

COLONIAL LAND AND WATER RIGHTS OF  
NEW MEXICO INDIAN PUEBLOS

(with special reference to the Tewa Region)

1979  
by

William B. Taylor  
Professor of History  
University of Colorado

JP-16

## CONTENTS

- I. Purpose, pp. 1-2.
- II. A Preliminary Note on the Written Record, pp. 3-4.
- III. Sedentary Indians and Their Lands, pp. 5-22.
- IV. Water Use and Adjudication of Water Rights, pp. 22-42.
  - A. Antiquity and Continuity of Indian Irrigation, pp. 22-26.
  - B. Adjudication of Water Rights in New Mexico and Other Borderlands Regions, pp. 26-40.
  - C. Summary, pp. 41-42.
- V. A Brief Appraisal of Pueblo Lands in Colonial New Mexico and the Early Mexican Period, pp. 43-53.
- VI. Non-Indian Lands in the Vicinity of San Ildefonso, Tesuque, Pojoaque, and Nambe During the Eighteenth and Early Nineteenth Centuries, pp. 54-59.
- VII. Conclusion, pp. 60-64.
- VIII. Notes, pp. 65-80.

COLONIAL LAND AND WATER RIGHTS OF  
NEW MEXICO INDIAN PUEBLOS

I. Purpose

---

The purpose of this report is to examine the laws and practices pertaining to the land and water rights of Indian pueblos in the colonial and Mexican periods. I am particularly concerned with the similarities and differences between Indian community rights in the New Mexico setting on the periphery of the viceroyalty of New Spain and the core region of the viceroyalty—the gobierno of Mexico—which are presented in my earlier study, "Land and Water Rights in the Viceroyalty of New Spain."

In the gobierno of Mexico, I found that water generally was attached to land (although not absolutely so) and therefore did not require a formal merced (royal grant) to establish a water right. From the very early years of Spanish rule in the sixteenth century, the standard solution to water disputes was the repartimiento de aguas or distribution of available waters among landowners in the vicinity who needed them. The repartimientos were based largely upon need, prior use of the water source, and protection of communities, especially Indian pueblos. Prior use was a type of superior right but it did not usually serve to establish exclusive rights for the oldest user of a source, especially if there were surplus waters. These repartimientos were not conceived as final distributions of water based

strictly on past or present use. They were subject to revision and did not set an absolute limit on the water an Indian pueblo might be assigned.

The needs of sedentary Indian communities were expressly protected in repartimiento judgments and water mercedes. In repartimientos, Indian communities were given the first assignment of enough water "to irrigate their land" and "to meet their needs"—open-ended phrases that allowed for some expansion in the future based on need. Special mercedes for land or water could not be lawfully made to the detriment of local Indian interests. In the early seventeenth century, the standard merced form stated that if it were determined that the Indians needed this land or water, a conflicting grant would be revoked without compensation.

## II. A Preliminary Note on the Written Record

The archival sources on the history of land and water for New Mexico in the colonial and early national periods (principally the documents listed by Ralph E. Twitchell in volumes 1 and 2 of The Spanish Archives of New Mexico, the Mexican Archives of New Mexico, the files of land grant cases adjudicated by the Surveyor General and the Court of Private Land Claims, the Archivo Judicial de la Audiencia de Nueva Galicia in Guadalajara, the University of Texas Latin American Collection, and Archive # 16 and the Julius Seligman Collection of the University of New Mexico manuscript collection) are far less complete than the wealth of case evidence for the central and southern portions of the viceroyalty of New Spain.<sup>1</sup> There are several reasons for the relative scarcity of New Mexico land and water records: (1) in contrast to the numerous attorneys and scribes stationed in nearly every cabecera (head town) of central Mexico, frontier New Mexico had few trained lawyers or official scribes even in the late colonial period. Accordingly, many cases of the distribution of available water -- which were rarely assigned by formal merced even in central Mexico -- may have been made informally in the name of the governor by the district alcalde mayor when conflicts arose, without filing a written report in Santa Fe. The governors of New Mexico apparently encouraged informal settlement of disputes among the parties;<sup>3</sup> (2) there may have been few intractable disputes over water in colonial New Mexico because of the small population and little pressure on available water.

resources except in years of drought; (3) the records extant in the public archives of Santa Fe after the Mexican-American War do not seem to have constituted a complete archive of property rights or transactions prior to 1846. With special reference to water rights, we know, for example, of the distribution of water (repartimiento) from the Rio Santa Fe in 1722 only because of a criminal suit against one Nicolas Ortiz, who had violated the agreement.<sup>4</sup> There was apparently no formal record of this repartimiento in the civil archives of New Mexico when they passed into the hands of the Surveyor General of New Mexico in 1854; and (4) virtually all of the early colonial records were destroyed during the Pueblo Revolt (1680-82) and an unknown quantity of records were lost in the turmoil of the 1840's and 1850's. Book "B" of the Register of Land Titles (for the Mexican period), for example, was lost prior to the Surveyor General's proceedings.<sup>5</sup> We also know that some Indian communities presented titles in the eighteenth and nineteenth centuries which were subsequently lost -- specifically, Nambe in 1840, Jemez prior to 1803, and Pojoaque, ca. 1816.<sup>6</sup>

To fill in some of the gaps in the New Mexico record on wa-  
rights in the colonial and Mexican periods, I have included several  
cases from northern Mexico in the late colonial period as well  
as comparing the New Mexico evidence with the well-documented land  
and water rights of Indian communities in central Mexico.

### III. Sedentary Indians and Their Lands

In my first report, "Land and Water Rights in the Vice-royalty of New Spain: Principle and Practice", I posited two underlying concerns of Indian law in New Spain that bear upon property rights: (1) a paternalistic concern for the wellbeing of the indigenous population as new and different royal subjects; and (2) the economic and political motives inherent in colonial rule. These concerns developed from the Spanish drive to universal rule under the Hapsburgs and their colonization of areas where wealth in the form of native labor, agricultural produce, and precious metals could be extracted. The Crown expected Indians to accept the position of royal vassals owing it allegiance, tribute, and service. Two examples of the Indians' legal position as vassals of the Crown are Recopilación 6-5-1 connecting Indian vassalage to the tribute tax, and 6-10-23, a royal order which refers to Indians as "My vassals ... who have served the Crown so well and have so contributed to its greatness and glory."<sup>7</sup> This expectation of vassalage led the Crown and Spanish colonists to distinguish between "civilized" Indians who conformed to Spanish expectations of sedentary, farming Christian vassals who could be trusted with a measure of self-government, and "barbarous" Indians who would have to be brought to a civilized life by persuasion and force, if necessary, and who, in any case, could not be trusted to govern themselves. As Edward Spicer notes, this dichotomy was evident in colonial New Mexico where Spaniards recognized the Pueblos as "civilized" communities with clear rights to land and water

in contrast to their nomadic, heathen neighbors.<sup>8</sup> Colonial and Mexican period documents treating the Indian pueblos of New Mexico frequently contrast them to the "barbarous Apaches and Navahos" and the "heathen Comanches."<sup>9</sup>

#### A. Municipal Organization

In terms of political and social organization, civilization to the Spaniards meant settled town life. This is clear from the laws printed in the Recopilacion (1681), the major compilation of law for the Indies and the body of rules from which colonial judges were to draw in giving decisions thereafter. Title 7 of Book 4 of the Recopilacion is devoted to the founding of towns, with detailed instructions on choosing the proper site, establishing the town government, providing for community needs, and identifying the rights and duties of municipal corporations.

The colonial administration followed Castillian tradition by dividing legal municipalities into three categories: ciudad, villa, and pueblo. Book 4 Title 7 refers specifically to these three categories in its title "de la poblacion de las ciudades, villas, y pueblos." Ciudad was the most prestigious category and it was applied to the largest and most important towns; villa, the middle rank of town, was a title conferred on a small number of secondary population centers; and all remaining towns were held to be pueblos or lugares as they were called in a number of the sixteenth and early seventeenth-century laws excerpted in the Recopilacion, such as 4-7-2 and 4-9-1. "Pueblo" was most often (but not exclusively) used in reference to Indian communities.<sup>10</sup>

The town government or cabildo was the emblem of the municipality's separate administrative identity.<sup>11</sup> Rafael Altamira emphasizes town government in the definition of municipio (municipality) included in his study of colonial Spanish American municipalities: "the assemblage of inhabitants of a jurisdictional entity, ruled in their interests as residents by a town council; the town council itself; the municipal boundary."<sup>12</sup> As Recopilación 4-7-2 states, "having chosen a site, the Governor shall declare if it is to be a ciudad, villa, or lugar, and shall proceed to form the town government ("repúblicas y comunidades de Indios", as they are called in 3-3-64).<sup>13</sup> This law and others specified the type and number of municipal officials for the different classes of towns. Villas and lugares, by this law, were to have one alcalde ordinario, four regidores, one alguacil, one escribano de concejo, and one mayordomo. Law 4-10-2 allowed twelve regidores to the ciudades principales such as Mexico City and Lima and no more than six in the other ciudades, villas, and pueblos.<sup>14</sup>

The organization of Indian communities under viceregal rule was patterned on this system of Spanish municipal government. Royal concern for the settlement of Indians in permanent towns is made explicit in law 6-3-1, titled "That the Indians be re-established in settlements":

With much care, and particular attention, it has always been our endeavor to use the most effective measures for the instruction of the Indians in the Holy Catholic Faith and the Evangelical Law that, forgetting the errors of their ancient rites and ceremonies, they may

live in good order and conduct; and so this may be accomplished with more certainty, Our Council of the Indies met several times, and other Religious persons, and the Prelates of New Spain congregated in the year 1546, by command of the Lord Emperor Carlos V, of glorious memory; these with the desire of acting in the service of God and Ours, resolved that the Indians be gathered in Pueblos and not live divided and separated by mountains and hills, deprived of all spiritual and temporal benefits and without the assistance of our ministers, and without all the required human needs which some men should give to others, and having recognized the propriety of this Resolution and the Lord Kings, our predecessors having on diverse occasions, given orders and commands to the Viceroy, Presidents and Governors, that with much temperance and moderation they effect the gathering, settlement and doctrination of the Indians with tact and suavity that it is accomplished without causing objections so encouragement would be given to those already resettled, they would hasten to voluntarily offer themselves, and it was ordered; and because the aforesaid was already established in the major portions of Our Indies; We Ordered and Commanded that in all others it be likewise observed and complied with; and the Encomenderos shall apply according to and in form as the laws in this title declare.

As the Mexican colonial historian Delfina López Sarrelangué has observed, "with some variations and restrictions and with adjustments demanded by necessity, the institution of the Spanish municipality was implanted in the Indian towns of America in the sixteenth century."<sup>15</sup> The philosophical basis of these corporate municipal organizations for Indians is described as follows by François Chevalier, a leading French historian of colonial Latin America:

After an initial period of reticence, the monarchy lent its wholehearted support to the new philosophy, thereby discrediting Sepúlveda's theory of the Indian as an irrational being. The philosophy's conclusions were simple, to the point, and fundamental: there existed independently of revealed truth a temporal order of things and a law of nations whose conception was

immediately accessible to human reason. Natural law, which was a reflection of divine law and the basis of universal order and harmony, applied equally to all rational beings, Christians or not. ... Indians accordingly had rights like Spaniards, who, possessing no innate superiority, could in relation to them be no more than their guides. As Vitoria put it, "Infidelitas non est impedimentum quominus aliquis sit verus dominus"— "Paganism does not keep a man from being a true master in anyone's eyes." ...

Missionaries and jurists took the short step dividing theory from practice when they declared that Indians obviously could not be kept enslaved, except those living more ferarum ("like wild animals"), such as the Chichimecas. They were capable of self-government in their own "civilized states" and were fully as well qualified as Spaniards to possess, individually and collectively, both real and personal property. If they were already converts to Christianity, their rights were all the more compelling.<sup>16</sup>

Colonial documentation on settled pre-Hispanic communities and scattered Indian groups that were resettled in <sup>new</sup> towns (reducciones) often refers to them as repúblicas de indios, suggesting their legal identity as municipal corporations. They could not be altered or moved without the express consent of the Viceroy or the Audiencia (Recopilación 6-3-13). Most sedentary Indian communities were classified as pueblos (although a few in the Valley of Mexico were recognized as ciudades and villas).<sup>17</sup> In this way, the "pueblo" Indians of northern New Mexico were distinguished by the Spaniards from their nomadic neighbors as settled Christian vassals living in recognized towns.

According to the law, old and new Indian towns were to have a cabildo like their Spanish counterparts, a church, a community treasury and other municipal institutions. Clarence H. Haring described the formal organization of Indian pueblos under Spanish rule:

Official regulations regarding these Indian pueblos were as meticulous as those relating to the towns and cities of the Spaniards. Each Indian community must be provided with a church, and with a priest (cura doctrinero) paid out of the tribute, as well as with a sacristan to take charge of the church fabric and its ornaments. Every pueblo of a hundred or more Indians was to have two or three chanters (cantores), besides two fiscales who were to be old men over fifty years of age charged with the duty of calling the Indians to religious service and instruction. The sites of the newly created Indian towns must be carefully selected as to accessibility, water supply, arable land and woodland available, and must be provided with a commons (ejido) at least a league in extent for the pasturage of cattle. From one to four Indian regidores and one or two Indian alcaldes, depending upon the size of the pueblo, were to be chosen each year in the presence of the priest and the local corregidor (later the subdelegate) and relieved during their term of office of tribute and personal services. The alcaldes shared jurisdiction with the hereditary native chief or cacique, were aided by one or more Indian alguaciles, sometimes collected the local tribute, and had authority to make arrests and to punish minor offenses such as drunkenness and failure to attend Mass. More serious offenses were referred to the corregidor or other local Spanish official.

The New Mexico Indian pueblos conformed to the conception of municipalities outlined for them by the Spanish state—electing cabildos, maintaining a church, paying taxes, and supporting a mission priest and local colonial officials. Two viceregal orders in 1620 specified the cabildo election procedures, the officers to be elected (governor, alcaldes, totiles, fiscales, and other public officers) and the pueblo status of the New Mexico Pueblos:

1. It was ordered that on the days of annual pueblo elections, when the local officials, such as governor, fiscal, etc., were named, no representatives of the State or Church should be present in the pueblos in order to insure to the Indians complete freedom of action ...  
 [Regarding this point the document stated] "the Governor may give orders how each of the pueblos of those provinces

on the first day of January of every year, may carry out their elections of governor, alcaldes, topiles and fiscales and other public officers without my said Governor or any other Judiciary, you or any other Religious of your Custodia being found present in the said elections so that in them the said Indians may have the freedom which is fitting, and that the [elections] which may be effected in this manner may be [correct] [ly reported] to my said Governor in order that [the elections] having been effected and by the majority [of the Indians] with the freedom indicated, he [the governor] may confirm [the fact] that everything is in accord with what is customary in our said Spain."

2. Governor and custodian were instructed that on feast days and Sundays friars should go to the several Pueblos where there were churches, so that the Indians would be spared the trouble of going to distant pueblos to hear Mass.

3. In those pueblos already subject to tribute or encomienda the friars were not to impede the collection of such tribute. In pueblos converted in the future, no tributes were to be levied until governor, custodian, and the guardian of the convent made reports to the viceroy who would decide what was best. Moreover, no tributes were to be collected in the Zuni and Hopi pueblos, as they were still unconverted.

4. The governor was instructed to see to it that the encomenderos provided military escort for mission supply trains coming from Mexico City and also for the friars going to administer the sacraments in frontier pueblos.

5. The governor was forbidden to graze herds of livestock for his own account.

6. In order to avoid damage to the growing crops of the several pueblos the Spaniards were instructed not to pasture their stock within three leagues of the pueblos, except in certain circumstances.

7. Both the governor and the custodian were ordered not to permit the uses of Indian labor in illegal ways, or in such amount that the Indians would suffer hardship. All levies or repartimientos of Indian laborers were to be limited only to the work of sowing and planting, the number to be called from each pueblo strictly limited, and the wages duly paid. The allotment of Indian women as servants in the houses of Spaniards was forbidden, unless "they go with their husbands [and] voluntarily." The custodian was instructed that Indian labor at the missions should be used only "for things necessary for the church and the convenien of the living quarters" and then only "with the greatest moderation."<sup>19</sup>

...

