Dividing New Mexico's Waters, 1700–1912

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tion of irrigation water was the issue litigated most frequently, but other problems included right-of-way location and flood control. During judicial proceedings, officials relied more on custom than abstract principles in reaching verdicts. Through their decisions, magistrates attempted to heal rifts within the community rather than determine the winners and losers of water lawsuits. On rare occasions, personal influence appears to have affected the outcome. In cases involving physical violence, authorities seldom imposed harsh sentences, even when serious crimes had been committed. However, mild punishment for criminal behavior of all kinds seems to have been the norm throughout New Spain, perhaps again reflecting community values that favored leniency for defendants.[29]

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3 Water Administration During the Mexican Era

New Mexico's population having grown steadily during the last decades of Spanish rule—rising almost 50 percent, from about 25,000 in 1790 to more than 36,000 in 1817—more irrigated farmland was needed for sustenance. Settlement expanded in every direction. From the Rio Pecos to Cebolleta and from Taos to Socorro, government officials authorized new land grants on the frontiers of the province. On the eve of Mexican independence, farming and stockraising remained the dominant forms of economic activity for the majority of New Mexicans.[1] Despite the great importance of agriculture for all levels of society, Spanish and Mexican documents provide few reports concerning crop production, farming techniques, or weather conditions. There is an interesting exception from the Mexican period, however. In 1840, Governor Manuel Armijo, on orders from his superiors, requested information concerning mining and agriculture in the Santa Clara region of the upper Rio Grande Valley. Filtering down through bureaucratic channels, his inquiry came to the attention of Juan Cristóbal García, a minor functionary serving as a substitute *juez de paz* (justice of the peace). García immediately claimed complete ignorance of local mineral resources, but managed to produce a useful summary of the agricultural situation within his jurisdiction that is probably accurate for much of New Mexico both before and after that time.[2]

After making a modest reference to the time and effort devoted to the report, García began with a list of the district's principal field crops, which included maize, wheat, barley, peas, lentils, and several kinds of beans. Planted in March and April, these grains and legumes matured at varying times between July and October. Once harvested, they usually sold for two pesos per fanega (1.6 bushels), although *frijol* and *garbanzo* brought a little more. García reported that most farmers marketed their crops in small quantities close to home, using carts and pack trains for transportation. He made no mention of commodity sales to other parts of Mexico.

In addition to the staples, producers also raised an assortment of fruits and vegetables: apricots, peaches, apples, plums, melons, onions, garlic, and chiles, that commanded a range of prices. They also grew *punche*, a variety of coarse tobacco important in the Indian trade, worth two reales (a real = 1/8 peso) for a handful. Turning to land tenure, García declared that farmers in his district

all owned the fields they cultivated, indicating an absence of tenancy. Each year began with spring plowing, seeding, and ditch cleaning, followed by irrigation and weed control, and ended with the harvest in late summer or fall. Emphasizing the importance of irrigation water to maintain production, García observed that farmers near Santa Clara depended on the Rio del Norte and the Rio Chama to water their fields and turn their gristmills. Although treacherous during spring floods, the two rivers supplied the community's lifeblood.[3]

When Mexico won independence from Spain in 1821, the new government incorporated some changes in the local administrative structure that encouraged greater public participation. Reforms included reestablishment of popularly elected municipal councils, known sometimes as *cabildos*, sometimes as *ayuntamientos*. At Santa Fe, a cabildo had functioned almost from the villa's founding early in the seventeenth century. After the reconquest, a revived council contended for power with the governor and other officials, as noted above in the case of Diego Arias de Quiros. Around 1720, however, the institution was eliminated, which must have pleased its political opponents. No similar bodies existed elsewhere in New Mexico until after adoption of the liberal Spanish constitution of Cádiz in 1812. Several ayuntamientos then sprang up, at Santa Fe, Santa Cruz de la Cañada, and other locations, but all were suppressed within two years after the reactionary monarch, Ferdinand VII, resumed the throne. In 1820, a revolt by liberal Spanish political and military leaders forced the king to restore the Cádiz constitution, so that many New Mexico communities again boasted ayuntamientos shortly before independence. As Mexico became a sovereign state, the municipal councils relieved governors and alcaldes of some local responsibilities, including water administration.[4]

