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LAND AND WATER TENURE IN NEW MEXICO:

1821-1846

April 1983 - see p. 64

GLOSSARY OF SPANISH TERMS FREQUENTLY
CITED IN THIS REPORT

Note: The author has included English translations for longer phrases appearing in the text. Readers will note that Spanish words are in italics (underlined) for their first use. Afterwards, they are incorporated in the text without special marking. This glossary provides only a general translation of terms that may have several meanings.

abrevadero	- public right of way
alcalde	- principal local magistrate, sometimes justice of the peace
alcalde mayor	- colonial official appointed to govern local districts
alcaldía	- district served by one or more alcaldías
antigüedad	- age, authority
asamblea departamental	- territorial (departmental) legislature
ayuntamiento	- city, town, or municipal council
bárbaros	- nomadic Indians
bases orgánicas	- constitutional charter or legal basis for governing
cabecera	- head; in terms of political districts, it means county seat
caciques	- Indian chiefs
casa de comunidad	- community center where people voted
ciudadano	- citizen
cobarde	- coward
compañero	- friend, countryman
conciliación	- process for arbitration of disputes through compromise with the alcalde presiding
Cortes	- senate and congress of deputies in Spain
diezmo	- tithe paid to the Church
diligencia	- an affair to be transacted, a business dealing, an investigation

diputacion	- territorial legislature
diputado	- deputy; usually refers to the territorial representative to congress
distrito	- district
donacion	- grant
ejido	- commons land worked by community residents
en comunidad	- in common
en feria	- in exchange
escrutador	- election inspector
estado	- state
expediente	- file of papers, proceedings
fundo legal	- large estate of land
gandul	- vagabond, or bum
genizaro	- partially civilized non-Pueblo Indian of mixed racial ancestry
gentiles	- nomadic Indians without Christianity
hombre bueno	- credible, or oath worthy, advocate representing a litigant in a dispute
indigena	- Native American
indio	- Indian; a generic term
indonable	- ungrantable
intendencia	- see Yntendencia
jefe politico	- political chief (head) of a territory; similar to a governor
juez conciliador	- judge, usually an alcalde, in the conciliation process. Also referred to as conciliador competente
juez de paz	- justice of the peace; very much like an alcalde
juicio verbal	- legal process very much like a small claims court; deals largely with domestic disputes

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junta departamental	- departmental legislature
junta electoral	- electoral body that voted on political candidates
jurisdicciones	- jurisdictions
ladrón	- thief
ley	- law
mancomunidad	- commons land, public and shared
manzana	- in political terms, an electoral district
mayordomo	- ditch boss
merced	- grant
mercenación	- grant or granting
ministro	- minister, meaning secretario or head of a government department
naciones salvajes	- uncivilized tribes
natural	- a native person; reference is usually, but not exclusively to Indians
nuevomexicanos	- New Mexicans
Occidente	- West; also used to include Sonora and Sinaloa when they were together in one political division of the country
<u>Ordenanzas de Tierra y Aguas</u>	- statutes regarding land and water
partidos	- political subdivisions of districts
pasteos	- pasture lands
pasteos de hacienda	- pasture lands belonging to a community
pasteos y labores	- pasture lands and farm lands
perjuicio del tercero	- damage or injury to a third party
prefecto	- prefect who supervised affairs in his district
primacía	- primacy
procurador síndico	- attorney general for a municipal corporation
propios y arbitrios	- income earning lands owned by municipalities

protector de indios	- colonial official designated to resolve legal problems involving Indians
Pueblo	- town, or Indian(s) who lived in villages
Real Cedula	- royal order, or decree
recopilacion	- compilation (of laws)
regidores	- members of an ayuntamiento
repartidor de agua	- distributor, or supervisor, of water distribution
repartimiento	- distribution, or dividing up
secretaria	- administrative office serving a governor or the Mexican president
sobrantes	- excess (lands)
solicitud	- petition
subprefecto	- subprefect in charge of a partido
suerte	- lot, parcel, or piece of ground
terna de sugetos	- list of candidates nominated for political office
terreno baldio	- also terreno valdío and terreno yermo, means uncultivated lands
terreno comun	- commons land
tierras donadas	- land grants
titulo	- title
toma de agua	- headgate or other outlet for irrigation water
vara	- measure of approximately 33 inches
vocales	- members of a diputacion
tribu	- tribe
vecino	- neighbor; used in this report to designate non-Indians
vigente	- in effect, in force
Yntendencia	- political-military district or province of the colonial period

Research Objectives and Sources Consulted

The objective of this study is to determine how Indian and non-Indian New Mexicans transferred land and water in the Mexican period. The author has focused on laws emanating from the Cortes of Spain and Mexico City as well as several plans and constitutions appropriate to the issues. How the various edicts and decrees were interpreted in the territory of New Mexico,¹ whether the Indians were accepted as equal citizens capable of alienating their lands, and how customary political and legal practices worked to support, and in some cases to replace, the law are subjects of this report.

Beginning with a review of how the Indians' status was expected to change after Independence (1821), the author describes the political and legal infrastructure extant in New Mexico during the Mexican period. Because of the radical political change implemented by Mexico in 1836, this section is divided to distinguish between the functioning of local authorities during the federalist (pre-1836) and centralist (post 1836) periods. An understanding of New Mexico's political and legal processes will enable the reader to place the Pueblo Indians in clearer perspective both as to their opportunity to take advantage of their supposedly equal status as citizens in the body politic, as well as their rights to sell and exchange lands in a society dominated by non-Indians.

Once the political and legal institutions of New Mexico are explained, as well as the role of the Pueblo Indians therein, the author summarizes the non-Indian New Mexican view of Indians in their midst and then proceeds to a discussion of the specific instances of land and water alienation as recorded in official documents.

A number of underlying themes emerge from the Mexican period records. Although exceptions can be found for each, some consistency is evident during this twenty-five year period. To wit:

1. Mexican officials in New Mexico were as litigious as their Spanish predecessors. However, they often obeyed laws that suited their purposes (such as the constitution and decrees of the Spanish Cortes, 1810-1813); because they were befuddled by contradictory pronouncements emanating from Mexico City, and because they were angry that the Supreme Government had failed to recognize the real nature of their problems.
2. The law in New Mexico was a combination of Spanish and Mexican edicts combined with local custom and precedent. A few families elected to administrative positions influenced the decisions of local governing bodies.
3. Indians were treated both as equal citizens, with all the rights and obligations of other Mexicans, and as inferior members of the body politic. Although respect was shown for Pueblo rights and traditions, ² as a group, the Pueblos were accorded only some of the privileges guaranteed to non-Indians. Separate from Pueblos and non-Indians were the gentiles, nomadic, troublesome, and dangerous, who came to be seen as savages and murderers. The Enlightenment did not touch them at all.
4. Development of agriculture was a major objective of governors during the Mexican period. Although used as a pretext for dividing up some Pueblo lands, numerous documents in the official record attest to the belief that New Mexico's survival depended on reviving agricultural

production. Pueblos occupied some of the best agricultural lands. Since many of these were uncultivated, they appeared particularly attractive to vecinos³ who petitioned New Mexican authorities for grants.

5. Documentation of land exchanges, sales, and donations is very uneven. One reason is that Mexican law provided no institutional mechanism for private citizens to record conveyance of title in New Mexico, unless the property in question was disputed by two or more parties, or in the case of a will requiring litigation. Once the land was removed from the public domain, exchanges were frequently effected without any official recording. Land deals were often made between individuals who lacked the means and/or the interest in recording them. This is made particularly clear by the appearance of Mexican period deeds involving Indians and non-Indians in the Pueblo Lands Board Records in Albuquerque.⁴ Many of these entries document exchanges dating back to the Mexican period. Recorded deeds available in the official records of the Mexican period reflect only an unknown percentage of all conveyances occurring between 1821 and 1846.
6. Discernible from extant documents is a general practice on the part of Mexican officials to allow alcaldes and ayuntamientos considerable leeway in determining the validity of a land or water grants. In addition, the vagueness of decisions at all levels makes it clear that Mexican authorities believed that title to land and water was relative to the needs of the community as a whole; that as circumstances changed, so might the conditions for holding property. But at the same time, a decision as to whether a grant or exchange should be made almost

always involved an investigation to see if someone else's rights would be damaged in the process. This idea of perjuicio del tercero dominated both the evaluation of petitions for new land and water as well as the litigation of disputes between existing property owners. Finally, Mexican period decisions reflect the desire of officials to avoid disputes, to resolve problems through arbitration if possible, and to effect some form of compromise between plaintiff and defendant. The law was interpreted with flexibility, with attention to long standing customs, and with an awareness of the interrelated nature of relatively small populations of vecinos and Pueblos living together, working together, and sharing public property in a social infrastructure that defied application of the neatly chiseled features of the law.

7. Caution should be exercised in drawing general conclusions regarding the alienation of land and water through reference to one or two cases. Due to the existence of many governments in the Mexican period, major and minor changes in instructions from Mexico City, and the variety in personalities resident in the governor's office in New Mexico, the Diputación, and the many ayuntamientos, a decision made at one time and place was not necessarily applicable in other parts of the territory. In fact, the official New Mexican record seems to indicate that decisions made in regard to land and water alienation in one Pueblo had little applicability when a similar problem arose in another Pueblo. However, and in retrospect, some legal and administrative practices appear to reflect an overall policy, because they are similar. But a conscious policy, in which officials cited examples of decisions made in other Pueblos, is not readily apparent as a matter of accepted legal practice.

The principal objective of this report is to describe how New Mexicans understood and applied the law in land and water matters. Therefore, the bulk of research concentrated on the Mexican Archives of New Mexico (MANM). This forty-three reel microfilm publication, prepared by the New Mexico State Records Center under the direction of Dr. Myra Ellen Jenkins, contains most of the extant official documents from the Mexican period. Dr. Jenkins also incorporated official documents found in the Zimmerman Library of the University of New Mexico as well as administrative records in the custody of the Bureau of Land Management regional office of the Department of Interior. For this report, the author concentrated on legislative records, correspondence between the governor and local officials, and judicial records. Another useful microfilm publication, Spanish Archives of New Mexico (SANM I), contains records concerning land grant and tenure. These records were segregated from the administrative records in 1854, were transferred to the Office of the Surveyor-General of New Mexico, and were filmed by the University of New Mexico in 1955. The first ten reels are the most appropriate for this study.

Other sources consulted include the various reports and depositions submitted to the court in the Aamodt case,⁵ secondary sources dealing with water and land distribution during the Mexican period, and the laws of Mexico. To obtain the best possible view of local judicial and legislative practices, this investigator also reviewed the collections of private papers in the New Mexico State Records Center, land records in the Bureau of Indian Affairs, Southern Pueblo Agency, Albuquerque, and the records of the ayuntamiento of Santa Cruz de la Cañada (Sender Papers) presently in the law offices of Catron, Catron, and Sawtell in Santa Fe.

I. Mexican Plans and Constitutions: 1821-1846

A. Citizenship: rights and responsibilities

As the principle of racial equality had been a subject of heated debate in the Cortes of Spain, 1810-1813, so, too, when Mexico separated from the mother country, the status of races in the Americas inspired a commitment to new, more liberal, concepts. The Plan of Iguala, issued on February 24, 1821, by Agustín de Iturbide, declared Mexico's separation from Spain and recognized the equality of all Mexicans.⁶ Iturbide also retained in force "all acts of the liberal Cortes that did not affect Mexican sovereignty."⁷ In addition, he declared that "those portions of the 1812 Constitution that did not run counter to the interests of independent Mexico would remain in force until a new constitution could be adopted."⁸

The Constitution of March 19, 1812, completed and promulgated before the arrival of New Mexico's delegate to the Spanish Cortes at Cádiz (Pedro Bautista Pino arrived in August 1812), specified that "Spanish citizens (including pure Indians or mestizos) who were married, widowers, or bachelors, if they had a place of residence and an honest occupation and were not disbarred by the Constitution from the privileges enjoyed by citizens could vote."⁹ Generally viewed as a revolutionary document, the Constitution of 1812 espoused some of the fundamental principles articulated by the Mexican delegation, including "the doctrine of popular or national sovereignty, the separation of powers, equal representation, equality of rights and privileges, and semiautonomous local government."¹⁰ It is not entirely coincidental that New Mexicans instituted more democracy in local government during the Mexican period and

stubbornly resisted, even to the point of revolution, the return to a more centralized form of government demanded by the Constitution of 1836. Furthermore, the Constitution of 1812, along with many subsequent decrees of the Cortes, contributed significantly to New Mexican understanding of the law in the newly created Republic of Mexico. According to the Constitution of 1812, "Spanish citizens possessing the quality of vecino could vote."¹¹ Negroes were not citizens, although individuals could gain this status by special dispensation, and Indians were citizens.¹² When these same principles were accepted in the Treaty of Córdoba, August 24, 1821, and the second act of Mexican Independence, September 22, 1821, it was clear that Mexico, as an independent state, was committed to a new status for Indians.

The most important statement on the status of citizenship in this period was made in a congressional decree of September 17, 1822. Intending to give effect to the Plan of Iguala, Congress ordered that "in all record of public or private documents, upon signing the names of the citizens of this Empire, classification by their origin will be omitted."¹³ The decree further specified that no class distinction should be made in parochial books. Additional acts of the Empire passed on February 24, 1822, and April 9, 1823, confirmed the principle of racial equality.¹⁴

The Constitution of October 4, 1824, did not mention the new status of Indians, but the Plan of Mexico, January 27, 1827, made it clear that Indians were to enjoy the rights and privileges conceded to them in earlier decrees. In subsequent legislative acts defining Mexican

citizenship, Indians were officially recognized as Mexicans with the same rights and responsibilities as any other race.¹⁵ Even the word "Indian" was supposed to be abolished on public and private documents. Congressional deputies proposed in 1824 that "indio, in common acceptance as a term of opprobium for a large portion of our citizens, be abolished from public usage," and in subsequent debates, congressional deputies awkwardly referred to "the so-called Indians" ("los llamados indios") and avoided reference to Indian towns by employing the more acceptable phrase, "indigene."¹⁶

Everyone, however, did not endorse these high ideals. While Liberals hoped to solve the Indian problem by denying their political existence, converting them free citizens, and abolishing the notion of "racial, caste, and class distinctions," the Conservatives maintained that the dogma of equality was inapplicable to a heterogeneous society.¹⁷ With the passing of time, the Conservative position grew stronger, not only because Indians refused to embrace their new freedom as the Liberals had predicted, but because the Liberals embraced a creole view of Mexican nationality which relegated the Indians to secondary status in the Republic.¹⁸

In time, the Mexican Congress abandoned any attempt at revolutionizing the Indians' status. Each state was left to determine for itself how to incorporate Indians into Mexican society.¹⁹ Territories were to be governed by Congress, but until that body wrote a constitution, or a set of guiding principles for territorial officials, the

status of the Indians in those provinces would be determined by those in power. What resulted was a strange mixture of Liberal ideals and customary practice. Mexicans had taken an important first step toward redefinition of Indian status, but by the middle of the 1830's, this effort appears to have lost momentum.

After the Texas Revolution, unrest in Mexico produced a movement to write a new constitution. The leaders of this movement were more conservative than those who had articulated Indian equality in the 1820's. As a result, Article Two of the law of October 23, 1835, which established the bases for a new constitution, suggested that a distinction would be made between Mexicans and Mexican citizens. When the Primera Ley of the Leyes Constitucionales was passed on December 15, 1835, it included definitions of Mexican citizenship along with the rights and obligations thereto. A citizen was now required to have an annual income of at least one hundred pesos and to demonstrate his usefulness to society. Once qualified as a citizen, a Mexican could vote for all offices filled by popular direct election, and could be voted into those offices if he fulfilled the requirements demanded by law. ²⁰ In effect, the right to vote was now restricted to those of the propertied classes.

During the remaining years of the Mexican period, the tendency to distinguish between Mexicans and Mexican citizens was accentuated. Titulo III of the Bases Organicas ratified on June 13, 1843, declared in Article Eighteen that to enjoy the rights of citizenship, an individual

must earn at least two hundred pesos annually from physical or industrial work, as well as from self-employment. This article further proclaimed, however, that the income rate could be amended by Congress in order to reflect the special circumstances in each department of the nation.²¹

In sum, what had begun as an attempt to revolutionize Mexico's social structure ended up with greater qualifications on the meaning of citizenship. Although Indians were not better off in 1846 than they had been in 1821, their rights were the subject of heated debate in all parts of the nation during the Mexican period.

B. Land and water regulations

According to the "Instrucción sobre las ventas y enagenaciones de tierra de Indios (Mexico, Febrero 23 de 1781), Indians were not allowed to alienate their lands without the issuance of a license from the "superior government, general court of Indians or Royal Court of Appeals" ("superior gobierno, juzgado general de naturales o real audiencia.")²² Thirty years later the Spanish Cortes recognized the need to break up Indian lands, noting in a decree of March 13, 1811, "That the concession of allotments of lands of the Pueblos of Indians not be extended to the castes."²³ On January 4, 1812, the Cortes decreed in favor of "the reduction of the common lands to private dominion /as/ one of the provisions which the welfare of the pueblos and the improvement of agriculture and industry most imperiously claim. . . ." ²⁴ Other laws of the Cortes, particularly Article 5 of the law of November 9, 1812, echoed the same theme: that vacant and crown lands should be reduced to private property.

Under Iturbide's Empire, the concept was matured. The decree of August 7, 1823, terminated the inalienability of Indian lands by specifically mentioning the end of entail on property that included lands controlled by caciques. Combined with the previously cited law of February 24, 1822, which declared the equality of civil rights to all free inhabitants of the Empire "whatever may be their origin in the four quarters of the earth,"²⁵ the termination of entail further suggests that Indian lands were to enjoy a status distinct from that maintained during the colonial regime.

State laws reflected this trend toward breaking up Indian holdings. Jalisco and Zacatecas passed legislation aimed at dividing up the lands of Indian villages, while local governments in the central and southern states enacted land division laws in the latter part of the 1820's.²⁶ In the new federal system the breaking up of communal lands was a matter left to the states, a situation which encouraged the illegal occupation of unused Indian lands. Mexico City appeared to ignore what was happening.²⁷ Efforts by the state of Sonora, for example, to return Indian lands illegally possessed by non-Indians, still contained the provision that uncultivated, vacant lands could be resold by the state, thereby implying that if the Indians "would not, or could not make such lands productive, then others should have the right to do so."²⁸ Likewise, in Sinaloa, as late as 1856, the governor with full support from the legislature, claimed the right to survey and redistribute tribal lands, leaving to the Indians only what was necessary for their survival and awarding the remainder to those who were interested in investing or settling in the region.²⁹

Mexican officials, however, recognized the rights of Indians to land. As noted in the fourth edition of Mariano Galván's Ordenanzas de Tierras y Aguas, Indian pueblos were to be given six hundred varas of land as a fundo legal, a square with each side having one thousand two hundred varas in length.³⁰ If these measurements proved difficult due to the occupation of surrounding lands by others, or because of natural impediments, the Indians were to be compensated by adding additional lands to one of the sides of the square, or by granting them lands from those owned by the government. In any event, local governments were admonished to attend "especially to the well being and advantage of the Indians" ("especialmente al bien y provecho de los indios.")³¹ The Estado Interno de Occidente (Sonora and Sinaloa) went further, urging its officials to take scrupulous care that the "indigenes should be guaranteed in the exercise of their rights of equality, liberty, property, and security under the fundamental code of the state." Up to half of the public lands were to be allocated to the Indians, and lands taken away from them were to be restored or replaced.³² Various decrees emanating from Occidente conferred special benefits on the Indians, exempting them from taxes and tithes but requiring them at the same time to send their children to school and to stand ready for service in the militia.³³ Indians were citizens, as noted in the 1825 Constitution of Occidente, who were expected to hold property, vote in elections, and participate in the administration of the public estate.

