continued to regard the Hopis as subjects of the Spanish Crown until the end of the colonial era. A Spanish-Navajo Treaty of 1819 required the Navajos to “respect the persons and property of the Hopi Pueblos, since this government takes them under the protection of its kind Sovereign, under whose shadow they have placed themselves.”<sup>113</sup> As Spanish subjects, the Hopis, like other Pueblos, enjoyed the legal protections accorded sedentary Indians throughout the Spanish Empire. Hopi specialist Peter Whiteley was right in asserting that “even though the Hopi had functionally maintained their independence for 140 years, they were still accorded official privileges deriving from colonial rule.”<sup>114</sup>

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<sup>112</sup> Vélez de Escalante to [Provincial Fray Isidro] Murillo, Zuni, May 16, 1776, copy of original, certified on October 30, 1779, by Juan Bautista de Anza, translated in Thomas, 1932, 162. A Spanish transcription is in Maas, 1915, 81-88. Quotation on p. 84 (“habla S.M. [su Majestad] de aquellas Naciones que nunca se han sugetado á su dominio ni perjudican á lo Religion ó á la Corona. Entre quiénes no pueden numerarse los Moquinos: porque en quanto á lo primero son legitimamente Vasallos de su Magestad, y repugnan desde tanto tiempo, como llevan de alzados la obediencia, que no solo prometieron, mas exercitaron muchos años. No se ha celebrado Capitulacion alguna con ellos, en que se haian absuelto de la obediencia, que deben á su Soberano, ni su Magestad en el lugar citado cede el derecho, que tiene para impeler á sus Vasallos á que reconozcan por su Rey y Señor”).

<sup>113</sup> “Convenio de paz con la nación Navajó . . .,” Santa Fe, Aug. 21, 1819, art. 5, in the *Gaceta Extraordinaria del Gobierno de Mexico*, vol. 10, no. 144, October 27, 1819, p. 1129, art. 16 (“Respetaran las personas y propiedades de los pueblos de Moquinos, respecto de que los toma este gobierno bajo la proteccion de su amable Soberano, á cuya sombra se han puesto”). Several writers discuss this treaty, and it is translated in David M. Brugge and J. Lee Correll, *The Story of the Navajo Treaties with Texts in English*. Navajo Historical Publication Documents Series, 1 (Window Rock, AZ: Research Station, Navajo Parks and Recreations Department. The Navajo Tribe, 1971), 45-50, and in Vine Jr. Deloria and Raymond J. DeMallie, *Documents of Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979* (2 vols.; Norman: University of Oklahoma Press, 1999), 1:145-47.

<sup>114</sup> Peter M. Whiteley, “Historic Hopi Use and Occupancy of the Little Colorado Watershed, 1540-1900” (manuscript report prepared for the Hopi tribe, 2004), 46-47, who called to my attention this clause in the Navajo Treaty of 1819.

## 6.

**Hopis under Independent Mexico, 1821-46**

The Hopis' relationship to independent Mexico resembled their relationship to the viceroyalty of New Spain. They remained by default under the jurisdiction of New Mexico, although their remote location, on the other side of a sea of Navajos, made it impractical for New Mexico officials to incorporate them into provincial life. During the years 1821-1846 the various governments of New Mexico levied no taxes on the Hopis and did not count them in the New Mexico census.<sup>115</sup> Private citizens, Mexicans and Anglo Americans alike, visited the Hopis during the Mexican period,<sup>116</sup> but government officials apparently did not. The single known exception was New Mexico Governor José Antonio Vizcarra who sought Hopis to guide him to water while on campaign against Navajos in 1823.<sup>117</sup>

Josiah Gregg, an astute and informed observer of New Mexico and its people, summed up the conventional wisdom of his day in a classic account published in 1844.

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<sup>115</sup> Ward Alan Minge, "Frontier Problems in New Mexico preceding the Mexican War, 1840-1846" (PhD diss., University of New Mexico, 1965), 94. See also, Gov. Narbona's census of 1827 and Antonio Barreiro's list of New Mexico pueblos in 1839, in Carroll and Haggard, 1942, 88 and 28 respectively. If Hopis were too far west for New Mexico officials to try to incorporate them, so were they too far north for Sonora officials to take note of them. Blocked by Apaches, Mexicans in Sonora had difficulty in asserting their control over the Gila River, much less give thought to the distant Hopis on the remote Colorado Plateau. For example, C. Ignacio Zúñiga, *Rápida Ojeada al Estado de Sonora* (Mexico: Juan de Ojeda, 1835), does not mention the Hopis at all. Zúñiga, whose father opened a route between Tucson and Zuni in 1795, knew the vast extent of northern Arizona, and make a case for expanding control over the north, but he his immediate goal was the Gila River, a world away from the Hopis. See, too, José Agustín de Escudero, *Noticias estadísticas de Sonora y Sinaloa (1849)*, ed. Héctor Cuauhtémoc Hernández Silva (1st ed., 1849; Hermosillo: Universidad de Sonora, 1997), 95-101.

<sup>116</sup> See, for example, David J. Weber, *The Taos Trappers: The Fur Trade in the Far Southwest, 1540-1846* (Norman: University of Oklahoma Press, 1971), 135, 141.

<sup>117</sup> David M. Brugge, ed. and trans. "Vizcarra's Navajo Campaign of 1823," *Arizona and the West* 6 (Autumn 1964), 225-26, 323-36. For the absence of official visitors, see Dockstader, 1985, 75, 170. Called to my attention by Peter Whiteley.

The “seven pueblos of Moqui [Hopi],” he said, lived “in a state of independence and paganism.” At the same time, he did not include them with the region’s “wild tribes,” like Navajos and Apaches, but instead classified the Hopis as Pueblos.<sup>118</sup> Other observers also classified Hopis as among New Mexico’s peaceful Indians. Reporting on Indians of the region, Charles Bent, a long-time American resident of Mexican New Mexico and its first governor under American rule, described Hopis as “intelligent and industrious” farmers and stockmen who lived in permanent villages.<sup>119</sup>

It was logical, then, for the first United States Indian agent in New Mexico, James S. Calhoun, to consider the Hopi pueblos as within his jurisdiction even though distance and danger--the same obstacles that kept Spain or Mexico from making greater efforts to incorporate the Hopis, prevented Calhoun from visiting them. In 1850, after expressing regret to the U.S. Commissioner of Indian Affairs that he could not reach the Hopi villages because of the dangers of traveling through the country of Apaches and Navajos, Calhoun added in the next sentence: “The Pueblo Indians, all, are alike entitled to the favorable and early consideration of the Government of the U.S.”<sup>120</sup>

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<sup>118</sup> Josiah Gregg, *Commerce of the Prairies*, ed. Max L. Moorhead (1st ed., 1844; Norman: University of Oklahoma Press, 1954), 188, n. 2; 193, 198.

<sup>119</sup> Charles Bent, Santa Fe, November 10, 1846, to the U.S. Commissioner of Indian Affairs, William Medill, reproduced in James S. Calhoun, *The Official Correspondence of James S. Calhoun while Indian Agent at Santa Fé and Superintendent of Indian Affairs in New Mexico*, ed. Annie Heloise Abel (Washington: Government Printing Office, 1915), 6-9; quotation on p. 7. Similarly, they appear in a report on New Mexico Indians prepared by a U.S. army officer in 1850, who echoed Bent’s description by characterizing them as “pacific, honest, and hospitable and are, besides, the most civilized of the western Indians.” George Archibald McCall, *New Mexico in 1850: A Military View*, ed. Robert W. Frazer (Norman: University of Oklahoma Press, 1968), 101-02.

<sup>120</sup> Calhoun to Orlando Brown, Commissioner of Indian Affairs, Santa Fe, March 29, 1850, in Calhoun, 1915, 172. See, too, Calhoun to L. Lea, Commissioner of Indian Affairs, Santa Fe, August 31, 1851, in *ibid.*, 415.

## 7.

**Hopi Land and Water under Spanish and Mexican Law: The Pueblo League**

When the New Mexico Pueblos appealed to Spanish authorities for protection of their land, they often referred to their holdings as a measurable grant of land—what came to be known in New Mexico as the Pueblo league. The best articulation of this from a Pueblo Indian came late in the colonial period when the governor of Taos Pueblo asked the local Hispanic *alcalde*, at San Fernando de Taos, for protection against non-Indian encroachment on Taos land: “since the king, God keep him, has given us one league of land to the four winds, we request Your Excellency that it be delivered to us so that our families may have more land for planting and our livestock may have ample pasturage.”<sup>121</sup> The *alcalde* referred the case to the governor of New Mexico, who supported the position of Taos Pueblo by affirming the existence of a “five thousand vara league, measured from the cross of the cemetery in all directions, which His Majesty granted to each Indian pueblo from the beginning of its establishment.” The land, Maynez said, could not be given away or sold “without license from the king, because it is a patrimony or entailed estate, which no judge nor governor has the authority to sell, in whole or in part.”<sup>122</sup>

These statements from 1815 reflect a decades-long belief in New Mexico, one shared by Pueblos and non-Indians alike, that each Pueblo held a grant of four-square

<sup>121</sup> Governor José Francisco Luján, San Gerónimo de Taos, to Alcalde José Miguel Tafoya, April 11, 1815, translated in Jenkins, 1966, 101.

<sup>122</sup> Maynez to Tafoya, April 15, 1815, translated in Jenkins, 1966, 101. Taylor, 1979, pp. 76-77, n. 94, contains a transcription of the Spanish text of Maynez’s order. Taylor’s translation (p. 45) does not differ substantively from Jenkins’ translation.

leagues from the Crown.<sup>123</sup> Historians also accepted that idea, and came to believe that all of the Pueblos except the Hopis had received formal Spanish grants.<sup>124</sup> As historians searched for the grants themselves, however, they found, with just one exception, no credible evidence that Spanish authorities issued these grants.<sup>125</sup> To the contrary, a set of land grant documents attributed to the late 1600s proved to be forgeries.<sup>126</sup>

The likelihood, as William Taylor has explained, is that “the fixed Indian *pueblos* of New Mexico, like the sedentary Indian farming villages of central and southern Mexico[,] did not receive formal grants to the lands they had used before the arrival of Spaniards and to which they were entitled under colonial law.”<sup>127</sup> Rather, Taylor suggests, the boundaries of the lands of pre-existing Indian communities came to be established by adjudication when non-Indians challenged those boundaries. That occurred in central New Spain, and the same process seems to have occurred in New Mexico, although documents from the years before the Pueblo Revolt are scarce. The earliest written reference found to date of four-square league pueblo boundaries dates to 1704, and refers to land belonging to the pueblos of San Ildefonso and San Felipe.<sup>128</sup>

<sup>123</sup> Hall, 1987, 76, calculates that as applied to the Pueblos, each league measure a linear 2.3 miles, although a classical league would have measured 5,000 varas or 2.6 linear miles.

<sup>124</sup> Nineteen pueblos, it was once believed, had formal grants: Taos, Picuris, San Juan, Santa Clara, Pojoaque, San Ildefonso, Nambe, Tesuque, Cochiti, Santo Domingo, Jemez, Zia, Santa Ana, San Felipe, Sandia, Isleta, Laguna, Acoma, and Zuni. See, for example, Marc Simmons, "History of Pueblo-Spanish Relations to 1821," *Handbook of North American Indians*, vol. 9: *Southwest*, ed. Alfonso Ortiz (Washington: Smithsonian Institution, 1979), 182.