Taos: A Useful Case Study

One of the more active and best-documented councils was located at Taos, on the far northern frontier. A consideration of attempts made by its members to resolve community water problems provides a useful case study of local government during the Mexican period. As in other settlements, the Taos ayuntamiento consisted of six *regidores* (aldermen), presided over by an *alcalde constitucional* chosen from the membership, and a *sindico procurador* (town attorney), all elected by popular vote.[5] Charged by the central government to work for the advancement of agriculture, the council regarded responsible resource administration as a primary duty. Water issues most often discussed included allocation disputes between competing settlements, questions of priority, rights-of-way, acequia maintenance, and related problems. The members also were empowered to advise the governor concerning the disposition of public lands for the creation of new settlements.

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When the Taos ayuntamiento opened for business, it represented a rapidly growing community. As indicated by the preceding chapters, settlement had been reestablished after the reconquest on the Rio de las Trampas at Ranchos de Taos, and near the pueblo at Los Estiércoles (El Prado). Population growth had been slow at first, but between 1790 and 1821, the number of Hispanos in the region had quadrupled from about 300 to more than 1,200 persons. Following establishment of the Don Fernando de Taos grant in 1796, new placitas originated at the present site of Taos and at Cañón. A few leagues to the north, settlement began at Arroyo Hondo, Arroyo Seco, and Desmontes in 1815, as we have seen. Inevitably, population expansion increased competition for land and water between Hispanos and the pueblo, and also among different groups of settlers.[6] As newcomers arrived, they sometimes constructed irrigation works before their water rights had been clearly defined. From the beginning, the Taos ayuntamiento faced serious issues of resource allocation. In rendering decisions, the regidores usually adopted a conservative position favoring well-established landowners, to the great disappointment of outsiders eager for new farmlands and the water needed to maintain them.

In July 1823, for example, the ayuntamiento attempted to resolve a controversy between inhabitants of Arroyo Hondo and Desmontes concerning water from the Rio Hondo. Eight years earlier, settlers at Arroyo Hondo had received possession of an authorized grant from Governor Alberto Máynez that included extensive irrigable farmlands in the river valley. Located west of Arroyo Seco village, the Desmontes community spread out haphazardly over the brushy plain that rises abruptly from the Hondo's south bank. Although residents there claimed ownership through an older grant made to Antonio Martín in 1745, occupation had occurred only recently, clouding title to the lands. With enormous effort, people at Desmontes had excavated the Cuchilla acequia up the steep south side of the valley to water their fields above. The project caused immediate protests from Arroyo Hondo farmers, who appealed to the ayuntamiento for redress.[7] Their position was compromised by a *merced* (grant), also made in 1815, by Máynez, that allowed Felipe Gonzales and his associates at Desmontes to appropriate an unspecified quantity of water from the Rio Hondo.[8] After mulling over this thorny problem, the ayuntamiento ruled that settlers at Arroyo Hondo possessed "a total and absolute right" in the river by virtue of their land grant; other claimants must allow sufficient flow to irrigate the fields of the preferred community. The decision included a small loophole, however. By obtaining permission from their neighbors below, Desmontes farmers could use their hard-earned ditch, and that is what they did.[9] Thus, the ayuntamiento settled the dispute, but only temporarily.