The Pueblo Rebellion, 1680-1692, interrupted Spanish rule in New Mexico. With the reconquest and negotiated settlements undertaken by the returning Spanish forces under Diego de Vargas (1692-94 and after the revolt of 1696), the Spaniards re-established control in northern New Mexico and reconfirmed existing Indian pueblos and their property rights. The formal ceremonies of possession made by Governor de Vargas usually consisted of planting a cross in the town plaza, collective singing of the alabado, assignment of a missionary to the parish, formal allegiance to the Crown sworn by the natives, and provision for the election or confirmation of municipal officers. The ceremony of possession by de Vargas at Tesuque on October 5, 1694 illustrates this formal procedure:

Tesuque extended a warm welcome to the group, 'having a great many bows.' Following the usual repeating of the Alabado, Vargas informed the inhabitants of their duties and expected obedience as Christians and Spanish subjects. He said he would assign a Father to care for them as soon as one should arrive from El Paso, providing that they built a church and a home for him in the meantime. These conditions the inhabitants promised to fulfill. Vargas thereupon confirmed the officials who had been elected before his arrival. 20

Municipal councils in the Indian pueblos of New Mexico continued to be selected locally and approved by the colonial government in Santa Fe. Judging by the civil records for the eighteenth century, the principal officials in the late colonial period were the gobernadorcillo (local governor) and the war captains—a reflection of colonial preoccupations with the military defense of the settled districts of northern New Mexico against hostile Comanches, Apaches, and Utes. In his Spanish Government in New Mexico, Marc Simmons describes the confirmation of Pueblo officers: "Indian justicias were elected annually by the Pueblo and were confirmed in their offices by the provincial governor in Santa Fe where they received their varas de justicia or staffs of justice. In 1797 the justicias of Sandia Pueblo included the governor (gobernadorcillo), the war captain, and several other notable persons."<sup>21</sup> During the Mexican period (after 1821), the municipal governments of the Pueblos not only continued to function under the aegis of the national government but were formalized in a more elaborate hierarchy of elected officers which typically included alcaldes and regidores like the cabildos of the Mexican heartland.<sup>22</sup>

#### B. Special Status of Indians

The similarity between Indian towns and Spanish towns as municipal corporations was modified in law by the Crown's paternalistic interest in Indians as innocent new subjects who were expected to provide food and certain vital services to the

Spanish community. The separate, protected legal status of Indians is evident in royal laws which spoke of "looking out always for the welfare of the Indians" and "giving greater protection to the Indians."<sup>23</sup>

To protect Indian communities in their daily lives, the Crown issued a series of laws intended to keep non-Indians out of the pueblos de indios. Several of these protective segregation laws are included in the Recopilación (6-3-21 to 25). The laws provided that non-Indians not be allowed to live in the pueblos, or visit them for more than two days, or lodge with Indian families. While these segregation laws could not be enforced rigorously, they remained principles of colonial administration throughout the viceroyalty, including New Mexico. For example, in his inspection tour of the Tewa region in August 1745, Governor Joaquín Codallos y Rabal spoke of "Spanish vecinos and Indian natives each living in their respective jurisdictions."<sup>24</sup>

The special position of Indians was evident also in their relationship to the courts. A crime committed against an Indian was to be punished with greater severity than the same crime committed against a Spaniard (Recopilación 6-10-21). This law was alluded to and applied in New Mexico in a case of assault and battery by two Spaniards against an Indian farmer from Nambé.<sup>25</sup> Unlike other members of colonial society, Indians were not subject to the stringent authority of the Inquisition, and special "Protectors of the Indians" were to be named to

make certain that the Indian interests were protected in the courts.<sup>26</sup> Viceroy, Presidents of Audiencias, and Audiencias were specially charged with looking after the interests of Indians (Recopilación 6-1-1). When litigation involving Indians reached the Audiencia, the fiscal (chief legal adviser to the Audiencia) generally acted as Protector.<sup>27</sup> The office of Protector of the Indians existed in colonial New Mexico although it seems not to have been filled continuously. In 1810, for example, we have the following appointment to the vacant post of Protector Partidario de Indios in New Mexico of Don Felipe Sandoval by the Audiencia of Guadalajara upon the recommendation of Nemesio Salcedo, Commandant-General of the Provincias Internas:

Considering the large number of Indians in the Villa de Santa Fe and the other pueblos of the Province of New Mexico, the lack of a Partisan Protector as required by law who will aid and defend them in matters that concern them, is prejudicial to their rights. Accordingly, and some of the aforesaid Indians having brought this lack to my attention, I advised the Interim Governor to propose someone to carry out well and fully the duties of said position, and having confirmed it in favor of Don Felipe Sandoval, I bring it to your attention so that with your agreement, the respective title of Partisan Protector of the Indians of the Province of New Mexico may be bestowed upon him, following the judicial notice by the Royal Audiencia. May God keep you many years, July 16, 1810.

Nemesio Salcedo<sup>28</sup>

(Audiencia approved on August 4, 1810)

Several years later, Pedro María de Allande, Interim Governor of New Mexico appointed Don Vicente Villanueva to this office.<sup>29</sup>

In the early colonial period, Indians were singled out by the Crown as agriculturalists who were expected to supply needed

foodstuffs and labor to meet colonial demands. Unlike other classes of people, Indians were the subject of royal laws calling for them to engage in farming and ordering that they be allowed sufficient time to cultivate their fields. Two of these laws are recorded in the Recopilación at 6-1-21 and 6-1-23:

Those Indians who may be officials shall be occupied and give attention to their duties, and those employed in farming, working the soil, and preparing the fields, making an effort to acquire oxen to ease their personal work, and obtaining things for their personal sustainment [for sale], and [for] barter with others: and those who do not dedicate themselves to any of the aforesaid occupations may apply for work on public projects; and the laborers in the cities and fields, shall be useful and not be idle since this is most important to their lives, health and preservation, so this must be done and enforced by the hand of our Justices. And We Command that the Spaniards cannot pressure them even though they be individuals assigned to them for service, or they will be severely punished. And We Charge those teachers of Doctrine to persuade the Indians to accept the aforesaid as provided in Our Law, especially that they be clothed for the better honesty and decency of their persons.

It is fair that the Indians be given time to cultivate their farm lands and those of the community, which the Viceroys and Governors will designate, and which is necessary to establish so they may attend to the farms, and procure [arrange] to hold them, so they will be provided for and make their lands more productive, so We Order.

While Indian pueblos in New Mexico could not reasonably be expected to meet all of the regional demands for food, it is apparent from the order that Governor Codallos y Rabal read in every Indian community he visited during his inspection tour of 1745 that the Indians were expected to farm and ranch and lived in their settled pueblos:

They should take special care, as His Majesty orders, to raise poultry, cattle, sheep, and goats; to cultivate their fields; not to be lazy nor live as idle vagabonds, but rather to work in their own pueblo and in their fields and to obey their leaders, the local governor and captains in whatever they may order in the service of the King and Queen.<sup>30</sup>

These various protective laws could not possibly be enforced everywhere or at all times in the vast territory of Spain's American empire. Nevertheless, as Francois Chevalier has written "The protective laws were extremely important. Missionaries as well as altruistic 'defenders' and justice officials, who were actively assisting the Indians, could brandish them as legal weapons in the fight against encroachment and make litigation particularly risky for their adversaries. The government, after all, was in the hands of the jurists."<sup>31</sup>

The community lands of Indian pueblos bear comparison to those of Spanish towns. López Sarrelangue found that Indian pueblos "possessed the so-called community properties (bienes de comunidad), some as rich or richer than the civic estates (propios) of certain Spanish villas. Like the civic estates, the community properties were much favored by the law because they were dedicated to the public good."<sup>32</sup> The laws describing the lands of newly-founded Spanish settlements, especially Recopilación law 4-7-1, are paralleled by law 6-3-8 on the formation of Indian pueblos and reducciones. Both Spanish and Indian towns were to be located where water and productive lands were available to support the community. Law 4-7-1 on Spanish towns says that in choosing a townsite,

they should be careful to have water nearby (which can be directed to the pueblo and the farmland, channeling it off the mainstream, if possible, in order to take best advantage of it) as well as the materials needed for construction, lands that can be farmed, and pastures ...

Likewise, law 6-3-8 on Indian towns states that

the sites where pueblos and reducciones are to be formed should have ample water, lands, woodlands, access routes, and farmlands, and an ejido one league long where the Indians can have their livestock, without having them intermingle with others belonging to Spaniards.

Indian communities in place when the Spaniards arrived were to be confirmed in their landholdings and further, they were to be assured of the land and water they needed for planting and livestock (Recopilación 4-12-18):

We order that the sale, proceeds, and settlement of land be made with such consideration, that the Indians shall be given all the land /and more, if possible/ that belongs to them, both as to individuals and communities alike, and, specially those lands where they may have made ditches /acequias/, or any other improvement, such that with their personal industry, they have fertilized. This is to apply particularly with respect to water and irrigation. And for no reason can these lands be sold or taken away from them; and the judges who were sent for the purpose, and those /lands/ that they may have turned over to each one of the tributaries, old men, exemptees, chiefs, governors, absentees, and communities.

In principle, all Indian towns were entitled to "a site with sufficient water, arable land, woodlands, and access routes so that they can cultivate their lands, plus an ejido of one league for the grazing of their cattle."<sup>33</sup>

Indian communities antedating Spanish colonization and those founded thereafter established their community land right in different ways. López Sarrelangue provides the following summary of the procedures:

In the first case [pre-Hispanic communities], it was a simple matter of recognizing the ancient land rights of the pueblos. Based on tradition, presentation of ancient paintings and the sworn statements of chiefs and respected old people from the place, the pre-Hispanic rights proceeding in all cases from the donations of Indian lords were reestablished and, with some discrepancies, the Spanish Crown officially confirmed them.

For pueblos already established, the legal instruments amounted to oral testimony and presentation of evidence. New settlements which lacked communal lands presented greater difficulties. For them, the acquisition of communal lands was achieved by three means: a) by royal grants; b) by concession from Indian nobles; and c) by purchase<sup>34</sup>

In principle, Indians had several advantages over non-Indians in their land rights. Ranches were not to be located near Indian communities (Recopilación 6-3-20, 4-12-12). New Spanish communities were to be founded on sites that did not prejudice the interests of Indians (4-7-1) but new Indian towns could be established on lands taken from Spaniards as long as "they [the Spaniards] are given just compensation in another location" (6-1-14). Several laws of the Recopilación indicate that the Crown intended Indians to receive preferential treatment in access to land:

whosoever has not had possession of the land for ten years, although he may claim that he is in possession (for this pretext alone is not sufficient) shall not be allowed to settle said land, and the Indian communities, in relation to other interested parties, shall be granted all consideration. (4-12-19)

We order that the ranchlands and other lands given to Spaniards be without prejudice to the Indians, and that those granted lands that are prejudicial and damaging to them shall be returned to their rightful owners. (4-12-9)

One way in which the principle of preferential treatment contained in these laws was applied to Indian communities in New Spain is contained in the following royal cédula of September 17, 1692, which provided for Indian communities to have first rights to vacant land adjoining their town lands on the basis of future needs:

Royal Cédula declaring that Indians have the right to purchase at the price fixed by the Crown, royal lands that in New Spain are conferred on Spaniards and other castas [non-Indians] Madrid, September 17, 1692.

The King. To my Viceroy, President and judges of my Royal Audiencia of the City of Mexico in New Spain. Dr. Benito de Novoa Salgado, attorney in civil matters for that Audiencia informed me by letter of July 10, 1689 that some Spaniards and others frequently come to the viceregal officials seeking rights to royal lands, paying a certain sum of money upon receipt of which the grant of lands is made to them. After the grants have been made, the Indians of the nearby towns also come to ask for the lands because the grants are prejudicial to them, because they already have similar neighbors who do them harm and encroach upon their lands as they are wont to do. You and that Audiencia have denied them this right, as recently happened in the case of Tomás de Palacios, Spaniard of the jurisdiction of Cholula, against whom the Indians were not able to obtain the rights to a swamp which was assigned to him, by paying the same amount as he paid even though my court attorney urged that they be allowed to do so because the Indians have the same right (considering that the lands are those in which they were borne and raised) that gave rise to the Royal law of Castile conceding the right of recovery of property to blood relatives and also because of the abuses they regularly receive from the owners of haciendas and lands that border their lands. He [the court attorney] begs me, in order to prevent disputes and litigation over this matter—which occur daily—to declare whether the Indians and their pueblos have the right to meet the price in such cases. And my Royal Council of the Indies having considered what my attorney asks and agreeing that it cannot be doubted that the Indians do have the right to meet the price for lands near their pueblos which are conferred on Spaniards and other people or which they [the Spaniards and other people] wish to enter. [It cannot be doubted]

because, as with lands that were theirs [before the beginning of Spanish rule], it is the law not only that the Indians should be given all the lands they may need in addition to those regularly assigned by law, but also because it is likewise the law that Spaniards should not live among Indians, nor should they have their livestock and haciendas adjacent to Indian lands, considering that if this law is broken, they will little by little be introduced among the pueblos and haciendas of the Indians, as a result of which many inconveniences and losses are accustomed to happen to them with such contact, and the Indians will never achieve their rightful privilege of being attended and favored in the possession of the land they may need for their plantings, for even though at present they may not need them, it is very possible that in time they may need them and if they are given to Spaniards the Indians will be denied the privilege and the laws and ordinances providing that the poor Indians have a greater right to them than any other group will not be enforcible. [They have a greater right to the lands] firstly because they belonged to them [before the beginning of Spanish rule] and for this reason I have granted them all the lands they possess and that may have been necessary for their preservation and increase, from which follows that they have the right to meet the price and should, by this right, be attended as the privileged first owners. In line with this, I declare that from hereon it [the Indians' derecho de tanteo] should be observed and practiced inviolably throughout that Kingdom and provinces, and by this just and necessary means the inconveniences and prejudicial acts against the Indians may be avoided and the laws [by their execution may no longer] achieve the opposite. Therefore I order you to execute this in the form expressed here, distributing in the complete and appropriate way, as soon as you receive this correspondence, the orders necessary to achieve compliance in the future, without permitting the contrary to be done at any time. And I further charge and order you to consider again the decrees concerning the swamp which you, my Viceroy, assigned to the said Tomás de Palacios and refused to assign to the Indians for the price agreed upon; and you should attend to the wellbeing of the Indians concerned in this matter, giving them justice in the shortest possible time. Such is my will.

Durán

The land grant made to Don Vicente/de Armijo near the puebl of Nambé on September 25, 1739 by Governor Gaspar Domingo de Mendoza is consistent with the spirit of this royal order. The

land) by Armijo to the east and upstream from Nambe was disputed by the pueblo. Even though the lands Armijo wanted appeared to be vacant they claimed that to grant them to him would do the pueblo great injury. However, they did not object to Armijo receiving vacant lands west of the pueblo's boundary and this was done on October 5 1739. <sup>36</sup> There are other similar instances in the record (see Part V below).

Unlike other royal subjects, Indians could sell their lands only by express royal or viceregal license, and the sale itself required a public auction (Recopilacion 4-12-16). Citing this law and law 4-12-9 (see above, p. 18), the Audiencia of Nueva Galicia on August 12, 1817 voided the sale of the Pena Blanca ranch and the site called ojo de agua de Santa Cruz, which had originally been made in 1744, and returned the lands to Cochiti Pueblo. <sup>37</sup> On the same grounds of no express license, the Audiencia, on March 26 1818 ordered the restitution of Santa Ana Pueblo lands that had been sold to three or four Spaniards. <sup>38</sup> These actions, occurring near the end of the Spanish regime, indicate that the Pueblos of New Mexico were perceived to be protected by the laws collected in the Recopilacion for the administration of Indian affairs.