<sup>125</sup> The one exception was a grant to Sandia pueblo, made in the 1740s, but as Taylor, 1979, 43, points out: “since it was the re-establishment of a different group of Indians (Moqui [Hopi]) of a *pueblo* long abandoned, it cannot be assumed to be the prototype of grants issued to pueblos that had been occupied continuously from pre-Hispanic times. Sandia was treated as a new settlement and formal grants to new settlements were made as a matter of course in the colonial period.” For Sandia, see, too Hall, 1987, 71, 133, n. 5.

<sup>126</sup> Jenkins, 1972, 114-17; Sandra K. Mathews-Lamb, "Designing and Mischievous Individuals: The Cruzate Grants and the Office of the Surveyor General," *New Mexico Historical Review* 71 (Oct. 1996), 341-59.

<sup>127</sup> Taylor, 1979, 43.

<sup>128</sup> Taylor, 1979, 44, who also lists subsequent examples from Santa Clara, Santo Domingo, San Juan, Sandia, and Taos.

These four-square league “grants” were, as historian John Kessell argued in the case of Pecos, “a legal fiction,”<sup>129</sup> but the fiction became fact through “practice and custom.” “By 1821 in New Mexico,” as attorney/historian Emlen Hall authoritatively summarized the situation, it was widely believed that “the Pueblos each owned four square leagues,”<sup>130</sup> and that belief remained the conventional wisdom throughout the Mexican period and long after the United States acquired the Pueblos in 1848.<sup>131</sup>

Hopis, however, made no claim to a four-square league grant of land. They had no non-Indian neighbors so they suffered no encroachment on their lands from non-Indians, had no quarrels over boundaries with non-Indians, and had no need to adjudicate boundaries with non-Indians or obtain paper titles to land.<sup>132</sup> The contestation for land that led to the invention of the customary Pueblo league at most of the other New Mexico pueblos did not exist at the Hopi pueblos.

Although the Hopis never claimed or received a formal title, Spanish law recognized their preexisting rights, as it did the rights of all Indian villagers to lands they historically occupied. Pueblo historian Joe Sando has observed Spain did not “give” land

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<sup>129</sup> John L. Kessell, *Kiva, Cross, and Crown: The Pecos Indians and New Mexico* (Washington, D. C.: National Park Service, 1979), 439.

<sup>130</sup> Hall, 1987, 71-84, very ably explains the evolution of the Pueblo league and the confusion over how to apply it. The quotations are on pp. 76 and 77. See, too, G. Emlen Hall, *Four Leagues of Pecos: A Legal History of the Pecos Grant* (Albuquerque: University of New Mexico Press, 1984), 13-14.

<sup>131</sup> Since Mexico declared all residents of Mexico citizens in 1821 and thus ended the Pueblos’ status as wards, Hall asks “what was left of the Pueblo league if that league had arisen from and depended on that Pueblo wardship status.” Hall, 1987, 85. It seems to me, however, that whatever the philosophical basis for the existence of the Pueblo league, it had become a widely accepted form of community grant that no longer depended on Indians’ wardship status to be enforced. Rulings from the Mexican period, cited above, and Hall’s own reference to the 1829 decision in the Pecos case (p. 90), would seem to bear that out. Pueblo communal property came to enjoy protections because it was privately owned by Indian corporations and not simply because it was owned by Indians.

<sup>132</sup> Brew, “The History of Awatovi,” in Montgomery, Smith, and Brew, 1949, 20, observed that no Spanish colonists ever established themselves at Hopi, and historians have found no evidence since 1949 to dispute that.

to Pueblos; Pueblos already possessed it.<sup>133</sup> From the point of view of the Crown, however, all lands in the American empire belonged to the Spanish Crown which in its wisdom chose to recognize the aboriginal rights of Indian communities. The titles to land that Spanish officials did bestow upon Indian communities were legal instruments designed to settle and limit their boundaries, bring Indian lands into the Spanish legal system, and put Indian property on a par with grants made to non-Indians.

Titles to land, then, had utility for Indians, but they were not essential under Spanish law. At its heart, Spanish law protected Indian lands and water at a more fundamental level than did legal instruments. Indians deserved protection just because they were Indians. As Myra Ellen Jenkins wrote in the case of Laguna Pueblo, “it is upon the provisions of Spanish law guaranteeing Indian title to all land used or occupied, and freedom from white trespass, that the title of the pueblo of Laguna rests . . . rather than upon a specific Spanish pueblo grant . . . .”<sup>134</sup>

Contemporaries also recognized this principle. In 1786, for example, New Mexico’s Protector of Indians, Carlos Fernández, argued that Pueblo Indians did not need paper titles. That year a group of settlers challenged Santa Clara Pueblo’s right to land on the grounds that the pueblo had failed to produce title papers. Fernández replied in the pueblo’s defense: “It is useless to ask that the Indians established in pueblos present grants to the lands they justly possess, because their grants are manifest in the royal laws of our sovereigns to which no objection can or should be made.”<sup>135</sup> Late in the colonial

<sup>133</sup> Joe S. Sando, *The Pueblo Indians* (San Francisco: The Indian Historian Press, 1976), 91; Hall, 1987, 72.

<sup>134</sup> Jenkins, 1961, 50-51, who wrote this at a time when some historians supposed that Pueblos did have land grants—and so she completed her sentence by saying: “for although there was probably a grant to Laguna, as well as to other New Mexico pueblos, it has apparently been lost.”

<sup>135</sup> The translation is in Jenkins, 1972, 129. The document itself is: Carlos Fernández, Procurador y defensor de los pueblos de Santa Clara y San Ildefonso to Juan Bautista de Anza, Gobernador Político y Militar de Nuevo Mexico, Santa Fe, May 30, 1786 (“*Pedir que los Yndios radicados en Pueblos, presenten*

period, then, Carlos Fernández, the Protector of Indians in New Mexico, understood that sedentary Indian communities like the Hopis had a right to land and its attendant water, whether or not that community held explicit title to that land.

Even without the protection that Spanish law gave to sedentary Indian communities, however, Pueblo Indians could have made a good case for recognition of their legal rights to land and water by appealing to the principles of prior use, need, and equity.<sup>136</sup> Malcolm Ebright has found two cases in New Mexico where claimants lacked title but won recognition of their rights to land on the basis of their use of it. This Ebright terms “the Spanish doctrine of prescription, allowing acquisition of title to property through possession even when there were no written records.”<sup>137</sup> Pueblos, like the Hopis, certainly had abundant evidence of usage on their side.

None of this appears to have changed under independent Mexico. Although newly independent Mexico proclaimed the equality of all Mexicans, local officials in New Mexico continued to recognize the special status of the Pueblos and their rights to long-used lands and waters.

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*mercedes de las tierras que justamente poseen es pedimento y nutil, porque sus mercedes estan constantes en Las Reales Leyes de nuestros soberanos, a las que no se puede, ni deve poner objecion alguna”),* in the “Proceedings in the definition of the boundaries of the pueblos of Santa Clara and San Ildefonso,” Spanish Archives of New Mexico I (Land Records of New Mexico), roll 6, frame 1606.

<sup>136</sup> Meyer, 1984, p. 147-48, is surely right in stressing the importance of holding a title to land, and he cites a case where the Indians of San Ildefonso’s lack of a title apparently led to their loss in a case against a non-Indian.

<sup>137</sup> Ebright, 1995, 213-15, 223.

## Conclusion

Whatever their actual relationship to Spain or Mexico, the Hopis' residency within Spanish and Mexican territory gave them certain protections under the law. Like other Pueblos, and in contrast to Indians who did not dwell in permanent villages, Hopis had rights to land and water. Like many other New Mexicans who fell under control of the U.S. government in 1848, the Hopis' water rights had not been specifically granted or officially allocated, but Hopis held those rights nonetheless under Spanish and Mexican formal law and under New Mexican customary law, which assumed that land carried an implied right to water and that the prior use, need, and protected status of sedentary Indians gave them a superior right to water. This was not an absolute right. Scholars of New Mexico water law have taught us that if an allocation of surface water to the Hopis had been made in the Spanish or Mexican eras, the official in charge would have considered the principle of equity as well—that is, he would have taken into account the needs and claim of others to that same surface water. This conclusion reflects more than my views. It does, I believe, reflect the consensus of current scholarship.

When Stephen Watts Kearny conquered New Mexico in 1846 he instructed one of his officers to prepare a code of laws. One of those laws provided for the continuation of Spanish and Mexican law: "All laws heretofore in force in this Territory, which are not repugnant to, or inconsistent with the Constitution of the United States and the laws

thereof, or the statute laws in force for the time being, shall be the rule of action and decision in this Territory.”<sup>138</sup>

When Mexico signed over its northern provinces to the United States in 1848, it negotiated safeguards for Mexicans who lived in those lands. As finally ratified, the Treaty of Guadalupe Hidalgo contained two articles that concerned those Mexicans, articles VIII and IX.

Article VIII as ratified:

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in said territories, or disposing thereof, and removing the proceeds wherever they please; without their being subjected, on this account, to any contribution, tax or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of the United States. But they shall be under the obligation to make their election within one year from the date of this exchange of ratifications of this treaty [May 30, 1848]; and those who shall remain in the said territories, after the expiration of that year, without having declared their intention to retain the character

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<sup>138</sup> Leyes del territorio de Nuevo Mejico. Santa Fe, a 7 de octubre 1846. Laws of the Territory of New Mexico. Santa Fe, October 7 1846, ed. Nolie Mumey (1st ed., 1846; facsimile edition, Denver, CO: n.p., 1970), 83 (Laws, Section 1).

of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to citizens of the United States.

Article IX as ratified:

Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the mean time shall be maintained and *protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.*<sup>139</sup>

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<sup>139</sup> David J. Weber, ed. Foreigners in Their Native Land: Historical Roots of the Mexican Americans (1st ed., 1973; 30th anniversary edition, Albuquerque: University of New Mexico Press, 2003), 163-63. Italics added. The treaty was signed at Guadalupe Hidalgo on February 2, 1848. The U.S. Senate, after amending the treaty, ratified it on March 16, 1848. The treaty is readily available in a number of sources including Richard Griswold del Castillo, The Treaty of Guadalupe Hidalgo: A Legacy of Conflict (Norman: University of Oklahoma Press, 1990), 183-99, who provides context.

Like most Mexican subjects, the Hopis chose to remain in their homeland. The Treaty of Guadalupe Hidalgo made it clear that the property of Mexicans would be respected, and if the Treaty had not existed, Secretary of State James Buchanan assured the Mexican government that Mexican property would be protected in any event. On March 18, 1848, Buchanan told his Mexican counterpart:

. . . if no stipulation whatever were contained in the Treaty to secure to the Mexican inhabitants and all others protection in the free enjoyment of their liberty, property and the religion they profess, these would be amply guaranteed by the Constitution and laws of the United States. These invaluable blessings, under our form of government, do not result from Treaty stipulations, but from the very nature and character of our institutions.<sup>140</sup>

Neither the Treaty of Guadalupe Hidalgo nor James Buchanan specifically mentioned Pueblo or sedentary Indians, but in taking New Mexico, General Stephen Watts Kearny had distinguished between “all quiet and peaceable inhabitants,” whose property he promised to protect, and the “enemies” of the peaceable people, the Eutaws [Utes], Navajos and others.”<sup>141</sup> The Treaty of Guadalupe Hidalgo had devoted an article (XI) to the “savage tribes,” whose incursions into Mexico the United States promised to contain, and made it clear that the “savage tribes” were not among the Mexicans whose property it promised to protect.