In sum, Mexican authorities generally accepted the philosophy of Indian equality articulated by the Spanish Cortes and they legislated this concept in the Empire and early Republic so that local authorities would implement the necessary changes. Because the federal system allowed each state to maintain a degree of autonomy in local affairs, the interpretation of land decrees varied from one state capital to another. The objectives of Mexican land policy seem to have been that of preserving the Indian's right to sufficient land for maintenance while allowing excess lands to be placed in the hands of those who would cultivate them. In addition, the Mexican government favored assimilation of the Indians into the mainstream of society by making them private land owners with citizenship responsibilities equivalent to other Mexican citizens. That the states and territories were left to interpret these guidelines according to their own needs and interests is a reflection of the inchoate condition of the federalist system, the immense distances between the capital and the outlying provinces, and a tradition of Spanish paternalism which had allowed colonial governors to become mini-dictators in their own districts.

II. Political and Legal Relationships in New Mexico

A. Political to 1837

Authority to grant lands, resolve land disputes, and supervise land exchanges evolved from practices developed in the colonial era which were later modified by decrees of the Cortes and Mexican period legislation. In the colonial period, the governor of New Mexico held both

civil and military power which he used to direct the affairs of the province with the aid of his agents, the alcaldes mayores.³⁴ In addition to issuing ordinances and decrees, appointing lesser political officials, and preserving the general well-being of the community, "he controlled the assignment of land and water rights outside of the Villa of Santa Fe."³⁵ He could make grants to Spaniards or Indians, and when petitioned for land, he instituted an investigation through the alcaldes, who were responsible for seeing that the land in question was vacant, and that the granting of it would not produce a conflict with other claims.³⁶ He was also obligated to protect Indian properties from trespass and encroachment. If the Indians had a complaint, they could appeal to the governor through their Protector de Indios or by sending a delegation to appeal to the governor directly. In either case, the governor resolved these disputes according to his personal feelings rather than the Spanish Law.³⁷

This pattern was altered during the Mexican period, although the tendency to think of the governor (jefe político) as the supreme magistrate with unlimited power continued well into the new era. Responsibilities of the jefe político included everything associated with the security and prosperity of the territory. He received communications directly from several secretarías in Mexico City, and until 1837, he looked to Chihuahua for approval in regard to military affairs. He had no definite term of office and could be removed at any time. This ability to survive for any length of time depended on the friends he appointed to key posts, interior and exterior problems affecting New Mexico, and his own qualities of leadership, improvisation, and chicanery.³⁸

In addition, the jefe político's power was difused by the creation of additional layers of bureaucracy. The territorial assembly (Diputación) was authorized under the Constitution of 1812. In 1822, electors from fourteen municipal districts convened in Santa Fe to elect seven vocales to serve in the diputación.³⁹ During the Mexican period, the jefe político served as president of this body and consulted with it in matters of land distribution. When petitions for land were received, they came directly from citizens or by way of the jefe político, who remained in the minds of many, the only authority in the territory. As in the colonial period, investigations were made to determine if a new grant would injure the rights of property owners. This was done by a special commission from the diputación or by the ayuntamiento with jurisdiction over the region in question. If the report was favorable, the diputación would approve the request, and the governor, acting both as a member of the diputación and as jefe político, would endorse the decision of the diputación. If the governor disagreed with the recommendation of the diputación, he could block the formal donation. The old powers of colonial governors had not been totally eclipsed by the implementation of grass roots democracy.

The Constitution of 1812 also established guidelines for ayuntamientos. These municipal organizations were familiar to New Mexicans. For much of the colonial period, Santa Fe was the seat of a cabildo (ayuntamiento).⁴⁰ It ceased to function at some point early in the nineteenth century, but by the time of independence, ayuntamientos had again appeared in the largest towns and Indian communities.⁴¹

According to the official records, Pueblo Indians were infrequent members of ayuntamientos. They had the right to vote, but they did not exercise this right consistently. Political responsibilities were assumed by vecinos who lived amongst them, and even though the Mexican period record takes note of conflicts between these two groups, it appears that the Pueblos were willing to abdicate their political responsibilities to their non-Indian neighbors.⁴² Ayuntamientos and alcaldias with Pueblo Indian names; are, therefore, political subdivisions of the New Mexican government staffed by vecinos and not Indians. If the jefe politico wanted to communicate with the leadership of the Pueblos, he did so by convening their governors (gobernadorcillos), a position which the Pueblos elected specifically to deal with first Spanish and later Mexican officials.⁴³

Ayuntamientos were composed of elected officials including alcaldes, four or five regidores, a secretario, a procurador sindico, and an escrutador.⁴⁴ The election procedure required the alcalde to call for an election. Citizens who were eligible to vote would convene in the casa de comunidad representing a predetermined number of electoral districts (manzanas).⁴⁵ Electors would then be chosen who would meet with representatives of other manzanas to form a junta electoral. Under the direction of the alcalde, this body would then choose members of the new ayuntamiento, including new alcaldes. If appropriate, the electors would also elect members of the diputacion and/or the diputado sent to represent territorial New Mexico in the Congress in Mexico City. In theory, the Pueblos were able to participate in this process. In fact, they did not.

Variations on this system were numerous, but non-Indian New Mexicans did enjoy a modicum of democracy which must have seemed preferable to the unquestioned rule of a colonial governor and the sometimes arbitrary rule of local alcaldes. The Mexican Congress was supposed to draw up new guidelines enumerating the responsibilities of all territorial officials, but this did not come about. Meanwhile, New Mexicans made it clear to the diputacion that they preferred the uncertainties of the existing structure to statehood,⁴⁶ a status which would have allowed them even more independence.

On December 20, 1824, complaining that the ayuntamientos had done very little for the people, the diputacion abolished them and turned to the alcaldes for election of New Mexico's deputy to Congress.⁴⁷ Although the ayuntamientos were soon restored, this action indicates a growing rivalry between alcalde, ayuntamiento, and diputacion for power. In land matters, the struggle was particularly noticeable. In the colonial period, the alcalde had the responsibility of investigating requests for land. In the Mexican period, the alcalde continued to have the function of placing grantees in possession of their lands, unless differences of opinion arose between the two authorities in which case the diputacion insisted on its superiority.⁴⁸ Rivalry between alcaldes and the ayuntamiento could create problems for the jefe politico as seen in 1832 when Governor Santiago Abreu ordered the alcalde of Abiquiu to investigate a ditch dispute. The ayuntamiento angrily defended its right in these matters, and suggested to the governor that a lot of trouble would have been avoided if he had consulted them in the first place.⁴⁹

Alcaldes sometimes found their traditional power base eroded by the new democracy. Formerly appointees of the colonial governor, and to all intents and purposes an extension of his authority in the towns and Pueblos, alcaldes of the Mexican period were elected and needed support from their constituency. The entire network of lesser officials was held together by a communications system made up of the many alcaldías.⁵⁰ Some had ayuntamientos and some did not, but every town and Indian Pueblo had at least one alcalde through whom the legislative and judicial processes were exercised. These individuals heard complaints from both vecinos and Pueblos. Sometimes they tried to effect a compromise through the process of conciliación; at other times, they forwarded complaints to the jefe político. They supervised elections and census counts, fined individuals who violated municipal laws, and witnessed official documents, such as wills and land deeds, when appropriate. Continuing in the colonial tradition, once land was granted, they accompanied the owners to the site, and in a well established ceremony, threw rocks, pulled up weeds, and scattered fistfulls of dirt in the air, shouting "Viva Mexico," by which means the new owners received real and personal possession of the land.⁵¹

B. Political after 1837

The power struggle in Mexico City in 1835 and 1836 resulted in the writing of a new constitution based on a centralist program aimed at tighter control of all divisions of the Republic. New Mexico was converted into a department, as were all other states and territories, with a governor appointed by the President and responsible

to him. In both the Constitution of December 30, 1836, and the Bases Organicas of 1843, the President was given authority to choose departmental governors without reference to the terna usually provided by the citizens.⁵² Like the governor of the viceregal era, the appointee was supposed to be of the same social class as the president, loyal to him under all conditions, and effective in imposing the centralist system on the inhabitants of his department. Reorganization of departmental sub-districts was also intended to channel authority more effectively. New names, and jurisdictions appear, but administrative and legal procedures change very little. Distritos were headed by prefectos appointed by the governor. They had a central location, similar to a county seat, which was called a cabecera. Lesser administrative entities within the distrito were referred to as partidos, each of which was ruled by a subprefecto. In New Mexico's smallest population centers, the only official was a juez de paz, a man who took the place of the old alcalde.

In addition to these changes, the Constitution of 1836 eliminated the diputacion and replaced it with a junta departamental (asamblea after 1843) which was to be elected indirectly, as opposed to the federalist system of popular elections, and whose actions were to be reviewed by the central government. Not only did citizens lose their rights to elect representatives, they also found that voting was to be a privilege reserved to property holders. He who could not vote could not hold office. Since the Constitution of 1843 set similar standards for political participation, it became obvious that the centralist government wanted to eliminate any evidence of political autonomy enjoyed by the states and territories under the Constitution of 1824.⁵³ Even the ayuntamientos were eliminated except in Santa Fe.

The Departmental Plan did affect New Mexico in several ways. First, it produced a violent response from the lower classes, including the Pueblo Indians, who joined in an armed rebellion against the central government's gubernatorial selection, Albino Pérez and the prefect system he tried to impose in the summer of 1837. The revolt was quashed, after Governor Pérez and members of his cabinet were killed, by a citizen army under Manuel Armijo and other groups of Mexicans and foreigners who saw the uprising as a rabble out of control. The rebels were angry at losing their autonomy at the village level, and when they named José Angel Gonzáles, the child of a Pueblo mother and genizaro father, as governor to replace the murdered Pérez, they showed more than just a frustration with local politics. Armijo even argued that the rebels wanted complete separation from Mexico and planned to make an allegiance with the nomadic tribes with whom they felt more compatible.⁵⁴ In any event, the 1837 Rebellion showed that the departmental system had angered both Pueblos and vecinos who resented Mexico's attempts at tightening up administrative control.

Secondly, Governor Pérez seems to have been uncertain about the exact nature of the changes needed while sensitive to the feelings of nuevomexicanos who were about to lose some of their political autonomy. On March 30, 1837, he announced that the Department of New Mexico was to be divided into three partidos. The first partido would include three alcaldías (jurisdicciones) as follows: (1) Santa Fe (cabecera), Bado, Cochiti, Gemez, Sandía; (2) Albuquerque (cabecera), Ysleta, Balencia, Tomé, Belen, Sabinal, Socorro, and Laguna; (3) Cañada (cabecera), San

Ildefonso, Santa Clara, San Juan, Abiquiu, Ojo Caliente, Taos, and Trampas. It was further announced that ayuntamientos would be established on a representational basis of one thousand persons, and that electors should report to their cabecera in April to elect other electors who, in turn, were to elect a deputy to Congress and the members of the junta departamental. The alcaldes and ayuntamientos were charged with seeing that the decree was obeyed.⁵⁵ In May, Perez announced a different departmental organization in which New Mexico was divided up into two districts, each with two cabeceras de partido.⁵⁶ In June, he announced that the government was about to name prefects for the cabeceras according to Article 6 of the law of December 30, 1836, and requested each alcalde to send him a terna de sugetos.⁵⁷ Then in July, Perez announced that the cabeceras would be Taos, San Ildefonso, and Albuquerque.⁵⁸ The confusion must have been difficult for New Mexicans to accept, but during the next ten years, the actual functioning of officials, albeit by different names, seems to have changed very little.

The prefecto was the one novelty. Appointed by the governor, he was generally considered the responsible authority in the absence of the governor.⁵⁹ He was expected to remain in direct contact with the alcaldias and was frequently charged with making decision on land requests.⁶⁰ The jueces de paz were expected to deal directly with the prefectos, or subprefectos, but the ayuntamientos did not disappear with the implementation of the Departmental Plan. There is ample evidence that they continued to operate throughout the last decade of the Mexican period in at least a few of the alcaldias.⁶¹

In sum, such a major change as that proposed by the centralists in Mexico City in fact made very little difference in the relationships of New Mexican officials. The long period of New Mexico's isolation had developed customs, practices, rivalries, and friendships that could not be easily altered by pronouncements from the Supreme Government.

C. The legal process

New Mexico's legal system never functioned to anyone's entire satisfaction. Much of what was decreed by Mexico was ignored or failed for lack of support, and much of what was practiced as law was a continuation of customary practice. This is not to say, as some observers have suggested, that New Mexico was in danger of losing its free institutions for lack of literate and trained judges.⁶² The diputacion and several ayuntamientos were concerned about criminals fleeing from the jails, laughing at the judges, and contributing to a general increase in immorality, but they blamed Spanish laws for these and other problems.⁶³ There was, indeed, a shortage of trained lawyers, and the system of district and circuit courts established by Mexican law failed to take root in frontier New Mexico. But the people were conscious of the need to operate within the limits of the law, and to the best of their ability, they carried on their affairs with every intention of obeying the law as they understood it.

The alcalde was most frequently involved in legal processes. In the Spanish period, he had been the only local court for the habitants of New Mexico, and if decisions were to be appealed, they had to be sent at considerable expense to Guadalajara or Mexico City.

In the Mexican period, the alcaldes grew even stronger. Jefes político turned to the alcaldes to sell lands, to inspect lands that were petitioned, to protect the interests of the Pueblos, to settle land disputes, to resolve quarrels regarding the administration of water, and in general to administer justice in such a manner as to free the jefe político to concentrate on other matters related to the well-being of the territory.⁶⁴ On more than one occasion, the jefe político urged plaintiffs who appealed to him to return to the alcalde for the administration of justice, and if they were not satisfied,⁶⁵ to take their case to the Supreme Court in Mexico.

Alcaldes also played an important role in working out compromises in a process known as conciliación. Required by law as of 1840,⁶⁶ and probably before, this was a mandatory first step required in all civil and criminal cases. Both sides were asked to present their position through hombres buenos who appeared before the first alcalde, usually referred to in these cases as the juez conciliador or the conciliador competente. After hearing both sides, the alcalde directed the hombres buenos to present a solution acceptable to both litigants. This was a cheap and expeditious way to resolve petty disputes. In regard to water and land litigation it is especially noteworthy due to the extent to which the Pueblos used this process when disputes arose between them and vecinos.⁶⁷ Alcaldes also presided over a kind of small claims court. In these juicios verbales, the process was similar to conciliaciones to the extent that each side presented hombres buenos to the alcalde segundo who made a decision, pronounced a sentence, or issued a fine

depending on the circumstances. Because most of these cases dealt with beatings, disputed wills, complaints by foreigners, family squabbles, unpaid debts, etc., the Pueblos were not frequently involved. Their own social controls were adequate to police internal disputes unless outsiders were involved.

It is difficult to measure the executive power of the alcalde throughout the Mexican period. Whether or not he could grant lands is open to question. As a regidor, in the local ayuntamiento, he was frequently called upon to intervene in land matters. Furthermore, in the early years after independence, there was a flurry of land activity, a confusion as to what laws were in effect, and a good deal of maneuvering by ricos to take advantage of the government's indecision. Under these circumstances, the diputacion was often queried by the jefe politico as to the proper authority for granting land. Some believed that this was the function of the alcaldes.⁶⁸ This concept was occasionally repeated throughout the Mexican period and led to the conclusion by some that alcaldes possessed this power. A closer reading, however, makes it clear that alcaldes were only expected to place petitioners in possession of lands. They were charged with the actual measurement, the ownership ceremony, and the copying of necessary documents which would serve as proof of the grant.⁶⁹ After 1836, this function was assumed by the juez de paz, although the failure to replace the alcalde completely meant that the latter continued in a role which he had enjoyed since the colonial era.

Land granting powers of the ayuntamiento appear to have been more generally acknowledged. Article 2 of the law of May 23, 1812, of the Cortes expressly declared that land matters were subject to the control of the nearest ayuntamiento.⁷⁰ No such law was ever passed regarding alcaldes. Ayuntamientos, on the other hand were designated by Governor Bartolomé Baca in 1825 as having land granting authority as one of their principal responsibilities.⁷¹ By 1829, the ayuntamiento of Santa Cruz de la Cañada was giving out lands, and the ayuntamiento of Santa Fe named one of its regidores to assign water.⁷² In 1844, Antonio José Montoya petitioned the ayuntamiento of Santa Fe ("yllustre cavildo") for a piece of land for a mill. After referring the request to a commission, the ayuntamiento instructed the first alcalde to put Montoya in possession.⁷³

In most cases the ayuntamiento's administration of water was unquestioned, but its right to grant land was occasionally challenged, as in the case of the ayuntamiento of El Paso which granted some common lands without considering the damages that would occur to the people. The diputación angrily denounced this act and firmly stated that the lands belonged to the jurisdiction of El Paso.⁷⁴ Partly because of the threat of conflict with the governor or with the diputación, ayuntamientos made very few grants. Some even argued that it was illegal for the ayuntamiento to grant lands.⁷⁵ What they were called on for most frequently was information regarding the status of land requested. The diputación saw itself as the legitimate clearing house for granting lands, and the ayuntamientos were lesser bodies whose function it was to provide the facts. On occasion, an

alcalde served as the workhorse digging up the data to present to the ayuntamiento. But the ayuntamiento was ultimately responsible.

In regard to the legal responsibilities of the diputación, a decree of the Cortes of January 4, 1813, established general rules of operational procedure. The Cortes further specified that all vacant or crown lands, except the ejidos necessary for the pueblos, should be converted to private property, and the provincial diputaciones were asked to propose to the Cortes terms⁷⁶ which would be proper to carry out this provision. Thus, the authority of the diputación to dispose of vacant lands was considered long before Mexican independence.