Six months later, the council considered a similar complaint concerning apportionment of the Rio Lucero that aligned the village of Arroyo Seco

lowed them to use its water for irrigation. Confronted with such strong evidence, Pérez declared that the stream's flow was "free" (*libre*) and available for use by Ojo Sarco farmers.[34]

The governor's decision caused hard feelings, of course. Four years later, Mariano Lucero, juez de paz at San Juan, received a disturbing statement from Juan Pablo Córdova, of Truchas—the Córdova involved in another water dispute at Pueblo Quemado in 1834, discussed before in this chapter. In his deposition, Córdova said that he and several compañeros had encountered Juan Antonio Baca and Tomás Domínguez from Las Trampas while resting at a *jacal* on their grant. When asked where they were going, the two replied that they intended to turn water into the Ojo Sarco acequia and that, if their documents failed to establish their rights, they would resort to force of arms. Later, Córdova and two others from Truchas attempted to return the water to their own ditch, but were stopped by gruff Trampaseños, who said they would give it up only at gunpoint. After the face-off, both sides appealed to Lucero for a ruling, each again presenting their papers. Having reviewed the case, Lucero reaffirmed Governor Pérez's judgment and ruled further that Trampas had exclusive right to water from the San Leonardo.[35] As in the dispute at Taos concerning the Rio Lucero, violence was narrowly avoided, but, as at Taos, the case was not settled and was reopened during the territorial period.

After the Siete Leyes

Although officials sometimes seemed indecisive and squabbled among themselves, during the first years of Mexican rule the agencies of local government usually managed to resolve problems within their jurisdictions. With few exceptions, the system responded to public opinion and recognized the importance of accepted customs in water administration. Changes came in 1836, however, when the conservative political faction came to power in Mexico and imposed a centralist constitution known as the Siete Leyes. New legislation divided the nation into departments and reorganized the three branches of government. Elevated to departmental status, New Mexico was partitioned into two districts, the Rio Arriba and the Rio Abajo, each administered by a prefect responsible to the governor. Regarded as dangerously democratic, the ayuntamientos were again abolished, except for the one in Santa Fe. Many former council responsibilities passed to the prefects and to a new class of local officeholders known as juezes de paz.[36] Although never popular in New Mexico, the departmental plan remained in place until the United States conquest in 1846, and the local offices created by the centralists continued into the territorial era. The new government made significant changes in judicial procedures, increasing usage of the conciliation process considered above. In an attempt to curtail unnecessary litigation, an act passed on May 23, 1837 required aggrieved parties to carry out a non-binding conciliation before a juez prior to beginning a lawsuit.[37]

Sometimes groups of parciantes who used the same acequia employed conciliation to work out a simple maintenance agreement—pacts similar to those considered above. In 1844, on orders from a superior, Juez de Paz Gervasio Ortega of Santa Cruz assembled the residents of La Mesilla and Polvadera, two placitas below the villa, to establish an annual labor schedule for their jointly owned ditch. Although the two communities had tried unsuccessfully to resolve the issue for a long time, Ortega and the hombres buenos managed to negotiate a settlement that determined mutual responsibilities and imposed acceptable penalties for infractions. Declaring that the pact was to last for the rest of their lives, the litigants made sure that Ortega recorded it in the villa's archives. Several decades later, on April 3, 1897, a slightly different version of the same document was presented to the clerk of Santa Fe County for registration—an indication that the settlement remained in force well beyond the lifetimes of the original signatories.[38]

By participating in conciliation, hombres buenos helped resolve water disputes in ways that conformed to community values, but, since it was not binding, the process did not always go smoothly. At the placita of San Antonio de Chama in 1838, for example, agents of two adversarial parties agreed on an appropriate location for a grist mill on la Acequia Común de los Salazares, an important ditch emanating from the Rio Chama. At the last minute, however, as the presiding justice collected signatures from the litigants and witnesses, the deal collapsed: one of the principals had changed his mind. To express dissatisfaction further, this litigant dismissed his hombre bueno, who happened to be his son-in-law—a circumstance that must have provoked some lively family conversation.[39]