#### IV. Water Use and the Adjudication of Water Rights

##### A. Antiquity and Continuity of Indian Irrigation

The practice of irrigation on the lands of the four Indian pueblos of Tesuque, Pojoaque, Nambe, and San Ildefonso is well established in various published reports and manuscript sources. The archaeological and ethnographic reports of Florence H. Ellis demonstrate the antiquity of these pueblos and their use of irrigation ditches both before and after contact with

Spaniards.<sup>39</sup> For the colonial and Mexican periods, there are written descriptions of irrigated farming by pueblos in the region from the 1590's through to the Mexican-American War. In an early reference, dated January 10, 1591, Castaño de Sosa noted that

All these six pueblos [Nambé, Pojoaque, Cuyamungue, Tesuque, San Ildefonso, and Pecos] are irrigated and have irrigation ditches, a thing which would [not be] believed if we had not seen it with our own eyes. A very great amount of maize, beans, and other vegetables is harvested . . . . They [the five Tewa pueblos visited to date] are small pueblos, although heavily populated.<sup>40</sup>

For the post-1680 period, various religious accounts and civil records mention irrigated farming in these four pueblos. For Nambé, there are references to irrigation ditches and irrigated farming in Vicente Durán de Armijo's will of November 15, 1745, in Bishop Tamarón's visita of 1760, and in the account of Fray Manuel de San Juan Nepomuceno y Trigo.<sup>41</sup> An 1899 ditch dispute elicited testimony and a judgment that "beyond the memory of any living man they [the seven acequias] have existed as acequias appurtenant to the Río de Nambé."<sup>42</sup> For San Ildefonso, irrigated farming is mentioned in the dispute with Captain Ignacio de Roybal in 1704 and in two other land disputes of 1763 and 1786.<sup>43</sup>

The main eighteenth-century reference to irrigated fields at these four pueblos is Fray Francisco Atanasio Domínguez's detailed report on the missions of New Mexico in 1776:<sup>44</sup>

[Tesuque] The planting for the father is entrusted to the pueblo up to the harvest, and since stealing and carelessness prevail, it goes ill for the priest.

These lands are irrigated by the river mentioned above through ditches belonging to the Indians, for they run through their lands. [page 49]

[Tesuque] Its Lands and Fruits. In comparison with the small population of this pueblo (which will be seen later) there is a good deal of land, for they have a whole league up the cañada, even though it is narrow. Below, where the cañada opens out more and more, as I said when I started to talk about the pueblo, they have about three-quarters of a league, which occupies most of the open, or wide, part. All are under irrigation, for although the river is short, as I have already said, the Indians are long in ingenuity, and therefore they draw off fairly good irrigation ditches. [page 50]

[Nambé] Its Lands and Fruits. They have almost as much land above the pueblo as below it, and it occupies most of the site mentioned, although a great arroyo that arises in the east-northeast and runs to the southwest until it enters the pueblo's river behind the church and convent and in front of the corrals mentioned divides them. They irrigate the upper lands with a mother ditch from well upriver, and they take water for the lower lands from the same ditch a little before the said arroyo empties into the river. [page 59]

[Pojoaque] Its Lands and Fruits. They are really surrounded because of the nearness of the aforesaid Spanish settlement, whose lands encircle them above and below ... Moreover, they are scanty, but they live off them. Their description is the same as that of those belonging to the Spanish settlement, for all grow grain. They are irrigated by ditches used by both Indians and settlers because they are in the same vicinity; and the harvest they yield is like that of the lands belonging to the citizens. [page 63]

[San Ildefonso] Its Lands and Fruits. The Indians of this pueblo have lands in all four directions, but not divided equally, for to the east, north and south there are a little less than three-quarters of a league. To the west, indeed, they have even more than a league, occupying both banks of the Rio del Norte, since it runs through them. Those on the west side of the river are irrigated from this very river through adequate ditches taken from it where necessary. Some of those on the east side, where the pueblo is, are irrigated from the river, and others from the spring in the little swamp I mentioned when I was speaking of the convent lands. Still others are irrigated from the Nambé River, which is very scanty by the time it reaches these parts, because everyone located beyond Nambé bleeds it, as understood, and when it dries up, there are hardships for those of these lands. [page 71]

In a brief statement accompanying a census report of 1826, Fr. Teodoro Alcina, missionary priest of San Ildefonso, noted that San Ildefonso irrigated from a small reservoir and Nambé had the advantage of abundant land and water:

This mission [San Ildefonso] is located at 37 degrees, on the banks of the big river from the north which bathes a part of the land which the Indians reach by canoe to plant and work. The best land adjoins the Pueblo and it is irrigated with a small tank and the Río Nambé which flows until the month of June, for which reason the planting is almost always lost for lack of water; at present, an acequia is being dug from the Río del Norte at the instance of an honorable vecino, even though it is against the will of the natives since working is against their nature. If this [acequia] is completed, the cultivation will be achieved. To the east are the Pueblos of Pojoaque and Nambé, located along the said river, the first two leagues away, the other a little more than three. The Pueblo of Pojoaque is sterile for lack of water; the Pueblo of Nambé enjoys an abundance of land and water. To the south is the Pueblo of Tesuque which also ordinarily lacks water. From this head town to the capital it is seven leagues. The four parishes are very backward in things material as well as what is necessary for the Divine Cult or priestly ornaments, particularly in missals. In none of them are there works, sodalities or funds [for the support of the Church]; nor a priest who has the means of living [there]. 45.

The Tewa pueblos' dependence on farming is confirmed in late colonial and Mexican period population counts. The 1790 census for Tesuque and Pojoaque refers to all of the Indians of these communities as labradores (farmers): "All of the aforementioned inhabitants of this Pueblo [Tesuque] are Indians and their only occupation is that of farmer"; Pojoaque's sixty-nine Indians were classified as "all farmers."<sup>46</sup> An 1840 report in which San Ildefonso, Nambe, Tesuque, and Pojoaque are named notes that "The Indian men of these pueblos generally engage in agriculture, in hunting, and in fishing."<sup>47</sup> Combined population figures for Santa Clara, San Ildefonso, Nambe, and Pojoaque in 1840 list the following occupations: 553 farmers, 239 day laborers, 145 craftsmen, 19 merchants, 3 school teachers, and 3 priests.<sup>48</sup>

#### B. Adjudication of Water Rights in New Mexico and Other Borderlands Regions

In the judicial proceedings over water and land rights between New Mexico Indian communities and non-Indians, the key wording is intentionally general, with the purpose of ensuring sufficient land and water to meet the Indians' needs and permitting local officials to make adjustments and seek compromises appropriate to local conditions. In the case of Arroyo Seco v. Taos in 1823, for example, the magistrate specified that the Indian pueblo "should not lack" for water ("para que no haya falta").<sup>49</sup>

The grant of land to Juan de Gabaldon south and east of the Tesuque pueblo was approved in June 1752 with

the provision that Gabaldón not cut off water from the Tesuque River, "especially from the Indians of San Diego de Tesuque," and further, that he build a reservoir for the benefit of all.<sup>50</sup>

Land and water assignments in other parts of the Spanish borderlands followed the same general principle of first ascertaining that the Indian communities' needs were met. In the case of Pacula, a new mission settlement in the Sierra Gorda of San Luis Potosí in 1688, the community was to be provided with "the water needed to maintain the community" ("el agua de su mantenimiento"). In the case of San Joaquín del Monte, a mission in Tamaulipas in 1767, there was an allotment of land and water judged sufficient for "normal cultivation and to meet daily needs" plus what was required to pay the costs of a resident priest.<sup>51</sup>

In applying these principles to pueblo Indian land and water rights in New Mexico, the judges were especially concerned with the source of water used. In the case of Arroyo Seco v. Taos in 1823, for example, the judge was less interested in how much water the Taoseños used then or in the past from the Río Lucero than in the fact that they had used this source for many generations and therefore had seniority in its use:

---

The natives of this Pueblo of Taos, in addition to the water of the river which cuts through their Pueblo, have always used the water from the Río de Lucero for irrigating their cultivated fields, and it is known that they have done so from the period of their paganism, that is, since the foundation of their Pueblo, with the sole object of enjoying the water of both rivers, from which it is inferred clearly that these natives, from time immemorial, have been the absolute owners and have complete right to the water of the Río de Lucero.<sup>52</sup>

The founding records of reducciones in northern Mexico provide additional evidence of judicial emphasis on water sources rather than precise measurement of Indian rights to a fixed quantity of water. Waters are frequently mentioned in these founding records but not assigned in specific amounts. For example, in establishing the mission lands of Santa Rosa (Sierra Gorda) in 1698, Viceroy Conde de Moctezuma mentioned "a large source of water with which they could irrigate."<sup>53</sup> The Santander mission (1767) was provided with the use of a spring to irrigate its twelve caballerías (ca. 1,260 acres) of farmland, while the Sichú congregación records refer to springs for the town's three caballerías.<sup>54</sup> In the case of San Joaquín del Monte, a dam and waterworks were planned in order to assure the cultivation of enough farmland to support the Indians ("para manutención de los Yndios").<sup>55</sup> Other records refer to "abundant water available" or "very appropriate lands because they have good [sources of] water," or give a judgment that sufficient water is available to justify the founding of a mission.<sup>55</sup>

The 1817 lands case pitting the pueblos of Santo Domingo and Cochití against Don Antonio Ortiz and Don Luis María Cabeza de Baca contains a short section on the Indians' rights to water. The court determined that Cabeza de Baca had irrigated the land he occupied from the Indians' acequia without their permission or a formal adjudication in his favor. The fiscal (chief counsel) of the Audiencia of Nueva Galicia declared—and his

declaration was affirmed by the Audiencia--that Cabeza de Baca had thereby violated Book 4 Title 12 Law 18 of the Recopilación "which calls for the Indians to have, with excess [con sobra], all the lands, water, and irrigation water that may belong to them; and the lands on which they may have constructed acequias; and that these be reserved for them in the first instance; and for no reason should they be sold or alienated."<sup>57</sup>

Ground water is rarely mentioned in the surviving land and water adjudication records for New Mexico in the colonial and Mexican periods. A 1734 case mentions the pueblo of Santa Clara using an ojo de agua (spring) on their lands and Father Domínguez notes that San Ildefonso was using a spring to irrigate some of its fields in 1776.<sup>58</sup> In 1841 a non-Indian, Guadalupe Miranda, petitioned for, and received the right to use a spring located on a piece of unidentified vacant land.<sup>59</sup> This is one of the very few formal grants of a watering place in the New Mexico records for the colonial or Mexican periods. Colonial water regulations speak of two kinds of water which were subject to distribution: 1) perennial streams, and 2) springs where the water had been channelled ("como en cazas") or contained in reservoirs.<sup>60</sup> The water in wells on private lands is not mentioned in these regulations as divisible. The legal commentary of Joaquín Escriche y Martín entitled Diccionario razonado de legislación y jurisprudencia (various editions, 1831-1925) which, according to William B. Stern, was used as a source of law in the courts of Mexican states after Independence,

substantiates this apparent right of landowners to the use of wells within their boundaries: "Every owner may open in his house or cultivated land (heredad) a spring or well of water even if by so doing he diminishes or removes all the water from the source or well of his neighbor, who nevertheless will have the right to impede the work or demand that it be stopped up or destroyed when it is done unnecessarily and with intent to harm him. He who has a spring on his cultivated land may use it as he sees fit because the spring is his as part of his landed property." <sup>62</sup> The two qualifications on the landowner's control of well water on his property were (1) when a third party has acquired a right to the spring, and (2) when the spring supplies water to the inhabitants of a pueblo.

Reasoning from absence of evidence to the contrary is not altogether satisfactory, but the absence of groundwater cases throughout the viceroyalty lends additional support to the proposition that the landowner generally had undisputed use of ground water on his land. <sup>63</sup> Passing references to ground water in disputes over surface water support this proposition; for example, in the report of Juan Fernandez Esquibel y Veitia, corregidor of Tonalá and Tlaquepaque (near Guadalajara) concerning a water dispute between the Indian pueblo of San Pedro Tlaquepaque and Don Ramon Vizente Lasterra in 1775 (this dispute was adjudicated by the Audiencia of Nueva Galicia which also had jurisdiction over New Mexico). <sup>64</sup> The dispute concerned use of the town's spring-fed stream. In 1771 Lasterra had been authorized to use the stream for his orchard two days and nights each week

because the townspeople had much more water than they needed or used. In late March 1775 the Indians complained of damage to their interests by Lasterra, and Corregidor Fernandez was ordered to report on the Indians' petition. On April 3, 1775 he inspected the spring and irrigation works. After noting that Lasterra had cut off the water to the pueblo he stated:

I went to inspect the springs (manantiales) which I found very low considering the pueblo's consumption; and although the said Indians claim in their petition that these [springs] are very useful and necessary for their pottery-making and adobe and brickworks, I must inform Your Highness that this is not a strong argument since for brickmaking and adobe making they have open wells (pozos) which provide them with the water necessary for this work [*italics mine*]; and for what is needed to irrigate their orchards and for drinking by all the people of the pueblo and their livestock, and the construction projects, and the church and local houses, which [consumption] of the abovementioned water is considerable because of the loss [of water] in conducting it to the center of town which results from not having underground canals. This is what I should report in this matter according to the inspection made according to orders; and I order it to be sent to Your Highness so that you may determine, as always, what will be best; and I signed it along with those who assisted me.

Establishing the right to use stream water often took the form of a repartimiento de aguas (distribution of waters agreement) in which available waters were divided among landowners in the vicinity. These repartimientos were judicial proceedings called to settle actual conflicts. Ideally, such distributions would be made "so that all users can irrigate their lands."<sup>65</sup> In practice, water was usually distributed according to need with special attention to the first rights of Indian communities to the water they needed to support the community

("para su sustento"). It was standard practice in repartimientos involving Indian communities for the Indians to receive the first assignment of enough water "for their needs" or "to irrigate their lands." 66

The procedures followed in arranging a formal repartimiento were recorded in some detail for the congregación of San Sebastian del Venado (San Luis Potosi) in 1808. After considering a petition from the subdelegado (local royal administrator) that the water from a spring be formally distributed in order to resolve chronic disputes, the Intendant of San Luis Postosi (the provincial governor) issued a decree on December 15, 1808, calling for a "repartimiento of the spring waters commensurate with the cultivated fields of those Indians and for other beneficial uses that might distract them from idleness and other vices resulting from it, and so that they may achieve their subsistence." 67 Specifically, the Intendant ordered that corvee labor be used to build the necessary canals and aqueducts and that an official repartidor de aguas be assigned to make a "detailed list of the gardens and farmlands that need to be irrigated for the well-being of the community and to avoid arguments of waste of the said water, looking after the maintenance of the ditches through which the water passes, as well as an account of the water taken by the Spanish and other non-Indian

users according to the distribution ordered by the Superior Authority."<sup>68</sup> The primary concern of the State officials in making the repartimiento was "the peace and good order and well-being of the Indians of this town."<sup>69</sup> The town apparently received rights to more water than the Indians actually used since some of the town's water was rented out to private Spanish landholders.<sup>70</sup>

The senior right of Indian communities was an active principle, especially where water was scarce and had to be conserved and distributed carefully, but these repartimientos were also pragmatic judgments based on a concern with "peace between the Indians and farmers" and designed to "prevent divisions and difficulties" and "avoid lawsuits and unrest."<sup>71</sup> Where there was competition for water but the sources were relatively abundant, it was common to divide the use in equal parts, as in the 1766 San Miguel el Grande case in which half was assigned to the non-Indian townspeople and half to the adjacent reducción de indios.<sup>72</sup>

Records relating to two water repartimientos in New Mexico survive for the late colonial and early Mexican periods. In both of these cases, the district alcalde mayor served as the water judge. One, a 1722 repartimiento for the Río Santa Fe in a time of serious shortage is of little importance in this case since it does not concern community or Indian pueblo water rights. It provides for distribution by turns on a ditch to individual landowners according to the size of their cultivate

land. <sup>73</sup> The Alcalde Mayor of Santa Fe, Don Francisco Bueno de Bohorquez ordered the repartimiento to be made on the following basis:

paying special attention to the greatest need and to poor widows; and giving each user what he may need for irrigation considering the limited time allotment that may be essential and that seems appropriate to the said inspectors according to the size of the cultivated plot; making sure that if the owner of the plot does not make use of it he will lose his turn and remain without water until his turn comes around again; [which sequence] will begin at the lower part where the water meets the acequia so that when it is in short supply all those vecinos in that section be allowed to irrigate; and making sure that those who may have had wasted fields for lack of weeding and care shall not be given as much as they may have been assigned [originally].