Whether or not it was from this decree alone, or in combination with others, during the Mexican period the public estate was placed in the care of the diputación.⁷⁷ In New Mexico, this responsibility was taken seriously. The diputación received requests for land which were then turned over to a special commission or sent directly to the nearest ayuntamiento for investigation. Upon receipt of a proper report, the diputación made a decision in favor of the petition, so long as no law was violated and no third party would be damaged. In at least two instances, as will be noted later on, the diputación simply did not know what to do and requested the jefe político to get a ruling from Mexico City.⁷⁸ At other times the diputación chose not to grant lands for a variety of reasons: they were located in the main path of nomadic Indians (1828); they were ejido lands (1844); or they were close to the frontier where only the Supreme Government could alienate lands (1845).⁷⁹ However, a grant approved by the diputación, in which the grantees were placed in possession of their property, was considered the legal process most acceptable to all participants.

The jefe político's function in the legal process depended to a great extent on the man in the office. He continued to serve as a court of appeal for those who felt injured by verdicts of lower courts, but not all governors functioned equally as a court of appeals. Governor Santiago Abreú was quite specific in telling Santa Clarans in 1832 to take their complaints to the Supreme Court, and that his office should not be considered an appellate court (tribunal de apelación). Abreú also advised the Pueblos not to waste their time in making trips to Santa Fe, because local authorities could better solve their problems.⁸⁰ Francisco Saracino, who replaced Abreú as governor, continued the trend by refusing to intervene in a water dispute,⁸¹ saying that the matter should be taken up by a "letrado."

In general, however, the governor could, and did, function in the legal process to the extent he wished to become involved. Before 1836, he seems to have worked more closely with the diputación in matters concerning land, but after that time, and particularly during the administrations of Manuel Armijo, he tended to take land matters into his own hands. This makes some sense in view of the fact that articles 75 to 77 of a law of March 20, 1837, stated that petitions for land grants were to be made directly to the governor.⁸² As it had been in the colonial period, and as it was at the end of the Mexican period, the governor's office was powerful enough to bend the law according to the whims of the individual in power. This is not to suggest however, that it was customary for him to do so. The law had to be obeyed, and to the extent that it was understood, compatible with the governor's

view of the political process, and applicable to circumstances in New Mexico, it was followed. The problem was that Mexican laws changed rapidly between 1821 and 1846. The governor's secretary, as well as the ayuntamientos, tried to archive the laws, circulars, plans, and pronouncements arriving from Mexico City, as well as those from other states in the country, but some documents got lost in transit, while others were misplaced by unskilled officials, or disappeared for other reasons. When Albino Pérez began his term as governor in 1835, he chastized New Mexico's alcaldes in a circular accusing them of sloppiness in handling documents and warned that if they did not mend their ways, he would have to resort to strong measures.⁸³ A few months later, he wrote the Ministro de Justicia y Negocios Ecclesiásticos in Mexico City asking that he be sent by return mail a collection of all the decrees issued by the Cortes of Spain since 1812 up to the present, explaining that the archival abominations committed in New Mexico were so extensive⁸⁴ that he would not even begin to enumerate them.

Governor Pérez was a stickler for form. He wanted to revolutionize political and legal practices as if New Mexico were another Mexico City. But the citizenry was not as deprived of legal assistance as his criticisms, or those of Lic. Antonio Barreiro, might suggest. The record indicates that a number of New Mexicans were willing to pay the expense of hiring lawyers in Chihuahua and Durango, while others suffered the interminable delays of appealing local decisions to Chihuahua, to the "Intendencia in Guadalajara," or to the Supreme Court in Mexico City.⁸⁵

The Supreme Court was not considered out of reach, although the expense narrowed the field of potential appellants. Cases were directed to the Supreme Court by the alcaldes or by defendants who believed that a legal decision had been made against them unfairly.⁸⁶ The problem was that the Supreme Court was two thousand miles distant and took its time in answering. The wheels of justice moved almost as slowly as the mail service between New Mexico and the capital. Sometimes this worked as a good delaying tactic, but at other times the plaintiff's injuries continued unabated.⁸⁷ In any event, the governors of New Mexico urged citizens to use the Supreme Court if justice was lacking at the local level. More than a few answers from the Supreme Court indicate that this advice was followed on matters as widely divergent as land encroachment and adultery.⁸⁸

D. Indians and the legal process

Having discussed the political and legal hierarchy and the actual process of obtaining justice in New Mexico, it remains to be seen how the Pueblos made use of the system. Governor Facundo Melgares of New Mexico concluded that the Indians had achieved a new status as of 1821. In response to the Pecos claim to their league, he announced on April 18 of that year that the "minority" of the Indians had ended, and that they should be regarded "as Spaniards in all things, exercising especially their rights to vote and to stand as candidates for office." Additionally, Melgares encouraged the establishment of formal municipal governments in the Indian Pueblos.⁸⁹

As previously mentioned, the Indians did not rush to participate in the political process; nor were they entirely convinced that their legal status had changed as completely as Melgares indicated. They seemed to be ready to manipulate the ambiguities of the system, demanding citizenship status when it suited them or insisting on their condition as wards of the government when they were being taken advantage of by vecinos. In the classic case of Pecos Pueblo, the diputación decided on March 3, 1825, that the Pueblos were no longer protected by their ancient privileges and responsibilities, that they were equal to other citizens,⁹⁰ and with them would form part of the great Mexican family. The diputación was arguing that Pecos could no longer sit on all the land they had held under the Spanish regime when their privileged status was protected. Exactly one year later, the Pueblos argued that they were sons of God and the Mexican nation, that they enjoyed "all the laws and the rights of citizens," just like other Mexicans, and, therefore, the government of New Mexico had no right to dispose of their lands.⁹¹ The matter of land alienation will be discussed later on. For the moment it is sufficient to note that the same argument regarding Indian status was used by both sides to accomplish polarized objectives. Likewise, the New Mexican government made no bones about the fact that the Pueblo's would now have to pay taxes, particularly the diezmo, and that they would have to serve in the militia. The Pueblos, occasionally resisted, but they seem to have understood that these obligations were a price they would have to pay if they wanted more citizenship rights.⁹²

Taking advantage of the legal process was less complicated. Pueblos frequently brought complaints to the alcalde (or juez de paz, depending on the year) involving conflicts over land and water. Sometimes these problems were caused by encroachments of vecinos; at other times they resulted from disputes between two Indian Pueblos.⁹³ Some complaints were represented by the Indians themselves; others were conducted utilizing a lawyer (apoderado) especially if the stakes were high or the issues particularly complicated.⁹⁴ No longer able to lean on the services of a "protector de Indios," the Pueblos often felt at a disadvantage when going to court. In 1822, during the litigation of a dispute between the Indians of San Juan and Fr. Mariano Sánchez Vergara, the Pueblos complained that their "protector" had died, and that ever since they felt like orphans "because we do not understand Spanish well and our comprehension [of things] is not as good as that of the vecinos ("por no entender bien el castellano y no ser nuestro entendimiento tan completo como el del vecindario.")"⁹⁵ How the office of "protector" was finally terminated is still unknown, but there is some evidence that it was suppressed by a real cédula of January 11, 1821.⁹⁶

The Pueblos also took their complaints either directly to the ayuntamientos or to the diputación. They filed suit against vecinos and were sued in turn.⁹⁷ They sought out the governor, both as a matter of tradition, and because they sensed a greater sympathy in the governor's office for their predicament. In this, they were probably correct. As the administrators ultimately responsible for maintaining law and order, governors of the Mexican period showed some reluctance in applying new

concepts that might result in the Indians' losing their long standing rights to land and water. Because they were unsure of the law, afraid that departure from accepted practices might get them in trouble, and genuinely (it appears) concerned that the Pueblos be allowed to preserve their ancient rights, they sometimes served as a counterbalance in slowing down the rush of greedy vecinos to possess Indian property.⁹⁸ Of course, there are exceptions to this generalization, but in the main, it seems accurate. It also appears certain that Pueblos who felt cheated or disadvantaged by neighboring vecinos not only knew they had recourse to the courts, but took advantage of this right.

E. Laws frequently cited by New Mexicans

Throughout the Mexican period, New Mexican officials at all levels made frequent reference to laws passed by the Cortes of Spain between 1810 and 1813. The reasons for this are several. First, New Mexico was proud of the accomplishments of its representative, Pedro Bautista Pino. Pino's trip to Spain and his return with tales of the new, liberal spirit abroad made an impression on provincial New Mexico. The existence of so many laws of the Cortes in the archives of Santa Fe, and lesser ayuntamientos, may be attributable to Pino's personal efforts. Secondly, the laws of the Cortes prepared the stage for the democracy and partial autonomy enjoyed by New Mexico under the Constitution of 1824. These laws were ruled "vigente" unless they conflicted with later edicts emanating from Mexico City. In other words, it was legal to use them, and their spirit, by and large, coincided with what New Mexicans wanted in the way of a political-legal

relationship amongst themselves and with Mexico City. Third, the already discussed difficulties of getting a complete set of laws passed by the many governments in Mexico between 1821 and 1846, and the difficulty of determining which laws conflicted with ones already accepted as "vigente" in New Mexico, resulted in administrators relying on what they knew best, hoping that the worst crime they could be accused of was not being current.

With this background, the oft-cited Article 5 of the Law of November 9, 1812, takes on special meaning. Rather than being a musty old decree searched out and brought forth by greedy Mexicans to justify land exchanges already planned or carried out, it is just one of many decrees drawn up by the Cortes and put into effect by New Mexicans trying to obey the law during the Mexican period. It was a law stating that if community lands were in great number in relation to the "Pueblo" to which they belong half of them will be distributed to individuals under supervision of the provincial diputaciones according to the special circumstances of each "pueblo."⁹⁹ In 1825, when a number of powerful vecinos were trying to get title to the many acres of land not being cultivated by the Pecos Pueblo, this law was cited as proof that the Indians were like any other Mexicans who had the right to sell their lands as private property.¹⁰⁰ Because the Pecos Indians, who also insisted on their right to sell their lands, began to see that they were losing all their property - that they were in fact participating in their own destruction - they appealed to the governor of New Mexico for help, and the governor then asked the diputación to consider whether or not what was taking place at Pecos under the law of

November 9, 1812, was in effect legal. The diputación¹⁰¹ decided to ask the Supreme Government. When a reply was received, the diputación ruled that all lands previously belonging to the Pecos Indians which had been granted to non-Indians by the government (tierras donadas) would have to be returned to the Indians, but lands which the Pueblo had sold would be considered legal conveyances.¹⁰² Although this ruling was fought by some vecinos, Domingo Fernández in particular,¹⁰³ it represented a modification of the broad interpretation of Article 5 by the diputación, but identified a principle which would be honored by New Mexican officials off and on during the remainder of the Mexican period: the right of Indians to sell their lands.

Even older laws were cited in regard to both the manner and proper authority for the distribution of lands. Writing from Abiquiú in 1831, vecino Juan José Abila complained that a group of genizaros was causing him damage by their use of lands in "Ballecito." During an investigation conducted by the alcalde of Abiquiú, the history of this land was mentioned along with a reference to the rights of the "Pueblos de Teguas," according to the Nueva Recopilación de Yndias.¹⁰⁴ Although the reason for this reference is not altogether clear, in subsequent land disputes, the Nueva Recopilación, or Novissima Recopilación, as it was sometimes called, was cited chapter and verse to make a point of law. This can be seen in the case of a grant of land made to Luis Robidoux to which Antonio Matías Ortiz raised an objection. Citing "la ley 7, 8, y 9 Tít. 7, Lib. 7 de la Recopilación así como las leyes de partida 3 y 18. Tít. 32, partida 3," a

special commission of the ayuntamiento of Santa Fe concluded that Matías Ortiz had no right to complain; that the grant was made in conformity with the law and did not cause prejudice to anyone else's property.¹⁰⁵ But Matías Ortiz was not to be denied. Indicating the extent to which New Mexicans used "the law" to advocate sometimes contrary positions, he, too, cited the Nueva Recopilación (la ley 11 Libr. 7° título 1°) in which it was written that regidores can not make land grants without first securing a license. Thus, Matías Ortiz concluded, the ayuntamiento was in violation of the law.¹⁰⁶

As interesting as this little spat may be, the point is that as late as 1840, regulations regarding the granting of lands were still unclear to local officials. The Recopilación had been in effect for a long time, and, like the laws of the Cortes, was viewed as something of an authority on many matters. Even the ayuntamiento of Cañada cited the Nobissima Recopilación when trying to resolve a conflict of interest dealing with blood relations (parentesco) in local elections.¹⁰⁷

Dependency on other laws of the Cortes is evident throughout the Mexican period. The law of October 9, 1812, was considered to be the basis for the judicial system.¹⁰⁸ The law of January 4, 1813, served as the basis for the organization (actually reorganization) of the diputación of New Mexico and described how public lands belonging to towns could be reduced to private ownership.¹⁰⁹ The law of March 25, 1813, was cited by Governor Antonio Narbona in providing additional lands to

the Pueblo of Laguna from the public domain with the requirement that they be used for agriculture.¹¹⁰ The law of April 28, 1813, was noted (albeit by the state government of Occidente) as the basis for giving the diputaciones the right to apportion lands.¹¹¹ And the law of June 23, 1813, providing guidelines for the ayuntamientos, diputaciones, and governors, was frequently cited by New Mexican officials in preference to the somewhat vague clauses of the Constitution of 1824 and in absence of more specific rules for the territories that were never acted on by the Mexican Congress. The Mexican period record includes numerous references to this law with respect to election rules, the rights of ayuntamientos, and even matters of health.¹¹² Clearly, the laws of the Cortes were viewed in New Mexico as a part of the corpus of Hispanic law in effect in the territories during the Mexican period.

III. Non-Indian Views of the Indians

A. Pueblos

Because so much has been written already in regard to the Pueblos' citizenship status, and thereby their right to alienate lands, the following comments are an attempt to determine the extent to which New Mexicans viewed the Pueblos as citizens with equal rights, and the extent to which non-Indians dealt with the Indians on this basis.

To avoid oversimplification, it should be noted that the labels used when referring to Indians in extant documents do not necessarily convey the same idea in translation as when written. For example, Mexican officials frequently referred to Pueblos as "ciudadanos." This does not mean that Indians had become citizens. Alcaldes used the phrase, "ciudadanos y compañeros;" the diputación records show references to ciudadanos of Picurís, Las Trampas "and other places" ("y demas lugares") "(San Antonio del Peñasco, Santa Cruz del Chamizal, San Juan Nepumoceno, Santa Barbara)." These records also contain the already cited statement by the vocales of March 3, 1825, stating that the "naturales" of Pecos have lost their ancient privileges and are henceforth to be considered equal citizens in the "the great Mexican family" ("gran familia Mexicana.")¹¹³ Governor Mariano Martínez referred to "ciudadanos. . .naturales del pueblo de Ysleta."¹¹⁴ And the Pueblos referred to themselves¹¹⁵ occasionally using "ciudadano" in written documents. But these suggestions of citizenship status do not mean that either Indians or non-Indians had completely accepted the philosophical concept adopted by the Spanish Cortes and written into the various state documents and decrees of the Mexican Republic. Undoubtedly, many New Mexicans were aware of a change, but they had lived with their naturales for generations, and a revised social, political, and economic status would not be allowed without a considerable struggle.

Far more numerous in the written record are the references to Pueblos as "indios," or "naturales." Throughout the Mexican period, officials most frequently used these terms in their description of Pueblo affairs.

For example, the "indio," Manuel Luna was set apart from "los ladrones" (probably vecinos) in the discussion of a robbery in 1832.¹¹⁶ The "indios" of Laguna were mentioned by the alcalde of Laguna in the same year as not being exempt from the diezmo.¹¹⁷ "Indios" of San Felipe and Santo Domingo were mentioned in the context of their pursuit of Navajo raiders in 1837. One year later, the "pueblos de Yndios" were suspected of uniting with the nomadic tribes to start a revolution.¹¹⁸

The word "naturales" was most often used in distinguishing Pueblo Indians from vecinos. It was a label applied to all Pueblos and can even be found occasionally regarding the activities of the nomadic tribes (gentiles). It connoted the idea of non-Indians living in non-Indian communities, friends of the vecinos, friends of the Mexican nation, and a people who were closer to being civilized than the wild tribes surrounding the territory of New Mexico. On rare occasions, the documents mention "yndios naturales,"¹¹⁹ a phrase which seems to convey the idea that the Pueblos were Indians but in some way a part of the corporate economic and political system under the laws of Mexico. The word "indigena" was used infrequently, apparently to convey the idea of Indian status without having any hard and fast rule as to whether this meant Pueblo or gentile.¹²⁰

In sum, non-Indian New Mexicans allowed the word ciudadano to creep into their vocabulary, but they frequently returned to traditional labels whose meaning was at best vague. References can even be found to the government's attitude (1830) against slavery and other forms of personal service by Indians,¹²¹ but the 1844

judicial proceedings include a reference to "una india" who had been borrowed with payment for her services secured by land. Obviously, she had not become a "citizen" with equality under Mexican law. Other references to Indian slavery suggest that the Indians' status changed very little in the Mexican period.¹²²

Underlying Mexican difficulties with the lofty principles of equality was the fact that many Indians, even among the Pueblos, were not Christians. This difference may be at the root of class distinctions that frequently appear in labels. If an Indian were a Christian, he would stand a better chance of obtaining citizenship rights as is revealed in a request for land by a Santa Fe soldier, Francisco López. López asked for land for himself and his family, and in his petition he mentioned the fact that he included in his family a twenty-five-year-old Navajo who had willingly received the "the healthy baptismal waters" ("saludables aguas del Bautismo.")¹²³ If this is what it took in New Mexico to receive equal treatment under the law, López would receive the suerte of land he petitioned. The record is not clear what happened, but the request reveals how one non-Indian believed he could raise the status of an Indian.

B. Gentiles

To better understand the relatively acceptable status of the Pueblos, and by way of noting that they were far more "equal" as Mexican citizens than the non-Pueblo Indians, a few words need to be said about the gentiles. These Indians were usually referred to as tribes. They included the Utes, Apaches (various groups), Comanches,

Navajos, and Kiowas. They were looked upon as potential enemies to whom arms should not be sold, and for whom measures should be taken so that they might be reduced some day to the same condition as the Opatas and Pimas (Sonora and Arizona).¹²⁴ As the Mexican period progressed, New Mexicans found that treaties with them were not honored; that the gentiles were becoming bolder and better armed, thanks to the trade arrangements of North Americans;¹²⁵ and that in addition to long standing problems of poverty, and isolation, illiteracy and hunger, New Mexico was increasingly threatened by an encirclement that aimed at the very existence of the territory.

Due to this growing fear and the central government's unwillingness to provide adequate means for defense, New Mexican officials showed little interest in accepting these Indians as equals. As the years progressed, references to gentiles became increasingly strident: simple references to "los bárbaros" became "las naciones salvages;" Utahs, referred to as "naturales," when they were helping fight the Navajos, became "gandules Utahs" (literally "bums"), and "salvages, while the Navajos turned into the "nación cobarde" and other nomadic tribes fell into the category of "tribus salvages." Nothing is clearer in the Mexican record than the gradually increasing crescendo of hate and fear which New Mexicans felt toward this threat to their existence, and no doubt can possibly remain that whatever improvement in status was accorded the Pueblos as a result of Enlightenment thinking, the gentiles slowly degenerated in the eyes of New Mexicans into the lowest form of human life.