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<sup>140</sup> Weber, 2003, 168.

<sup>141</sup> Kearny’s proclamation of August 22, 1846, in Ralph Emerson Twitchell, The History of the Military Occupation of the Territory of New Mexico from 1846 to 1851 by the Government of the United States (Danville, ILL: Interstate Printers and Publishers, 1909), 79.

It remained for American officials to determine how the Pueblos should be treated under the new regime—as Indians or as Mexican citizens—and American officials found themselves divided over the same fundamental question that had divided New Mexico officials before them. Should Pueblo Indians have the rights of citizens, including the right to sell community land? Or should Pueblo Indians fall under the control of the federal government, which would keep them under control and protect their lands? Under Mexico, the Pueblos were citizens in theory but retained a special protected status in practice. Under the United States, the Pueblos' status also remained ambiguous and the subject of contention for decades after the signing of the Treaty of Guadalupe Hidalgo.<sup>142</sup>

In 1876, in the Joseph case, the Supreme Court judged the Pueblos to be so civilized that they had ceased for all intents and purposes to be Indians. Agreeing with the judgment of a lower court ruling that the Pueblos were “Indians only in feature, complexion, and a few of their habits,” the Supreme Court declined to classify the Pueblos as “Indian tribes” and instead equated them with “Shakers and other communistic societies in this country.” The Supreme Court recognized that the Pueblos held title to lands going back to Spain and Mexico, but ruled that because the Pueblos did not merit the special protections that the United States government granted to other more Indian-like Indians that they could dispose of their land in any way they saw fit.<sup>143</sup> In

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<sup>142</sup> For a good summary of the legal status of Pueblos in the three decades following the Treaty of Guadalupe Hidalgo, see Deborah A. Rosen, “Pueblo Indians and Citizenship in Territorial New Mexico,” *New Mexico Historical Review* 78 (Winter 2003), 1-28, who suggests that the positions of U.S. government officials depended on their economic interests as much as on their philosophical stances. The ambiguous nature of the Pueblos' legal status was dramatically illustrated in two well-known cases that went before the Supreme Court, the U.S. v Joseph, 94 U.S. 614 (1876) and U.S. v Sandoval, 231 U.S. 28, 48 (1913). These cases have been described and analyzed in a number of sources, such as Felix S. Cohen, *Handbook of Federal Indian Law* (Washington: Government Printing Office, 1942), 385-90.

<sup>143</sup> The U.S. v Joseph, 94 U.S. 614 (1876), quoted at length in Cohen, 1942, 387-88, quotation on p. 388.

1913, in the Sandoval decision, the Supreme Court overturned its ruling in the Joseph case. In the Sandoval decision, as summarized by one of the nation's leading scholars of Indian law, Felix Cohen, "the court pointed out that neither the outright ownership of land by the Pueblos nor the claim of the Pueblo Indians to citizenship . . . stood as an obstacle to the exercise of federal guardianship by Congress."<sup>144</sup> The Sandoval ruling, then, rendered sixty-five years after the United States acquired sovereignty over the Pueblos, U.S. policy toward those Indians came to resemble the paternalistic Spanish-Mexican policy.

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<sup>144</sup> Cohen, 1942, 389, commenting on the U.S. v Sandoval, 231 U.S. 28, 48 (1913).

### Sources Cited

- Adams, E. Charles. "Passive Resistance: Hopi Responses to Spanish Contact and Conquest." Columbian Consequences. Vol. I: Archaeological and Historical Perspectives on the Spanish Borderlands West, ed. David Hurst Thomas, 77-91. Washington, D.C.: Smithsonian Institution Press, 1989.
- Adams, Eleanor B. "Fray Silvestre and the Obstinate Hopi." New Mexico Historical Review 38 (1963): 97-138.
- Anonymous. "Relaciones de Nuevo-Mexico." Documentos para la historia de Méjico. Tercera Serie, 127-225. Mexico: Imprenta de J.R. Navarro, 1856.
- Baade, Hans W. "The Historical Background of Texas Water Law." St. Mary's Law Journal 18 (1986): 1-98.
- Bandelier, A. F. Final Report of Investigations among the Indians of the Southwestern United States, Carried on Mainly in the Years from 1880 to 1885. 2 vols., Cambridge, MA: Papers of the Archaeological Institute of America, 1890-1892.
- Baxter, John O. Dividing New Mexico's Waters, 1700-1912. Albuquerque: University of New Mexico Press, 1997.
- Borah, Woodrow. Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real. Berkeley: University of California Press, 1983.
- Brayer, Herbert. Pueblo Indian Land Grants of the "Rio Abajo," New Mexico. Albuquerque: University of New Mexico Press, 1939.
- Brew, J. O. "Hopi Prehistory and History to 1850." Handbook of North American Indians, vol. 9: Southwest, ed. Alfonso Ortiz, 514-23. Washington: Smithsonian Institution, 1979.
- Brooks, Philip Coolidge. Diplomacy and the Borderlands: The Adams-Onís Treaty of 1819. Berkeley: University of California Press, 1939.
- Brugge, David M. ed. and trans. "Vizcarra's Navajo Campaign of 1823." Arizona and the West 6 (1964): 223-44.
- Brugge, David M. and J. Lee Correll. The Story of the Navajo Treaties with Texts in English. Navajo Historical Publication Documents Series, 1. Window Rock, AZ: Research Station, Navajo Parks and Recreations Department. The Navajo Tribe, 1971.
- Calhoun, James S. The Official Correspondence of James S. Calhoun while Indian Agent at Santa Fé and Superintendent of Indian Affairs in New Mexico, ed. Annie Heloise Abel. Washington: Government Printing Office, 1915.
- Carroll, H. Bailey and J. Villasana Haggard, eds. and trans. Three New Mexico

Chronicles. Albuquerque: The Quivira Society, 1942.

Clark, Ira G. Water in New Mexico. A History of its Management and Use. Albuquerque: University of New Mexico Press, 1987.

Cohen, Felix S. Handbook of Federal Indian Law. Washington: Government Printing Office, 1942.

Cohen, Felix S. "The Spanish Origin of Indian Rights in the Law of the United States." The Legal Conscience: Selected Papers of Felix S. Cohen, ed. Lucy Kramer Cohen, 230-52. New Haven: Yale University Press, 1960.

Cortés, José. Views from the Apache Frontier: Report on the Northern Provinces of New Spain by José Cortés, Lieutenant in the Royal Corps of Engineers, 1799, ed. and trans. Elizabeth A. H. John and John Wheat. Norman: University of Oklahoma Press, 1989.

Covarrubias, Sebastián de. Tesoro de la lengua castellana o española, según la impresión de 1611, con las adiciones de Benito Remigio Noydens publicadas en la de 1674. ed. Martín de Riquer. 1st ed., 1611; Barcelona: S. A. Horta, 1943.

Cutter, Charles R. The Protector de Indios in Colonial New Mexico, 1659-1821. Albuquerque: University of New Mexico, 1986.

Cutter, Charles R. The Legal Culture of Northern New Spain, 1700-1810. Albuquerque: University of New Mexico Press, 1995.

Deloria, Vine Jr. and Raymond J. DeMallie. Documents of Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979. 2 vols.; Norman: University of Oklahoma Press, 1999.

Dobyns, Henry F. "Sixteenth-century Tusayan." American Indian Quarterly 15, no. 2 (1991): 187-200.

\_\_\_\_\_. "Response: Superhuman Hearing, Superhuman Horses, Miraculous Maize." American Indian Quarterly 17, no. 3 (1993): 384-91.

Dockstader, Frederick J. The Kachina and the White Man: The Influences of White Culture on the Hopi Kachina Cult. 1st ed., 1954; rev. ed., Albuquerque: University of New Mexico Press, 1985.

Dublán, Manuel and José María Lozano, eds. Legislación mexicana, o colección completa de las disposiciones legislativas expedidas desde la independencia de la República [1821-1912]. 42 vols. México: Imprenta del Comercio, 1876-1912.

Duff, Andrew. Western Pueblo Identities: Regional Interaction, Migration, and Transformation. Tuscon: University of Arizona Press, 2002.

DuMars, Charles T., Marilyn O'Leary, and Albert E. Utton. Pueblo Indian Water Rights:

- Struggle for a Precious Resource. Tucson: University of Arizona Press, 1984.
- Ebright, Malcolm. Land Grants and Lawsuits in Northern New Mexico. Albuquerque: University of New Mexico Press, 1994.
- Ebright, Malcolm. "Frontier Land Litigation in Colonial New Mexico: A Determinant of Spanish Custom and Law." Western Legal History 8 (1995): 199-226.
- \_\_\_\_\_. "Breaking New Ground: A Reappraisal of Governors Vélez Cachupín and Mendinueta and Their Land Grant Policies." Colonial Latin American Historical Review 5 (1996): 195-233.
- Engstrand, Iris Wilson. "Land Grant Problems in the Southwest: The Spanish and Mexican Heritage." New Mexico Historical Review 53 (1978): 317-36.
- Escudero, José Agustín de. Noticias estadísticas de Sonora y Sinaloa (1849). ed. Héctor Cuauhtémoc Hernández Silva. 1st ed., 1849; Hermosillo: Universidad de Sonora, 1997.
- Ferguson, T. J. and Roger Anyon. "Hopi and Zuni Cultural Landscapes: Implications of History and Scale for Cultural Resources Management." Native Peoples of the Southwest. Negotiating Land, Water, and Ethnicities, ed. Laurie Weinstein, 99-122. Westport, CT: Bergin & Garvey, 2001.
- Flagler, Edward K. Defensores de la madre tierra. Relaciones interétnicas: Los españoles y los indios de Nuevo México. Palma de Mallorca: Hesperus, 1997.
- Flint, Richard and Shirley Cushing Flint, eds. and trans. Documents of the Coronado Expedition, 1539-1542. 'They Were Not Familiar with His Majesty, nor Did They Wish to Be His Subjects'. Dallas: SMU Press, 2005.
- Galvan [Rivera], Mariano, ed. Ordenanzas de tierras y aguas . . . vigentes hasta el día en la República Mexicana. 1st ed., 1842; 4th ed., corrected and expanded; Mexico: Librería del Portal de Mercaderes, 1851.
- Gibson, Charles, ed. The Spanish Tradition in America. New York: Harper & Row, 1968.
- Glick, Thomas F. The Old World Background of the Irrigation System of San Antonio, Texas. Southwestern Studies, Monograph no. 35. El Paso: Texas Western Press, 1972.
- González Navarro, Moisés. "Instituciones indígenas en el México independiente." La política indigenista en México, eds. Alfonso Caso and others, 1:207-313. 1st ed., 1954; 1st new edition, 2 vols. México: Instituto Nacional Indigenista, 1991.
- Greenleaf, Richard E. "Land and Water in Mexico and New Mexico, 1700-1821." New Mexico Historical Review 47 (1972): 85-112.
- Gregg, Josiah. Commerce of the Prairies, ed. Max L. Moorhead. 1st ed., 1844; Norman: University of Oklahoma Press, 1954.