Frequently when negotiations broke down in justice courts, the litigants turned to the prefect, or even the governor, for help in finding an accommodation. A case heard at Abiquiú in 1841 before Juez de Paz José María Chaves illustrates some of the pitfalls inherent in conciliation. One of Abiquiú's most famous sons, Chaves was a rising politico, then in the midst of a long career in which he held civil and military offices under Spain, Mexico, and the United States. Controversy began after José Francisco Vigil, a local farmer, built a protective dike on his property to prevent inundation of some fields with waste water whenever neighbors above began to irrigate. Ordinarily, the structure did not cause problems, but when cloudbursts filled nearby arroyos and breached the acequia, Vigil's dike trapped much of the runoff and forced it back onto the plantings of Miguel Antonio Gallegos and Diego de Luna. Seeking relief, the latter appealed to Chaves, who set a hearing date and ordered the concerned parties to appear with their hombres buenos as required by law. When the two sides gathered, the juez found that the hombres buenos, like their clients, could

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not agree on the dike's future status, causing Chaves to recess the proceedings for eight days while he made a decision. Once reconvened, the court ruled that, as a free man, Vigil had a right to protect his property, and thus, could maintain a dike of moderate size to prevent flooding. Chaves added arbitrarily that the plaintiffs would not be allowed further appeal. All parties signed the decree, but Gallegos and Luna added the phrase "*no soy conforme*" (I do not agree) next to their names.[40]

Still smarting from the Chaves verdict, Gallegos and Luna sought redress directly from Rio Arriba's prefect, Juan Andrés Archuleta. Demonstrating some knowledge of the law, they bolstered their plea with references to technical deficiencies in the adverse ruling, which they attributed to bias by the juez. Many times, they claimed, local justices acted capriciously, knowing that final appeal rested with the supreme court in far-off Mexico City. As a remedy, they begged the prefect to assert jurisdiction and remand their case to an impartial juez.[41]

Archuleta's ruling is not extant; however, he is known to have at times allowed litigation to bog down in bureaucratic red tape. One such case dragged on for more than three years. It began simply enough in April 1841 at San Pedro de Chamita when Juan de Jesús Córdova asked several neighbors for a right-of-way across their lands for an acequia to provide water power at a new grist mill. In return, he offered to grind their grain free of charge. All the neighbors proved to be willing except José Rafael Trujillo, who feared extensive damage to his property. To end the impasse, Santa Clara's juez de paz and census taker, Juan Cristóbal García, arranged a conciliation attended by Córdova, Trujillo, and their good men. At the end of a long discussion, Trujillo authorized the ditch, but he made some very specific stipulations: Córdova had to promise to reinforce the acequia's intake and to curb overflows along the lower bank by building it up with rocks and branches to Trujillo's satisfaction; if floods caused significant destruction in spite of these precautions, Córdova had to make restitution for losses incurred along the first fifty varas of right-of-way, the amount to be determined by the nearest justice. Córdova agreed, and after all parties had signed the document, García placed Córdova in possession of the ditch.[42]

Trujillo soon found that he had made a bad bargain. On February 16, 1843, he complained to Prefect Archuleta that the new acequia leaked from one end to the other, causing damage well beyond the first fifty varas, and to his dismay, Córdova refused to provide compensation. As usual, Archuleta referred the matter back to the juez (now Rafael García, Juan Cristóbal's successor at Santa Clara), who, together with four advisers, inspected the ditch and found Trujillo's claim entirely justified.[43] Córdova's position worsened even more after he refused to pay the experts a fee of twelve pesos for their trip, causing García to lock him in the stocks.[44]

Still not convinced, and perhaps unwilling to overturn the original agreement, Archuleta ordered another opinion from the juez at San Juan. Meanwhile,