IV. Water and Land: Grants, Sales, and Exchanges

A. Vecinos to Vecinos

In order to isolate the particular circumstances of Pueblo-vecino land exchanges, it is necessary to look first at certain general assumptions, practices, and problems affecting New Mexican officials in their handling of water and land questions. This background will place a sharper focus on Pueblo property rights during the Mexican period.

A fundamental problem in New Mexico was the lack of sufficient agricultural production. This lamentable situation was recognized at all levels of government. It touched everyone and was blamed variously on the indolence of natives, the hostility of nomadic tribes, and the prejudices inherent in old Spanish laws which prevented more equitable land distribution. When they received requests for land, Mexican officials had to weigh their desire to make more land productive against a concern that it was protected as ejido land, or came under the control of the Pueblos.¹²⁶

As described by the diputación in 1828, the territory of New Mexico suffered from untold misery and hunger specifically because of the bad distribution of land.¹²⁷ As it had noted five years earlier, this problem emerged because officials were reluctant to grant properties considered "terrenos comunes," a concern which resulted in the backwardness of agriculture in the territory.¹²⁸ This observation in 1823 came from the petition of Juan Estevan

Pino who had requested both farming and grazing land in the vicinity of San Cristobal. His request was approved. However, New Mexican officials were unsure whether uncultivated commons lands could be divided up no matter how desperate the food situation had come to be in the territory. In the first few years of the Mexican period, it seemed logical to take the commons lands, including Indian lands, which were capable of cultivation and grant them to citizens who were starving and had a need for lands to work. Furthermore, any lands sold, including those out of the public domain, would enrich the territorial treasury. ¹²⁹ Indian lands, however, which were often the best agricultural lands, had a unique status which New Mexican officials found themselves trying to resolve during the entire Mexican period. ¹³⁰

In 1824 the diputacion made it very clear to the Pueblos of San Felipe and Santo Domingo that land between them could be granted to others in order to make some progress toward improving the decadent condition of agriculture. ¹³¹ In 1829, the ayuntamientos of Santa Fe and San Miguel del Bado commented on their responsibility to distribute lands and water in such a way as to augment agricultural production in conformity with the laws of the nation. ¹³² Similar sentiments were echoed by governors of the 1830's and 1840's, but they too, were perplexed by not knowing how to treat Pueblo lands while fearful at the same time that vecinos who asked for lands on the frontier might not be strong enough to hold out against attacks from the bárbaros. ¹³³ The dilemma was real: to what extent should Indian lands be redistributed among vecinos in order for the territory to raise its living standard?

The status of commons land worried all officials with land granting authority. These lands were owned in common by the people, by a pueblo, or by a group granted colonization privileges. They consisted of abrevaderos, or public rights of way, in which animals could reach water from their pastures, pasteos, or pasture lands, in which animals could graze when not contained in an owner's private property, and propios y arbitrios which were lands owned by towns that earned income because they were rented. Public, shared land, sometimes referred to as mancomunidad, was distinct from the public domain. The land was owned, but it was owned communally and for a purpose. Occasionally, documents from the Mexican period reveal a confusion between commons land and what was known as terreno baldio. The baldio lands, uncultivated lands, also called terreno yermo, were generally lands which had never been irrigated, but could belong to the commons, Indian or vecino. However, vecinos had a tendency to apply the term "baldio" to unused land they coveted. Terreno baldio conveyed the idea that the land was unoccupied and could be cultivated if water were provided. In 1842 prefect Juan Andres Archuleta commented that one of his principal responsibilities was to determine which lands were "terrenos valdios" in order to get them into agricultural production.¹³⁴ Whether or not abandoned lands constituted terrenos baldios depended on the officials making the interpretation. Some citizens obviously felt that land which had been abandoned was free for the taking by someone else,¹³⁵

In 1823 the diputacion showed its concern for protecting the status of commons lands by angrily denouncing the ayuntamiento of El Paso for its grant of commons land to an Anglo-American at the expense of the pueblo of El

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Paso. Although its tone of criticism moderated in succeeding years, the diputación, and the ayuntamientos which investigated petitioned lands, proceeded with caution when petitions were made for private possession of commons lands. By contrast, grants in the public domain were made only with the stipulation that they would not interdict the customary use of pasteos and abrevaderos. Some grants specifically required that both the pasteos and waters should belong to the commons.¹³⁷

Ejido lands were also part of the commons, but the designation of ejido meant that lands belonged to, and were worked by, members of a municipal corporation which could be a pueblo of vecinos or an Indian Pueblo. Mexicans, however, tended to use both words loosely. For example, there are references to the "four leagues...like ejidos" ("cuatro leguas...como por ejidos") belonging to El Paso;¹³⁸ the "lengua /sic/ de ejido del Pueblo de Abiquiú";¹³⁹ and the ejido land belonging to the city of Santa Fe.¹⁴⁰ The ejidos of Galisteo were considered necessary for pasteos de Haciendas,¹⁴¹ and the lands around the Pueblo of Picurié were considered "indonable," because they comprised the only "ejidos y pasteos de sus animales."¹⁴² For land petitioners who sought lands within the Pueblo league, or nearby in lands that had been assigned to the Pueblo for pasturing their animals, possibility of rejection was very real. Many requests were denied on the basis that use or occupation would constitute an injury to those with "ejido" rights.¹⁴³

Petitioners for land encountered other obstacles. Requests for grazing and farm land might be restricted to one or the other.¹⁴⁴ In the case of a "solicitud" from

Juan Bautista Vigil and others for land in the Jornada del Muerto, petitioners were given land with the encouragement to farm as much as possible plus a warning that they had no right to the pasteos.¹⁴⁵ Requests were often denied or modified, because of an implied conflict with the colonization laws of 1824 and 1828, but throughout the extant Mexican record, very few references appear to these laws by name. The government was mainly concerned that land grants be made to foreigners only if they conformed to national laws, and to Mexican Nationals who were expected to place them under cultivation within a year under penalty of losing their land.¹⁴⁶

Most petitions for land which passed through the diputación were for pasteos y labores. As mentioned previously, the procedure for determining if a grant should be made began with the diputación. After a brief discussion, the petition was turned over to a commission or sent directly to the nearest ayuntamiento for an investigation of the property requested. If the ayuntamiento reported in favor of the grant, the diputación would recommend formal approval by the governor and would authorize the alcalde to place the petitioners in possession of their lands. If investigations produced evidence of possible conflicts, the diputación tried to work them out. Petitioners were asked to make compromises, or were told to go ahead and cultivate the land in question until further study could be done.¹⁴⁷ Mexican officials wanted to grant land. Not only were they impelled by New Mexico's agricultural scarcities, they were also guided by a general principle that in any dispute, the best solution was for each side to get something.¹⁴⁸

On occasion, the diputación got itself in trouble. Lack of good surveying techniques, the existence of customary arrangements involving land exchanges that had not been officially documented,¹⁴⁹ and the whole question of sobrantes¹⁵⁰ sometimes resulted in both errors of omission and commission. The latter is evident in a petition for pasteos made by Antonio Chávez in 1825. After an investigation, it was learned that the land belonged to the towns of Socorro and "Sebilleta," but the diputación concluded that Chávez should receive the grant, not only because he was in need of land, but because this was an area that needed population to hold back "los bárbaros," and because Chávez himself had lost most of his property to the Navajos. Furthermore, the diputación stressed the fact that Socorro and Sebilleta already possessed ample amounts of land and would in no way be injured by the "donación."¹⁵¹

In rationalizing its position, the diputación had clearly decided that Chávez should get the land, even though this decision clashed with an earlier decision vis-a-vis a grant of land in the El Paso area. Consistency was not a forte of the diputación. Furthermore, on several occasions, lands granted by the diputación sometimes conflicted with the local alcalde's view of land ownership.¹⁵² If everything functioned smoothly, a request for land encountered no conflict with any of the officials who reviewed the petition, and a proper title was placed in the hands of the new owners.

Known as formalidades de estilo, the process of securing legal title to a grant of land began when the diputación approved the report of the special commission or ayuntamiento investigating the area requested. It

ordered the preparation of an expediente, or diligencia, which contained a description of the land, its boundaries and any special provisions or restrictions dictated by the diputación. The originals of these documents were archived in the Secretaría of the governor's office, and copies were placed in the hands of the grantees by the alcalde who accompanied them to the site and formally placed them in possession of their land.¹⁵³

Documentation dealing with the control, transfer, and ownership of water in the Mexican period is less abundant, but certain general principles appear to be in operation. First, few requests were made for a specific quantity of water. When water was the property involved in a dispute, officials tried to work out a compromise so that both sides received something.¹⁵⁴ Secondly, the concept of equal distribution seems to have been at least as important as primacía or antigüedad.¹⁵⁵ Repartimientos de agua were made when conflicts arose over the use of water, and the ideal distribution was based on the belief that everyone should be able to irrigate some of their lands.¹⁵⁶ Third, community rights took precedence over the rights of individuals. This principle was clearly articulated in 1832 when Governor Santiago Abreú told several citizens of San Juan, who asked for more water, that "the commons of a pueblo is undoubtedly more important than a single individual" ("el común de un pueblo es sin duda mas respetable que un solo hombre.")¹⁵⁷

Public acequias, however, sometimes caused problems. Their age and the distinct tendency of Mexican officials to honor customary practices complicated the administration of Mexican law. As noted by Pedro Ygnacio Gallegos, alcalde constitucional and president of the ayuntamiento of Abiquiú, among the acequias constructed many years previous, most crossed many private lands, and none had an outlet (toma de agua) on the private property of its principal user.¹⁵⁸ In other words, over the years, the place at which the water was originally taken out of the river for irrigation purposes downstream and inland no longer belonged to the party with the oldest water right, and the users along the ditch should not have to forfeit their customary use of water because of land transfers taking place near the headgate.¹⁵⁹ Authorities tried to solve these kinds of problems in such a fashion that every user got something. No one was guaranteed a fixed and legal right to a set amount of water. Instead, in the community spirit which characterized New Mexico in this period, the adjudication process was flexible enough to take into consideration the uneven flow of surface water and the possibility that circumstances would change in future years necessitating a new adjudication based on different needs and priorities. However, the antigüedad of the acequia was important, and so was the custom of all the users working on it. This was a community operation, supervised by a mayordomo, and policed by local authorities who could fine those who abdicated their responsibilities.¹⁶⁰

Ayuntamientos accepted their responsibility in matters of water distribution, and concerned themselves with both the need to distribute the water equally and the obligation to make sure that none was wasted.¹⁶¹ They were also quick to hold persons responsible for allowing waste water to damage the property of others.¹⁶²

Regidores were often selected as the ayuntamientos' repartidores de agua, but the alcaldes also played an important role, especially in the last ten years of the Mexican period when many of the ayuntamientos were dissolved. At this time, the juez de paz, or alcalde constitucional, assumed the burden of litigating water rights, but none of the basic principles changed. In this matter, the force of custom was strong. Water was not to be bought and sold separately as property. In New Mexico, its use did not follow a rigid pattern of laws and measurements such as those articulated in the Ordenanzas de Tierra y Aguas. In sum, the spirit behind the repartimiento process remained very much a reflection of the interrelated functioning of all members of the community. This would mean that no one would be left out, and everyone would bear some responsibility.

B. Vecinos to Indians

The exchange of land between Pueblos and vecinos took place in several ways. Since the Spanish colonial period, and as early as the 1700's, Pueblos had sold parcels of land to Spaniards. This was legal, although the procedure required a license. It reflected the fact

that many Spaniards had settled near the Pueblos "for reasons of common defense," and as the years passed, they intermarried with the Pueblos and bought and sold lands within the Pueblo league.¹⁶³ By 1923, non-Indian land claims within the Pueblo grants amounted to 18,349.888 acres, or approximately 13.54% of the total land area claimed by the Pueblos of Tesuque, Santa Clara, Taos, San Ildefonso, San Juan, Sandia, and Cochiti.¹⁶⁴

Non-Indians who took possession of Indian lands did so through encroachment, purchase, or donation (grant) from the government. Some sales were recorded and some not. It appears from the record that once public domain or commons lands were alienated to a private party, no institutionalized procedure required private parties to record the exchange of land titles. A land dispute, however, would bring litigants before the local alcalde or justice of the peace and transfers would then be recorded. It is not known how many unregistered exchanges took place between Indians and non-Indians. Records in the Bureau of Indian Affairs, Southern Pueblos Agency in Albuquerque, make it clear that the Surveyor General's Office and the Court of Private Land Claims were unaware of a number of exchanges which escaped recording until late in the nineteenth century. These BIA documents are notes presented to the Pueblo Lands Board from records in county court houses.¹⁶⁵ They show that Pueblos could, and did, make sales to non-Indians, but New Mexican government officials did not have an easy time with the legality of such transfers while trying to deal at the same time with the land hunger of vecinos, the liberalized status of Indians after 1821, and the proliferation of confusing and contradictory Mexican laws.

Simple encroachments are easy to document. As in other parts of Mexico where an Indian population had been reduced and protected in its land rights by the Spanish government, in New Mexico, independence signalled the opening of a citizen movement to separate the Indians from their land. Sometimes these lands were forcefully occupied, as happened in Laguna, Santo Domingo, and Picuris, resulting in the Pueblos' appeal to the governor for restitution of their traditional property rights.¹⁶⁶ Sometimes Pueblo lands were sold without Pueblo permission, thus raising the sticky question whether an Indian could sell his land without getting permission from the governor of the Pueblo, the cacique, or the rest of the Indian residents.¹⁶⁷ Bribes, manufactured legal documents, personal influence, and connections with the courts were used by vecinos to bilk the Pueblos of their property. It was a form of bullying which placed the Pueblos at a distinct disadvantage, since they could no longer run to their Protector de Indios. In the case of Pecos, the constant pressure from vecinos wanting good agricultural land, which the small number of Indians were not cultivating, resulted in that Pueblo selling its most valuable lands rather than seeing them taken over by the Mexican government in New Mexico or simply stolen by land-hungry non-Indians.¹⁶⁸ Other vecinos simply moved onto the Pecos lands acting very much like Antonio José Otero of Valencia, who became apoplectic when the Pueblos of Isleta removed some trees he had planted in lands that he felt belonged to him.¹⁶⁹ Such an uncontrollable rage, reported by the diputación, suggests that Otero gave very little thought to the fact that Isletans might have property rights which took precedence to his land greed.

Most frequently, these kinds of conflicts revolved around the question of the Pueblo league. Did the Pueblos in fact, have a league that they could call their own? To whom did it belong? Could it be sold? And did vecinos have a right to petition for unused lands within this league under the terms of the laws of January 4, 1813, and November 9, 1812, and the Mexican government's decrees urging greater agricultural productivity? These were tricky questions which defied definite answers.

In the matter of the league, there were several issues to consider. In the first place, most of the Pueblos, and most New Mexican officials, believed that these Indian settlements had been given and guaranteed a square league as their rightful property. In a proclamation of October 15, 1713, the king stated that, "the ordinances and laws of the Indies, and especially eighth, book third of the recopilacion of the same, provide that locations, with sufficient water, land, timber, entrances and exits, for cultivation, be given to the settlements and towns (pueblos) of Indians which may be formed, and a common of one league, where they can pasture their cattle, without their being mixed with those of the Spaniards;..."¹⁷⁰ Pecos claimed this ancient privilege, as did Santo Domingo, Nambé, Picuri's, Sandiá, Santa Clara, and most of the other Pueblos. Even the citizens of Abiquiú claimed that the Indians of that Pueblo had been guaranteed a league before the lands were subjected to repartimiento.

The Indians argued that this land was inviolate, that lands within the league which had been alienated should be returned to the Pueblo.¹⁷¹ As pressure increased on Pueblo lands, this was the argument most frequently presented to the diputación as a defense against further encroachment. But the problem was a delicate one. If the Indians were now citizens, did they still have inviolate rights to their league? Furthermore, the diputación showed confusion in regard to the amount of land given to the Indians. The King's proclamation had provided for land security to the Pueblo itself, but it had also provided for "a common of one league where they can pasture their cattle, without their being mixed with those of the Spaniards." The Pecos argued that they needed more land than just the Pueblo league, and they made it clear in 1826 that they never abandoned their church and surrounding lands, implying that their rights extended considerably beyond the one square league.¹⁷² In contrast, the Pueblo of Sandiã was forced to defend itself against Dⁿ Eusebio Rael de Aguilar, who hired a Durango lawyer to prove that the Pueblos had no legal right to extend beyond their one league.¹⁷³ Other examples can be found in the Mexican records suggesting that the Pueblos felt they had some right to pasture land outside the immediate confines of the Pueblo. But could they legally continue to claim rights to this land in the Mexican period?

Vecinos who coveted the land thought not. They argued that lands which were in excess of the one league were "sobrantes," and these lands were up for grabs, particularly if the Pueblos were not cultivating them. In

the case of Pecos they also claimed a right to uncultivated lands within the Pueblo league. Given the mandate to harvest more agricultural produce, it seemed only reasonable that the lands not being used should be converted to crop production. Early in the 1820's, the diputación began to receive petitions for lands which were sobrante to but within the Pueblo league.¹⁷⁴ Although it was at first quite convinced that such grants could be made, the diputación began to waiver, recognizing full well the conflict between Spanish laws and customs remaining in force, the laws of the Cortes, and the guarantees of equality for all residents of Mexico. What was especially confusing was the status of the Pueblos' commons land.

Immediately following independence, the diputación was faced with a problem relative to the commons lands of Abiquiú. In order to pay their cura, the "naturales" of Abiquiú had sold land from the commons. The diputación decided that this sale was null and void, and that the land should be returned to the commons. The cura was told he still had the right to demand payment of debt from the Pueblo.¹⁷⁵ The following year, the diputación received an urgent request from Felix Guerra of San Lorenzo Real detailing the condition of poverty in the area and asking if the uncultivated commons lands could be divided up among the pobladores according to the terms of Article 5 of the law of November 9, 1812.¹⁷⁶ Although a response was not immediately returned to Guerra, the diputación took a position before the end of the year. Echoing its concern that poverty in New Mexico was attributable to the long standing reluctance to alienate commons land, it

conceded a grant to Juan Estevan Pino "in the name of the Supreme Government of the Mexican nation" ("a nombre del Supremo Gobierno de la nación Mexicana.")¹⁷⁷ The same argument was applied in 1824, when several vecinos asked for lands belonging to the Pueblos of Santo Domingo and San Felipe. Again the diputación pointed out the need to stimulate agriculture, and specifically lectured the Indians that the governor had the right to alienate their lands in order to "achieve improvement in the backward agriculture of this vast territory" ("procurar el progreso de la decadente agricultura de este vasto territorio.") The diputación further pointed out that the lands held by these Pueblos "en comunidad" could be sold by each individual so that the "sobrantes" would be disposed of in the best terms.¹⁷⁸

By 1825, the diputación began to have second thoughts. When Juan Diego Sena asked for sobrantes belonging to the Pueblo of San Juan, the diputación said that it would have to consult the supreme government.¹⁷⁹ Earlier in 1825 the diputación had granted land requested by Miguel Ribera in what Ribera had referred to as "commons lands that are uncultivated found in Pecos Pueblo" ("tierras de comunidad que ya baldías se hallan en el Pueblo de Pecos.") The grant had been made, but the diputación showed the beginning of its change in mood by indicating that it planned to grant some lands to the "naturales," and warning that if these Indians had sold some of the lands, the sale would be null and void. This meant, of course, that Ribera could count on the legality of his grant.¹⁸⁰ It was at this time that the diputación pointed out that the Pueblos no longer held their ancient privileges, and that they were equal to other Mexicans in the "gran familia Mexicana."¹⁸¹

Due to pressure from the Pecos Indians, a change in New Mexico's governor, and some concern about the status of the law of November 9, 1812, the diputación (a new group) decided to seek advice from Mexico City before continuing with the granting of Pueblo lands. The Pueblos, meanwhile, insisted on their status as equal citizens, arguing that the government had no more right to alienate their lands than those belonging to other citizens.