Griswold del Castillo, Richard. The Treaty of Guadalupe Hidalgo: A Legacy of Conflict. Norman: University of Oklahoma Press, 1990.

Hall, Frederick. The Laws of Mexico: A Compilation and Treatise Relating to Real Property, Mines, Water Rights, Personal Rights, Contracts, and Inheritances. San Francisco: A. L. Bancroft and Company, 1885.

Hall, G. Emlen. Four Leagues of Pecos: A Legal History of the Pecos Grant. Albuquerque: University of New Mexico Press, 1984.

\_\_\_\_\_. "The Pueblo Land Grant Labyrinth." Land, Water, and Culture: New Perspectives on Hispanic Land Grants, eds. Charles L. Briggs and John R. Van Ness, 67-138. Albuquerque: University of New Mexico Press, 1987.

Hall, G. Emlen and David J. Weber. "Mexican Liberals and the Pueblo Indians, 1821-1829." New Mexico Historical Review 59 (1984): 5-32.

Hammond, George P. and Agapito Rey, eds. and trans. Don Juan de Oñate: Colonizer of New Mexico, 1595-1628. 2 vols.; Albuquerque: University of New Mexico Press, 1953.

James, Harry C. Pages from Hopi History. Tucson: University of Arizona Press, 1974.

Jenkins, Myra Ellen. "The Baltasar Baca 'Grant': History of an Encroachment." El Palacio 68 (1961): 47-64.

\_\_\_\_\_. "Taos Pueblo and its Neighbors, 1540-1847." New Mexico Historical Review 41 (1966): 85-114.

\_\_\_\_\_. "Spanish Land Grants in the Tewa Area." New Mexico Historical Review 47 (1972): 113-34.

Jenkins, Myra Ellen. "The Pueblo of Nambé and Its Lands." The Changing Ways of Southwestern Indians: A Historic Perspective, ed. Albert H. Schroeder, 91-106. Glorieta, NM: The Rio Grande Press, 1973.

Kessell, John L. Kiva, Cross, and Crown: The Pecos Indians and New Mexico. Washington, D. C.: National Park Service, 1979.

Kessell, John L., Rick Hendricks, and Meredith D. Dodge, eds. and trans. To the Royal Crown Restored: The Journals of don Diego de Vargas, New Mexico, 1692-1694. Albuquerque: University of New Mexico Press, 1995.

Kuwanwifwima, Leigh and T. J. Ferguson. "Ang Kuktota, Hopi ancestral Sites and Cultural Landscapes." Expedition 46, no. 2 (2004): 24-29.

Laird, W. David. Hopi Bibliography: Comprehensive and Annotated. Tucson: University of Arizona Press, 1977.

Leonard, Irving Albert, ed. and trans. The Mercurio Volante of Don Carlos de Sigüenza y Góngora: An Account of the First Expedition of Don Diego de Vargas into New Mexico in 1692. Los Angeles: Quivira Society, 1932.

Lomawaima, Hartman H. "Hopification, a Strategy for Cultural Preservation." Columbian Consequences. Vol. I: Archaeological and Historical Perspectives on the Spanish Borderlands West, ed. David Hurst Thomas, 93-99. Washington, D.C.: Smithsonian Institution Press, 1989.

Maas, Otto. Viajes de misioneros franciscanos á la conquista del Nuevo México. Documentos del Archivo General de Indias (Sevilla). Sevilla: Imprenta de San Antonio, 1915.

Margadant, Guillermo F. "El régimen de aguas en el derecho indiano." Recopilación de leyes de los reynos de las indias: Estudios histórico-jurídicos, ed. Francisco de Icaza Dufour, 499-514. Mexico: Miguel Ángel Porrúa, 1987.

Margadant S., Guillermo F. "Mexican Colonial Land Law." Spanish and Mexican Land Grants and the Law, ed. Malcolm Ebright, 85-99. Manhattan, KS: Sunflower University Press, 1989.

Mathews-Lamb, Sandra K. "'Designing and Mischievous Individuals': The Cruzate Grants and the Office of the Surveyor General." New Mexico Historical Review 71 (1996): 341-60.

McCall, George Archibald. New Mexico in 1850: A Military View. ed. Robert W. Frazer. Norman: University of Oklahoma Press, 1968.

McIntire, Elliot G. "Changing Patterns of Hopi Indian Settlement." Annals of the Association of American Geographers 61, no. 3 (1971).

Meyer, Michael C. Water in the Hispanic Southwest: A Social and Legal History, 1550-1850. Tucson: University of Arizona Press, 1984.

\_\_\_\_\_. "The Legal Relationship of Land to Water in Northern Mexico and the Hispanic Southwest." New Mexico Historical Review 60 (1985): 61-80.

Minge, Ward Alan. "Frontier Problems in New Mexico preceding the Mexican War, 1840-1846." PhD diss., University of New Mexico, 1965.

Montgomery, Ross Gordon, Watson Smith, and John Otis Brew. Franciscan Awatovi: The Excavation and Conjectural Reconstruction of a Seventeenth-Century Spanish Mission Establishment at a Hopi Indian Town in Northeastern Arizona. Papers of the Peabody Museum, Harvard, vol. 36. Cambridge: Peabody Museum of American Archaeology and Ethnology, 1949.

Morner, Magnus. La corona española y los foráneos en los pueblos de indios de América. 1st ed., 1970; Madrid: Ediciones de Cultura Hispánica, 1999.

Leyes del territorio de Nuevo Mejioco. Santa Fe, a 7 de octubre 1846. Laws of the Territory of New Mexico. Santa Fe, October 7 1846, ed. Nolie Mumey. 1st ed., 1846; facsimile edition, Denver, CO: n.p., 1970.

Page, Gordon B. "Hopi Agricultural Notes." Ms., on file, USDA Soil Conservation Service, Washington, D.C., 1940.

Patrick, Elizabeth Nelson. "Land Grants during the Administration of Governor Mendinueta." New Mexico Historical Review 51 (1976): 5-18.

Radding, Cynthia. Wandering Peoples: Colonialism, Ethnic Spaces, and Ecological Frontiers in Northwestern Mexico, 1700-1850. Durham: Duke University Press, 1997.

Recopilación de leyes de los Reynos de las Indias . . . 4 vols.; 1st ed., Madrid: 1681; facsimile reprint, Madrid : Editorial Cultural Hispánica, 1973.

Rosen, Deborah A. "Pueblo Indians and Citizenship in Territorial New Mexico." New Mexico Historical Review 78 (2003): 1-28.

Sánchez, Joseph P. ed. "El Plan de Pitic de 1789 [1783] y las nuevas poblaciones proyectadas en las Provincias Internas de la Nueva España." Colonial Latin American Historical Review 2 (1993): 449-67.

Sando, Joe S. The Pueblo Indians. San Francisco: The Indian Historian Press, 1976.

Schroeder, Albert H. "Comments on Henry Dobyns' Sixteenth-century Tusayan." American Indian Quarterly 17, no. 3 (1993): 379-84.

Simmons, Marc. Spanish Government in New Mexico. Albuquerque: University of New Mexico, 1968.

Simmons, Marc. "History of Pueblo-Spanish Relations to 1821." Handbook of North American Indians, vol. 9: Southwest, ed. Alfonso Ortiz, 178-93. Washington: Smithsonian Institution, 1979.

Solano, Francisco de, ed. Cedulario de tierras. Compilación de legislación agraria colonial (1497-1820). Mexico: Universidad Nacional Autónoma de Mexico, 1984.

Sánchez, Jane C. "The Plan of Pitic: Galindo Navarro's Letter to Teodoro de Croix, Comandante General de las Provincias Internas." Colonial Latin American Historical Review 3 (1994): 79-89.

Taylor, William B. "Colonial Land and Water Rights of New Mexican Indian Pueblos (with special reference to the Tewa Region)." manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], [1979].

\_\_\_\_\_. "Land and Water Rights in the Viceroyalty of New Spain." New Mexico Historical Review 50 (1975): 189-212.

\_\_\_\_\_. "Memorandum to Herbert A. Becker, Assistant U.S. Attorney, District of New Mexico, re: Daniel Tyler, 'Land and Water Tenure in New Mexico, 1821-1846' [July 21, 1983]." manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], 1983.

Tena Ramírez, Felipe. Leyes fundamentales de México, 1808-1978. 1st ed., 1957; 8th edition, Mexico: Editorial Porrúa, 1978.

Thomas, Alfred B., ed. and trans. Forgotten Frontiers: A Study of the Spanish Indian Policy of Don Juan Bautista de Anza, Governor of New Mexico, 1777-1787. Norman: University of Oklahoma Press, 1932.

Twitchell, Ralph Emerson. The History of the Military Occupation of the Territory of New Mexico from 1846 to 1851 by the Government of the United States. Danville, ILL.: Interstate Printers and Publishers, 1909.

Tyler, Daniel. "Mexican Indian Policy in New Mexico." New Mexico Historical Review 55 (1980): 101-20.

\_\_\_\_\_. "Land and Water Tenure in New Mexico, 1821-1846." manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], 1983.

\_\_\_\_\_. "Ejido Lands in New Mexico." Spanish and Mexican Land Grants and the Law, ed. Malcolm Ebright, 24-35. Manhattan, KS: Sunflower University Press, 1989.

\_\_\_\_\_. The Mythical Pueblo Rights Doctrine: Water Administration in Hispanic New Mexico, intro Iris W. Engstrand. El Paso: Texas Western Press, 1990.

\_\_\_\_\_. "The Spanish Colonial Legacy and the Role of Hispanic Custom in Defining New Mexico Land and Water Rights." Colonial Latin American Historical Review 4 (1995): 149-65.

Tyler, S. Lyman, ed. and trans. Spanish Laws Concerning Discoveries, Pacifications, and Settlements Among the Indians. Occasional Papers vol. 17. Salt Lake City: University of Utah American West Center, 1980.

Weber, David J. The Taos Trappers: The Fur Trade in the Far Southwest, 1540-1846. Norman: University of Oklahoma Press, 1971.

Weber, David J. The Mexican Frontier, 1821-1846: The American Southwest Under Mexico. Albuquerque: University of New Mexico Press, 1982.

Weber, David J. "The New Mexico Archives in 1827." New Mexico Historical Review 61 (1986): 53-61.

Weber, David J. The Spanish Frontier in North America. New Haven: Yale University Press, 1992.

\_\_\_\_\_, ed. Foreigners in Their Native Land: Historical Roots of the Mexican Americans. 1st ed., 1973; 30th anniversary edition, Albuquerque: University of New Mexico Press, 2003.

\_\_\_\_\_. Bárbaros: Spaniards and Their Savages in the Age of Enlightenment. New Haven: Yale University Press, 2005.

Whiteley, Peter M. "Historic Hopi Use and Occupancy of the Little Colorado Watershed, 1540-1900." manuscript report prepared for the Hopi tribe, 2004.