Córdova's relatives fired off a series of impassioned petitions to the prefect, intimating bias and protesting the harsh treatment suffered by their kinsman. Archuleta then ordered Manuel Morfín, the juez at San Juan, to take charge of the case, but, on April 28, Juez García called the parties before him and commanded Córdova to close off his acequia.[45] Belatedly, Morfín held a hearing but refused to overturn the decision of another juez, and for the next year, the Córdovas, trying in vain to settle this simple case in a local court, were unable to find a justice willing to assume responsibility. Then in July 1844, Juan de Jesús Córdova presented the whole matter before Mariano Martínez de Lejanza, who had taken office as New Mexico's civil governor in January. Appalled by Córdova's tale of repeated delays and shoddy procedures by local justices, Martínez handed the case over to Tomás Ortiz, a Santa Fe alcalde, with directions to arrange a hearing immediately and find an equitable solution. The governor also sharply reprimanded every justice involved, observing that they had failed utterly in carrying out their responsibilities and demanding improved performance in the future. Within a few days, Ortiz notified his superior that the parties had met, reached a new agreement, and ended the lawsuit.[46]

In his statement, the governor reserved his criticism for the local justices, but Archuleta, too, should have shared some of the blame. If he had acted more decisively, he could have saved considerable delay and prevented his subordinates from evading their responsibilities. However, in another case from the same jurisdiction, the prefect performed with greater assurance. On September 3, 1838, Jesús María Manzanares, of San Juan de Chama (today's Plaza Larga), composed a long letter to Archuleta in which he requested atonement for public abuse by the community mayordomo, Pedro Herrera. According to Manzanares, he—Manzanares—had gone to Herrera's house in place of his younger brother, who had been ordered to present himself there. When Jesús María asked why the summons had been issued, the mayordomo replied that he had intended to punish the younger Manzanares, but, in his absence, the older brother would do just as well. Harsh words escalated into a scuffle, and Herrera had Jesús María tied up, subjecting him to public humiliation. Further investigation revealed that young Manzanares had refused to pay a fee of one peso to the mayordomo prior to receiving irrigation water, a practice described by Jesús María as an illegal sale.

In reply, Archuleta sagely observed that, although no one could properly assault a duly appointed official, those in authority must not resort to bribery while performing their duties. He ordered the juez at Santa Clara to verify the facts, and then, if warranted, to fine Herrera ten pesos in hard cash—five for the district treasury, and five for Manzanares. When notified of the penalty imposed against him, Herrera was stunned by its severity. As a poor man, he appealed to the prefect's sense of charity, claiming that his misdeeds resulted from lack of understanding rather than ill will. If the heavy fine must be paid, he

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begged that it be in "products of the country" (*efectos del país*), rather than in money. As an afterthought, he added that the so-called water sale was a procedure authorized by the acequia's *principales*, who supervised its management. If the peso demanded by the mayordomo was an assessment rather than a user's fee or bribe, it was an unusual charge for that time—one not recognized as such by either Archuleta or Manzanares. In this instance, the prefect ended the suit summarily by directing the juez to proceed as ordered, waiving the requirement for a cash payment.[47]

As indicated by the previous discussion, institutions of local government changed significantly under Mexican administration, but water regulation problems remained much the same as those encountered during the colonial era. A growing population accelerated competition for arable land and irrigation water between Hispanos and Pueblo Indians and between contending groups of Hispano settlers. Allocations and related issues were determined by community ayuntamientos until these councils were abolished in 1837, and juezes de paz assumed similar responsibilities. Aggrieved parties often complained of bias by officials in their jurisdictions, an inevitable problem in an area of small villages with highly interrelated populations. Dissatisfied litigants often sought redress from the governor or prefect, but those officials preferred to remand water cases back to local authorities whenever possible. An appeal to the nation's highest tribunal, the supreme court in Mexico City, although sometimes considered, was never attempted, according to available documentary sources. Despite frequent complaints, New Mexicans managed to resolve most water problems locally, relying more on local customs than law books in arranging settlements.

Fig. 1. Bisecting the state as it flows south, the mighty Rio Grande has provided farmers with irrigation water for centuries. This aerial view shows cultivated fields near the river's junction with the Rio Santa Fe, visible at upper right. The area has been under water since construction of the Cochiti Dam began in 1965. Courtesy Rio Grande Historical Collections, Yeo Collection, New Mexico State University Library.

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