In its first timid response to the situation, Mexico City asked for more information, obviously uncertain about that to do. Governor Antonio Narbona replied that no harm would come to the Pecos Pueblo, that the Indians owned their property communally, and that even if some Indians cultivated individual tracts, those tracts belonged to the entire community. Consistent with the general mood of New Mexico at this time, Narbona also added that the Pueblo would progress more rapidly if each Indian was allowed to own his own land.¹⁸² The diputación approved Narbona's response and continued to grant a few requests for other communal lands.

No further word was received from Mexico City, but it is apparent that both the diputación and the Pueblos expected something. By 1827, when Manuel Armijo had assumed the governor's office for the first time, he took an opposite position. Responding to Antonio Sacamé ("natural del Pueblo de Tesuque") on May 29, 1827, he pronounced the view that the Pueblos could not alienate their commons land.¹⁸³ Two years later, the diputación took its own position decreeing that the Pecos Indians did, indeed, have the right to determine what happened to

their lands - that all lands which had been granted to vecinos by the government would have to be returned to the Pueblo of Pecos and only the lands sold by the Indians would remain legitimate transfers of ownership.¹⁸⁴

Based on this new ruling, Picuri's Pueblo asked the diputación to return the "ejido" lands which had been granted to several non-Indians. The diputación waffled in its response, authorizing the grantees to sow crops in their land for one year, but noting that if, as a result of the present dispute, the lands in question were determined to be "indonable" they would have to be returned.¹⁸⁵

The general pattern was continued in the 1830's and 1840's. Lands requested in Santo Domingo and San Felipe were referred to a commission for investigation.¹⁸⁶ No further results have come to light. In 1840, the governor decided that land making up the commons of Nambé could not be granted.¹⁸⁷ Two years later, another request for lands between Nambé and Tesuque was denied.¹⁸⁸ And in 1845, the departmental assembly confirmed Isleta's right to communal lands outside its league on grounds of their prior use. A conflicting grant to a non-Indian was revoked.¹⁸⁹

What remained was the somewhat hazy implication that the Pueblos could sell their lands but could resist the government's desire to stimulate agriculture by putting their abandoned, or uncultivated lands, under the plow. Whether Indians could sell their lands as individuals or as an entire Pueblo remained a point of contention. The Santo Domingo-San Felipe decision of 1824 had indicated

that individuals could sell their lands. In 1832, however, and again in 1834, different governors argued that commons land could not be sold by individuals; that the sovereignty of the Pueblo required the approval of the entire Pueblo.¹⁹⁰ When the final Pecos land deal was consummated, wiping out the Indian ownership of Pecos lands in 1830, José Cota noted that he was selling the cienega of Pecos pueblo and was acting for the entire Indian community.¹⁹¹

Almost every sale of land by Indians presented a different twist. Francisco Baca, a Navajo, sold lands to residents of Cebolleta. Having decided to leave the area, Baca wanted to recover something, and he chose to sell his lands to those who were his nearest neighbors.¹⁹² Although this was an unwritten custom, one other instance has surfaced in the Mexican record in which the courtesy of giving neighbors a first right of refusal is documented.¹⁹³ Some land sales were made without documents. Investigation of the Sierra Mosca grant led Eugene A. Fiske to the conclusion that Vicente Durán de Armijo might have held property "simply by consent of the Indians and not by virtue of any formal 'act of possession'."¹⁹⁴ This suspicion is further supported by the sale of lands in the San Ildefonso area in which it was noted that the Indians "have not issued him documents" ("no le an selevrado documentos.")¹⁹⁵ In a community where personal relations were so closely intertwined, land use frequently converted into land possession with the passage of time, and unless the need for alienation arose, documents were unnecessary.

In cases where vecinos failed to purchase lands from their Indian neighbors, they could try to appeal to the government by declaring the lands uncultivated or abandoned. Precedents for this logic predated the Mexican period. When Jacona and Cuyamungué were abandoned after the Pueblo Revolt, their former lands were granted to the Spaniards.¹⁹⁶ After independence, the state of Sonora decreed that if Indians abandoned their lands "within the space of three years 'through laziness or vice'," the lands were returned to the public estate,¹⁹⁷ and the state was entitled to resell them as vacant lands.

New Mexico faced the same situation, although, as previously explained, the amount of land belonging to a Pueblo remained somewhat unclear throughout the Mexican period. In the case of the Pecos Pueblo, the diputación maintained that it had the right to redistribute abandoned lands, and when Pecos Indians objected to this move, the diputación argued that Pecos was unique due to the abandonment of its land, and that the application of the law of November 9, 1812, to these lands should not be considered a blanket rule for every Pueblo.¹⁹⁸ However, it should also be noted that the diputación never used the small Pecos population to justify sales of lands within the Pueblo league.

The Pecos situation was unique, both because of the amount of lands it held compared to the number of Indian families actually living there, and because of the fact that the first thrust of acquisitiveness toward Pueblo lands concentrating on Pecos proved to be something of a test case. However, Pecos is also a symbol of the

government's efforts to moderate the post-Independence acquisitiveness of certain vecinos. Had there been no interest on the part of the Mexican officials in preserving the Pueblos in tact, Pueblo lands might have been expropriated quite rapidly.

This government concern is quite well documented. It is apparent in the confusion over the law of November 9, 1812, which the diputación could have continued to cite as a basis for divesting the Pueblos of any land they were not using. As already noted, however, the government blocked a petition for land in the San Juan Pueblo and again at Pecos, arguing that an interpretation of the law from Mexico City was necessary before it could proceed further. That Mexico City failed to respond satisfactorily is hardly the fault of the New Mexicans. Even in the matter of religious taxes on the Pueblos of Nambé, Tesuque, and Pojoaque, officials turned to the supreme government for a proper answer.¹⁹⁹

Both the diputación and the governor of New Mexico maintained a noteworthy consistency in their attempts to determine if a grant of land would cause injury to a Pueblo. Their interpretations were not always balanced, and there is no question that some of the more powerful members of New Mexico society forced their will on these officials. At the same time, examples of concern for Pueblo land rights are sufficient enough to give the government high marks in this area.²⁰⁰ The government also watched over the water situation. In 1829, the diputación requested an investigation of the availability of water before awarding land in the vicinity of the Ácoma Pueblo. Its concern was that Ácoma might lose some of the

water it needed.²⁰¹ Similar concern was shown for the acequia rights of Santo Domingo and the possibility of water loss to the Pueblo of Santa Ana if a new settlement²⁰² were allowed on the same stream above the Pueblo. Other examples abound in which local officials worried about damage done by animals to Pueblo property, the correct jurisdiction for a Pueblo in the political process, and rights of the Indians to make use of the legal system. In no way does it appear from the record that the government intended to disembowel the rights of their Pueblos.

In water matters, Indians and non-Indians reacted more to custom than to written laws. Although some of the same principles of land alienation applied to water, the latter was not something that could be bought and sold, and the extant Mexican record does not reveal a single merced of water that was not somehow attached to property rights.

Several principles were in operation. First, informal agreements, were made between users. This custom was based on the underlying philosophical concept that everyone should be able to irrigate at least some portion of his land. These informal agreements could change as the weather changed or new circumstances arrived to place greater demand on limited supplies of water. Second, water was a community matter, and the priority of water rights was always with a community (Pueblo or municipality) and not with an individual. This principle implied a community responsibility to work on the acequias, and, as has already been noted, this responsibility

was carefully protected, not so much because of Indian seniority, but because Pueblos were communities whose customary distribution and delivery systems had to be respected. Fourth, when non-Indians wanted land that would require water already being used, at least in part, by a Pueblo, the burden of proof was on non-Indians to show that the Pueblo would not be damaged if the grant were made.

In general, there is little documentation in the Mexican period records of New Mexico to show anything more specific regarding water law. Even the oft-cited Lucero Case (1823) shows that the above principles were followed. The traditional rights of the Taos Pueblo were respected; the vecinos of Arroyo Seco were given some water, albeit more in times of abundance than in times of scarcity; and the people of San Fernando were given senior rights because they had established themselves as a community long before the people of Arroyo Seco.²⁰³

C. Indians to Indians

The few examples of land and water exchanges between Indians make it difficult to draw any significant conclusions. Suffice to say that exchanges were sometimes made, occasionally as trades for other kinds of property (en feria),²⁰⁴ and if disputes arose, the Indians used the legal system. Likewise, when two Pueblos argued over water, local alcaldes were brought in to settle the matter through the process of conciliación, or, if necessary at a higher legal level.²⁰⁵ Given the principles mentioned above, compromise always seemed to produce a settlement without the need for appeal.

V. Conclusions

According to the record reviewed, Indians of Mexico in the Mexican period were accorded a new status by constitution and decrees which were directed at making them equal to other citizens in the Mexican republic. In New Mexico, this status was only partially recognized, and then applied in a limited way to the Pueblos. Nomadic Indians were never considered an integral part of the Mexican nation and were less welcome at the end of the Mexican period than at the beginning. The real status of Pueblos in New Mexico, when one sums up all the possible relationships with non-Indians, was one of limited citizenship. They seem to have been accepted as part of the corpus of Mexican society, but they were not expected to have the same privileges and opportunities as vecinos. They were different, and they were expected to remain different.

At the same time, they were allowed participation in the legal process, and, on occasion they functioned politically. However, the communities of Pueblos and vecinos which functioned as an integral whole, shared something akin to a division of labor, and in this division, the vecinos assumed the responsibility of politics in a way that was unique to the western world.

Non-Indians did not make a habit of using the laws against the Pueblos. It is true that in the first few years after independence, the laws of the Spanish Cortes were applied to justify some land acquisition, but the government backed off, and by the end of the decade began making more of an effort to protect the Indians in their

lands and water. However, Pueblos did sell, trade, and exchange their lands on a private basis. Some of these transfers found their way into the written record, but many did not. Even though confusion remained regarding the status of commons lands, sales continued, and they were accepted on both sides as legitimate. This was, after all is said and done, a community of people whose dealings with one another resulted from many generations of comingling. When customary practices were brought forth to be adjudicated according to the uneven and inconsistent potpourri of Mexican laws, it was often very difficult for the government to separate what was right from what was legal.

In regard to water transfers, all New Mexicans understood that rights to water transferred with the land. At the same time, these "rights," were relative to the primary needs of communities and were subject to change when conditions changed. New lands which were granted for cultivation were given with the understanding that there would be enough water for irrigation but never to the extent that traditional uses would be compromised. Based on the interwoven relationships of Pueblos and vecinos which created dependency and required cooperation, it was only logical that everyone should have some water and no one should have a fixed right to a flow of water at all times and seasons.

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Fort Collins, Colorado
April 1983

FOOTNOTES

1. New Mexico was a "territory" in the Mexican Republic from 1824 until 1837 when, by virtue of the Constitution of December 30, 1836, it became a "Department." For purposes of simplicity and consistency, New Mexico will be referred to as a territory throughout this report.
2. Although the word "Pueblo" is used in the Mexican period to mean town and/or a community of Pueblo Indians, such as the Tewa of San Ildefonso, Nambe, and Pojoaque, it is used in this report to refer only to the Indians and the communities they inhabited.
3. Vecino, meaning literally "neighbor," is used in this report to describe non-Indians.
4. See, for example, "Indian Deeds, San Ildefonso Pueblo" file numbers 300.10-9-5, 8, 9, 12, and "Indian Deeds: Nambe Pueblo" File numbers 300.5-9-9, 9.1 in the records of the Pueblo Lands Board, Southern Pueblo Agency, Albuquerque, New Mexico.
5. No. 6639-Civil. State of New Mexico ex rel. S. E. Reynolds, State Engineer and United States of America on its own behalf and as Guardian for the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque, Plaintiffs vs R. Lee Aamodt, et al., Defendants and Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque, Plaintiffs in Intervention.
6. Plan de Iguala de 24 de Febrero de 1821, Art. 12 says: Todos los habitantes de la Nueva-Espana sin distincion alguna de europeos, africanos, ni indios, son ciudadanos de esta monarquia, con opcion a todo empleo, segun su merito y virtudes." Leyes Fundamentales de los Estados Unidos Mexicanos y Planes Revolucionarios Que Han Influido en la organizacion Politica de la Republica, num. 13 de Boletin Compilador de Leyes Federales y del Distrito y Territorios (Mexico: Secretaria de Governacion, July-August, 1923) p. 42.

7. David J. Weber, The Mexican Frontier, 1821-1846. The American Southwest Under Mexico (Albuquerque: The University of New Mexico Press, 1982), p. 47.
8. Ibid., p. 18.
9. Charles R. Berry, "The Election of the Mexican Deputies to the Spanish Cortes, 1810-1822," in Nettie Lee Benson, ed., Mexico and the Spanish Cortes, 1810-1822 (Austin and London: University of Texas Press, 1966), p. 18.
10. David T. Garza, "Mexican Constitutional Expression in the Cortes of Cadiz," in Benson, e., Mexico and the Spanish Cortes., p. 45.
11. This is an important definition in New Mexico due to the fact that local decrees and ordenanzas usually distinguished between vecinos (non-Indians) and naturales (Indians). Pueblos were referred to as both "ciudadanos" and "indios."
12. Roger L. Cunniff, "Mexican Municipal Electoral Reform, 1810-1822," in Benson, ed., Mexico and the Spanish Cortes, p. 68.
13. Coleccion de Ordenanzas y Decretos de la Soberana Junta Provisional Gubernativa y Soberanos Congresos Generales de la Nacion Mexicana, Tomos I-IV (Mexico: Galvan a cargo de Marian Arevalo, 1829), I, 80.
14. The Bases Constitucionales de 24 de Febrero de 1822 say, "El Congreso soberano declara la igualdad de derechos civiles en todos los habitantes libres del Imperio, sea el que quiera su origen, en las cuatro partes del mundo." Leyes Fundamentales, p. 48. Parts of this law were abolished by a decree of April 8, 1823.
15. Plan de Mexico, articulo 4, and Leyes Constitucionales, articulo 1, Leyes Fundamentales, pp. 132, 180, 213. See also Daniel Tyler, "Mexican Indian Policy in New Mexico," New Mexico Historical Review 55 (1980): p. 104.

16. See Charles A. Hale, Mexican Liberalism in the Age of Mora, 1821-1853 (New Haven: Yale University Press, 1968), p. 218 and Edward H. Spicer, Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960 (Tucson: University of Arizona Press), p. 334.
17. Hale, Mexican Liberalism, pp. 217, 222, 243, 246.
18. Ibid., p. 244.
19. Spicer, Cycles of Conquest, pp. 334-6. Spicer summarizes the Mexican program for the Indians as threefold: full citizenship, political incorporation; distribution of land.
20. Manuel Dublan y Jose Maria Lozano, eds., Legislacion Mexicana o Coleccion Completa de las disposiciones legislativas expedidas desde la Independencia de la Republica, 37 vols. (Mexico: Imprenta del comercio a cargo de Dublan y Lozano, 1876), Tomo III, pp. 89, 216-217, 230-233.
21. Dublan y Lozano, Tomo IV, pp. 430-1.
22. Mariano Galvan y Rivera, Ordenanzas de Tierra 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 agua: . . . (Mexico: Imprenta de Vicente G. Torres, Calle del Espiritu Santo N.2, 1842), pp. 96-7.
23. Galvan, Ordenanzas de Tierras y Aguas..., 1844 edition, p. 40.
24. Frederick Hall, The Laws of Mexico. A Compilation and Treaties Relating to Real Property, Mines, Water Rights, Personal Rights, Contracts and Inheritances. (San Francisco: A. L. Bancroft and Co., 1885), p. 45.

25. Hall, Laws of Mexico, p. 63. The author notes that this decree was cited by the United States Supreme Court in *U.S. vs Ritchie*, 17, How. 525, to show that Indians could purchase, hold, and sell real estate under the Mexican law.
26. Stuart F. Voss, On the Periphery of Nineteenth-Century Mexico. Sonora and Sinaloa, 1810-1877 (Tucson: University of Arizona Press, 1982) p. 51.
27. *Ibid.*, pp. 41, 51.
28. *Ibid.*, pp. 53, 54.
29. *Ibid.*, pp. 101.
30. A vara measured approximately 33 inches. In Mexico (New Mexico) it was used to measure land along a water course, the depth of property being relatively unimportant because of the importance of water. A squared measurement would, of course, define all the limits of property more specifically.
31. Galván y Rivera, Ordenanzas de Tierras y Aguas, pp. 15, 16.
32. Paul H. Ezell, "Indians Under the Law: Mexico, 1821-1847" America Indígena XV (July 1955), pp. 204, 205.
33. *Ibid.*, pp. 209, 210.
34. Marc Simmons, Spanish Government in New Mexico (Albuquerque: The University of New Mexico Press, 1968), p. 53.
35. *Ibid.*, p. 55.
36. *Ibid.*, p. 78.

37. Ibid., p. 80.
38. See Chap. II in Daniel Tyler, "New Mexico in the 1820's: The First Administration of Manuel Armijo" (Ph.D. dissertation, the University of New Mexico, 1970).
39. Weber, Mexican Frontier, p. 19.
40. Simmons, Spanish Government, p. 193n.
41. Weber, Mexican Frontier, p. 17.
42. This view is supported by election returns in MANM. The idea is further clarified by Alvar W. Carlson, "El Rancho and Vadito: Spanish Settlements on Indian Land Grants," El Palacio 85 (Spring 1979): 28-39, which traces the extent of Hispanic settlement among Pueblos of the Rio Grande. That some Pueblos did participate in the political process is revealed in a document listing "ⁿD Pascual Guaron, 4° regidor de esta corporación [Isleta] y gobernador de dhos Indios (1822. Legislative MANM, Roll 1, fr. 1157). Another source refers to "los indios nombrados al colegio electoral" (1845. Governor's Papers, MANM, Roll 38, fr. 846).
43. There may have been an attempt to eliminate the governadorcillos in 1823. The diputación received a letter from Felix Guerra S. Lorenzo de Real, Feb. 1, 1823, in which he refers to a decree terminating the "governadorcillos de los Pueblos," 1823. Legislative, MANM, Roll 2, fr. 709.
44. 1829. Legislative. Election for Ayuntamientos, MANM, Roll 9, fr. 1205; also Legislative Records, Sesión del dia 21 de octubre de 1823, MANM, Roll 42, fr. 139.