Zorrilla, Luis G. Historia de las relaciones entre México y los Estados Unidos de América, 1800-1958. Biblioteca Porrúa, 29-30. 2 vols. Mexico: Editorial Porrúa, 1965-1966.

Zúñiga, C. Ignacio. Rápida Ojeada al Estado de Sonora. Mexico: Juan de Ojeda, 1835.

## Exhibits

Most of the sources used for this report are readily available in academic libraries at major universities, or readily available by purchase. I have, then, limited the attachments to the following:

- HX-DJW-APP-1 p. 57  
 Book 4, title 12 (with laws 1-23), from the Recopilación de leyes de los Reynos de las Indias . . . 1st ed., 1681; 4 vols. Madrid: Editorial Cultural Hispánica, 1973, and an English translation of Book 4, title 12 (with laws 1-23), from S. Lyman Tyler, ed. and trans., Spanish Laws Concerning Discoveries, Pacifications, and Settlements Among the Indians. Occasional Papers vol. 17. Salt Lake City: University of Utah American West Center, 1980. Pp. 155-169.
- HX-DJW-APP-2 p. 58  
 Taylor, William B. "Land and Water Rights in the Viceroyalty of New Spain." New Mexico Historical Review 50 (July 1975): 189-212.
- HX-DJW-APP-3 p. 59  
 Taylor, William B. "Colonial Land and Water Rights of New Mexican Indian Pueblos (With Special Reference to the Tewa Region)." manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al., 1979].
- HX-DJW-APP-4 p. 60  
 Tyler, Daniel. "Land and Water Tenure in New Mexico, 1821-1846." manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], 1983, with a response to this by William B. Taylor, "Memorandum to Herbert A. Becker, Assistant U.S. Attorney, District of New Mexico, Re: Daniel Tyler, 'Land and Water Tenure in New Mexico, 1821-1846,' " manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.] 1983.

## HX-DJW-APP-1

Book 4, title 12 (with laws 1-23), from the Recopilación de leyes de los Reynos de las Indias . . .. 1st ed., 1681; 4 vols. Madrid: Editorial Cultural Hispánica, 1973, and an English translation of Book 4, title 12 (with laws 1-23), from S. Lyman Tyler, ed. and trans., Spanish Laws Concerning Discoveries, Pacifications, and Settlements Among the Indians. Occasional Papers vol. 17. Salt Lake City: University of Utah American West Center, 1980. Pp. 155-169.

## HX-DJW-APP-2

Taylor, William B. "Land and Water Rights in the Viceroyalty of New Spain." New Mexico Historical Review 50 (July 1975): 189-212.

**HX-DJW-APP-3**

Taylor, William B. "Colonial Land and Water Rights of New Mexican Indian Pueblos (With Special Reference to the Tewa Region)." manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al., 1979].

## HX-DJW-APP-4

Tyler, Daniel. "Land and Water Tenure in New Mexico, 1821-1846." manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.], 1983, with a response to this by William B. Taylor, "Memorandum to Herbert A. Becker, Assistant U.S. Attorney, District of New Mexico, Re: Daniel Tyler, 'Land and Water Tenure in New Mexico, 1821-1846,' " manuscript [prepared for the State of New Mexico vs. R. Lee Aamodt, et al.] 1983.

## Author's Curriculum Vitae

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### EDUCATION:

B.S. (1962), Social Sciences, State University of New York, College at Fredonia

M. A. (1964) & Ph.D. (1967), History, University of New Mexico

### TEACHING & ADMINISTRATIVE EXPERIENCE:

Assistant Professor of History, Sept. 1967 to Aug. 1970, San Diego State University

Fulbright-Hays Lecturer, March 1970 to Dec. 1970, Universidad de Costa Rica, (lectures in Spanish)

Associate Professor of History, Sept. 1970 to Aug. 1973, San Diego State University

Professor of History, Sept. 1973 to Aug. 1976, San Diego State University

Professor of History, Sept. 1976 to present, Southern Methodist University

SMU-in-Spain, Madrid, Jan. 1977 to May 1977

Professor of History and Department Chairman, Aug. 1979 to June 1986, Southern Methodist University

Robert and Nancy Dedman Professor of History, Sept. 1986 to present, Southern Methodist University

SMU-in-Spain, Madrid, Director, Sept. 1989 to May 1990

Director, William P. Clements Center for Southwest Studies, Southern Methodist University, Sept. 1995-

Visiting Professor (Profesor invitado) in the program: Doctorado Interuniversitario en Historia, taught at the Facultad de Ciencias Humanas, IEHS, Universidad Nacional del Centro, Tandil, Argentina, August 2000.

Visiting Professor of History, Harvard, fall semester, 2002

### COURSES TAUGHT:

Latin America (Colonial and Modern); Mexico; Frontiers in the Americas; Spanish Borderlands; American Southwest; Mexican-American; Worlds of Christopher Columbus; Historical Method.

**SCHOLARLY PUBLICATIONS:****Books**

The Taos Trappers: The Fur Trade in the Far Southwest, 1540-1846. Norman: University of Oklahoma Press, 1971. Paperback reprints, 1980, 1982, 1991, 1996, 2005.

The Mexican Frontier, 1821-1846: The American Southwest Under Mexico, in the Histories of the American Frontier Series, edited by Ray Allen Billington and Howard R. Lamar. Albuquerque: University of New Mexico Press, 1982, hardcover and paper. 7<sup>th</sup> paperback reprint, 2001.

Spanish-language editions: La frontera norte de México, 1821-1846. El sudoeste norteamericano en su época mexicana. Mexico City: Fondo de Cultura Económica, 1988 and Madrid: Editorial Mapfre, 1992.

Richard H. Kern: Expeditionary Artist in the Far Southwest, 1848-1853. Albuquerque: University of New Mexico Press, for the Amon Carter Museum, 1985.

Myth and the History of the Hispanic Southwest: Essays by David J. Weber. Albuquerque: University of New Mexico Press, 1988. 3<sup>rd</sup> paperback reprint, 2002.

The Californios vs. Jedediah Smith: A New Cache of Documents. Spokane, WA: Arthur H. Clark Co., 1990.

The Spanish Frontier in North America. New Haven: Yale University Press, 1992. Paperback and cloth. 7 printings.

Spanish language edition: La frontera española en América del Norte. Mexico City: Fondo de Cultura Económica, 2000.

On the Edge of Empire: The Taos Hacienda of Los Martínez. Santa Fe: Museum of New Mexico Press, 1996. Paperback and cloth.

Spanish Bourbons and Wild Indians. The Twenty-Sixth Charles Edmondson Lectures. Waco: Baylor University Press, 2004.

Bárbaros: Spaniards and Their Savages in the Age of Enlightenment. New Haven: Yale University Press, 2005. Paperback, 2006. Spanish language edition, forthcoming, Barcelona: Editorial Crítica.

**Edited Books**

Ed. and trans., The Extranjeros: Selected Documents from the Mexican Side of the Trail, 1825-1828. Santa Fe: Stagecoach Press, 1967.

Ed., Prose Sketches and Poems Written in the Western Country (With Additional Stories), by Albert Pike. Albuquerque: Calvin Horn, Publisher, 1967 (reprint, hardcover and paperback, College Station: Texas A&M Press Southwest Landmarks Series, 1987.)

Ed., Foreigners in Their Native Land: Historical Roots of the Mexican Americans. University of New Mexico Press, 1973 (12<sup>th</sup> printing 1999, a 30<sup>th</sup> anniversary edition, 2003, with new introduction by Arnaldo de León, and my new afterword).

Ed., The Lost Trappers, by David H. Coyner. Albuquerque: University of New Mexico Press, 1970 (reprint with new afterword, paperback, University of Oklahoma Press, 1995).

Ed., El México perdido. Ensayos sobre el antiguo norte de México, 1540-1821. México: Secretaría de Educación Pública (serie SEP SETENTA), 1976.

Ed., Northern Mexico on the Eve of the United States Invasion: Rare Imprints Concerning California, Arizona, New Mexico and Texas, 1821-1846. New York: Arno Press, 1976.

Ed., with Duane L. Smith, Fortunes Are for the Few: Letters of a Forty-niner by Charles William Churchill. San Diego Historical Society, 1977.

Ed., New Spain's Far Northern Frontier: Essays on Spain in the American West, 1540-1821. Albuquerque: University of New Mexico Press, 1979, hard-cover and paper (reprint: 1984 ) (reprint, Dallas: SMU Press, 1988; 1989, 1992, 1996).

Ed. and trans., with Conchita Hassell Winn, Troubles in Texas, 1832: A Tejano Viewpoint from San Antonio. Austin: Wind River Press for the DeGolyer Library, 1983.

Ed. and trans. Arms, Indians, and the Mismanagement of New Mexico: Donaciano Vigil, 1846. El Paso: Texas Western Press, 1986.

Ed., The Idea of Spanish Borderlands. New York: Garland Press, 1991.

Ed. with Jane M. Rausch, Where Cultures Meet: Frontiers in Latin American History. Jaguar Series on Latin America, William Beezley and Colin MacLachlan, eds. Wilmington, DE: Scholarly Resources, 1994.

Ed. with Jane Lenz Elder, Trading in Santa Fe: John Kingsbury's Correspondence with James Josiah Webb, 1853-1861. Dallas: SMU Press for the DeGolyer Library, 1996.

Ed., What Caused the Pueblo Revolt of 1680? Boston: Bedford/St. Martin's, 1999.

Guest Editor. The Spanish Frontier in North America, a topical issue of the Magazine of History, 14 (Summer 2000). (Published by the Organization of American Historians).

Guest Editor, "Scholarship from the Clements Center for Southwest Studies" a special issue of The Journal of the Southwest, vol. 46 (Summer 2004).

In progress, with Jane Lenz Elder: an edition of letters from the U.S.-Mexico Boundary Survey, previously unpublished, by George Clinton Gardner.

#### **Introductions, Forewords, and Prefaces to Books**

Introduction to a reprint of Travels in the Interior of Mexico in 1825, 1826, 1827 and 1828, by R. W. H. Hardy. 1st edition, London: 1829; reprint ed., Glorieta, New Mexico: Rio Grande Press, 1977.

Introduction to Tales of the Mountain Men, edited by Barton H. Barbour. Santa Fe, New Mexico: Press of the Palace of the Governors, 1984.

Foreword to Daniel Tyler, Sources for New Mexican History, 1821-1848. Santa Fe: Museum of New Mexico Press, 1984.

Introduction to La Cultura Hispano Mexicana de Texas y Sus Orígenes. Dallas: Dallas Public library, 1986. (unpaged exhibit catalogue).

Introduction to a reprint edition of Cleve Hallenbeck, The Journey of Fray Marcos de Niza. Dallas: Southern Methodist University Press, 1987.

Foreword to W. H. Timmons, El Paso: Four Centuries of Borderlands History. El Paso: Texas Western Press, 1990.

Foreword to Max L. Moorhead, The Presidio: Bastion of the Spanish Borderlands. Norman: University of Oklahoma Press, 1991.

Preface to Under An Open Sky: Rethinking America's Western Past, ed. by William Cronon, George Miles, and Jay Gitlin. New York: Norton, 1992.