The second water adjudication and repartimiento came as a result of a dispute in 1823 between the Indians of the Taos pueblo and the citizens of Arroyo Seco over rights to the Lucero River. <sup>74</sup> After determining that the Taosenos had always used the R: Lucero to irrigate their fields, doing so long before the founding of Arroyo Seco, the ayuntamiento judge concluded that the people of Arroyo Seco would be allowed to use a surco (furrow) of water in times of abundance and proportionally less in times of scarcity "so that the party of the first part [Taos] who enjoys the antiquity and primacy [primacia] as sons of the said pueblo shall not lack [for water]; and the remainder [shall go to] the people of San Fernando who established themselves long before the [people] of Arroyo Seco." <sup>75</sup> Here the needs of the

Indian pueblo were provided for first, then the non-Indian community of San Fernando would receive the remaining water, and finally the recently settled community of Arroyo Seco, which technically had no right to irrigate from the Río de Lucero, would receive one surco of water (roughly fifty-one gallons per minute) in times of abundance and less according to the total amount of water available.<sup>76</sup> The Indian pueblo's advantageous position in the distribution of water from the Río de Lucero was based partly on being the oldest user ("la antigüedad") and partly on their primacy ("primacia") as a recognized pueblo of Indians.

The best documented repartimiento case involving an Indian settlement in the borderlands concerns the congregación of San Francisco Malpaís, the Spanish Villa de Nombre de Dios, and neighboring private estates in southern Durango. The Indian congregación of Zacatecan Indians at Malpaís apparently was founded in 1553, ten years before the formal establishment of Nombre de Dios, a villa of Spaniards and Mexican Indians which adjoined Malpaís to the northeast.<sup>77</sup> Within a few years, the settlers of Nombre de Dios may have dispersed to mining camps in the region, for a petition to found another Spanish villa at Nombre de Dios was denied in 1584 because there were too few Spaniards living in the vicinity to justify a formal town. In 1604 plans were made to construct a monastery at Nombre de Dios and bring the "Chichimec Indians of Malpaís" (a badlands region nearby) together in a regular community.<sup>78</sup> In the early

seventeenth century, Nombre de Dios was reported to have eighteen Spanish families, thirty Indian families, and two priests.<sup>79</sup>

Despite the halting development of Nombre de Dios, Spanish ranchers occupied the area in the late sixteenth century and arranged a formal repartimiento of the Apuanas River in 1573.<sup>80</sup> According to this repartimiento, five upstream estates were to receive ten days of water each month, three downstream estates received another ten days of water, and a ninth estate was assigned alternate nights of water from a separate source called "agua fría." Indian settlements were not specifically mentioned in this repartimiento, but the thirten-day allotment of water from the Apuanas River and alternate nights of water use from "agua fría" may have been set aside for them. The seventeenth and eighteenth centuries witnessed periodic disputes and re-divisions of water among the private estates of the jurisdiction.<sup>81</sup> In 1679, Malpaís received a formal assignment of two and one-half surcos of water from the Audiencia in Mexico City.<sup>82</sup>

The confrontation of Malpaís-Nombre de Dios and the private non-Indian users of the Apuanas River culminated in 1748-1750 following a period of population growth in the two communities. In 1748, a judgment affirmed the principle of first rights for the communities, even though the haciendas were located upstream from the towns. The needs of the congregación of Malpaís and the Villa de Nombre de Dios were satisfied with one-half of the available water. The remainder was judged to be residue and was assigned to the haciendas. In 1750, the first rights

principle was again upheld. The needs of the towns were measured at three and one-fourth surcos, the residue was apportioned to the haciendas, and the small estates located between the haciendas and the two towns, which had tapped the river without formal authorization, were not provided with water. This division was to continue "until such time as His Excellence issues another order." <sup>83</sup> Malpais apparently had received more than enough water, since the community acquired additional farmland in 1775. <sup>84</sup>

In Indian pueblos of New Mexico, as Indian towns and ancient users, normally were entitled to the water they needed at a given time, subject to periodic review as needs changed. Surplus waters could be assigned to other landowners, as they were in the case of settlers of the Rio de Don Fernando de Taos in 1797:

By Virtue of a petition made by the settlers of the Rio de Don Fernando to Lieutenant Colonel and Governor of the province Fernando Chacon, praying he might be pleased to do them, in the name of His Majesty -- God preserve him -- the favor to allow them the surplus water from the Taos River and from the Lucero river (las aguas sobrantes del rio de Taos y el del Luzero) and his Excellency having given me the said Chief Alcalde the order to place them in possession, I do, in the name of His Majesty as aforesaid, giving this instrument for their greater security, to which I certify.

Antonio Jose Ortiz <sup>85</sup>

As needs changed, the assignment of water could change, too, as it did in the Malpais case where the community's assignment of water from the Apuanas River was increased because the population growth. While no examples of revised assignments in New Mexico have come to light in the small body of surviving water

records, none of the water adjudications studied for New Mexico or other regions in New Spain calls for permanent silence of the parties to the decision as do land grants and other land adjudications.

Another New Mexico record, this one involving the pueblo of Santa Ana and vecinos of the settlement of Angostura in a determination of co-tenant rights to the use of an acequia in the early Mexican period (1824-1838), shows 1) the provincial government's concern that irrigation water be used to increase agricultural production by all neighboring farmers, 2) need as one principle of assigning water to users, 3) recognition that Indians might have special rights in water, and 4) that formal settlements of water disputes did not call for perpetual silence but left the way open for future adjustments by the local water judge.<sup>86</sup> This case is not altogether complete, lacking information on the actual allotment of water, specific adjustments in time of scarcity, and the official response to the pueblo's side of the case. It is limited to establishing that the vecinos of Angostura could use the acequia of Santa Ana and that the pueblo of Santa Ana did not have exclusive rights to the use of the acequia.

The record begins with an order from Jefe Político Bartolomé Baca to the Alcalde of Alameda on April 27, 1824 that the people of Santa Ana and Angostura be joined as co-tenants of the acequia "with the same limits as was done last year, so that in this way the crops will not be damaged ... ." On July 18, 1829 Alcalde Pedro José Perea ordered that Don Pablo Montoya be joined as a co-tenant, that Don Pablo help maintain the acequia as a

condition of his right to use water ("he is obligated to give them in case of need all the help that they may demand of him"), and that all parties submit themselves to the water alcalde who directs the use of the acequia. In a petition dated July 11, 1834, Pablo Montoya, Antonio Montoya, and Juan Pablo Archibeque requested implementation of the co-tenancy order. On August 1, 1834 Jefe Politico Sarracino ordered the alcalde to attend to this matter, invoking the importance of agriculture: "As the agricultural branch is among those most highly esteemed by the laws and the petitioners, some of whom merit the name of alcalde, the alcalde to whom this matter belongs, as is proper to his duty, will do the most suitable justice, as much to observe the laws in this matter as that the petitioners not be deprived of such a laudable goal for them and their plantings." Two years later, on June 30, 1836 (July 3, 1836 according to the MANE document), José Andrés Sandoval ordered that the petitioners (Archibeque and the Montoyas) be permitted to use the acequia as long as they helped to maintain it. He ordered that the water be allotted on the basis of greatest need with possible adjustment in favor of the Indians of Santa Ana if they showed the judge that they had special rights or had suffered damages. Sandoval sought to make a concrete determination of water assignments after the Indians had presented their side ("The petitioners are obliged to appear in this court on the day the Indians themselves propose to make their appearance. We seek in this way to avoid prejudice to the

litigants and at the same time, with knowledge of all the proceedings, to determine what is proper and may be the conclusion by which means they shall be reconciled in the future") but there is no indication whether the Indians presented their rights or what if any formal adjustments were made. The last document for this case is a fragment of an order of August 1, 1838 by Salvador Montoya to the Alcalde of Santa Ana in response to the complaint from Pablo Montoya of Angostura. The order called for Pablo Montoya to use water from the acequia temporarily until he presented his documented rights to water. 87

The goal of bringing as much farmland as possible under irrigation, while recognizing that there would not be enough water to achieve this end in most instances, is implicit in these cases from the borderlands. Fostering development of all irrigable land was a goal of the "Plan for Pitic," a copy of which was filed in the archives in Santa Fe on January 20, 1800. The concept of irrigable land appears in paragraph 19 which treats irrigation:

Since the practice of irrigation is the principal means of fertilizing the soil and the most conducive to the development of the community, the Commissioner will take special care to distribute the water so that all the land that may be irrigable takes part, especially during the spring and summer seasons when they [the irrigation waters] are most needed in the fields to secure the crops. 88

### C. Summary

This small group of water rights records which survives for the northern reaches of New Spain and Mexico before the Treaty of Guadalupe Hidalgo tends to confirm the patterns of adjudication of the water rights of settled Indian communities in the center of the viceroyalty discussed in my earlier report. Generally speaking, the right to use surface water was attached to the land it passed through, and actual need (which was not conceived in a static sense whereby final, unchangeable dispersals were made) was important in establishing the amount of water assigned. Judging by the small number of formal water cases for New Mexico before 1848, users of a stream or river and the local water judge were permitted -- probably encouraged -- to strike informal agreements acceptable to the users whenever possible. Formal mercedes or grants of exclusive rights to water were rarely made. In the surviving records, special consideration was given to community uses and the oldest users. The preference for public over private uses and the senior rights of formally constituted towns to the water of public rivers and streams crossing their territory is clear in the laws and cases described here and in Escriche's commentary on the law: "the owners of the lands through which they [non-navigable rivers] pass may avail themselves of their waters for the use of their fields or their industries as long as they do not prejudice the community use or the purpose which the pueblos that they pass may have given to them . . . ."

89

Indians, as vassals of the Crown, received some

additional consideration. Indian settlements in the northern borderlands of New Spain, like their better documented counterparts further south, usually received the first assignment in a distribution adjudication of enough water "for their needs", with some leeway implied for future adjustments as needs changed.

V. A Brief Appraisal of Pueblo Lands in Colonial New Mexico.

Whether or not the pre-Hispanic Indian pueblos of New Mexico received formal grants to their community landholdings during the colonial period has not been firmly established. The "Cruzate Grants" which were accepted as valid by the Surveyor General of the United States after the Mexican-American War have been shown to be spurious or, at best, imperfect copies of original grants from the 1680's. There is a possibility that at least some of the purported 1689 "Cruzate titles" are copies of authentic grants since Cruzate had been authorized in 1684 to make grants to the Pueblos.<sup>90</sup> The clearest example of a Spanish grant to a pueblo is that of Sandia in 1748.<sup>91</sup> Since it was the re-establishment of a different group of Indians (Moqui) 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.

It is possible, as Dr. Myra Ellen Jenkins suspects, that grants were issued to the other Pueblos but have been lost.<sup>92</sup> It is also possible, and perhaps more likely, 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 (see pp. 18-19 above). If ownership of ancient community lands was disputed by outsiders, a formal

adjudication would have been made by the colonial courts to establish the boundaries of the pre-Hispanic lands. This is the pattern of land confirmation in the heartland of the viceroyalty of New Spain in the early colonial period. The destruction of the official archives of New Mexico in Santa Fe during the Pueblo Rebellion in the 1680's makes it impossible to elaborate on the process for early New Mexico. Given the small non-Indian population of New Mexico in the sixteenth and seventeenth centuries, encroachments on traditional Indian lands may have been infrequent and may therefore have reduced the need for adjudication of Indian land boundaries.

Late colonial evidence tends to support a basic four-square league (slightly less than 35 square kilometers) territory for Indian pueblos. The four-square league standard is mentioned in the following pueblo land records and late colonial accounts, among others:

| <u>Pueblo</u> | <u>Year</u> | <u>Source</u>          |
|---------------|-------------|------------------------|
| San Ildefonso | 1704        | SANM, I, #1339         |
| San Ildefonso | 1724        | SANM, I, #1344         |
| San Ildefonso | 1766        | SANM, I, #1351         |
| San Ildefonso | 1776        | Domínguez, p. 71       |
| San Ildefonso | 1786        | SANM, I, #1354         |
| Santa Clara   | 1724        | SANM, I, #1351         |
| Santa Clara   | 1786        | SANM, I, #1354         |
| San Felipe    | 1704        | SANM, I, #78           |
| San Felipe    | 1770        | SG-142, Patrick, p. 10 |
| Santo Domingo | 1770        | SG-142, Patrick, p. 10 |
| Santo Domingo | 1844        | SANM, I, #1380         |
| San Juan      | 1776        | Domínguez, pp. 89-90   |
| Sandía        | 1748        | SANM, I, #848          |
| Taos          | 1815        | SANM, I, #1357         |

The Santo Domingo and San Felipe land records formed during the governorship of Don Pedro Fermín de Mendinueta (1767-1778)

and his protective pueblo land policies recently have been described by Elizabeth N. Patrick:

Mendinueta acted with foresight and planning when the governors of Santa Domingo and San Felipe pueblos asked for parcels of land which lay between their pueblos for the pasturing of cattle and horses. He enthusiastically granted the land to them because he judged it extremely prejudicial to their pueblos if <sup>93</sup> that area would ever be alienated to a third party.

The most emphatic statement of pueblo rights to a minimum of 5,000-varas league in each of the four cardinal directions was made by Governor Alberto Maynez in response to the Taos Pueblo complaint of encroachments on their lands by non-Indians, dated April 11, 1815. In his decree of April 15, 1815 (Twitchell, I, p. 429 incorrectly dates this document April 18, 1815), Governor Maynez spoke of the "Pueblo league" in the following terms:

. . . the league of five thousand varas measured from [the cross] in the cemetery in all directions which His Majesty granted each Indian pueblo from its founding is to be preserved for the maintenance of its natives. Accordingly, they have the use [of it] and cannot give or sell [it] without the King's permission. Because it is patrimonial or entailed property, no judge or governor has the power to sell any part or all of the said league.