45. For example, Pojoaque and Nambe were each considered manzanas which elected electors from amongst vecinos for the purpose of choosing regidores to serve in the ayuntamiento of Santa Cruz de la Canada. See ayuntamiento letterbook, Villa of Santa Cruz de la Canada, 1831, folder No. 116, 117, 118, Sender Papers, Law Offices of Catron, Catron and Sawtell.
46. 1828. Diputacion Territorial Proceedings, MANM, Roll 8, frs. 178-9; 1831. Ibid., MANM, Roll 13, fr. 631; Legislative Records, sesion del dia 26 de enero de 1828, Roll 42, fr. 545; Ibid., sesion del dia 12 de abril de 1831, Roll 42 fr. 666ff.
47. 1824. Legislative Records, sesion del dia 20 de diciembre de 1824, MANM Roll 42, fr. 251.
48. This conflict appeared in 1825 when two groups petitioned for the same land at Pecos Pueblo. The diputacion ruled that it was superior to the alcalde in these matters. See 1825. Legislative Records, MANM, Roll 42, fr. 263. See also Aguilar to jefe politico, March 12, 1825. SANM, I, 1370. Miguel Ribera to governor and territorial diputacion, February 13, 1825, SANM, I, 808, and minutes of the diputacion, February 16, 1825, MANM, Roll 42, frs. 257-258.
49. 1832. Judicial Proceedings. Jose Ramon Martinez, Abiquiu vs Manuel Martinez, damage from acequia. MANM, Roll 15, frs 171-194. See also article based on these documents by Malcolm Ebright, "Manuel Martinez's Ditch Dispute: A Study in Mexican Period Custom and Justice." New Mexico Historical Review 54 (Jan. 1979): 21-34.
50. Alcaldias listed in 1825 and 1830 include Alameda Abiquiu, Albuquerque, Balencia, Belen, Bado, Canada, Cochiti, Cienega, Galisteo, Isleta, Laguna, Pena Blanca, Socorro, San Juan, Taos, Tesuque, Tome, Xemes. These jurisdictions changed during the Mexican period as a result of combinations and the creation of new alcaldias, 1825. Legislative, MANM, Roll 4, fr. 858; 1830. Legislative, MANM, Roll 11, fr. 358.

51. 1831. Judicial Proceedings, MANM, Roll 13, fr. 740; 1839. Legislative, Ayuntamiento Proceedings (Santa Fe), MANM, Roll 26, fr. 582 (Benjamin Read Papers); SANM, I, Roll 2 (1842), fr. 223.
52. Constitution of Dec. 30, 1836, Law 6, Art. 5; See also Bases Orgánicas, Title VII, Art. 134, part XVII.
53. Weber, Mexican Frontier, pp. 33-36.
54. Armijo to the Ministro de Guerra y Marina, Santa Fe Oct. 11, 1837, in Diario del Gobierno, Nov. 30, 1837, as cited in Weber, Mexican Frontier, p. 370, note 89.
55. 1837. Govenor's Papers, MANM, Roll 23, frs. 572-4.
56. 1837. Miscellaneous. "División del Departamento," May 22, 1837, MANM, Roll 24, fr. 814.
57. 1837. Governor's Papers (Bradford L. Prince Papers), Circular of June 9, 1837, MANM, Roll 23, fr. 610.
58. 1837. Legislative. Commission Report of July 14, 1837, MANM, Roll 23, frs. 718-719.
59. 1846. Legislative. Sección extraordinaria del dia 10 de marzo 1846, MANM, Roll 42, fr. 872.
60. Gov. Armijo to various petitioners of land, February 1838, copy of documents relating to the Tecolote Grant (SG #7) in Fiske Papers, New Mexico State Records Center; see also Gov. Pérez to the alcalde of Santa Clara, June 22, 1837, in Folder #191, 192, Sender Papers.
61. 1845. Legislative, MANM, Roll 38, fr. 993 shows relationship of juez de paz to the prefectura; 1846. Legislative, Roll 41, frs. 298-310 gives a detailed description of the role of ayuntamientos in a document entitled "Ordenanzas Municipales."

62. View of Lic. Antonio Barreiro, Ojeada sobre Nuevo Mexico (Puebla, 1832), in H. Bailey Carroll and J. Villasana Haggard, ed. and transl., Three New Mexico Chronicles (Albuquerque: The Quivira Society, 1942) p. 47.
63. 1831. Legislative. Statehood Proposal by the Diputacion, MANM, Roll 13, frs. 632-633. In this proposal the diputacion noted that the degenerate situation in New Mexico was attributable to Spanish legislation "which causes more damage in our Mexico than the barbarous Indians." Several ayuntamientos signed this document.
64. 1824. Governor's Papers, MANM, Roll 3, fr. 1008; 1826. Governor's Papers, MANM, Roll 5, frs. 711, 743, 752; 1830. Judicial Proceedings, MANM, Roll 11, fr. 4; 1832. Governor's Papers, MANM, Roll 14, fr. 723.
65. 1832. Governor's Papers, MANM, Roll 14, fr. 717; 1834. Governor's Papers, MANM, Roll 18, frs. 285-287.
66. In a land dispute between Juan Gallego and Gervacio Herrera, March 1840, a reference is made to the process of conciliation being required by Article 155 of the constitution [of 1836?]. See copies of BIA documents, Southern Pueblos Agency, in Museum of New Mexico manuscript collection #126, B-1.
67. Examples of Pueblo involvement can be found in BIA documents, Southern Pueblos Agency #126, B-11 (San Ildefonso) and in 1836. Legislative, MANM, Roll 22, frs. 94-98 (Santo Domingo).
68. Legislative. 1824, sesion del dia 28 de agosto de 1824, MANM, Roll 42, fr. 224.
69. 1835. Judicial Proceedings, MANM, Roll 20, frs. 531-533; 1836. Governor's Papers, MANM, Roll 21, fr. 738; 1846. Legislative, Donaciano Vigil Papers, MANM, Roll 41, fr. 413; 1846. Governor's Papers, MANM, Roll 41, frs. 179-180, refer to the "mercenacion de terreno dado por la Exma. Asamblea Departamental" and notes importance of copying communications between alcalde and governor to further protect the owners in the grant made to them.

70. Hall, Laws of Mexico, p. 56.
71. 1825. Governor's Papers, Letterbook, MANM, Roll 4, fr. 819. Minutes of the ayuntamiento of Santa Cruz de la Canada, Apr. 5, June 18, 1829.
72. Sender Papers, document folder #104, 105; 1829. Legislative, Ayuntamiento Proceedings, Santa Fe, MANM, Roll 9, fr. 1216.
73. Hinojos Family Papers, New Mexico State Records Center.
74. 1823. Legislative, sesion del dia 17 de junio de 1823, Roll 42, fr. 106-107.
75. 1840. Legislative, Communications of local officials, MANM, Roll 28, frs. 91ff. Gives account of "illegality" of grant made by Santa Fe ayuntamiento to Luis Robidoux.
76. Hall, Laws of Mexico, p. 45.
77. Ezell, "Indians Under the Law," p. 206.
78. This occurred as a result of the uproar caused by the granting and sale of Pecos Pueblo lands. But even in the case of land petitioned as sobrante to the San Juan Pueblo, the diputacion decided to make no decision until the Supreme Court answered its request for an interpretation of the law of Nov. 9, 1812. Legislative, 1825, sesion del dia de 15 de Septiembre de 1825, MANM, Roll 42, fr. 298.
79. See for example, 1828. Legislative, MANM, Roll 8, fr. 174, in which the diputacion refused to grant lands "dentro de la linea del Rio de Pecos hasta el del Norte;" other examples appear in 1844. Legislative, MANM, Roll 35, fr. 1063; and 1845. Governor's Papers, MANM, Roll 38, fr. 925.
80. 1832. Governor's Papers, MANM, Roll 14, frs. 725-726.

81. 1834. Governor's Papers, MANM, Roll 18, frs. 246-247.
82. As quoted by Luis Ortiz in a petition to the governor for land. 1842. Governor's Papers, MANM, Roll 30, fr. 878.
83. 1835. Governor's Papers, MANM, Roll 19, frs. 727-728.
84. Ibid., frs. 632-633. It should be noted that the index of the governor's archives for 1834 includes "correspondencia despachada en 1813," the "Recopilacion de Leyes de Yndias," and several other items, but none of the many laws of the Cortes which were so frequently cited in this period. See 1834. Governor's Papers, MANM, Roll 18, frs. 2-7; also see Jesus Gabriel Aranda to the governor, Sept. 31, 1834, Santa Cruz de la Canada, in which Aranda notes the lack of documents in the Canada archives. Ibid., fr. 275.
85. Pueblo of Sandia vs Pedro Garcia, Schroeder Collection, New Mexico State Records Center (reference to the Durango lawyer); 1826. Governor's Papers, MANM, Roll 5, 513-539 (case involving Juan Bautista Vigil, and the Intendencia of Guadalajara). In 1846, a commission of the Asamblea Departamental, weary of a litigation involving the Pueblo of Isleta and Antonio Jose Otero, urged the governor not to send the case back to the tribunal superior of Chihuahua again, because New Mexico had only been able to establish courts of the primera instancia, and the kind of complaint in which Otero was involved was not likely to be resolved by higher legal opinions. 1846. Legislative, MANM, Roll 41, frs. 412-415.
86. 1835. Judicial Proceedings, MANM, Roll 20, frs. 403-404; 1832. Governor's Papers, MANM, Roll 14, fr. 717, in which the governor says typically, "Este gobierno no es Tribunal de apelacion contra los alcaldes en asuntos permanente judiciales; y en tal virtud si a la presentante le parese que el Alcalde de Tome le falto a la justicia tiene su dro a salvo para ocurrir contra el al supremo Tribunal de justicia que es a quien corresponde."
87. 1831. Judicial Proceedings, MANM, Roll 13, fr. 738.

88. 1835. Governor's Papers, MANM, Roll 19, fr. 895.
89. Simmons, Spanish Government, p. 213.
90. 1825. Legislative, sesión del día 3 de marzo de 1825, MANM, Roll 42, fr. 261.
91. Rafael Aguilar to the Governor, March 12, 1826, SANM, I, 1370.
92. 1830. Governor's Papers, MANM, Roll 10, fr. 824; 1832. Governor's Papers, MANM, Roll 14, fr. 837. Fr. Teodoro Alcina also argued that the Tewas should not have to pay "obenciones," because of their privileged status as Indians. See 1826. Legislative, sesión del día 17 de marzo de 1826, MANM, Roll 42, fr. 385.
93. Dispute between Laguna and Acoma over water rights, 1845. See BIA documents ms. collection #126, Museum of New Mexico, E-10, E-11, G-3, G-4, I-1.
94. D. Dolores Madrid, apoderado for Santo Domingo Indians, argued that his clients could not have alienated land legally to vecinos because the entire Pueblo did not approve the sale. See 1836. Legislative, MANM, Roll 22, frs. 94-95.
95. 1822. Judicial Proceedings, MANM, Roll 1, frs. 1184-1185.
96. Letter to the author from Charles Cutter, Feb. 9, 1983, in which Cutter cites the Colección de Reales del Archivo Histórico Nacional, Tomo II, p. 388, entry #6.132. Cutter is preparing a thesis on the office of Protector de Indios at the University of New Mexico.
97. 1835. Judicial Proceedings, MANM, Roll 20, fr. 137.

98. 1836. Governor's Papers, Governor Pérez writes, Apr. 6, 1837, that without wishing to favor either of the parties in conflict, he recognizes the "antigüedad y malloría. . .al Pueblo de Sto Domingo," MANM, Roll 21, frs. 744-745.
99. See Dublán y Lozano, Legislación Mexicana, I, p. 396.
100. Legislative. 1825, sesión del día 16 de febrero de 1825; sesión de día 3 de marzo de 1825, MANM, Roll 42, frs. 257, 260.
101. Ibid., sesión del día 17 Noviembre de 1825, MANM, Roll 42, fr. 314. The diputación had used the Nov. 9, 1812, law to rule that unused Pueblo land was forfeited to the government which could redistribute this land to others. This was a public right that could not be upset by a private Pueblo sale of unused land. By the fall of 1825, however, the diputación had begun to doubt its own position and decided to refer the whole matter to the national government in Mexico City for its interpretation of the law of Nov. 9, 1812.
102. John L. Kessell, Kiva, Cross, and Crown: The Pecos Indians and New Mexico, 1540-1840 (Washington: National Park Service), p. 448; also, 1829. Legislative, sesión del día 24 de marzo de 1829, MANM, Roll 42, frs. 605-606.
103. 1829. Legislative, sesión del día 12 de junio de 1829, MANM, Roll 42, fr. 618.
104. 1831. Judicial Proceedings, MANM, Roll 13, fr. 740.
105. 1840. Legislative, MANM, Roll 28, fr. 84.
106. Ibid., fr. 91. These documents do not reveal the outcome of this dispute.
107. Undated, Legislative, MANM, Roll 41, fr. 886.

108. Weber, Mexican Frontier, p. 303 note 108. Weber points out that the Mexican ministers of justice recognized this as the law of the territories in 1829 and 1835.
109. The law of January 4, 1813, is cited in Doblan y Lozano, Legislacion Mexicana, I, pp. 397-399. Article I of the law, dealing with public lands in towns, is discussed in Diario de las discusiones y actas de las Cortes (18 vols., Cadiz: Imprenta Real, 1811-1813), V. XVIII, p. 397.
110. Photocopies of sworn testimony, Dept. of Interior, GLO, Dockets 266, 227, Def. Ex. 8, in which is included the Aug. 28, 1826, statement of Gov. Narbonna re the Pueblo of Laguna.
111. Ezell, "Indians Under the Law," p. 204.
112. See for example the Ayuntamiento of Santa Fe to Gefe Politico Jose Antonio Chavez, June 18, 1830, Governor's Papers, MANM, Roll 10, frs. 656-658; Ibid., fr. 805; 1832. Legislative, Ayuntamiento Proceedings, MANM, Roll 14, fr. 1060; 1831, Legislative, sesion del dia 3 de agosto de 1831, MANM, Roll 42, fr. 681.
113. See the following references in MANM; Roll 5, fr. 512; Roll 13, fr. 593; Roll 23, fr. 920; Roll 42, fr. 261.
114. 1845. Legislative, MANM, Roll 38, fr. 993.
115. In 1821, Isletans referred to themselves as both Indians and ciudadanos. See Governor's Papers, 1821. MANM, Roll 1, frs. 274, 1122; the Governor of Zuni called himself "El ciudadano Salvador Binudo Gobernadorcillo del Pueblo de Suni" in 1832. See 1833. Governor's Papers, MANM, Roll 16, fr. 288.
116. 1832. Governor's Papers, MANM, Roll 14, fr 779.
117. Ibid., fr. 837.

118. 1837. Governor's Papers, MANM, Roll 23, fr. 581; 1838. Governor's Papers, MANM, Roll 24, fr. 1185.
119. 1835. Governor's Papers, MANM, Roll 19, fr. 527.
120. 1845. Governor's Papers, MANM, Roll 38, fr. 787; 1846. Legislative, MANM, Roll 41, fr. 338.
121. 1830. Governor's Papers, MANM, Roll 10, fr. 835.
122. 1844. Judicial Proceedings, MANM, Roll 36, fr. 431.
123. 1824. Governor's Papers, MANM, Roll 3, fr. 760. See also a request to have a license that would allow Antonio Trujillo to buy "una Yndia." 1826. Governor's Papers, MANM, Roll 5, fr. 569.
124. 1825. Governor's Papers, MANM, Roll 4, fr. 814; 1826. Legislative, MANM, Roll 5, fr. 917.
125. 1829. Legislative, letter from Juan Estevan Pino Sept. 24, 1829, who noted that the nomadic tribes were lined up like "globos en linea" which receive their "impulso" from Washington, MANM, Roll 9, frs. 1120-1126. See also 1838. Governor's Papers, Roll 24, fr. 1187.
126. Infrequently, official documents suggest that in certain matters, Pueblos were thought of as sovereign nations. See 1834. Governor's Papers, MANM, Roll 18, fr. 348.
127. 1828. Legislative, MANM, Roll 8, fr. 169.
128. Pino was told by the diputación that he could have the pasture and crop lands he had asked for, since one of the reasons for New Mexico's backwardness was a failure in the past to make grants in lands known as commons lands. 1823. Legislative, sesión del día 2 de diciembre de 1823, MANM, Roll 42, fr. 150.

129. 1824. Governor's Papers, MANM, Roll 3, fr. 1008.
130. 1823. Legislative, MANM, Roll 2, frs. 709-711. 1824.
131. 1824. Legislative, sesión del día 16 de febrero de 1824, MANM, Roll 42, fr. 171. The diputación also authorized the Pueblos to dispose of these lands held "en comunidad" in the same way as other citizens alienate land. See 1824, Legislative, sesión del día 12 de marzo de 1824, MANM, Roll 42, fr. 175.
132. 1829. Legislative, MANM, Roll 9, fr. 1216; SANM, I fr. 143.
133. 1830. Governor's Papers, MANM, Roll 10, fr. 818; 1834. Judicial Proceedings, Julius Seligman Collection, MANM, Roll 18, fr. 591; 1836. Governor's Papers, MANM, Roll 21, fr. 813; 1842. Governor's Papers, MANM, Roll 30, fr. 877.
134. SANM, I, Reel 2, fr. 223.
135. This was particularly true of lands which vecinos petitioned in and around the Pecos Pueblo. See the Pueblo response in 1826. Governor's Papers, MANM, Roll 5, Donaciano Vigil Papers, fr. 512. In another fragment of litigation, involving two vecinos in 1826, the same views are repeated. See the Suaso Papers, New Mexico Records Center.
136. 1823. Legislative, MANM, Roll 42, fr. 106.
137. 1830. Governor's Papers, MANM, Roll 10, fr. 820; 1835. Legislative, MANM, Roll 42, fr. 727; Ibid., fr. 759; 1846. Governor's Papers, MANM, Roll 41, fr. 180.
138. 1823. Legislative, sesión del día 15 de julio de 1823, MANM, Roll 42, fr. 116.