With Carla Rahn Phillips, "Introduction" for Essays on the Columbian Encounter [a series of four booklets, by James Axtell, Karen Ordahl Kupperman, William D. Phillips, Jr., and James P. Ronda]. Washington, D.C.: American Historical Association, 1991-92.

"Introduction" to José Cisneros, My Life As An Illustrator in the Southwest. Dallas: DeGolyer Library, Southern Methodist University, 1992.

"Remarks by the President," Five Centuries of Mexican History: Papers of the VIII Conference of Mexican and North American Historians . . . 1990, ed. by Virginia Guedea and Jaime E. Rodríguez-O. 2 vols.; Mexico: Instituto Mora, 1992.

Foreword to LeRoy and Ann Hafen, Old Spanish Trail: Santa Fé to Los Angeles. Lincoln: University of Nebraska Press, 1993.

Introduction to Essays on the Changing Images of the Southwest, Richard Francaviglia and David Narrett, eds. College Station: Texas A & M University, 1994.

With David Farmer, "Foreword" to The Defenses of Northern New Spain: Hugo O'Connor's Report to Teodoro de Croix, July 22, 1777, ed. and trans. by Donald C. Cutter. Dallas: SMU Press for the DeGolyer Library, 1994.

Foreword to "Adios Nuevo Mexico": The Santa Fe Journal of John Watts in 1859, ed. by David Remley. Las Cruces, NM: Yucca Tree Press, 1999.

With David Farmer, foreword for a CD ROM, Sylvia L. Hilton, ed., Las raíces hispánicas del oeste de norteamérica. Madrid: Colección Clásicos Tavera in cooperation with the Clements Center for Southwest Studies and the DeGolyer Library, 1999.

Foreword to Vicente de Zaldívar's Report of his Expedition to the Buffalo Plains in 1598. A Bilingual Edition. Ed. by Jerry Craddock. Trans. By John H. R. Polt. Dallas: Clements Center for Southwest Studies, SMU, 1999

Foreword to Continental Crossroads: Remapping U.S.-Mexico Borderlands History, Samuel Truett and Elliott Young, eds. (Durham: Duke University Press, 2004).

"Introduction," to "A Southerner at Yale Views the West. A Roundtable on the Work of Howard Lamar," Western Historical Quarterly, 36 (Summer 2005): 133-35.

Foreword to Choice, Persuasion, and Coercion: Social Control on Spain's North American Frontiers. Jesús F. de la Teja and Ross Frank, eds. (Albuquerque: University of New Mexico Press, 2005).

As coeditor of the Histories of the American Frontier Series since 1982 I, together with Howard R. Lamar, Martin Ridge, and William Cronon, have written forewords to many books.

### Scholarly Articles

"Panama," in Possible Threats to United States Security via Latin America. Edited by Miguel Jorin and Edwin Lieuwen, classified manuscript, U.S. Air Force, 1966.

"William Workman: A Letter from Taos, 1826," New Mexico Historical Review 41 (April 1966):155-161.

"Stephen Louis Lee," in The Mountain Men and the Fur Trade of the Far West, LeRoy R. Hafen, ed. (Glendale: Arthur H. Clark, 1966) 3:181-188.

"John Rowland," in ibid., (1966) 4:275-282.

"Gervais Nolan," in ibid., (1966) 4:225-230.

"The Municipal Archives of Ciudad Juarez," New Mexico Historical Review 42 (January 1967):26.

"Spanish Fur Trade from New Mexico, 1540-1821," The Americas, 24 (October 1967):122-136.

With Donald C. Cutter, "Cyrus Alexander," in Hafen, ed. The Mountain Men (Glendale, 1968) 5:23-30.

"Francois Laforet," in ibid. (1968) 6:213-218.

"Sylvestre Pratte," in ibid. (1968) 6:359-370. Reprinted in Janet Lecompte, ed., French Fur Traders and Voyageurs in the American West (Spokane: Arthur H. Clark Company, 1995), 258-69.

"Samuel Ellison on the Election of 1857," New Mexico Historical Review 44 (July 1969):215-221.

"Mexico and the Mountain Men, 1821-1828," Journal of the West 8 (July 1969):369-378. Reprinted in The Backwoodsman 7 (July/August 1986):6-12, 56.

"William Workman," in Hafen, ed., The Mountain Men (Glendale, 1969) 7:381-392.

"John Harris," in ibid., 155-160.

With Stephen T. Garrahy, "Francisco de Ulloa, Joseph James Markey, and the Discovery of Upper California," California Historical Quarterly 50 (March 1971):73-77.

"Louis Robidoux," in Hafen, ed., The Mountain Men (Glendale, 1971), 8:315-329. Reprinted in LeRoy R. Hafen, ed., Trappers of the Far West. Sixteen Biographical Sketches. Selected, with an introduction by Harvey L. Carter (Lincoln: University of Nebraska Press, 1983), 36-50.

"William Becknell as a Mountain Man: Two Letters," New Mexico Historical Review 46 (July 1971):253-260.

"Louis Robidoux: Two Letters from California, 1848," translated and edited by Weber, Southern California Quarterly 54 (Summer 1972):105-116. Reprinted in the Westport Historical Quarterly 8 (March 1973):106-117.

"An Unforgettable Day: Facundo Melgares on Independence," translated and edited by Weber, New Mexico Historical Review 48 (January 1973):27-44.

"A Black American in Mexican San Diego. Two Recently Recovered Documents," Journal of San Diego History 20 (Spring 1974):29-35.

"Stereotyping Mexico's Far Northern Frontier," in Manuel P. Servín, ed., An Awakened Minority: The Mexican-Americans (Glencoe Press, 1974), 18-26. An expanded version of this article, entitled "'Scarce More than Apes': Historical Roots of Anglo-American Stereotypes of Mexicans," has been reprinted in Weber, ed., New Spain's Far Northern Frontier (1979), 293-307; in Renato Rosaldo, et al., Chicano: The Evolution of a People (2nd ed.: Malabar, FL: Robert E. Krieger, 1982), 56-62; Clyde A. Milner, II, Major Problems in the History of the American West (New York: D. C. Heath, 1989), 251-59; in Michael R. Ornelas, Between the Conquests: Readings in Early Chicano History (Dubuque: Kendall/Hunt, 1991), 73-85; and in an Italian translation in Acoma: Rivista Internazionale di Studi Nordamericani 4 (spring 1995):25-33.

"Asimilación y acomodamiento," en Aztlán: Historia del Pueblo Chicano (1848-1910). Ensayos compilados por David Maciel y Patricia Bueno (Mexico: Secretaría de Educación Pública, SEP/SETENTAS, 1975), 147-171. (A translation of a portion of my Foreigners in Their Native Land.)

"California in 1831: Heinrich Virmond to Lucas Alamán," edited by David J. Weber and translated by Ronald R. Young, Journal of San Diego History 21 (Fall 1975):1-6. Reprinted and translated into Spanish in Meyibó (a journal published by the Centro de Investigaciones Históricas, Universidad Nacional Autónoma de México and the Universidad Autónoma de Baja California), 1 (March 1977):65-74.

"El gobierno territorial de Nuevo México: La exposición del Padre Martínez 1831," Historia Mexicana 25 (October-December 1975):302-315.

"From California to Sonora for Gold in 1851: The Letters of Charles Churchill," edited by Weber, Brand Book Number Four, San Diego Corral of Westerners, edited by Abraham P. Nasatir (San Diego: 1976), 23-29.

"Mexico's Far Northern Frontier, 1821-1854: Historiography Askew," Western Historical Quarterly 7 (July 1976):279-293.

"Mexico's Far Northern Frontier: A Critical Bibliography, 1821-1845," Arizona and the West 19 (Autumn 1977):225-266. An annotated bibliography of 160 entries.

"Here Rests Juan Espinosa: Toward a Clearer Look at the Image of the 'Indolent' Californios," Western Historical Quarterly 10 (January 1979):61-68.

"Commentary" on "Rancheros, Comerciantes, and Trabajadores in South Texas, 1848-1900," by Arnaldo de León in Reflections of the Mexican Experience in Texas, Margarita Melville and Hilda Castillo Phariss, eds. (Houston 1979), 98-105.

"The Failure of a Frontier Institution: The Secular Church In the Borderlands Under Independent Mexico, 1821-1846," Western Historical Quarterly 12 (April 1981):125-43.

"American Westward Expansion and the Breakdown of Relations Between Pobladores and 'Indios Bárbaros' on Mexico's Far Northern Frontier, 1821-1846," New Mexico Historical Review, 56 (July 1981):221-38. (One of the themes in this article is expanded upon in Donald W. Matson's letter to the editor, and my reply New Mexico Historical Review 57 (April 1982):203-08.

With Roger W. Lotchin, "The New Chicano Urban History: Two Perspectives," The History Teacher 16 (Feb. 1983):219-47.

“From Hell Itself: The Americanization of Mexico's Northern Frontier, 1821-1846,” in Border Perspectives, Working Papers Series (Center for Inter-American and Border Studies, University of Texas, El Paso, 1983), 1-14. Reprinted in The Cochise Quarterly 16 (Summer 1986):3-11.

With G. Emlen Hall, “Mexican Liberals and the Pueblo Indians, 1821-1829,” New Mexico Historical Review 59 (January 1984):5-32.

“Raising the Blindfold: The Earliest Published Graphic Images of the Desert Southwest,” Southwest Art (August 1984):50-56.

“The Artist, the Lithographer, and the Desert Southwest,” Gateway Heritage 5 (Winter 1984-85):32-41.

“Coronado and the Myth of Quivira,” Southwest Review 70 (Spring 1985), 230-41. Reprinted under the title: “Meditations on Coronado and the Myth of Quivira,” in Dianna Everett, ed., Coronado and the Myth of Quivira (Canyon, Tx.: Panhandle-Plains Historical society, 1985), 59-69.

“The New Mexico Archives in 1827,” New Mexico Historical Review 61 (January 1986):53-61.

“Turner, the Boltonians, and the Borderlands,” American Historical Review 91 (January 1986):66-81 Translated and reprinted in Estados Unidos visto por sus historiadores, Victor A. Arriaga, et al., (Mexico: Universidad Autonoma Metropolitana, 1991), and also translated in Estudios sobre la frontera, Francisco de Solano y Salvador Bernabeu, eds. (Madrid: Consejo Superior de Investigaciones Cientificas, Centro de Estudios Históricos, 1991): 61-84.

“John Francis Bannon and the Historiography of the Spanish Borderlands,” Journal of the Southwest 29 (Winter 1987):331-63. Reprinted in Amy Bushnell, ed., Establishing Exceptionalism: Historiography and the Colonial Americas (Aldershot, Eng.: Variorum, 1995):297-330.

“The Collapse of the Missions,” in James J. Rawls, New Directions in California History: A Book of Readings (New York: McGraw Hill, 1988):46-59. Excerpted from The Mexican Frontier.

With Susan Armitage et al., “The Legacy of Conquest, by Patricia Nelson Limerick: A Panel of Appraisal,” Western Historical Quarterly 20 (Aug. 1989):303-22.

With Jane Lenz Elder, “‘Without a Murmur’: The Death of Kate Kingsbury on the Santa Fe Trail,” in Mark Gardner, ed., The Mexican Road: Trade, Travel, and Confrontation on the Santa Fe Trail (Manhattan, Kansas: Sunflower University Press, 1989), 98-105.