If it should happen that for many years past or in any manner whatever citizens may have intruded to plant and build on the Indians' land, they are to lose the improvements [made on the land] and leave the land free for them [for the Indians]. But since grave injuries might result to the citizens from this judgment, the Alcalde Mayor of Taos should mete out equity with justice as far as possible, hearing the parties and adjusting their differences in such a manner that the natives' interests are not compromised in the settlement which they may make; and Don Felipe Sandoval, the Protector of the Indians, will set forth in fulfillment of this decree whatever may occur to him in regard to the present matter. <sup>94</sup>

This is a strong statement by a governor of colonial New Mexico of the pueblos' right to a minimum of four square leagues of land, but it also contains an important provision for some flexibility in practice, which is so characteristic of Spanish justice in America. In this case, the governor rather cryptically allowed the Alcalde Mayor of Taos to make some "adjustments" agreeable to the parties as long as they did not compromise the pueblos' rights and interests. While urging a verbal compromise agreeable to all parties, Governor Maynez concluded by reaffirming the Indian pueblo's right to the four square leagues: "but being well established in principle that their rights to the league granted them by the Crown are inviolable, it is appropriate that the vecinos be content because if formal proceedings continue, it appears that right is on the side of the Indians."<sup>95</sup>

The meaning of flexibility in applying the four-league standard is illustrated in fuller detail and over a long period of time in the boundary adjudications for the San Ildefonso pueblo. In January 1702, a grant of land east of the community apparently was made by Governor Pedro Rodríguez Cubero to Matías Madrid.<sup>96</sup> The pueblo claimed that it had allowed Madrid to use the land but did not acknowledge that he had received a formal grant. This land was sold to Juana Luján in 1714 and later passed into the possession of Francisco Gómez del Castillo. In 1763, the pueblo claimed that part of the grant to Madrid was located within its four square leagues and should be returned

to the community. The governor of New Mexico, Tomás Vélez Cachupín, acting upon the advice of Fernando de Tarifa y Seri, attorney and corregidor of the Villa de San Felipe el Real (Chihuahua), found that Madrid had received a valid grant from Governor Cubero and therefore Gómez del Castillo should not lose the portion of his land located within the four square leagues. Grants of this sort were said to have been crucial to the defense of New Mexico after the Pueblo Revolt of 1680 and since there was no way to determine whether or not the original grant had been prejudicial to the pueblo, it should not be revoked.<sup>97</sup> On the other hand, the governor affirmed that San Ildefonso did have a right to its four leagues of land and should be compensated for the loss of land on the east with vacant land north of the pueblo—"as much as they need" ("toda la extensión necesaria")—including the abandoned rancho of Pedro Sánchez.<sup>98</sup>

A second grant—this one between San Ildefonso and Santa Clara—apparently was made by Governor Cubero to Mateo Trujillo. On June 9, 1724, Juan Páez Hurtado ruled that this grant was prejudicial to Santa Clara's interests.<sup>99</sup> He proceeded to measure a full league to the south for Santa Clara, conceding to Trujillo the remaining land up to "the mesa." Trujillo's grant was not measured against San Ildefonso's league at that time. In measuring San Ildefonso's lands in 1763, it was determined that to the north, the pueblo lacked 628 varas to reach the 5,000 varas league. On May 5, 1766, Governor

Vélez Cachupín declared that the grant to Trujillo had been harmful to "the legitimate lands of the pueblo" which he judged to be a full league ("legítimo derecho de la legua de tierra").<sup>100</sup> San Ildefonso's lands were now to be measured up to the ranch house of Trujillo and the pueblo was to be given first rights to purchase the Trujillo grant if it were ever put up for sale.<sup>101</sup>

Two other claims by outsiders to land within San Ildefonso's four square leagues were rejected by the colonial authorities. In one case, Marcos Lucero of Ojo Caliente had purchased a plot of land north of San Ildefonso from a member of the pueblo and proceeded to occupy the land. On April 12, 1765 the governor of New Mexico ordered Lucero to vacate and accept in return the sum of money he had originally paid for it.<sup>102</sup> In the second case, dating from 1704, the pueblo complained that Ignacio de Roybal was occupying lands west of the Río Grande within its league. Roybal countered that the Indians had never cultivated the land and his use of it caused no injury to the interests of the pueblo.<sup>103</sup> On September 27, 1704, Lieutenant Governor and Captain General Juan Páez Hurtado declared that Roybal's grant was valid only for land beyond the pueblo's league.<sup>104</sup> This judgment effectively invalidated part of Roybal's claim. Páez Hurtado's judgment was reconfirmed by Governor Vélez Cachupín on May 5, 1766 when he supported San Ildefonso's "legitimate right to the league of land."<sup>105</sup>

As Dr. Myra Ellen Jenkins has suggested, the four square leagues were considered a minimum allotment to the Indian pueblos,

not as a rigidly-fixed maximum area allowed to such communities. None of the pueblos whose lands have been documented for the colonial period had boundaries measuring a neat 5,000 varas in all four cardinal directions.<sup>107</sup> The location of the communities and their proximity to one another made such a symmetrical arrangement virtually impossible. Some pueblos were less than two leagues apart and few had uniformly good farmland that stretched north, south, east, and west to points equidistant from the cemetery cross.

In considering the land rights of Indian communities, some attention was given by colonial New Mexico magistrates to the general principle of community needs, and future expansion. Lands that had once been cultivated by the New Mexico pueblos were recognized by the courts as Indian lands even after long periods of disuse and encroachment by non-Indians. In the 1724 case involving Mateo Trujillo's petition for lands between the San Ildefonso and Santa Clara pueblos, the judge, Juan Páez Furtado, accepted the existence of the Indians' previous cultivation to order Trujillo to vacate the plot.<sup>108</sup> An old irrigation ditch was also the pivotal evidence on the Indians' behalf in a 1704 dispute over land west of the Río Grande occupied by Ignacio de Roybal and apparently not farmed by the pueblo for many years.<sup>109</sup> Future expansion was considered in the grant of land south of San Ildefonso to Pedro Sánchez in 1742. In this case, the judge, Juan José Lovato, set aside more farmland for the pueblo than it was cultivating at the time. His purpose in

doing so was to provide for expanding future needs of the Indians as a means of preventing new disputes with neighboring landowners:

. . . in order that no obstacle or dispute should arise in the future with these Indians, I extended their lands beyond those which they cultivate so as to include that which they consider to be the best in order that they might increase their crops and by the common consent of the aforementioned, a Holy Cross was erected to serve as the southern boundary of said Indians and the northern boundary of said Captain Pedro Sánchez.<sup>110</sup>

Another possible case of pueblo communities expanding their use of land with government consent is recorded in an 1859 document in which the Indians of the Laguna pueblo claimed that they had been allowed to extend their fields beyond the league boundary in order to "meet their needs" ("para su manutención").<sup>111</sup> There are also two cases of unused or little used land given to Indian pueblos in 1770 and 1776 which are consistent with the principle of tanteo established by the Crown for Indian pueblos and documented in the 1692 case involving Tomás de Palacios in the jurisdiction of Cholula (discussed above, pp. 19-20). Governor Mendinueta in 1770 assigned a parcel of land between the pueblos of Santo Domingo and San Felipe to the two communities jointly on the grounds that to grant the parcel to someone else would be extremely prejudicial to the communities.<sup>112</sup> For essentially the same reason, the pueblos of Zia, Santa Ana, and Jémez received a grant from Governor Vélez Cachupín (dated June 16, 1776) to the Valley of Espíritu Santo, an area of about forty-eight square leagues to be used for grazing.<sup>113</sup> In this case, the Indians

claimed they had long considered this valley part of their ejidos (community pastures). They objected to a request for a formal grant to this pastureland by certain non-Indians ("dho Balle a tenido algunos pretendientes vesinos para adquerirlo de merced") on the grounds that it would do them great harm. After determining that the Indians of the three pueblos had sufficient livestock to need this land and that no third party would be prejudiced, the governor granted it to them.

Following Independence, the legal position of Indian pueblos was altered in several ways. Mexican laws after 1824 no longer referred to Indians as vassals of the State with certain rights and obligations that distinguished them from other citizens. Indians came to be considered citizens of the Mexican State with the same legal personality as other Mexican citizens. Hence, the office of Protector de Indios, the special state-appointed attorney for Indian litigants, was disbanded and Mexican period documents often referred to Indians as "ciudadanos" ("citizens") or "naturales" ("natives" in the neutral sense of "native or originary of some town or kingdom"<sup>114</sup>)<sup>115</sup>.

The property rights of Indian pueblos do not seem to have been altered in major ways before 1848. Although individual Indians could now sell their private property without a special license from the State, the traditional communal lands of the Pueblos were not expropriated nor does it appear that they were privatized. Mexican period legislation in New Mexico continued to recognize the rights of communities to hold property. For example, the municipal ordinances issued by the Departmental Assembly on February 22, 1846 refer to community rights to land in paragraph 2 of Chapte

5 (fondos publicos): "the lands which in common they possess at the present time or may acquire in the future, as well as the rights and shares that may belong to them." 116 In practical terms, this continuing right of recognized communities to hold land in common meant that Indian pueblos in New Mexico were protected in their four square league holdings and other lands which they could demonstrate to have held in common. Several remeasurements and confirmations of the pueblo league in response to encroachment by outsiders are documented in the Mexican period: Jemez in 1833, Santo Domingo in 1844, Picuris in 1845, and Isleta in 1845. 117 In the Santo Domingo case, the Indians petitioned for a new measurement on August 23, 1844 because all of the boundary markers had been destroyed and they were having boundary difficulties with a neighboring landowner, Jose de Jesus Sanchez. Their petition refers to "one league in the direction of the four winds which was assigned them by the Spanish government" ("una legua que por los cuatro vientos les fue adjudicada por el Gobierno espanol"). 118

Isleta's petition of March 27, 1845 to the Departmental Assembly laid claim to a site called ojo de la cabra outside the pueblo's league on the grounds that the people had used it from time immemorial as common land to pasture their animals. On June 29, 1845 the Departmental Assembly decided that this site had indeed been used as a communal pasture by the people

of Isleta and therefore the grant of ojo de la cabra made by the Departmental Assembly to Don Juan Otero must be revoked.<sup>119</sup> While this case confirmed Isleta's right to communal land outside the four square leagues, it also points to new pressure on Indian lands by land-hungry non-Indians. In contrast to the late eighteenth century, individuals were petitioning the government of New Mexico for new land grants near Indian pueblo communities and Indians were complaining more often of illegal encroachments by their neighbors in the Mexican period. One apparent example of this new pressure on the land is an 1829 complaint by the Picuris Pueblo against Rafael Fernández and Miguel González whom the pueblo claimed were making a practice of requesting land grants only to sell them as soon as they were confirmed and return with requests for new grants.<sup>120</sup> While favorably disposed toward communal lands of pueblos, the New Mexico government in the Mexican period also began leaning toward private land tenure. For example, in response to petitions from eighteen individuals for unoccupied agricultural lands in the possession of the pueblos of Santo Domingo and San Felipe (apparently the same lands assigned to these pueblos by Governor Mendinueta which are discussed on p. 50), the Provincial Deputation on February 16, 1824 and March 12, 1824 decided that in the interests of reviving agriculture, the lands should be divided between the two pueblos instead of held by both pueblos jointly, that each pueblo could dispose of its portion of the land "with the same liberty as other citizens (ciudadanos)" and that any surplus lands would then be disposed of.<sup>121</sup>

VI. Non-Indian Lands in the Vicinity of San Ildefonso, Tesuque, Pojoaque, and Nambé During the Eighteenth and Early Nineteenth Centuries

Non-Indian land grants in the vicinity of these four pueblos are discussed at length in the two articles by Dr. Jenkins.

Rather than recapitulate her detailed and accurate descriptions based on the eighteenth-century documentation, I shall only summarize the chronology and location of the non-Indian holdings and their relationship to Indian pueblo land and water rights.

For the pre-Revolt period, no formal grants survive, but from an inspection of lands north and northeast of San Ildefonso by Lieutenant Governor Luis Granillo in March of 1695, we know that there were private estates in the vicinity before 1680.<sup>122</sup> Two leagues out from Santa Fe in the direction of Tesuque (north), Granillo mentioned the ruined hacienda formerly occupied by Francisco Gómez, which he judged could support only one family because there was limited water for irrigation.<sup>123</sup> From the Gómez estate he crossed over to the Santa Cruz watershed and continued north to San Lázaro, near Chimayó. Following the "canyon" (valley of the Santa Cruz River) west toward the Río Grande he mentioned the farm of Captain Juan Ruis. He continued toward the northwest, passing San Juan Pueblo, crossed the Río Grande and turned south to Santa Clara. Recrossing the river and returning up the canyon, he identified the Martínez estate adjoining Ruis's land, followed by the former haciendas of Miguel Luján, Marcos de Herrera, Nicolás de la Cruz, Melchor de Archulet Juan Griego, Sebastián Gonzales, Francisco Xavier, and Pedro de la Cruz. Turning southwest down another part of the Santa Cruz

valley toward the Río Grande and San Ildefonso, Granillo noted more private estates: those formerly occupied by Bartolomé Montoya, Diego López, Marcos de Herrera (presumably the same estate noted on his first pass), Francisco López (as noted previously), Ambrosio Sáez, and Agustín Romero (near the mesa).

Following the Spanish re-entry into New Mexico in 1692, Governor Diego de Vargas expressed concern that Spanish settlers and local Indian communities alike have their own lands, and that the two groups should live in separate communities.<sup>124</sup> In taking possession, the de Vargas forces were careful not to intrude upon Indian lands. After the possession ceremonies at San Lázaro and San Cristóbal, the Spaniards withdrew more than one league to camp "in order not to destroy the fields with the horses," and they purchased maize from El Paso rather than confiscate the Indians' grain.<sup>125</sup> However, re-establishing the Spanish presence clearly was the primary concern of the early post-Revolt governors. On March 18, 1695, a settlement grant for the new Spanish villa of Santa Cruz assigned lands to the colonists "as far as the pueblos of Nambé, Pojoaque, Jacona, San Ildefonso, Santa Clara, and San Juan."<sup>126</sup> To encourage permanent Spanish settlement north of Santa Fe and to clarify boundaries, formal land grants were issued to individuals from the late 1690's.

Land grants in the vicinity of San Ildefonso, Pojoaque, Tesuque, and Nambé were concentrated in this early post-Revolt period. Of the fourteen grants identified, eleven were first

made between 1699 and 1704. Two of the three later grants (1739 and 1752) coincided with severe droughts in the Santa Fe area which led some soldier-farmers to look north for irrigable land.<sup>127</sup> The earliest grants were to lands near vacated Indian pueblos. The Cuyamungue and Jacona grants, which may date from 1699 and are clearly documented in 1702 and 1704 respectively, were for lands of two small pueblos which had not been revived after the 1696 revolt.<sup>128</sup> Pojoaque, the only pueblo of the four that concern us here which was not occupied during the granting period, 1699-1704, found its borders severely restricted by new grants. When it was reoccupied in 1707, Pojoaque was bounded on the west by the Jacona grant; on the south by the Cuyamungue grant. Arable lands just west of the pueblo itself (called "San Isidro") had been granted to Francisco de Anaya in 1699 and sold by his son-in-law Sebastián Canseco to Juan Trujillo in 1702 for two hundred pesos.<sup>129</sup> Another grant of three fanegas de sembradura was made west of "San Isidro" in 1699 to Juan de Mestas.<sup>130</sup> The western portion of this grant was sold to Ignacio de Roybal in 1705, the owner of the adjacent Jacona grant.<sup>131</sup> Three other small grants were made near Pojoaque in 1701 and 1704: one to Joseph Quiros and Antonio Durán de Armijo on September 10, 1701, a second to María de Tapia and her son Carlos López in 1701, and the third, located between Pojoaque and Nambé, was granted to Juan Páez Hurtado on March 3, 1704.<sup>132</sup> Durán de Armijo's portion was sold to the pueblo of Pojoaque in 1716 as was part of the grant to Tapia and López.<sup>133</sup>

Another segment of this grant was sold to Antonia Durán in 1716 and was acquired by a son of Juan Trujillo (holder of the "San Isidro" property) in 1733.