139. 1831. Judicial Proceedings, MANM, Roll 13, fr. 749.
140. 1840. Legislative, MANM, Roll 28, fr. 100.
141. 1830. Legislative, MANM, Roll 11, fr. 164.
142. 1829. Legislative sesión extraordinaria de día 2 de mayo de 1829, MANM, Roll 42, fr. 606.
143. 1844. Legislative, MANM, Roll 35, fr. 1063; SANM, I, Reel 2, fr. 223.
144. For examples see Legislative, sesión del día 8 de agosto de 1827, MANM, Roll 42, fr. 516; José de la Ascensión Vrito and José Ygnacio Ortis, San Miguel del Vado, petition for farming land, February 6, 1839, MANM, Roll 43, frs. 581-582.
145. 1846. Legislative, sesión del día 10 de enero de 1846, MANM, Roll 42, frs. 831-832.
146. The Colonization Law of August 18, 1824, and Regulations for the Colonization of the Territories, Nov. 21, 1828, are described in Matthew G. Reynolds, Spanish and Mexican Land Laws: New Spain and Mexico (St. Louis: Boston and Skinner, 1895). One of the few references to these laws in MANM can be located in Roll 21, fr. 738.
147. See, for example, 1826. Legislative, sesión del día 18 de marzo de 1826, Roll 42, fr. 388. This policy was also followed in a few water disputes. See Governor's Papers, 1836, MANM, Roll 21, fr. 775.
148. When the ayuntamiento of Santa Fe granted land to Miguel Sena that conflicted with land owned by Juan Estevan Pino, Governor Pérez declared the grant legal as long as some land was left for Pino and he continued to have free access to his property. See 1836. Governor's Papers, MANM, Roll 21, fr. 745.

149. William A. Keleher, "The Law of the New Mexico Land Grant." New Mexico Historical Review (1929), p. 7, says, "There is no doubt but that under the laws of Mexico transfers of real estate could be made by verbal contract." Eugene A. Fiske, in a letter to his partner dated Feb. 2, 1877, noted that Vicente Durán de Armijo might have owned property in Indian lands "simply by consent of the Indians and not by virtue of any formal 'act of possession'." See the Sierra Mosca Litigation (SG75, SG87, PLC87) in the Fiske Papers, p. 4, New Mexico State Records Center.
150. "Sobrantes," or "sobras," convey the idea of land which theoretically had an owner (usually Pueblos), but which was not being used and was not necessary for the well-being of the owners. These lands were often commons lands and/or lands within the Pueblo league. Granting them to others raised the question of commons land status in the Mexican period.
151. SANM, I, Reel 2, fr., 218.
152. See, for example, a conflict involving Antonio Mestas, vecino of la Cañada, Document Folder #182, Sender Papers; also a similar problem involving Juan Estevan Pino, and the alcalde of San Miguel del Bado in 1824. Legislative, sesión del dia 13 de febrero de 1824, MANM, Roll 42, frs. 166-167; and a similar problem also involving San Miguel del Bado in 1825. Legislative, sesión del dia 16 de febrero de 1825, MANM, Roll 42, fr. 257.
153. The title procedure is pieced together from various documents in MANM, Roll 42.
154. This concept is also presented in William B. Taylor, "Colonial Land and Water Rights of New Mexico Indian Pueblos" (with special reference to the Tewa region). He cites as an example Arroyo Seco vs. Taos, 1823, SANM, I, No. 1292, p. 2., Reel 6.

155. Galván's Ordenanzas de Tierras y Aguas (1842), p. 138, notes that in certain cases, the most equitable and just policy was to completely forget the antiquity of "las mercenaciones" and distribute the water by day and night periods so that everyone would share equally in the benefit and in the damage.
156. Taylor, "Colonial Land and Water," p. 31.
157. 1832. Governor's Papers, MANM, Roll 14, fr. 732.
158. 1832. Judicial Proceedings, MANM, Roll 15, fr. 194.
159. The best example of toma de agua problems are to be found in 1832. Legislative, Ayuntamiento Proceedings, Santa Cruz de la Cañada. MANM, Roll 14, frs. 1056-1064.
160. Governor's Papers, MANM, Roll 18, fr. 246.
161. 1829. Legislative, MANM, Roll 9, fr. 1216.
162. Dispute involving Juan de Jesús Cordova who wants to put in "una finca de molino." Final solution includes the stipulation that Cordova may proceed, but any damage he causes will be his responsibility. See Document Folder #266, Sender Papers.
163. Carlson, "El Rancho and Vadito," pp. 29-30.
164. "Private Land Claims in Indian Grants of New Mexico," compiled by Geo. M. Need, from the records in the Office of United States Surveyor General, Santa Fe, New Mexico, January 11, 1923, typescript in the New Mexico State Records Center.

165. Pueblo Indian deeds to non-Indians recorded by the Pueblo Lands Board include the following:

Nambé

1. P.C. 14.2, Feb. 19, 1929, Francisco El Chicano, son of the deceased Loreto native of the Pueblo to José Rafael Córdoba.
2. P.C. 14.2, April 3, 1829, Antonio José Tafoya to Rafael Córdoba.
3. P.C. 34.1, Sept. 25, 1930, Juan Diego Fenbe, Francisco Chicano, Santiago Durán, Belvameda Bernal, Joaquin Montoya, Juan Pajarito, LaSara Guillo, Manuel Trujillo to Miguel Otiz.
4. P.C. 34.1, March 11, 1830, José Manuel Chinago, native of the Pueblo of San Juan de los Caballeros to Salvador Armijo.
5. P.C. 14.2, Jan. 2, 1831, María Dolores, native of the Pueblo of San Juan, gives receipt in payment for piece of land which was held by the deceased Chinaco.
6. P.C. 14.2, Nov. 2, 1831, Pantaleon Pena and José Manuel Chinago to Jose Rafael Cordoba.
7. P.C. 24.1 R., Nov. 14, 1833, Francisco Tomas, natural del Pueblo de Nambé to Miguel Ortiz.

San Ildefonso

1. P.C. 103.1, Nov. 20, 1820, Juan José, Governor of the Pueblo of San Ildefonso and the following principals of the Pueblo: Josito Diego, Bartolo Martín Antonio and Juencio El Chino to Francisco Ortiz.
2. MANM, minutes of Diputación, 27-28 June, 1827 R. 42. Juan Lujan et. al. "todos naturales del Pueblo de San Ildefonso" to Francisco Ortiz.
3. P.C. 131.1., Nov. 8, 1830, Francisco Roybal and José Antonio Ochotegua (Indians of San Ildefonso).
4. P.C. 131.1, Dec. 17, 1833, Juan Diego Martin, San Ildefonso Indian to Juan Posesión Sánchez.
5. P.C. 106.2., Dec. 14, 1834. Juan de Dios Chiso to Miguel Gonzáles. Chiso is identified as an Indian. Witnessed by José María Trujillo, Governor of the Pueblo and two witnesses.
6. P.C. 106.2, Dec. 15, 1834. Nicolas de Trujillo, governor of Pueblo to Miguel Gonzáles. Witness: José María Trujillo.

7. P.C. 131:1, Dec. 24, 1835. Mariá Ignacia Pena, San Ildefonso Indian, to Juan Poseción Sánchez.
 8. P.C. 131.1, Sept. 9, 1826, Mariano, Juan Luis and Rafael Herrera, Indians to Ramon Gonzáles.
 9. P.C. 106.2., Dec, 5, 1836, Juan José Chigua, Indian, to Miguel Gonzáles.
 10. P.C. 131.1, Feb. 3, 1837, Agustín Roybal, San Ildefonso Indian, to Manuel Antonio Marquez.
 11. P.C. 131.1, March 2, 1837, José Antonio, San Ildefonso Indian, to Manuel Roybal.
 12. March 2, 1837, José Miguel, Indian, to Mariano Gómez.
 13. P.C. 131.1, March 2, 1837, Mariá Luisa, Indian, to Mariano Gómez.
 14. P.C. 131.1, March 3, 1837, José Miguel Guagu (Indian, principal of San Ildefonso Pueblo) to Manuel Roybal.
 15. Maurino Pino for his father Francisco Pino etc. principales and the whole community of San Ildefonso Pueblo together with Francisco Montoya, Governor; 1st General Augustin Roybal and Atenacio Pena to Miguel Gonzáles D: 3-27-1855; R. Conveyance the confirmation of a piece of land that was sold by the Pueblo to Gonzáles in 1837.
 16. P.C. 113.1, March 20, 1838, José Antonio Jacoben, Indian of San Ildefonso to Jose Gonzáles. Acknowledged before the Governor of the Pueblo, Francisco Pino.
 17. P.C. 131.1, March 19, 1838, José Antonio Coamacu (Indian of San Ildefonso) to Antonio Gonzáles.
 18. P.C. 131.1 Dec. 31, 1838, Manuel Aguilar, Indian, to Manuel Marquez.
 19. Dec. 2, 1840, Augustin Roybal (Indian) to José Gregorio Roybal.
 20. Feb. 27, 1843, Juan de Dios Jerita to Ma. Ignacia Pena. Tract delivered in the presence of the govenor of the Pueblo and all its principals.
 21. P.C. 88.1., April 1, 1842, Felipe Ortiz (San Juan Indian) to Francisco Antonio Maestas.
166. See document G-3 in ms. collection #126, Bureau of Indian Affairs materials (copies), Museum of New Mexico; also, 1836. Governor's Papers, MANM, Roll 21, fr. 618; and 1836. Legislative, MANM, Roll 22, frs. 99-100.

167. 1826. Governor's Papers, MANM, Roll 5, frs. 751-752.
168. See note infra #191.
169. 1846. Legislative, MANM, Roll 41, frs. 299-304.
170. Brayer, Pueblo Indian Land Grants, p. 13.
171. See document B-10, I-1 in ms. collection #126, Bureau of Indian Affairs materials (copies); Museum of New Mexico; and 1836. Governor's Papers, MANM, Roll 21, fr. 618.
172. 1826. Governor's Papers, MANM, Roll 5, fr. 512.
173. Letterbook of communications regarding ownership of lands in Sandía Pueblo, Sept. 9, 1823, Schroeder Collection, New Mexico State Records Center.
174. 1825. Legislative, sesión del día 19 de marzo de 1825, sesión del día 19 de julio de 1825, and sesión del día 15 de septiembre de 1825, MANM, Roll 42, frs. 272, 284, 298.
175. 1822. Legislative, sesión del día 25 de abril de 1822, MANM, Roll 42, frs. 11, 12.
176. 1823. Legislative, correspondence received, MANM, Roll 2, frs. 709-711.
177. 1823. Legislative, sesión del día 2 de diciembre de 1823, MANM, Roll 42, frs. 148-150.
178. 1824. Legislative, sesión del día 16 de febrero de 1824 and 12 de marzo de 1824, MANM, Roll 42, frs. 170-175.
179. 1824. Legislative, sesión del día 15 de septiembre de 1825, MANM, Roll 42, fr. 298.

180. 1825. Legislative, sesion del dia 3 de marzo de 1825, MANM, Roll 42, frs. 261-262.
181. Ibid., fr. 261.
182. Narbona to Camara, Oct. 14, 1826, MANM, Roll 5.
183. 1826. Governor's Papers, MANM, Roll 5, fr. 745.
184. 1829. Legislative, sesion del dia 24 de marzo de 1829; MANM, Roll 42, frs. 605-606.
185. 1829. Legislative, sesion extraordinaria de dia 2 de mayo de 1829, MANM, Roll 42, frs. 606-607.
186. 1831. Legislative, sesion del dia 14 de abril de 1831 and 12 de noviembre de 1831, MANM, Roll 42, frs. 673, 685-686.
187. 1840. Governor's Papers, MANM, Roll 27, fr. 1156.
188. 1842. Governor's Papers, MANM, Roll 30, frs. 877-878.
189. Requested Findings of Fact and Requested Conclusions of Law on the Rights of the Pueblos Under Spanish and Mexican Law, March 6, 1981, p. 12.
190. See 1832. Governor's Papers, MANM, Roll 14, fr. 745, 1834. Governor's Papers, MANM, Roll 18, fr. 348. But sales by individuals did take place. See footnote 165.
191. Emlen G. Hall, "'Se Los Coma'; New Mexico Land Speculation in the 1820's," New Mexico Historical Review 57 (Jan. 1982), pp. 27-42, in which the author notes that this deed from Jose' Cota was recorded for the first time on May 29, 1894, in the San Miguel County courthouse, p. 35.

192. Documents relating to the sale of lands to residents of Cebolleta by the Navajo Francisco Baca, Feb. 8, 1836, MANM, Roll 43, frs. 575-576.
193. Document Folder, No. 275, Sender Papers.
194. Letter, February 2, 1877, Fiske to Stevens, Fiske Papers, New Mexico State Records Center.
195. Teodoro Gonzáles, Juez de Paz, San Ildefonso, July 30, 1845, Gilbert Papers, New Mexico State Records Center.
196. Myra Ellen Jenkins, "Spanish Land Grants in the Tewa Area," New Mexico Historical Review 47 (April 1972): p. 118.
197. Ezell, "Indians Under the Law," p. 206.
198. 1825. Legislative, sesión del día 17 de Noviembre de 1825, MANM, Roll 42, fr. 313.
199. 1826. Legislative, sesión del día 17 de marzo de 1826, MANM, Roll 42, frs. 385-386.
200. See 1831. Legislative, MANM, Roll 13, fr. 750, 1832. Governor's Papers, MANM, Roll 14, frs. 723-726, 1842. Governor's Papers, MANM, Roll 30, fr. 877.
201. 1829. Legislative, sesión extraordinaria del día de 9 de febrero de 1829, MANM, Roll 42, frs. 592-593.
202. See 1834. Judicial Proceedings, MANM, Roll 18, fr. 591; 1836. Governor's Papers, MANM, Roll 21, fr. 775; 1835. Legislative, sesión del día 23 de marzo de 1835, MANM, Roll 42, frs. 738-739.
203. SANM, I, Roll 6, No. 1292.

204. Sale of land by Manuel Martín (Picuris), March 4, 1824, to José Antonio Pacheco, Robert Jones Collection, New Mexico State Records Center; sale of land in Laguna, March 9, 1840, ms. collection #126, E4-E6, BIA documents (copies), Museum of New Mexico.

205. Dispute between Acomas and Lagunas, April 29, 1845, ms. collection #126, E-10, BIA documents (copies), Museum of New Mexico, 1832. Governor's Papers, MANM, Roll 14, fr. 723.

*Tyler - you need your
to permit sales by Indian ad. - what
Does the historical record indicate w respect
to the - protection, laws, land status
Appropriation of reputation*

*- ask P if he agrees w Tyler
Conclusion - see P 17-18
P P*

July 21, 1983

Memorandum to Herbert A. Becker, Assistant U.S. Attorney,
District of New Mexico

in the

From William B. Taylor, Professor of History, University of *spat*
Virginia

Re: "Land and Water Tenure in New Mexico, 1821-1846" by Daniel
Tyler

Daniel Tyler's "Land and Water Tenure in New Mexico, 1821-1846" is a fine, extensively researched and generally cautious report which contributes new information and insight into the history of political jurisdictions, Indian status, and land rights in the Mexican Period, including the place of decrees from the Cortes of Cádiz in New Mexican law after 1821. Its conclusions are quite consistent with my findings for the Spanish colonial period. Even with changes in Indian status and a shift toward private property after 1821, the property rights of New Mexico Indian Pueblos generally were preserved during the period of Mexican sovereignty.

The purpose of this memorandum is to identify continuities and changes between the Spanish and Mexican periods suggested by our reports, to add some additional information on Indian lands and water use in the Mexican Period, and to comment on the issue of the sale of Indian lands after 1821.

Land

Professor Tyler is right to emphasize added pressures on Pueblo Indians in the Mexican Period to privatize and alienate

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some of their lands in the interests of increasing agricultural production, populating sparsely inhabited lands, and consolidating a settled frontier against the raids of nomadic tribes. Certainly petitions for grants in the Mexican Period more often laid claim to "sobrantes"--"excess" lands that were not used by their title holders--and there were more sales of Indian land.

But what Indian lands were sold, granted, or otherwise alienated? Were the four square leagues of an Indian pueblo--the area that was customarily recognized to be the basic community landholding--subject to private appropriation and sale? Professor Tyler recognizes that while the territorial government of New Mexico for part of the 1820s supported privatizing some community lands on the basis of decrees of the Cortes of Cádiz in 1812 and 1813, its long-term policy was to "protect the Indians in their lands and water" (p. 64): "Both the diputación and the governors of New Mexico maintained a noteworthy consistency in their attempts to determine if a grant of land would cause injury to a Pueblo" (p. 60); "For land petitioners who sought lands within the Pueblo league, or nearby in lands that had been assigned to the Pueblo for pasturing their animals, possibility of rejection was very real. Many requests were denied on the basis that use or occupation would constitute an injury to those with 'ejido' rights" (p. 44); and "Had there been no interest on the part of the Mexican officials in preserving the Pueblos intact, Pueblo lands might have been expropriated quite rapidly" (pp. 59-60).

ask

Professor Tyler finds one case, that of Pecos in the mid-1820s, where substantial lands within a Pueblo's four square league community lands were granted and sold. He seems uncertain of its significance. On page 30 he speaks of Pecos as a "classic" case, and for the idea on p. 54 that vecinos could lay claim to uncultivated lands within the Pueblo league he cites only the example of Pecos. But on p. 59 he also speaks of the Diputación treating Pecos as unique. Here he adds that the case was considered unique because Pecos Indians had abandoned their lands, not because of the very small Indian population that remained in Pecos.

Additional evidence suggests that Pecos was treated as a singular rather than a classic case, and not only because the Indians had abandoned their lands. When the Diputación decided on November 17, 1825 to seek the national government's interpretation of Article 5 of the Spanish Cortes's decree of November 9, 1812 calling for up to half of a community's lands to be distributed to individuals if they were not in use, it stated that the division of lands had been undertaken only at Pecos and not in the other Indian Pueblos because of the "extremely small number of individuals who make up the old* pueblo of Pecos" (MANM roll 42, frs. 313-314, "las causas porque en esta Diputación no se ha hecho con los demás pueblos lo ejecutado

* "Former" is another possible definition of "antiguo" here: "Que existió o sucedió en tiempo antiguo," Diccionario de la Lengua Española, Real Academia Española, 19th ed., Madrid: 1970, p. 94.

con el cortíssimo número de los individuos que forman el antiguo de Pecos"). In this way the Diputación raised the question of whether the population of Pecos had become so small that it could no longer be considered a pueblo. When the Governor of New Mexico recommended the privatizing of some Pecos lands on October 14, 1826, he also noted the small number of Indians remaining: nine families and less than forty inhabitants (SANM I doc. 1371, fr. 2; as of March 1825 there had been ten families in Pecos, MANM roll 42, fr. 272). As Professor Tyler notes on p. 57 of his report, the Diputación later ordered the return to Pecos Indians of lands that had been granted to outsiders within the community lands while allowing the various land sales to stand.