“Blood of Martyrs, Blood of Indians: Toward a More Balanced View of Spanish Missions in Seventeenth-Century North America,” in Columbian Consequences, vol. 2: Archaeological and Historical Perspectives on the Spanish Borderlands East. David Hurst Thomas, ed. (Washington, D.C.: Smithsonian Institution Press, 1990), 429-48. Reprinted in Columbus, Confrontation, Christianity: The European-American Encounter Revisited. Timothy J. O’Keefe, ed. (Santa Clara, CA: Forbes Mill Press, 1994), 133-56.

“The Idea of the Spanish Borderlands,” in Columbian Consequences, vol. 3: The Spanish Borderlands in Pan-American Perspective. David Hurst Thomas, ed. (Washington, D.C.: Smithsonian Institution Press, 1991), 3-20 and Spanish translation in Salvador Bernabéu, ed., El Septentión Novohispano. Ecohistoria, sociedades e imágenes de frontera (Madrid: Consejo Superior de Investigaciones Cientificas, Centro de Estudios Históricos, 2000) 177-196.

"The Spanish Frontier in North America and the Historical Imagination," Western Historical Quarterly 24 (Feb. 1992):4-24 (translated and reprinted as "El legado español en Norteamérica y la imaginación histórica" in Madrid in the Revista de Occidente, [Nov. 1992]:104-24).

"The Mystery of Francisco de Ulloa and Joseph James Markey, Revisited," in Ferenc M. Szasz, ed., Great Mysteries of the West (Golden, CO: Fulcrum, 1993):207-117.

"The Spanish-Mexican Rim," Oxford History of the American West (New York: Oxford University Press, 1994): 45-77.

With Julie Roy Jeffrey, "The Frontier Thesis," in Peter N. Stearns, ed., Encyclopedia of Social History (NY: Garland, 1994):291-92.

"Spain's North American Frontier: Transformations," in La frontera: Mito y realidad del Nuevo Mundo, ed. by María José Álvarez Maurin, et al. (León, Spain: Universidad de León, 1994): 353-61.

Annotated bibliography on the Spanish Borderlands, consisting of some 40 items for The American Historical Association's Guide to Historical Literature, ed. by Mary Beth Norton (2 vols.; New York: Oxford University Press, 1995), 2:1196-98.

"Battle of the Alamo," Encyclopedia of Latin American History and Culture, Barbara A. Tenenbaum, ed. (5 vols.; New York: Scribner's, 1996)1:38.

"The Cart War" in The New Handbook of Texas. (6 vols., Austin: Texas State Historical Association, 1996)1:1003

"Fray Marcos de Niza" in ibid., vol. 4:1022.

"Richard Kern" and "Fray Marcos" for the Encyclopedia of the American West, Charles Phillips and Alan Axelrod, eds. (New York : Macmillan, 1996), vol. 2:815; vol. 3:937.

Ed. and trans., with Andrés Tijerina, "The State of Coahuila and Texas in 1824: The Report of Governor Rafael Gonzales." Southwestern Historical Quarterly 100 (Oct. 1996):187-204.

"Conflicts and Accommodations: Hispanic and Anglo-American Borders in Historical Perspective, 1670-1853," Journal of the Southwest (Spring 1997):1-32.

Translated as "Conflictos y acuerdos: las fronteras hispanomexicanas y angloamericanas en su perspectiva histórica (1670-1853)," in Encuentro en la frontera: mexicanos y norteamericanos en un espacio común, Manuel Ceballos Ramírez, ed. (Mexico: Colegio de Mexico et al., 2001), 55-89.

"The Spanish Moment in the Pacific Northwest," in Terra Pacifica: People and Place in the Northwest States and Western Canada, Paul Hirt, ed. (Pullman: Washington State University Press, 1998), 3-24.

"The Spanish Colonies," American Heritage Encyclopedia of American History, John Mack Faragher, ed. (New York: Henry Holt, 1998), 877.

"Borbones y bárbaros. Centro y periferia en la reformulación de la política de España hacia los indígenas no sometidos." Anuario del IEHS [Instituto de Estudios Históricos, Universidad Nacional del Centro de la Provincia de Buenos Aires, Tandil], 13 (1998): 147-71, translation by Aníbal Minnucci.

"Hubert Howe Bancroft," American National Biography (24 vols.; New York: Oxford University Press, 1999) 2:99-100.

"Refighting the Alamo: Mythmaking and the Texas Revolution," which first appeared in Myth and the History of the Hispanic Southwest: Essays by David J. Weber (1988) was reprinted in Zaragosa Vargas, ed., Major Problems in Mexican American History (Boston: Houghton Mifflin, 1999), 106-112.

"From the Editor" and "The Spanish Borderlands of North America: A Historiography," Organization of American Historians' Magazine of History, 14 (Summer 2000): 3-4 & 5-11. The latter essay translated as: "Las fronteras españolas en norteamérica. Un balance historiográfico," in Raúl J. Mandrini y Carlos D. Paz, eds. Las fronteras hispanocriollas del mundo indígena latinoamericano en los siglos XVIII-IX. Un estudio comparativo (Neuquén, Bahía Blanca, & Tandil: CEHIR, UNS & IEHS, 2003), 109-119. (also available in a CD edition).

"Indians, Spanish Missionaries, and the Contest for Sacred Space in Southwestern America," on a CD ROM, Espacios Sagrados/Sacred Space. Exhibit Book and Classroom Resources in Spanish & English. Dallas: Institute for the Study of Earth and Man, 2000.

"Bourbons and Bárbaros: Center and Periphery in the Reshaping of Spanish Indian Policy," in Negotiated Empires: Centers and Peripheries in the New World, 1500-1800, eds. Christine Daniels and Michael V. Kennedy (New York: Routledge, 2002), 79-103.

"Readers, Writers, and the *Meaning* of the Spanish Frontier in North America," Colonial Encounters: Essays in Early American History and Culture, ed. Hans-Jürgen Grabbe (Universitätsverlag WINTER Heidelberg, 2003): 89-107.

"The Spanish Borderlands, Historiography Redux," The History Teacher 39 (November 2005):43-56.

"Santa Barbara's Presidio in Imperial Perspective: Citadel and Theater Set," Boletín. The Journal of the California Mission Studies Association, 22, no. 1 (2006):4-21.

#### Popular Articles

"Mexico: So Far From God, So Near the U.S.--And So Rich," Los Angeles Times, Opinion, January 14, 1979, written on request and reprinted on the op-ed page in the Austin American-Statesman, January 28, 1979 (entitled "Mexico Oil Clout May Alter Image of Immigrants,"); Dallas Times Herald, January 28, 1979 (entitled "A History Lesson: Complaints of U.S. Attitudes Shape Mexican Oil Policy,"); Houston Chronicle, January 21, 1979 (entitled "Myths and Stereotypes Hurt: Mexicans, Mexican-Americans want their role, history understood,"); and elsewhere.

"U.S. Record of Intervention not a Happy One," Dallas Morning News, Sunday, February 28, 1982, op-ed.

"Remember the Alamo, Not Myth," New York Times, March 22, 1986, op-ed. Reprinted in a number of publications.

"Nicaragua Ten Years After the Revolution," Dallas Times Herald, July 18, 1989, A-4. Short version, "U.S. Meddling in Nicaragua Serves No One," Atlanta Constitution, July 19, 1989, op-ed.

"Our Hispanic Past: A Fuzzy View Persists," Chronicle of Higher Education, March 10, 1993, A-44.

"The Secret Lives of Professors," SMU Magazine (Fall 1995): 31-33

#### Reviews

Author of over 140 reviews of books dealing with the history of the Western United States and Mexico. Those reviews have appeared in: American Historical Review, Journal of American History, Journal of American Ethnic History, Journal of Economic Geography, Ethnohistory, The Public Historian, Pacific Historical Review, Hispanic American Historical Review, The Americas, Slavic Review, Church History, The Public Historian, Western Historical Quarterly, The American West, Journal of the West, William and Mary Quarterly, Southwestern Historical Quarterly, Journal of Southern History, Arizona and the West, Journal of Arizona History, Montana Magazine, Colorado Magazine, Great Plains Quarterly, East Texas Historical Journal, West Texas Historical Association Yearbook, Military History of the Southwest, Catholic Southwest, El Palacio, New Mexico Historical Review, Southern California Quarterly, California Historical Quarterly, The New Scholar, Lingua Franca, Dallas Morning News, New York Times Book Review. In addition, served as book review editor of the Journal of San Diego History, 1971-1976, contributing book notes and occasional reviews.

**PROFESSIONAL AND COMMUNITY OFFICES:**

Chairman, San Diego Historical Society's 6th and 7th Annual Institute of History, December 1973, December 1974, and member of the Institute Committee 1968-76.

Program Chairman, 11th Annual Convention of the Congress of History of San Diego County, March 1975.

Faculty Advisory Board, The New Scholar: A Journal of Graduate Studies, published at San Diego State, 1968-1973.

Board of Directors, San Diego Historical Society, 1972-1974; 1975 -1978.

Chairman, Board of Editorial Consultants, and Book Review Editor, Journal of San Diego History, 1971-1976. Board of Editorial Consultants, 1976 to present.

Mayor's Science Resources Panel of San Diego's Quality of Life Board, 1973, 1974, 1975.

Board of Editors, Western Historical Quarterly, 1975-1980.

Board of Editorial Consultants, New Mexico Historical Review, 1977-1985.

Board of Editorial Consultants, Meyibó, 1977 to present.

Co-Founder (1977) and Sheriff (1978) of the Dallas Corral of Westerners.

Board of Trustees, DeGolyer Foundation, 1978 to present.

Kit Carson Memorial Foundation Advisory Board, Taos, New Mexico, 1979-1985.

Oscar O. Winther Awards Committee, Western History Association, 1980, 1981. Chair, 1982.

Board of Editorial Consultants, California Historical Quarterly, 1980 to December 31, 1986.

Advisory Board, Texas Humanities Resource Center, 1980-83.

Coeditor, with Howard R. Lamar, Martin Ridge, William Cronon of the Histories of the American Frontier Series, 1982-present).

Herbert E. Bolton Award Committee of the Western Historical Quarterly, 1982-present).

Western History Association Program Committee, 1983.

National Council of Advisors, Institute of the American West, Sun Valley, Idaho, 1983-84).

President, Friends of Woodrow Wilson High School, 1983-1986.

Western History Association Nominating Committee, 1983. Chair, 1984.

Board of Editors, SMU Press, 1983-present.

Board of Editors, Southwest Review, 1983-present.

Consultant, Project 150, 1984-85.

Guest Curator, Richard Kern Exhibit, Amon Carter Museum, Fort Worth (with showings in Santa Fe and Denver), 1984-85.

Texas State Historical Association Membership Chairman, 1984-85.

Board of Advisory Editors, Handbook of Texas, 1985-

American Historical Association, Committee for the Celebration of the Columbus Quincentenary, 1985-92.

American Historical Association Program Committee, 1986.

Western History Association, Liaison Committee with Montana Magazine, 1985-1987.

Consultant, Dallas Public Library, NEH-funded project, "Mexican Legacy in Texas," 1985-86.