The other four early grants were made in the vicinity of San Ildefonso. Two of these were located west of the Río Grande: one to Mateo Trujillo, dated March 29, 1700; the second, located south of Trujillo's grant, was made to Ignacio de Roybal on March 4, 1704. The third grant, east of the pueblo, was made to Matias Madrid in a somewhat faulty proceeding on January 26, 1702 and reconfirmed to Juana Luján on October 4, 1715 (she had purchased it from Madrid on July 16, 1714). The fourth grant, a small tract near the mesa was made to José Trujillo on December 29, 1700. One later grant (1742) was made to Pedro Sánchez west of the Río Grande with the consent of San Ildefonso.<sup>1</sup> Between 1763 and 1786 San Ildefonso filed complaints against the grants situated on pueblo lands (using the four square league standard) and the size of several of the grants was reduced. The Pedro Sánchez grant was abandoned and turned over to the pueblo in 1765. The part of Ignacio de Roybal's grant within the pueblo's league was voided. The Mateo Trujillo grant was reduced several times; first, with the measurement of Santa Clara's league in 1724, and again in 1766. Finally, in 1786, Governor Juan Bautista de Anza judged the original grant improper and returned all but 236 varas of it to the pueblo. This remaining portion could only be sold to the pueblo. The Matias Madrid grant was validated in the 1763-66 litigation even though

it was within a league of the community. However, San Ildefonso's right to additional land was recognized in an assignment of land as compensation to the north of the pueblo.<sup>135</sup>

The two formal grants near Nambé and Tesuque were made in 1739 and 1752. The 1739 grant to two small plots west of Nambé was made to Vicente Durán de Armijo.<sup>136</sup> Durán de Armijo had originally requested a larger piece of land east of the pueblo which was not granted because of objections by the community. The 1752 grant to Juan de Gabaldón was for lands on both sides of the Tesuque River, southeast of Tesuque pueblo's lands.<sup>137</sup>

There is evidence of at least seven other private, non-Indian holdings near these four pueblos in the eighteenth century which are not documented in formal grants. These include three tracts near the Pojoaque pueblo (one occupied by Sebastián de Salas in 1702; a second to the north of Cuyamungue belonging to Lázaro Trujillo in 1731; and the third, bordering the Pojoaque River on the north and measuring 73 varas by 73 varas, was inherited by Juan Trujillo and Tomás de Tapia from their father, Juan Trujillo, and sold to Juan Durán on April 19, 1751);<sup>138</sup> two ranches adjoining the Gabaldón grant near Tesuque (one south of the grant belonging to Juan de Ledesma in 1752; the second to the west of the grant owned by Juan de Benavides in 1752 and sold to Ignacio de Alarid in 1772);<sup>139</sup> a piece of land west of Nambé belonging to Juan Páez Hurtado in 1739 which bordered on the south and east with the Durán

de Armijo plots; and lands held by Andres Montoya in 1742 south of the Pedro Sanchez grant (west of the Rio Grande).<sup>140</sup>

Documentation on land ownership near the four pueblos during the Mexican period is scarce. This was a period of weak central government in Mexico City, a political vacuum which may have contributed to some illegal occupation and unauthorized sale of community lands in New Mexico as it did further south, even though the Mexican governments prior to 1848 generally applied colonial laws relating to land rights. Of the formal records, Dr. Jenkins has discussed the unsuccessful petitions of members of the Ortiz family in 1840 and 1842 for pueblo lands located between the communities of Nambe and Tesuque.<sup>141</sup> Three transfers of land near San Ildefonso during the Mexican period are recorded in Book "A" of the Register of Land Titles filed in the Surveyor General papers.<sup>142</sup> These were the transfer of two farming plots "in the woods on the other side of the river" from Domingo Leiba, resident of San Ildefonso, to Juan Vigil on May 23, 1837, and two plots from Juan Diego of San Ildefonso to Gregorio Trujillo of Santa Fe on November 1, 1837, and January 3, 1842.<sup>143</sup> One of Juan Diego's plots was farmland measuring 50 varas by 103 varas situated "in the woods on the other side of the river." His second plot, measuring 31 varas by 65 varas, was located at Jacona. For the second plot, Trujillo exchanged another piece of land measuring 20 by 200 varas and eight pregnant ewes. The SANM papers also include a dispute between Trinidad Barcelo and Pablo Ortiz in 1837 over rights to a house and lot in Pojoaque.<sup>144</sup>

## VII. Conclusion

The scattered land and water records for eighteenth and early nineteenth-century New Mexico cannot easily be understood in isolation from the larger context of adjudication in the viceroyalty of New Spain. New Mexico was administered as a province of the viceroyalty, subject to the same laws regarding the rights of sedentary Indian subjects. As Professor France V. Scholes observed:

After the resignation of Oñate, responsibility for the government of New Mexico was assumed by the viceregal authorities of New Spain. Governors of the province were appointed by the viceroy who exercised a general supervision over military and civil administration. The Audiencia of Mexico became the court of appeal, and it actively advised the viceroy on all matters of high policy concerning the province.<sup>145</sup>

In New Mexico, as in other parts of the viceroyalty of New Spain, Indian agriculture was encouraged and supported by Spanish officials.<sup>146</sup> Spaniards had more than purely religious and paternalistic interests at stake in supporting the settled, "civilized" Indian communities of New Mexico and central Mexico. A solid agricultural base in Indian villages meant tax revenue for the Crown, food for the colony, sustenance for the parish priest, a reliable source of seasonal labor, royal subjects who lived in sedentary communities and could be more easily incorporated into the colonial political system, and military allies against the "barbarous" Apaches and Comanches.

The special position of Indians based on paternalism and the needs of the colonial system had important implications

for Indian property rights. Royal laws provided that Indians were to be confirmed in their pre-Hispanic landholdings and further they were to be assured of the lands they needed for planting and livestock. One law excerpted in the Recopilación suggests that the Indians were in fact to receive preferential treatment in access to land:

Whosoever has not had possession of the land for ten years, although he may claim that he is in possession (for this pretext alone is not sufficient), shall not be allowed to settle said land, and the Indian communities, in relation to other interested parties, shall be granted all consideration.<sup>147</sup>

Unlike other royal subjects, Indians could sell their lands only by express royal or viceregal license and the sale itself required a formal hearing and a public auction.<sup>148</sup> This special consideration was, according to the law, for "the welfare of the Indians," but the productivity of these royal vassals was also an important factor.<sup>149</sup> Another kind of preferential treatment for Indians in economic matters was set down in 1601. Indians were to be charged less than other groups for the purchase of food and supplies.<sup>150</sup> With regard to water, when non-Indians applied for assignments of water near a pueblo de indios, the burden of proof was on the applicant to demonstrate that he was not encroaching on what the Indian community needed.<sup>151</sup> Before a private applicant could qualify for an allotment of water, his petition had to be posted on the church of the local Indian community in both Spanish and the Indian language; a formal inspection of the water source had to be made to ascertain that

the Indians' interests would not be harmed; and it had to be determined that the assignment would serve the "common welfare."<sup>1</sup>

In practice as well as principle, the larger viceregal context can shed light on the surviving New Mexico records. As we have seen, royal laws for New Spain had their application in New Mexico and general patterns of water adjudication were common to different districts of the viceroyalty. For example, in New Mexico, as in the core area of the viceroyalty, formal water grants were extremely rare in comparison to land grants. This common pattern supports the hypothesis that surface water was generally attached to irrigable lands and its use did not require a formal merced (although water grants could be made as a way of establishing a superior right).

In the colonial legal system, the repartimiento de aguas—division of available water among local landowners through judicial proceedings which responded to actual conflicts—was considered the most desirable formal solution to competition for scarce water. Because the need for water could be expected to change over time, repartimientos were not conceived as final, unalterable assignments. Need at the time of the adjudication, which was very important in determining the distribution of available water among the landholders, could change over the years. These changing needs were recognized in the Malpais case where repartimientos for water from the Apuanas River were made in 1573, 1679, 1748, and 1750. Each new repartimiento superseded the previous one. In addition to the importance

of general need (productive use by the various users), special consideration was given in repartimiento proceedings to community needs -- to Indian communities in particular -- and to the needs of the oldest users. As far as possible, repartimientos were designed to meet the needs for water of all farmers eligible to use a particular source and thereby to promote greater agricultural production.

Considering the special place of the repartimiento process in determining the water rights of Indian communities in the gobierno of Mexico, it would seem to be particularly significant that the most specific surviving record of a water adjudication in New Mexico under the Spanish and Mexican regimes which involved an Indian pueblo and neighboring non-Indians (the Arroyo Seco v. Taos settlement of 1823) was a distribution decision which emphasized the first rights and needs of the ancient Indian community over its less venerable neighbor. In this case, as in many others, a spirit of compromise ("justice with equity," as Governor Maynez put it) permitted the settlers of Arroyo Seco to use a small portion of the water from the Rio de Lucero even though they had no legal right to it.

The main point emerging from the Taos and Malpais distribution cases and related documentation is consistent with my earlier findings on the colonial water rights of Indians in the

51.  
gobierno of Mexico: unless there was a specific water merced, the waters were distributed informally by the users or by repartimiento in adjudicated cases, with special consideration to the water needs of communities, Indians, and the oldest users of the source. Such distributions were not necessarily final. As the judge in the Malpais case expressed it, the repartimiento of 1750 was to continue "until such time as His Excellence issues another order." In this same case, the Indians of Malpais and the non-Indian community of Nombre de Dios received an increase in their allotment of water from the Apuanas River from two and one-half surcos to three and one-quarter surcos on the basis of growing need. In the Taos case, a repartimiento or division of waters gave first priority to the Taos pueblo for the waters required to meet its needs ("para que no haya falta").

A D D E N D U M

(August 30, 1979)

I have reviewed a report to the Secretary of the Interior from a Special Assistant Attorney General (who was no doubt R.E. Twitchell) dated December 29, 1921, on the legal status of the Pueblo Indians under three sovereigns, brought to my attention this week by William C. Schaab. I understand that copies of this report have been furnished the State of New Mexico. Although somewhat confused on institutions of Spanish colonization, the analysis of the Pueblo land rights under Spanish rule generally is well founded and largely consistent with the conclusions in my report.

## Notes

1. The available documentation on land grants near the Tewa pueblos is discussed by Dr. Myra Ellen Jenkins in "Spanish Land Grants in the Tewa Area," New Mexico Historical Review, XLVII: 2 (1972), 113-134, and "The Pueblo of Nambé and Its Lands," in Albert H. Schroeder (ed.), The Changing Ways of Southwestern Indians: A Historic Perspective, Glorieta, New Mexico: The Rio Grande Press, 1973, pp. 91-105.

2. Governor Fernando Chacón, in a letter to the viceroy, dated November 19, 1803, claimed that there were virtually no lawyers or scribes in the province of New Mexico, Archivo General de la Nación, Mexico (hereafter AGN), Ramo Civil, Vol. 1674, exp. 16. A similar complaint by Governor Chacón to the Audiencia of New Galicia in 1802 is included in Marc Simmons's study of colonial New Mexican government: "All my predecessors and I have made known to the audiencia on repeated occasions that in this Province there are no, nor have there ever been, asesores, lawyers, nor notaries who can prepare and direct a legal case in the proper manner . . ." Spanish Government in New Mexico, Albuquerque: University of New Mexico Press, 1968, p. 85.

3. For example, Governor Maynez's call for an oral agreement in the land dispute between Taos Pueblo and Arroyo Seco vecinos on May 22, 1815: "for it is my wish that no more be written and that it all be resolved in oral judgments if possible." Spanish Archives of New Mexico, Series I (hereafter SANM, I), no. 1357 (in Microfilm of Papers relating to New Mexico land Grants--hereafter MPNMLG--roll 6). Originals are in the custody of the Historical Services Division of the State of New Mexico Records Center, Santa Fe.

4. SANM, II (originals in the custody of the Historical Services Division of the State of New Mexico Records Center, Santa Fe), no. 317a. For another example, see SANM, II, no. 2503 (SANM microfilm roll 17 frs. 755-759), community of San Isidro in the jurisdiction of Jémez, 1813. In this dispute over labor to maintain the local acequia and the removal from office of the ditch master (mayordomo) the judge, Don Lorenzo Gutierrez of Santa Fe, referred to archival documents concerning previous disputes over this ditch and its water. These documents do not appear in the Twitchell guide or the calendar for the SANM microfilm.

5. MPNMLG roll 11.

6. Jenkins, "Pueblo of Nambé," p. 96; AGN Civil 1674, exp. 16 refers to the Alcalde Mayor of Jémez having measured the pueblo's lands and identified its boundaries in exchange for hides; and Court of Private Land Claims (hereafter PLC) case no. 123 (in MPNMLG roll 45) records the testimony of elders of Pojoaque on June 28, 1856 that they lost their written titles in a suit presented before the Alcalde Mayor of Chimayó approximately forty years before.

7. 6-5-1: "Because it is just and reasonable that the Indians that may be pacified and reduced to our obedience and vassalage serve and render us tribute, in recognition of our dominion and service, that they, as our subjects and vassals, should render, for they also, among themselves, had the custom of rendering tribute to their lords tecles and chiefs: We command that, for this reason, they be persuaded to come to us with a moderate amount of tribute from the fruit of the land at such times as ordered by the laws of this title. And it is Our Will that whatever Spaniards there might be there, and to whom, by Us the King or by our authority the Indians have been allotted, accept this tribute in order for them the Indians to comply with the burden to which they have been bound, reserving for Us the King the head towns and seaports and the rest of the encomiendas and Pueblos now incorporated or to be incorporated in Our Royal Crown."

8. Edward H. Spicer, "Political Incorporation and Culture Change in New Spain: A Study in Spanish-Indian Relations," in Howard Peckham and Charles Gibson, eds., Attitudes of Colonial Powers Toward the American Indian, Salt Lake City: University of Utah Press, 1969, pp. 127-130. Early Spanish colonization achieved a numerous conversion of Pueblo Indians to Christianity and recognized the existence of their towns and their agricultural lands. From Oñate's arrival in 1598 he was generally received well by the Pueblos "and all rendered the required obedience," George P. Hammond, Don Juan de Oñate and the Founding of New Mexico, Santa Fe: El Palacio Press, 1927, p. 110. Churches were built and Indian baptisms were numerous, Hammond, pp. 148, 181. Hammond offers the following description of the early conversion and the policies of Governor Peralta after 1609:

"He was to see that friars were sent to the churches on Sundays and holidays to say mass. The Indians were not to be treated harshly. Military escorts were to be provided the friars whenever they deemed it necessary, either in visiting the pueblos or in going to Mexico. The cattle must be kept out of the corn fields of the Indians. And a proposal to move the capital at Santa Fe to some other point was prohibited without further orders.

By 1620 the region had been erected into a custodia, and 17,000 Indians had received baptism." (p. 182)  
The dichotomy between civilized Pueblos and uncivilized nomads is clear in the 1786 instrucción of Viceroy Bernardo de Gálvez to his Comandante General for the Provincias Internas, Bernardo

8 (cont'd) de Gálvez, Instructions for Governing the Interior Provinces of New Spain, 1786, translated and edited by Donald E. Worcester, Berkeley: The Quivira Society, Vol. XII, 1951, passim. In punto 164, Gálvez spoke of union of, and military defense by, the Spanish settlers and Pueblo Indians against the "heathen": "In New Mexico, as the province is very distant and surrounded in all directions by different enemies, the troops must operate, if not by themselves, with only the aid of the Spanish settlers and the Indians of the pueblos," (p. 72).

9. SANM, II, no. 1519, Taos, 1800 (roll 14 fr. 658); SANM, I, no. 1381, Isleta, 1845 (MPNMLG roll 6).

10. Rafael Altamira, Diccionario castellano de palabras jurídicas y técnicas tomadas de la legislación indiana, Mexico: Instituto Panamericano de Geografía e Historia, 1951, pp. 261-262.

11. Clarence H. Haring, The Spanish Empire in America, New York: 1947, p. 147 described the cabildo as follows:

"The local unit of political government in Spanish America as in Spain itself, the lowest stage in the administrative hierarchy, was the municipal corporation or ayuntamiento--the cabildo as it was generally called in the colonies. And at least from one point of view, this institution in the history of the American empire was of extreme importance. It was the only institution in which the Creole or Spanish American element in society was largely represented. And it was one of the few institutions which retained even a small measure of local autonomy."

12. Rafael Altamira, "Plan y documentación de la historia de las municipalidades en las Indias españolas (siglos XVI-XVIII)," in Contribuciones a la historia municipal de América, Mexico: Instituto Panamericano de Geografía e Historia, 1951, p. 15. This definition is derived from the Diccionario de la Academia Española de la Lengua, 1939.

13. República (as in república de indios) is taken to mean "representative form of government in which authority resides in the community and municipality in the double sense of 'resident, ruled by an ayuntamiento,' and the municipal council itself," Altamira, Diccionario, p. 288.

14. Haring, pp. 150-151, describes the cabildo offices in the following manner:

"Municipal authority was vested chiefly in two kinds of officers, regidores or councilors, and alcaldes ordinarios or magistrates. The number of regidores varied

with the size and importance of the town. In smaller towns, called villas or pueblos, the number was generally from four to six. In larger communities, ciudades, it was usually twelve or more. The number of alcaldes was one in the small towns, elsewhere invariably two."

15. Delfina E. López Sarrelangue, "Las tierras comunales indígenas en la Nueva España en el siglo XVI," Estudios de Historia Novohispana, I (1966), 131.

16. François Chevalier, Land and Society in Colonial Mexico; The Great Hacienda, translated by Alvin Eustis, Berkeley: University of California Press, 1963, pp. 187-188.