The fate of the "Pueblo league" in the New Mexico Pueblos during the Mexican Period also sheds light on the case of Pecos as unique. The evidence available from the files of the Diputación minutes and the Governors' records in MANM and SANM I indicates strong government protection for the Pueblos' community lands from 1829 to the end of the Mexican Period. Professor Tyler believes that the Diputación made an ambiguous response in the case concerning protection of the "ejido" or community lands of Picurís Pueblo in 1829 (p. 57, citing MANM roll 42, frs. 606-607): "The diputación waffled in its response, authorizing the grantees to sow crops in their land for one year, but noting that if, as a result of the present dispute, the lands in question were determined to be 'indonable' they

would have to be returned." But the Governor's order in this dispute eliminated the ambiguity: on June 5, 1829, Governor Abreú declared that "Rafael Gonsales and his associates shall not be placed in possession of the land they requested near the Río de Picurís and as soon as they harvest the field they were allowed to plant this year they will vacate the land" (SANM I doc. 1374, "no se les consede propiedad al C. Rafael Gonsales y socios del terreno que solicitaron en el Río de Picurís y tan luego como cosechen la labor que se les consedió por este año se retirarán"). This verdict denying possession to Gonsales was repeated on March 4, 1830 and April 14, 1831 after Gonsales entered new petitions for community lands of Picurís (SANM I doc. 1374). In the last years of Mexican rule, Picurís Pueblo again received confirmation of its four square leagues of community land: "The judge of first resort of the Second District will arrange that the natives of the Pueblo of Picurís are not disturbed in the peaceful possession of the league of land that was granted to them and that the Justice of the Peace in Taos shall turn over to them, without any pretext whatsoever, the portion of the land of which they have been deprived" (SANM I doc. 1169 fr. 42, April 7, 1845, "El juez de 1^a inst^a del 2^o Dtro dispondrá q los naturales del Pueblo de Picurís no sean molestados en la pacífica posesión de la legua de terreno que se les concedió y q el Jues de Pas de Taos les entregue sin pretesto alg^o la parte de tierra de q los ha despojado").

Other examples of official validation of Pueblo community lands--the Pueblo league--in the Mexican Period are Jémez on April 18, 1833 (SANM I doc. 1245); Nambé, 1840 (Tyler report p. 57); Nambé and Tesuque, 1842 (Tyler report p. 57); Santo Domingo on August 26, 1844 (SANM I doc. 1380); and Isleta in June 1845 (SANM I doc. 1381). In the Isleta case even lands located beyond the league were denied to a private petitioner because the Pueblo had used them without opposition as ejidos comunes for a long time. In the 1820s Sandía Pueblo's league was formally protected although vacant lands beyond the league were considered sobrantes (Tyler report p. 53).

What constituted the Pueblo league in the Mexican Period? Without addressing this question directly, Professor Tyler speaks as if the Pueblo league was one square league (borders measuring one league from north to south and one league from east to west) as opposed to the customary four square leagues of the colonial period (one league measured in each of the four cardinal directions from the Pueblo's cemetery cross or church; that is, a square that is two leagues on a side). On page 52 Professor Tyler speaks of Pueblo community lands as "a square league" and on p. 53 Sandía's lands are spoken of as "one league."

New Mexico's custom of considering Pueblo community lands to be four square leagues in area is unusual. One square league was the accepted standard in the heartland of the Viceroyalty of New Spain. Some ambiguity about the size of the Pueblo league

occasionally does enter the New Mexico evidence after the Cortes of Cádiz decrees in 1812 and 1813. For example, the measurement of the community lands of Santo Domingo and Cochití in May 1817 raised the issue of two ways of measuring the Pueblo league. The commissioners first marked off 2,500 varas (one-half league) from the cemetery cross, which they called "the half league which by right belongs to this community"; then they measured "the other half league which the said Indians considered theirs" (AJANG caja 267 doc. 19-3658, fol. 42r). Ignacio María Sánchez Vergara, the Promotor Fiscal named by Governor Allande in these proceedings, recommended that the second half league in each direction which the Indians claimed as community land be declared surplus land available for reassignment (Ibid., fol. 50r). No action was taken on this recommendation but the idea of a one square league assignment was raised. Two years before, however, Governor Maynez had clearly defined the Pueblo league as a four square league area: "5,000 varas measured from the cemetery cross in the four directions" (SANM I doc. 1357, fr. 2, April 15, 1815).

While a new settlement of non-Indians during the Mexican Period might be assigned one square league surrounding their cultivated land as ejidos (e.g. El Chaparito, SANM I doc. 1130, 1846 decretos of the Asamblea Departamental, March 10, 1846), the Indian Pueblo league remained four square leagues: the Jérez community lands in 1833 were measured one league in the four directions "according to custom" (SANM I doc. 1245). Santo

Domingo's lands in 1844 also were measured 5,000 varas from the cemetery cross (SANM I doc. 1380). The governor's report on Pecos dated October 14, 1826 spoke of the Pueblos of New Mexico having "the ancient immemorial possession which was given to them and which, as I said above, occupies one league in each direction" (SANM I doc. 1371, fr. 3, "la antigua immemorial posesión que se les dió, y que como dixé arriba ocupa una legua por cada viento").

Aside from Pecos in the 1820s, one other apparent case of division and sale of Pueblo community lands sanctioned by the government is described in "Land and Water Tenure in New Mexico, 1821-1846." It is a land partition between the Santo Domingo and San Felipe Pueblos in 1824 (p. 55). Professor Tyler says, "The diputación further pointed out that the lands held by these communities 'en comunidad' could be sold by each individual so that the 'sobrantes' would be disposed of in the best terms." This is an application of the policy to privatize some Indian land in the 1820s but the land in question was a separate grant outside the Pueblos' leagues that was made jointly to San Felipe and Santo Domingo by Governor Mendinueta in 1770 on the grounds that to grant the parcel to someone else would be prejudicial to the two communities (SG-142, MPNMLG roll 16). "En comunidad" here refers to the lands having been held jointly by San Felipe and Santo Domingo and should not be confused with the phrase "tierras de comunidad" which ordinarily would refer to a Pueblo's patrimonial lands, the four square leagues.

There is some ambiguity in Professor Tyler's report concerning the Indian lands that might be subject to sale. At several points he speaks in broad terms and without qualification of "the right of Indians to sell their lands" (p. 34); "the Spanish Cortes recognized the need to break up Indian lands" (p. 10); "State laws reflected this trend toward breaking up Indian holdings. Jalisco and Zacatecas passed legislation aimed at dividing up the lands of Indian villages" (p. 11); "The objectives of Mexican land policy seem to have been that of preserving the Indian's right to sufficient land for maintenance while allowing excess lands to be placed in the hands of those who would cultivate them" (p. 13); "The decrees of August 7, 1823, terminated the inalienability of Indian lands by specifically mentioning the end of entail on property that included lands controlled by caciques" (p. 11); and "the somewhat hazy implication [for the 1830s and 1840s] that the Pueblos could sell their lands" (p. 57). What lands might be sold or granted? The Cortes's decrees on pueblo lands were not blanket edicts on the need to break up Indian lands or allow the sale of those lands without restriction. Article 1 of the often-cited Cortes decree of January 4, 1813 on the privatizing of common lands stated that the "ejidos necesarios de los pueblos" were to be exempt from distribution (Manuel Dublán and José María Lozano, Legislación mexicana o colección completa de las disposiciones legislativas expedidas desde la independencia de la república, Mexico, 1876, vol. 1, p. 397). That laws of Jalisco after 1821 were "aimed at dividing up the lands of

Indian villages" also needs qualification. Some community lands were distributed after 1821 (actually, many of these lands in Jalisco had been divided in a de facto fashion before 1810) but Article 1 of the Cortes decree of January 4, 1813 was invoked to exempt the ejidos needed by the communities (Colección de acuerdos, órdenes y decretos sobre tierras, casas, y solares de los indígenas, bienes de sus comunidades y fundos legales de los pueblos del estado de Jalisco, title varies, 5 volumes, Guadalajara: 1849-1880, vol. 1, pp. 14-17, instrucción of the Diputación Provincial, December 7, 1822) and on June 17, 1836 the Junta Departamental of Jalisco cancelled the laws on the division of terrenos de indígenas (Ibid., p. 86). The end of legal entailment of caciques' landholdings affected the mortmain property of individual Indians. It did not terminate "the inalienability of Indian lands" (all lands of Indians had not been inalienable in the colonial period for that matter)* any more than the disentailment of lands of the creole nobility in the Mexican Period meant the potential breakup of all municipal lands of non-Indian towns and cities in Mexico. As Professor Tyler shows later, the statement on p. 13 that Mexican land policy was to give Indian Pueblos subsistence lands and privatize excess lands had substance for the 1820s (although it was not widely implemented

* With the proper authorization, Indians could and did sell some lands outside the patrimonial holdings of the community. This would include lands purchased by communities outside the league as well as the private holdings of individual Indians.

then) but does not represent the history of land tenure in the later years of the Mexican Period in New Mexico.

That some lands owned by Indians in New Mexico were sold during the Mexican Period is apparent, but it is not clear that a significant part of the Pueblos' four square leagues was being transferred officially to non-Indians. Professor Tyler's references in note 165 to deeds of sale to non-Indians by Indians of Nambé and San Ildefonso during the Mexican Period from the Pueblo Lands Board records are not unequivocal evidence of Indian land sales or sales within the Pueblo league.* For San Ildefonso these records are very sketchy, amounting to a short outline of who sold, who bought, date of sale, and occasionally some further information in the deed on boundaries and witnesses. The Nambé records contain translations of the Mexican-Period deeds and some transcriptions of the original Spanish, but the original Spanish records are not available for study. The authenticity of the deeds for Nambé was ques-

* In discussing the Pueblo Lands Board records for private claims near Nambé and San Ildefonso the following changes in Professor Tyler's list in note 165 should be made: entries #3,4,7,8,10,11,12,13,14,17,18,19, and 20 for San Ildefonso are recorded in P.C. 45.1-13 rather than P.C. 131.1; entry #5 for Nambé (P.C. 14.2, Jan. 2, 1831) covers the same parcel of land as entry #1 (P.C. 14.2, Feb. 19, 1829); and two more deeds of sale by Indians are listed near San Ildefonso in P.C. 45.1-13--Oct. 29, 1823, seven small parcels by seven San Ildefonso Indians to Antonio Armijo, and Sept. 12, 1834, two fields by Juana and Dominga, Indians of San Ildefonso to Juan Ponciano Sánchez. This gives six apparent deeds of sale for different lands of Nambé Indians and twenty three for San Ildefonso; twenty nine in all. For San Ildefonso, entry #6 (P.C. 106.2), the seller is said to be Nicolás de _____, not Nicolás de Trujillo.

tioned by H. J. Hagerman, a member of the Pueblo Lands Board, in a "Memorandum in regard to the method of interpreting that part of Section 7 of the Pueblo Lands bill relating to Nambe," dated December 30, 1925. He stated that

An examination of the deeds in a preliminary way (and a more detailed examination will be made) seems to indicate that in almost every instance /all underlining appears in the original/ the deeds from Indians as officers of the Pueblo or as individuals, were signed by the same party (and in the same handwriting) who wrote the deeds or the descriptions in the deeds.

The deeds seem to show that in some cases the so-called seal behind the signature was made by the same party who wrote the signature. In other cases the mark seems to have been inserted subsequently to the alleged signatures and in different ink and by different parties. In few instances does it seem that even the mark has been annexed to the alleged signature by the Indian himself.

It is not clear from the record whether the authenticity of the deeds for San Ildefonso was considered but there seems to be an internal contradiction between the summary of the deeds for San Ildefonso on December 14, 1834 (entry #5 in note 165) and December 15, 1834 (entry #6). In entry #5 the Governor of the Pueblo who witnessed the transaction on December 14 is said to be José María Trujillo. The next day, when entry #6 was executed, the Governor of the Pueblo is listed as Nicolás de _____.

If the deeds are authentic--and this is not likely in some cases and cannot be verified in others--there are patterns in the evidence that make it difficult to say how many of the lands were within the Pueblo league. In nine of the deeds it is not clear that the Indian seller was from Nambé or San Ildefonso

(the seller is identified only as an Indian and the witnesses are not officials of Nambé or San Ildefonso) and the record does not state that the land was within the Pueblo lands (Nambé entries #3,6; San Ildefonso entries #8,9,12,13,18, and 19). In two other deeds the Indian sellers are listed as natives of San Juan Pueblo (Nambé entry #4; San Ildefonso entry #21), one of whom was selling land "inside the league of the Pueblo of Nambé." Only in five of the deeds is it clear from the Pueblo Lands Board records that the lands were within the Pueblo league: Nambé, entries #1 and 4; San Ildefonso, entries #5 (house), 6 (house lot), and 17. I suspect, however, that if the deeds are genuine, at least some of the other sales by San Ildefonso Indians would be for lands within the league. Unfortunately, only for a few of the parcels is the description clear enough to permit a judgment: San Ildefonso, entries #8 (at the ciénega grande), 10 (at the ciénega in the Cañada de San Ildefonso), 19 (at El Bosque), and 21 (at El Bosque). Another pattern that emerges from these records is that all but two of the deeds describe small parcels of farm land (usually about 50 varas by 100 varas in size) or house lots. The two exceptions are "arid lands" in San Ildefonso entries #10 (P.C. 45.1-13, Feb. 3, 1837) and 18 (P.C. 45.1-13, Dec. 31, 1838). This suggests that the small farming plots available to Indian families may, at least in some Pueblos, have been considered private property in the Mexican Period. One

final ambiguity in these records and in the question of the sale of Indian lands is whether an individual Pueblo Indian could sell land without the approval of the Pueblo officials or higher authorities. In seven of these deeds Pueblo officials were the sellers or witnesses to the sale (San Ildefonso entries #1, 5, 6, 14, 15, 16, and 20); in the other twenty two there is no mention of Pueblo approval or notice. In one case a non-Indian purchaser requested the Diputación to recognize the transaction, which it did (San Ildefonso entry #2, MANM roll 42, frs. 491 and 499).

On page 50 of his report, Professor Tyler says that 18,350 acres, or about 13.54% of lands within the Pueblo grants of Tesuque, Santa Clara, Taos, San Ildefonso, San Juan, Sandía, and Cochití were claimed by non-Indians at the time of the Pueblo Lands Board proceedings in the 1920s. Since these figures include post-1848 transfers and occupations, the 13.54% must be reduced, perhaps substantially reduced, to arrive at an estimate of Indian sales in the Mexican Period. Professor Tyler's secondary source for the point that non-Indians occupied lands within the Pueblos' leagues, Alvar W. Carlson (in "El Ranchito and Vadito: Spanish Settlements on Indian Lands," El Palacio 85: 1, spring 1979), indicates that most of the transfers took place after 1848, during the period of confusion and declining Indian population in the early years of American rule ^{(Carlson, pp. 30, 34).} For El Ranchito Carlson offers one Mexican

Period sale within San Ildefonso's community lands and for El Vadito, near Picurís Pueblo, he indicates that much of the settlement there occurred in the 1860s and 1870s (pp. 30, 34). Even including, as Professor Tyler does, all the sales and other transfers and occupations after the Mexican Period, between 1848 and 1923, the total is a small proportion of the Pueblos' holdings. That at least 86.5% of the patrimonial lands of the Pueblos were undisputed in 1923 suggests that the four square leagues were respected in the Mexican Period and that sales from within these community lands would have been the exception rather than the rule.

Water

Professor Tyler's brief consideration of water rights for the Mexican Period is consistent with what is known about water adjudications under Spanish rule: water rights were attached to rights in land, and water was distributed in repartimiento arrangements which were subject to some change as conditions changed; the water rights of formal communities were senior to those of individuals; and a principle of equity operated, in which efforts were made to accommodate the needs of the various potential users: "In regard to water transfers, all New Mexicans understood that rights to water transferred with the land. At the same time, these 'rights' were relative to the primary needs of communities and were subject to change when conditions changed" (p. 64); "everyone should be able to irrigate at least some portion of his land" and "water was a

community matter, and the priority of water rights was always with a community (Pueblo or municipality) and not with an individual" (p. 61).

Professor Tyler finds that the Diputación was careful to protect Indian Pueblos' access to water. He notes that Acoma was protected by the Diputación against loss of water in the case of an individual petition for a tract near the Pueblo's lands (pp. 60-61). He continues, "Similar concern was shown for the acequia rights of Santo Domingo and the possibility of water loss to the Pueblo of Santa Ana if a new settlement were allowed on the same stream above the Pueblo" (p. 61). The list of examples of attention to the water needs of Pueblos can be lengthened: for Laguna and Acoma, MANM roll 42 fr. 175, Diputación minutes of March 12, 1824; for Jémez, 1835, MANM roll 42 fr. 737; and Taos, 1837, described in Myra Ellen Jenkins, "Taos Pueblo and Its Neighbors," New Mexico Historical Review XLI: 2 (1966), 106-107.

Nearly all of the small group of records that treat irrigation systems in New Mexico between 1821 and 1848 have to do with maintenance of the ditches or division of the water within one community. For the distribution of water between an Indian Pueblo and neighboring non-Indians the one clear and detailed record of a repartimiento in the Mexican Period is the Taos-Arroyo Seco judgment of 1823 (discussed in my second report, "Colonial Land and Water Rights of New Mexico Indian Pueblos" on pages 27 and 34-35) which gave clear preference to the

water rights of the Pueblo but permitted other landowners to use some of the remaining water.

While he does not explore the point in detail, Professor Tyler says that a "concept of equal distribution seems to have been at least as important as primacía or antigüedad" (pp. 47 and 49). Given the clear preference for the rights of Pueblos and other formal communities, it is difficult to imagine how equal distribution would be applied. Perhaps a more appropriate word for the principle--and one that appears more often in the manuscripts than "igual" is "equitativo" or "equidad"--"equitable." Equity here recalls the efforts made to accommodate as many users as possible within a system that favored communities, not that the assignments should be equal.

Conclusion

In light of Professor Tyler's conclusions and my reading of evidence for the Mexican Period, the statement early in his report that "the official New Mexican records seem to indicate that decisions made in regard to land and water alienation in one Pueblo had little applicability when a similar problem arose in another Pueblo" (p. 4) needs qualification. Precedents were rarely cited in the decisions of colonial and Mexican judges for New Mexico but this was not a situation of judicial anarchy despite the frequent, often violent shifts in government in Mexico City and the sometimes bewildering changes in the laws sent north from the capital. There are several clear patterns

in the judicial records on land and water that permit us to identify principles in operation. One is the well-documented pattern of protecting the customary four square leagues of Pueblo community land; another is the attention paid to protecting the waters used by Pueblos; also preference for community rights over private rights; and equitable distribution that would promote agriculture and settlement and satisfy as many users as possible. While the Mexican Period is characterized by increased pressure on Indian lands, declining numbers of Indians and increasing numbers of non-Indians, the move toward privatizing community lands and authorizing their sale was centered in the mid-1820s. Even then it was not a frontal assault on Pueblo community lands and did not lead to a major redistribution of Indian landholdings to non-Indians in the Mexican Period.