Editorial Board, New Mexico Historical Review, 1986-1992.

Editorial Board, Journal of Borderlands Studies, Jan. 1, 1986-Jan. 1, 1989.

Council Member, Association of Borderlands Scholars, Jan. 1, 1986-Jan. 1, 1989.

Conference on Latin American History, 1986 Conference Prize Committee.

Chair, Texas Institute of Letters Prize Committee (Friends of Dallas Public Library Award), 1986.

Conference on Latin American History, General Committee, 1987-89.

Journal of the Southwest, Editorial Board, 1987-1989, 1990-?

Journal of Arizona History, Board of Editorial Consultants, 1987-89.

Council, Western History Association, 1987-89.

XII Travelers Commission, El Paso, Texas, 1988-?.

Fellows Committee, Texas State Historical Association, 1988, 1989 (chair).

Steering Committee, Spanish Missionary Heritage of the U. S. Symposium, National Park Service, 1989-91.

Texas Council for the Humanities, 1989-92 (resigned March 1989 to administer a program in Spain).

Vice-President, Western History Association, 1989-1990.

President, Western History Association, 1990-1991.

President, 8th Conference of North American and Mexican Historians, 1990.

Texas Institute of Letters Prize Committee (Friends of Dallas Public Library Award), 1990.

Co-editor, with Carla Rahn Phillips, of four-pamphlet series, Essays on the Columbian Encounter, American Historical Association, Teaching Division, 1991-1992.

Chairman, Board of Editors, SMU Press, 1993-1997.

Chair, Texas Institute of Letters Prize Committee (Carr P. Collins Award), 1993.

American Historical Association Prize Committee (Premio del Rey, for the best book in English on early Spanish History), 1994-97.

Organization of American Historians Prize Committee (Ray Allen Billington Prize, for the best book on the American frontier), 1993-95.

Board of Senior Editors, The Americas, July 1994-April 2003.

Board of Editors, Revista de Indias [Madrid], 1994-present.

Prize Committee: Bolton-Kinnaid Award, Western History Association, 1994-97, for best article on the Spanish borderlands

Co-editor with David Farmer of the DeGolyer Library Series, books published from the manuscript holdings of the DeGolyer Library, SMU, 1994-.

Council, Texas Institute of Letters, April 1994-April 1996; April 1996-April 1998.

Council, Institute for Early American History, July 1994-June 1997.

Organization of American Historians Distinguished Lecturer, 1995 through 2000.

Texas Council for the Humanities, two terms, Jan. 1997-Dec. 2003.

*Resigned in Dec. 2001 to fulfill responsibilities at SMU*

Co-editor with David Farmer of The Library of Texas, a series of classic works on Texas history, published by the DeGolyer Library and the Clements Center for Southwest Studies, SMU, 1997-present

Chairman, Society of American Historians' Parkman Prize Committee, 1999

Search committee to find a new director of the American Historical Association., 1999

Program co-chair of the Annual Conference of the Omohundro Institute of Early American History and Culture, 1999.

Board of Directors, Texas State Historical Society, 1999-2002.

Comité Asesor de "Colección Monografías," Sociedad Argentina de Antropología, Buenos Aires, 1998-?

Committee on the J. Franklin Jameson Award in Editorial Achievement, awarded quinquennially by the American Historical Association, 2000.

Texas State Historical Association's New Handbook of Texas Advisory Committee, 2000.

Editorial Board, Common-place, 2000-05.

Chair, Angie Debo Prize Committee (for the best book published by the University of Oklahoma Press), 2000-2001.

Chair, Texas State Historical Association's Book Award Committee, 2001-02.

Comité de Consultores, Atekna, Revista del CICEHP, Puerto Madryn, Argentina, 2001-?

Advisory Board, Western Americana Series, Yale University Press, 2001-?

Consejo Asesor, Anuario de Estudios Americanos, 2002-?

Advisory Board, H-NET listserv, H-Borderlands, 2006-?

#### **MISCELLANEOUS PROFESSIONAL ACTIVITIES:**

Over a career that exceeds a quarter century, this category has become unwieldy on my vita. Suffice it to say that it includes delivering papers, offering commentaries, and chairing panels at numerous scholarly meetings; evaluating manuscripts for many university presses, scholarly journals, and government agencies; historical consulting for public and private foundations, attorneys, and film makers; and giving banquet and keynote addresses and public lectures and seminars from Argentina, Bolivia, Costa Rica, Guatemala, and Mexico to the south, to Johns Hopkins, NYU, University of Virginia, William & Mary, and Yale in the East, to the University of Washington, Berkeley, Stanford, UCD, UCLA and UCSD in the Far West, and at many institutions in between the two coasts, from Sul Ross in Alpine, Texas, to the University of Chicago. I have also lectured and conducted seminars at several institutions in Spain.

#### **RESEARCH AND TEACHING HONORS (Fellowships are listed under a separate heading):**

The Taos Trappers, received the 1971 History Award of the Border Regional Library Association.

Along with my wife, Carol, named a Danforth Associate, an award given in recognition of bringing human values to teaching, 1973.

Outstanding Educators of America, 1973 (one of four professors named from San Diego State that year).

Choice selected Foreigners in Their Native Land as one of the "Outstanding Academic Books" of 1974-1975 ("works of enduring value") along with twenty-two other titles which appeared in the category of "History--North America."

Herbert E. Bolton Award in Spanish Borderlands History, 1980, for the best manuscript on the borderlands submitted to the Western Historical Quarterly in the previous two years.

Third David E. Miller Lecture, University of Utah, April 1981.

Article in the July 1981 New Mexico Historical Review chosen as best article to appear in that volume of the journal, and nominated for the Ray Allen Billington Award (NMHR 58 (January 1983):55).

Southwest Conference Humanities Lecturer, 1982-83.

My book, The Mexican Frontier, received the following awards:

- The 1983 Ray Allen Billington Award from the Organization of American Historians for the best book to appear on the American frontier in the previous two years.
- Co-Founders Book Award For Best Non-Fiction Published in 1982, Westerners International.
- The 1982 History Award of the Border Regional Library Association.
- The 1982 Presidio La Bahía Award from the Sons of the Texas Republic.
- The 1982 Friends of the Dallas Public Library Award from the Texas Institute of Letters.
- University Lecture Series, Author's Award, 1983 (SMU).

Elected to membership in the Academia Mexicana de la Historia, 1983- (one of six scholars from the United States invited to membership as of that year)

Elected to membership in the Texas Institute of Letters, 1984.

Paul F. Sharp Lecture, University of Oklahoma, March 1984.

My book, Richard H. Kern, received:

- A 1985 Award of the Border Regional Library Association.
- The 1985 Outstanding Art Book Award from the National Cowboy Hall of Fame and Western Heritage Center.

Lifetime Fellow (1 of 60) of the Texas State Historical Association, 1985.

United Methodist University Scholar/Teacher of the Year Award, 1986.

Elected a Fellow of the Society of American Historians, 1986 (membership in the Society, founded in 1939 to promote literary distinction and scholarly merit in historical writing, is limited to 200 Fellows).

Calvin Horn Lectures, University of New Mexico, October 1987.

Margareta Deschner Teaching Award, SMU Women's Studies Council, 1988.

Honorary President, 8th Conference of Mexican and North American Historians, San Diego, 1990.

Outstanding Achievement Award, Alumni Association, State University of New York, Fredonia, 1990

President, Western History Association, 1990-1991.

Barnard Lecture, University of Tulsa, 1992.

The Spanish Frontier in North America was nominated for the Pulitzer Prize in American History and the National Book Award, was named by the New York Times one of the "notable books" of 1992, and was a History Book Club selection. It won the:

- Caroline Bancroft History Prize from the Denver Public Library, 1992
- National Cowboy Hall of Fame and Western Heritage Center, Outstanding Nonfiction Book of 1992 prize

- Premio España y América, 1992, from the Spanish Ministry of Culture
- Texas Institute of Letters' Carr P. Collins Award for the best non-fiction book of 1992
- University Lecture Series, SMU, Author's Award
- Western History Association Caughey Prize, for the outstanding book on the American West in 1992

Prim Lecture, University of Missouri, St. Louis, 1993.

Pettyjohn Lecture, Washington State University, 1994.

Norman Lecture, Colorado College, 1994.

Whitsett Lecture, California State University, Northridge, 1994.

Charles Griffin Lecture, Vassar College, 1994

Trading in Santa Fe: John Kingsbury's Correspondence with James Josiah Webb, ed. with Jane Lenz Elder (1996), won:

- a Southwest Book Award from the Border Regional Library Association
- an Award of Merit from the Santa Fe Trail Association
- the Fray Francisco Atanasio Domínguez Award from the New Mexico Historical Society

A four-part PBS program, The U.S.-Mexican War (1846-1848), produced by KERA in Dallas, to which I was one of the principal academic advisors, aired in autumn 1998 and won an Emmy in 1999.

Elected to honorary membership in SMU's Gamma chapter of Phi Beta Kappa, Summer 2001.

Elected to membership in the American Antiquarian Society, October 2001.

Plenary Address to the 49<sup>th</sup> annual meeting of the German American Studies Association, Wittenberg, Germany, May 24, 2002.

Lyon G. Tyler Lecturer, College of William and Mary, Nov. 1, 2002.

Carl Becker Lecturer (3 lectures), Cornell, Feb. 26-28, 2003.

Named to the Real Orden de Isabel la Católica by the King of Spain, Juan Carlos (the Spanish equivalent of a knighthood). May 2003.

Opening honorary lecture in the symposium: "Las fronteras inter-étnicas en América. Temas, fuentes, y teorías (siglos XV al XIX)." 51<sup>st</sup> International Congress of Americanistas, Santiago, Chile, July 14, 2003.

The Charles Edmondson Historical Lectures, Baylor University, March 8 & 9, 2004.

Merrick-Travis Lecture, University of Oklahoma, September 16, 2004.

The Orden Mexicana del Águila Azteca (the Order of the Aztec Eagle), the highest award the Mexican government bestows on foreign nationals. 2005.

Nominated to membership in PEN American Center, 2006.

Elected to the Executive Board of the Organization of American Historians, May 2006-April 2009.

**FELLOWSHIPS AND GRANTS:**

John F. Kennedy Fellow, University of New Mexico, 1966-67

Fulbright-Hays Lecturer, Universidad de Costa Rica, 1970

National Endowment for the Humanities, Younger Humanist Fellow, 1974-1975

American Philosophical Society grant, Summer 1975

Huntington Library Fellow, Summer 1975

American Council of Learned Societies Fellow, Spring 1980

National Endowment for the Humanities, award to direct a Summer Seminar for College Teachers, 1986

Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford University, 1986-87, with financial support provided by the Andrew W. Mellon Foundation.

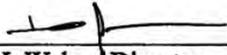
National Endowment for the Humanities, Fellowship, 1990-91

National Endowment for the Humanities, award to direct a Summer Seminar for College Teachers, 1993

Huntington Library, Times Mirror Distinguished Fellow, 2000-2001

3-19-'09  
Date

Dallas, Texas  
Place

  
\_\_\_\_\_  
David J. Weber, Director  
Clements Center for Southwest Studies  
& Dedman Professor of History  
Southern Methodist University, Dallas, Texas