17. Charles Gibson, The Aztecs Under Spanish Rule: A History of the Indians of the Valley of Mexico, 1519-1810, Stanford: Stanford University Press, 1964, p. 32. Recopilación law 4-8-6 speaks in the same breath of Spanish pueblos and Indian pueblos: "We order that for no cause or reason should the Viceroy, Audiencias, Governors or any other Ministers of the Indies no matter how high they may be, give the titles of cities or villas to the pueblos or lugares of Spaniards or Indians, or exempt them from the jurisdiction of their principal head towns; with the warning that they will be charged in their residencias because this grant and privilege must be sought from our Council of the Indies. And we nullify the titles contravening the content of this law which may have been given to any pueblos and lugares; and concerning the new settlements, the same will apply."

18. Haring, pp. 161-162. The establishment of Indian cabildo offices is provided for in Recopilación 6-3-15.

19. Quoted in Ward Minge, "A History of the Pueblo Indians" (report prepared for the Bureau of Indian Affairs), pp. 20-21.

20. These officials were the following: governor, Domingo Romero; lieutenant governor, Domingo Romero (same name given); alcalde, Alonso Presnota; alguacil, Martín Juatito, and war captains and fiscales to be elected when the promised missionary should arrive. Jessie Bromilow Bailey, Diego de Vargas and the Reconquest of New Mexico, Albuquerque: University of New Mexico Press, 1940, pp. 175-180.

21. Simmons, p. 161.

22. Simmons, pp. 212-213.

23. Recopilación 4-12-16 & 17; provisions of the same type appear regularly in the viceregal laws of the seventeenth and eighteenth centuries as well, AGN Reales Cédulas Originales vol. 1, exp. 1; vol. 2, exps. 43, 189; vol. 8, exp. 29; vol. 10, exp. 74; vol. 16, exp. 49; vol. 24, exp. 9.

24. SANM, II, roll 8 fr. 396.

25. SANM, II, roll 8 fr. 144 (September 24, 1743.)

26. Simmons, p. 189-190 provides some information on the office of Protector in New Mexico:

"A provincial protector was present in New Mexico in the 17th and early 18th centuries, though sometime later the office became vacant and remained so until the first decade of the 19th century. ...

With the separation of the Provincias Internas from the rest of the viceroyalty, a protector general for the new northern jurisdiction was appointed in the Audiencia of Guadalajara in the person of the criminal attorney (fiscal criminal)."

27. For example, SANM, II, roll 19 fr. 92.

28. Archivo Judicial de la Audiencia de Nueva Galicia (hereafter AJANG), Guadalajara, Jalisco, Caja 267 doc. 18-3657: "Siendo considerable el numero de yndios existentes en la villa de Santa Fe, y en los demas pueblos de la Provincia del Nuevo Mexico, han caresido hasta ahora con perjuicio de sus dñs del Protector Partidario que le dispensan las leyes para que los ampare y defiende en los asuntos que les corresponden, con cuya constancia, y haviendome representado esta misma falta algunos de los referidos Yndios, previne al Governador Ynterino propusiera sugeto que desempeñara dicho cargo bien y cumplidamente y haviendolo verificado a favor de D<sup>n</sup> Felipe Sandoval: lo pongo en noticia de V.S. para que teniendolo a bien se sirva expedirle el respectivo titulo de Protector Partidario de los Yndios de la enunciada Provincia del Nuevo Mexico, previo el debido conocimiento de la Real Audiencia. Dios gue a VS m<sup>s</sup> a. Chihuahua 16 de julio de 1810."

29. AJANG Caja 267 doc. 19-3658, fol. 40r.

30. SANM, II, roll 8 fr. 427.

31. Chevalier, pp. 205-206.

32. López Sarrelangue, p. 132.

33. Recopilación sumaria de todos los autos acordados de la real audiencia y sala del crimen de esta Nueva España, y providencias de su superior gobierno (Mexico, 1787), vol. 1, p. 208. The Crown recognized that Indian needs for land might increase in the future and attempted to provide for this eventuality; see pp. 19-20 of this report.

34. López Sarrelangue, pp. 138-139.

35. Richard Konetzke (ed.), Colección de documentos para la historia de la formación social de Hispanoamérica, 1493-1810, Madrid: 1962, Vol. 3, primer tomo, pp. 25-26 (photocopy attached)

delin formación civil de H. y M. de N. 1473. 1310  
Madrid: 1462.  
vol 3, primer tomo 12

ANCIA  
CHUCUI-  
AVAN

R. C. DECLARANDO TOCAR A LOS INDIOS EL DERECHO  
DEL TANTO DE LAS TIERRAS QUE EN LA NUEVA ESPAÑA  
SE BENEFICIAN A ESPAÑOLES Y OTRAS CASTAS

Madrid, 17 de septiembre de 1692.

1692.

Capi-  
provin-  
eren que  
Virrey  
generales  
la villa  
erque de  
as a la  
lta que  
no haber  
neros  
que los  
en los  
eria de  
visto  
fiscal del,  
a estos  
obráredes

de diciembre  
Potosí, Libro 8,

El Rey. Mi Virrey, Presidente y oidores de mi Audiencia Real de la ciudad de México en la Nueva España. El Doctor Don Benito de Novoa Salgado, fiscal de lo civil de esa Audiencia, me dió cuenta en carta de 10 de julio de 1689 que muchas veces ocurren algunos españoles y otros que no lo son al Gobierno de vos, el mi Virrey, a beneficiar tierras que son realengas, sirviendo con alguna cantidad que se regula por la merced que de ellas se les hace, y habiéndola conseguido salen los indios de los pueblos circunvecinos y las piden por el tanto así por serles de perjuicio tener semejantes vecinos de quienes reciben agravios e introducción en sus mismas tierras, como por la afición que tienen a ellas, habiéndoseles negado el derecho de tanto por vos y esa Audiencia, como últimamente sucedió con Tomás de Palacios, español de la jurisdicción de Cholula, contra quien no pudieron conseguir los indios el tanto de una ciéne-ga que se le benefició dando lo mismo que él dió, aunque mi fiscal instó en que se les debía dar por militar en los indios (respecto de ser las tierras en que nacieron y se criaron) la misma afición que dió motivo a la ley Real de Castilla para conceder el retracto a los con-sanguíneos y también por los agravios que reciben ordinariamente de los dueños de haciendas y tierras que confinan con las suyas, supli-cándome que para que se excusasen dudas y pleitos que sobre lo re-ferido cada día se ocasionan, fuese servido de declarar si tienen el derecho de tanto en tales casos los indios y sus pueblos, y visto en mi Consejo Real de las Indias con lo que sobre ellos pidió mi fiscal y teniéndose presente que no puede dudarse que los indios tienen de-recho de tanteo en las tierras cercanas a sus pueblos que se bene-fician a españoles y otras gentes o quieren entrar en ellas así porque a los indios como en tierras que fueron suyas está mandado no sólo que se les den todas las que hubieren menester demás de la que regularmente se señalan por ley, sino también por estar asimismo dispuesto que los españoles no vivan entre indios, ni que junto a las tierras de éstos tengan sus ganados y haciendas, considerándose

7 no  
considera  
it...  
Se  
curro  
m  
- Pan

... dar  
... de  
... pública

... al  
...  
... 977

...  
Paris: 1314

que si esta orden se quebranta se irán poco a poco introduciendo entre los pueblos y haciendas de los indios de que no pocos inconvenientes y menoscabos suelen ocasionárseles con semejante comunicación y nunca vendrá a tener efecto el privilegio de que sean atendidos y privilegiados en la posesión de las tierras que necesitan para sus sementeras, pues aunque al presente no las hayan menester, es muy posible las necesiten con el tiempo, y si están dadas a españoles se les faltaría al privilegio y no se cumpliría con las leyes y ordenanzas que lo disponen respecto de que los pobres indios tienen más derecho a ellas que otra casta alguna, pues primeramente fueron suyas y en esta atención les he dado graciosamente todas las que poseen y les fueren precisas para su conservación y aumento, de que se sigue ser constante tienen el derecho de tanto y que deben ser en él atendidos como primeros adquirientes y privilegiados, en cuya conformidad lo declaro para que de aquí adelante se observe y practique generalmente en todo ese Reino y provincias inviolablemente y por este medio tan justo y preciso se eviten los inconvenientes y perjuicios que contra los indios y las leyes resultan de lo contrario, y así os mando lo hagáis ejecutar en la forma que va expresada dando para su entero y debido cumplimiento luego que recibáis este despacho las órdenes que fueren necesarias para que se observe en lo venidero sin permitir se haga en ningún tiempo lo contrario, y asimismo os encargo y mando que volváis a ver los autos tocantes a la ciénega que vos, el mi Virrey, beneficiasteis al dicho Tomás de Palacios y negasteis a los indios por el tanto que daban y que atendáis al consuelo de los indios que en ello son interesados, haciéndoles breve y sumariamente cumplimiento de justicia, que así es mi voluntad.

A. G. I. Audiencia de México 1070. Libro 34, fol. 367r.

*V. participó activamente en un partido o agitación formada para TO FIGURAR, TO MILITAR la defensa de algo*

R. C. M.  
RA SCOR  
HUBS I

te de ...  
dal ...  
1689 ...  
que pro ...  
tando ...  
traer ...  
causado ...  
español ...  
con gran ...  
tizos ...  
pueden ...  
disposi ...  
rectitud ...  
me dan p

A. G. I.

R. C. M.  
RESULT  
DE LO

El Rey  
General d  
mi Audiencia

36. SG-31. That the concept of tanteo was known in New Mexico is evident in Sandia's founding document of 1748 (SANM, I, No. 848, fr. 6) which called for "vista de ojos, tanteo y reconocimiento del sitio referido."

37. AJANG Caja 267, doc. 19-3658, fols. 51v-56r. This same case and principle are described in pp. 94-98 of Ordenanzas de tierras y aguas, o sea formulario geometrico-judicial, para la designacion, establecimiento, mensura, amojonamiento y deslinde de las poblaciones, y todas suertes de tierras, sitios, caballerias y criaderos de ganados mayores y menores, y mercedes de aguas: recopiladas a beneficio y obsequio de los pobladores ganaderos, labradores, duenos, arrendatarios y administradores de haciendas, y toda clase de predios rusticos, de las muchas y dispersas resoluciones dictades sobre la materia, y vigentes hasta el dia en la Republica Mexicana, Mexico: Imprenta de Vicente G. Torres, 1842. This description includes a strongly worded viceregal defense of Indian lands dated February 23, 1781 ("Instruccion sobre las ventas y enagenaciones de tierra de indios"), a statement that this policy was applied to Cochiti on November 2, 1816, and that the decision was printed and circulated throughout the Audiencia of Nueva Galicia on April 19, 1817.

38. SANM, II, roll 19 fr. 92-93.

39. Florence H. Ellis, "Tesuque, Past Use of Farm Land and Water," (n.d.), "Pojoaque, A Casualty of the Pueblo Rebellion," (n.d.), "Nambe, Their Past Agricultural Use of Territory," (n.d.) (reports prepared for the Bureau of Indian Affairs).

40. Quoted in Ellis, "San Ildefonso," p. 41.

41. SANM, I, no. 26 (MPNMLG roll 1); Eleanor B. Adams (ed.), "Bishop Tameron's Visitation of New Mexico, 1760," New Mexico Historical Review XXVIII (1953), p. 213; Ellis, "Nambe", p. 23.

42. University of New Mexico manuscript collection, Archive 16, box 1, folder 12.

43. SANM, I, nos. 1351, 1354 (MPNMLG, roll 6).

44. Fr. Francisco Atanasio Dominguez, The Missions of New Mexico, 1776 (translated and annotated by Eleanor B. Adams and Fray Angelico Chavez), Albuquerque: University of New Mexico Press, 1956.

45. University of Texas Latin American Collection, Rare Books Room, WBS-1904, pp. 19-20.

46. SANM, II, roll 12, frs. 404, 459.

47. Three New Mexico Chronicles . . ., translated with introduction and notes by H. Bally Carrol and J. Villasana Haggard, Albuquerque: Quivira Society, 1942 (Pedro Bautista Pino, Exposicion, 1812), pp. 28-29.

iento

MPNMLG Roll 11

Microfilm of Papers relating to  
New Mexico

SANM = State Archives New Mexico  
Historical Services Division

62. Paris edition, 1858, p. 108.

63. Taylor, "Land and Water," p. 205.

64. AJANG Caja 85 doc. 10-949.

65. AGN Tierras 918, exp. 3, fol. 13v (1573). A similar statement appears in the Arroyo Seco v. Taos case: "no pieran ni unos ni otros sus labores," SANM, I, no. 1292, p. 3. (MPNMLG roll 6). The 1842 guide to land and water in Mexico recommended that in time of shortage, water be prorated "so that the benefit and the damage be divided equally among all" ("de manera que el provecho y el dano quede repartido igualmente entre todos"), Ordenanzas de tierras y aguas, p. 138.

66. Taylor, "Land and Water," pp. 203-205.

67. AGN Tierras 1404, exp. 10, fol. 1r.

68. Ibid., fol. 3v.

69. Ibid., fol. 4r.

70. Ibid., fol. 3r.

71. Taylor, "Land and Water," p. 201; SANM, I, no. 1292, p. 3 (MPNMLG roll 6).

72. AGN Tierras 918, exp. 1, fol. 73r; Taylor, "Land and Water," p. 204.

73. SANM, II, no. 317a, fol. 1r.

74. SANM, I, no. 1292 (MPNMLG roll 6).

75. The senior right of Indian pueblos to the water they needed also is suggested in a colonial land case involving a petition by Juan de Tafoya and Antonio de Tafoya for land near the pueblo of Santa Clara (SANM, I, no. 942, MPNMLG roll 5). The Indians of Santa Clara opposed an unlimited use or farming grant because they feared the loss of water flowing through the adjacent Cañada de Santa Clara which they needed for irrigating their fields. With the agreement of the Tafoyas, the grant made to them in 1724 was expressly for grazing only, in order to protect the pueblo's use of water from the canyon stream.

In the following official statement, Cristóbal Torres, Alcalde Mayor of the Villa of Santa Cruz reports on the formal possession he performed, the Indians' initial opposition to the grant, and the agreement reached between the Tafoyas and the pueblo of Santa Clara:

I set out to perform the official possession, for which purpose I took with me the caciques, governor, and war captains of the said pueblo. Having been informed of the contents of the Tafoya brothers' petition, they answered that if Juan and Antonio Tafoya were to farm the requested and conferred land it would do them great harm because the river that descends through the said canyon carries little water, barely enough for them to maintain their plantings. In this case they would not allow the said possession until they had taken this difficulty to the Governor. Having heard this plan, Juan de Tafoya and his father Cristobal de Tafoya who represented his son Antonio, informed them that no such harm existed because they did not want the land for farming of any sort, but only to construct corrals and keep their livestock. As a result, the said Indians were willing to settle their differences and they said that under these conditions they would be content ...

(Paze a dar la pozez<sup>n</sup> real, para cully efecto llebe a los casiques, Gov<sup>t</sup> y Capitanes de la Guerra de dho Pu<sup>o</sup> a quiénes aviendoles echo notoria la peticion de los contenidos hizieron el reparo de que si en el sitio pedido y proveido hazian lavor los contenidos Juan y Antonio Tafoya, se les seguia gravisimo perjuicio por ser el agua del Rio que baja por dha cañada mui poca y que apenas podian mantener con ella sus sementeras y que siendo assi no daban paso a dha pozez<sup>on</sup> asta representar este ynconbeniente al SS<sup>or</sup> Governador, a culla propuesta les dieron a entender Xptoval de Tafoya que fue en n<sup>o</sup> de su hijo Antt<sup>o</sup> y Juan de Tafoya que no les havian tal perjuicio porque el sitio no lo querian para lavor ninguna, sino solo para hazer corrales y mantener en el sus ganados y caballadas en culla virtud se avinieron dhos naturales y dixeron que devajo del supuesto quedaban contentos ...)

Apparently the Tafoya brothers proceeded to farm the grant in spite of the provision that it be used only for grazing. In 1733 they appealed to Governor Gervasio Cruzat y Góngora for full rights in their use of the land (SANM, I, no. 952). Their first witness, the venerable Don Juan Páez Hurtado, testified that he had witnessed the grant made by Governor Bustamante to the Tafoyas in 1724 (however, he had not been present at the possession). He added that since 1724 the Tafoyas "have settled it, have built their houses and broken land, and have established on said lands a chapel where celebrations have been made in honor of the Holy Cross" (fr. 4). Their second

75 (cont'd) witness, Antonio Truxillo, said he was present at the possession. Truxillo neglected to mention that the Indians had objected and that conditions had been placed on the Tafoyas' possession (fr. 6). He later modified his testimony to agree with that of Captain Miguel Martín Serrano (frs. 9-10).

Serrano, who had also witnessed the possession, said that "the Indians opposed it saying that they did not oppose the Tafoyas settling there but that they could not plant even a hill of chiles because there was little water in the river and if they [the Tafoyas] cut off any of it the pueblo would be harmed. Juan de Tafoya and his father, who was there in place of Antonio Tafoya agreed, saying that they did not want the site except as a ranch and not for planting; and under this condition, they were given possession." ("hizieron contradision dhos naturales diziendo q no ympedian q se poblasen dhos Tafoyas per q no abian de sembrar ni una guesta de chile por el razon de ser cogrto el Rio y que atajandoles el agua seria en perjuisio del pu y que a esto se abinieron Juan de Tafoya y su Padre q fue en lugar de Antonio Tafoya dicien/do que no lo querian mas q para rancho y no para sembrar y devajo desta condision se les dio la pozezion real")

Governor Cruzat reaffirmed that the Tafoyas could use their land only for ranching because the original possession had specified as much in order to protect the Indians of Santa Clara (fr. 12):

In Santa Fe on the twentieth of November 1733, I, Colonel Gervasio Cruzat y Gongora, Governor and Captain General of this Kingdom of New Mexico, in view of what witnesses have said who were present at the possession made to Juan de Tafoya and Antonio Tafoya, and the said witnesses' depositions that the said possession was only for the rancho and not for farming land claimed by the petitioners because of the harm to the Indians of Santa Clara if the lands were cultivated. The Indians only consented to the possession of said ranch and not to farm land as the record shows. Consequently, I should order and I do order that the said possession applies only to the ranch and not to farming land according to the conditions made in the said possession. And [I further order] that Juan de Tafoya and Antonio de Tafoya who brought this suit shall pay the court costs. I so ordered it and signed it with the witnesses who assisted me for lack of a public royal scribe, of which there are none in this kingdom.

(En la Villa de S<sup>ta</sup> Fee en veinte dias del mes de g<sup>bre</sup> de mil setecientos treinta y tres años yo el coronel D<sup>n</sup> Gervasio Cruzat y Gongora Governador y Capitan General de este Reyno de la Nueva Mexico en vista de lo q declaran los testigos que se hallaron presentes en la posesion q se les dio a Juan de Tafoya y Antonio Tafoya y declarase por las de-  
posiciones de los referidos testigos haver sido dicha

75 (cont'd) posesion solamente del rancho y no de las tierras q suponen los suplicantes por el perjuicio q de sembrarlas podia seguirse a los yndios de S<sup>ta</sup> Clara quienes solo consintieron en la posesion de dicho rancho y no en las tierras de sembradura como consta de los Autos, por tanto devia mandar y mande q la posesion referida solo se entienda por lo q mira a solo el rancho y no a las tierras de sembradura deviendo estar a las condiciones con q se dio dicha posesion y pagaran las costas prosesales los referidos Juan de Tafoya y Antonio de Tafoya pretendientes en esta causa. Asi lo declare y firme con los testigos de mi asistencia a falta de escrivano publico y real q no lo ay en este Reyno.

76. Earlier in 1823, Arroyo Seco had lost its use of water from the Río Hondo (SG-159, fr. 32). This loss may help to explain the small assignment of water from the Río de Lucero even though Arroyo Seco had no right to irrigate from this source.

77. Robert H. Barlow and George T. Smisor, Nombre de Dios, Durango: Two Documents Concerning Its Foundation, Sacramento, Calif.: 1943, pp. xvii, 64, 67-69. Vito Alessio Robles, Coahuila y Texas en la época colonial, Mexico: 1938 stated that Nombre de Dios was founded in 1555.

78. AGN Tierras 70, exp. 5, fols. 250ff.

79. Barlow and Smisor, Nombre de Dios, p. xviii.

80. AGN Tierras 973, exp. 5.

81. AGN Tierras 918, exp. 3; Tierras 973, exp. 5; Tierras 981, exp. 1; Tierras 999, exp. 5.

82. Texas v. Valmont Plantations, Plaintiff's exhibit 161, p. 2759. A surco equals 1/48 of a square vara of running water (about 23 square inches) or roughly 51 gallons per minute, "Ordenanzas y forma de medir tierras", Suro Library, fol. 19r.

83. Ibid., p. 2867.

84. AGN Tierras 991, exp. 1, fol. 2v. A 1777 report speaks of a formal Indian government at San Francisco Malpais and 193 Indian families in residence. This report also mentions water sources and the irrigated fields of the Indians. Barlow and Smisor, Nombre de Dios, pp. 74-75.

85. SG-125, pp. 38-42 (MPNMLG roll 24). A number of other documents in SANM, I and II, and the Mexican Archives of New Mexico collection concern acequias and water for irrigation: SANM, I, no. 1169 (roll 6 fr. 16), no. 1291, petition by Rafael Sánchez, February 2, 1829 (roll 6); SANM, II, no. 372 and 379

(roll 6, fr. 1153; roll 7, fr. 1), no. 657 (roll 10, fr. 619), no. 2503 (roll 17, fr. 755); MANM, roll 7 fr. 288, roll 15 fr. 171, and roll 26 fr. 672. None of these documents, however, sheds additional light on the standards for distributing water, or the rights of Indian pueblos in relationship to others.

86. Julius Seligman Collection, University of New Mexico; MANM roll 18 frs. 592-593.

and 12,

87. See pp. 2-6/of my "Notes on Land and Water Cases for Angostura and the Indian Pueblos of Santa Ana and San Felipe."

88. SANM, I, no. 1265 (MPNMLG roll 6). "Siendo el beneficio del riego el principal medio de fertilizar las tierras y el mas conducente al fomento de la Poblacion pondra particular cuidado el Comisionado en distribuir las aguas de modo que todo el terreno que sea regable pueda participar de ellas especialm<sup>te</sup> en los tpos y estacion<sup>s</sup> de primavera y verano en que son mas necesarias a las Sementeras para asegurar las cosechas."

89. Escriche, p. 109. Juan N. Rodríguez San Miguel's Pandectas Hispano-Megicanas, Mexico: 1852, vol. 2, pp. 304-305 contains an example of the preference for public over private uses of water in the case of Mexico, 1803.

90. Herbert O. Brayer, Pueblo Land Grants of the "Rio Abajo," New Mexico, Albuquerque: University of New Mexico Press, 1939, p. 11; SANM.I.no. 1338(microfilm too light to read).

91. SANM, I, no. 848 (MPNMLG roll 5).

92. Myra Ellen Jenkins, "The Baltasar Baca 'Grant': History of An Encroachment," El Palacio 68: 1 (Spring 1961), 50-51.

93. Elizabeth N. Patrick, "Land Grants During the Administration of Spanish Colonial Governor Pedro Fermín de Mendinueta," New Mexico Historical Review LI: 1 (January 1976), p. 10. Patrick goes on to say that Governor Mendinueta "scrupulously protected the interests and rights of Christianized Pueblo Indians."

94. SANM, I, no. 1357 (MPNMLG roll 6). "La legua de cinco mil varas medidas desde la word obliterated on microfilm/del cementerio para todos rumbos que Su Magestad hizo merged a cada pueblo de Indios desde el principio de su establecim<sup>to</sup>; es para que se conserbe para mantenerse los hijos dell; de modo que tienen el uso y no pueden dar ni vender, sin licencia del Rey, por ser patrimonio o mayorazgo que ningun Juez, ni govern<sup>or</sup> tiene facultad para bender parte ni el todo de la citada legua.

94.(cont'd) Si resultare que de muchos años a esta parte o de cualesquiera [sic] modo se hayan introducido vecinos a sembrar y fabricar en tierra de los yndios, deven perder lo travajado, dejandoles suelo libre; pero como de esto resultaran graves perjuicios a los vecinos, proporcionara el alcalde mayor de Taos la equidad con la justicia en lo posible, oyendo las partes y componiendolas de modo que los naturales no queden perjudicados en la composicion que tengan; y el protector de Yndios D. Felipe Sandoval expondra a continuacion de este decreto lo que le ocurra sobre la presente instancia."

95. Ibid., fr. 8.

96. SANM, I, no. 1351 (MPNMLG roll 6).

97. Ibid., fr. 28 "... y que no consta de estos autos si quando se hizieron dhas mercedes fueron o no en perjuicio de dho Pueblo de S<sup>n</sup> Yldefonso por no saberse su numero de familias de aquel tiempo i el presente.

98. Ibid., fr. 29.

99. Ibid., fr. 38.

100. Ibid., frs. 44-45.

101. Ibid., frs. 52-53.

102. Ibid., fr. 7.

103. SANM, I, no. 1339 (MPNMLG roll 6).

104. SANM, I, no. 1351, fr. 16 (MPNMLG roll 6).

105. Ibid., fr. 45.

106. Jenkins, "Spanish Land Grants," p. 115.

107. Ibid., pp. 115, 131; Jenkins, "Pueblo of Nambé," p. 93.

108. SANM, I, no. 1344 (MPNMLG roll 6).

109. SANM, I, no. 1339 (MPNMLG roll 6).

110. SG-38, fr. 11 (MPNMLG roll 16).

111. UNM, Archive 16, box 1, folder 9.

112. SG-142 (MPNMLG roll 26).

113. UNM, Archive 16, box 1, folder 14.

114. Escriche, p. 1330.

115. See, for example SANM, I, no. 1374 fr. 1 (Picurís, 1829), and no. 1381 fr. 1 (Isleta, 1845) in which the Pueblo representatives are referred to as "ciudadanos." On March 3, 1825, the Diputación Provincial of New Mexico spoke of the status of Indians in the following way: "just as their old obligations have ceased, so have their privileges; they are equal, one to the other, to all the other citizens who with them form the great Mexican family", MANM, roll 42 fr. 260, acta de sesión, March 3, 1825 ("...asi como sesaron sus antiguas cargas, han terminado sus pibilegios, quedando igual, unos a otros, a todos los demas ciudadanos que con ellos forman la gran familia Mejicana.").

116. SANM, I, no. 1106 (MPNMLG roll 6) "las tierras que en comun poseen actualmente o que en adelante adquieren, asi como los áros y acciones q les pertenescan."

117. SANM, I, nos. 1245, 1380, 1169 fr. 42, and 1381. The 1842 guide to land and water rights in Mexico quotes the various Recopilación laws on Indian lands (4-12-12, 4-12-16 to 19, 6-3-14, 6-3-20), Ordenanzas de tierras y aguas, pp. 84-93.

118. SANM, I, no. 1380 (MPNMLG roll 6).

119. SANM, I, no. 1381 (MPNMLG roll 6); also MANM roll 42, frs. 753, 757-760.

120. SANM, I, no. 1374 (MPNMLG roll 6).

121. SANM, I, no. 1291 (MPNMLG roll 6), MANM roll 42, frs. 170-171, 174-175; summarized in Twitchell, I, p. 377.

122. SANM, I, no. 882 (MPNMLG roll 9).

123. Ibid., fol. 8r.

124. Ibid., fol. lv, dated March 18, 1695. After calling for lands and townsites for the Spanish vecinos, de Vargas stated, "procurando buscar la en tierras distintas y separadas si posible fuesse de los naturales de las nazonas y pueblos de este dho R<sup>no</sup> y distrito de esta dha villa para obiar el que no tengan, estando rebueltos con los españoles, molestia ni reciban vejazion ni agrabio sino antes vien estando separados esten los unos y los otros con toda quietud y de ella se siga la tranquilidad y concordia de dhos naturales con dhos españoles de suertte que se portten y abengan con buena correspondenzia amistosa<sup>te</sup> araygandose en ellos nra S<sup>va</sup> fee con los Realzos (?) de firmeza y con la esperanza con el tiempo a su exemplar las nazonas confinantes barbaras y xentilicas se reduzgan."

125. Bailey, p. 175.
126. SANM, I, no. 882.
127. SG-65, SG-87 (MPNMLG, rolls 19, 21).
128. The Jacona grant, located between San Ildefonso and Pojoaque was apparently granted to Captain Jacinto Peláez in 1699 (Jenkins, "Spanish Land Grants," p. 120), and confirmed to Ignacio de Roybal on October 2, 1702 (SG-92). It was still in the hands of Roybal's son in 1787 (Jenkins, "Spanish Land Grants," p. 121). The Cuyamungue grant, located north of Tesuque and south of Nambé and Pojoaque, was confirmed to Alfonso Rael de Aguilar on September 24, 1704, although a grant to this and additional land may have been made in 1699 (SG-81, Jenkins, "Spanish Land Grants," p. 130). The site was probably abandoned by Rael de Aguilar since it was re-granted on January 2, 1731 to Bartolomé and Tomás Sena and Luis López. Much of the grant was purchased by the Ortiz-Bustamante family later in the eighteenth century (Jenkins, "Spanish Land Grants," p. 131).
129. SANM, I, no. 928 (MPNMLG roll 5).
130. SG-54 (MPNMLG roll 18).
131. SANM, I, no. 735 (MPNMLG roll 4).
132. SANM, I, nos. 7, 1227, 1136 (MPNMLG rolls 1, 6).
133. SANM, I, no. 7 (MPNMLG roll 1), Jenkins, "Spanish Land Grants," p. 119.
134. SG-38 (MPNMLG roll 16).
135. SANM, I, nos. 1351, 1357 (MPNMLG roll 6).
136. SG-87, SANM, I, no. 26 (MPNMLG rolls 19, 1).
137. SG-54, SG-87, PLC-123 (MPNMLG rolls 18, 19, 45). For location of the Bernardino de Sena grant see also the maps in SG-87 pp. 15-16 (MPNMLG roll 21).
138. SG-54, PLC-123, SANM, I, no. 240 (MPNMLG rolls 18, 45, 2).
139. PLC-123, SANM, I, no. 45 (MPNMLG rolls 45, 1).
140. SANM, I, no. 26, SG-38 (MPNMLG rolls 1, 16).
141. Jenkins, "The Pueblo of Nambé," p. 96.
142. MPNMLG roll 11.

143. Ibid., Book "A", pp. 44-46. This register contains a larger number of land transactions near Santa Clara. Most seem to have been exchanges among members of the community (pp. 82-85, 109v, 111v, 112v, 113v, 114v).

144. SANM, I, no. 149 (MPNMLG roll 1).

145. France V. Scholes, "Civil Government and Society in New Mexico in the Seventeenth Century," New Mexico Historical Review X: 2 (April 1935), p. 72.

146. Dr. Jenkins, for example, has noted "the basic concern of most governors for Indian rights" in settling land and water disputes, "Spanish Land Grants," p. 124.

147. Recopilación 4-12-19.

148. Ibid., 4-12-16. Grants of land to Indians included the same provision, AGN Tierras vol. 11, segunda parte, exp. 2, fol. 2r; Tierras 447, exp. 1, fol. 237r; Tierras 1433, exp. 2, fol. 12r. Protection of Indian property rights and a special amparo de los naturales ceremony are noted in Peter E. B. Coy, "Justice for the Indian in Eighteenth-Century Mexico," American Journal of Legal History, XII (1969), 41-49.

149. Recopilación 6-1-23.

150. Ibid., 6-1-26.

151. Examples in AGN Tierras 1015, exp. 4, and Taylor, "Land and Water Rights," p. 204.

152. AGN Tierras 1015, exp. 4.