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ON THE COVER
Música para la Malinche (Music for la Malinche), Alcalde, New Mexico
(Photograph by Miguel Gandert)

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Sharing the Shortages

Water Litigation and Regulation in Hispanic New Mexico, 1600–1850

Malcolm Ebright

Disputes over water in the American Southwest and in Central Mexico have a long history. Indigenous peoples fought over land and water before the arrival of the Spanish conquerors, and the Spaniards joined in the tradition, disputing water access and control with the local Indians and among themselves. However, battles between Spaniards and those between Spaniards and Indians differed in character. The Spaniards seemed to share an understanding that the aggressive tactics used against Indians were unacceptable against other Spaniards. Blows were sometimes exchanged between Spaniards, as documented in cases from Spain and Central Mexico, but the preferred tactic was simply to take more water than law or custom allowed and see what happened.[1] Court cases in New Mexico record numerous references to threats of violence, but in the end most disputes were resolved by water-sharing regimes.[2]

The tradition of fiercely defending one's water rights in New Mexico inspired the saying "whiskey is for drinking and water is for fighting."[3] But this study of New Mexico water battles reveals that disputants generated bluster

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far more than they spilled blood. In a tightly choreographed dance both sides marshaled all possible arguments to support their water claims, knowing that the final decision would probably recognize everyone's needs. No single party would get all the water.

By what rules did Spanish colonial society allocate the contended-for water? New Mexico was a remote frontier outpost with few law books and fewer lawyers. The law, especially regarding water rights, was usually comprised of decisions in actual cases, not some obscure law in the *Recopilación de Leyes de los Reynos de Las Indias* (the compilation of laws governing Spain's colonies in the Americas) or some blanket characterization of water rights law in modern terms. Knowing the criteria the alcaldes and governors used to divide the water will suggest how Spaniards and Indians, and elite Spaniards and their poorer neighbors negotiated the balance of power.[4]

Water-rights adjudication suits filed by the New Mexico state engineer have stimulated the study of water litigation in Spanish and Mexican New Mexico. In the last thirty years books and articles published by historical experts in these legal cases have added substantially to our knowledge about water rights in New Mexico and the Southwest.[5] Early works address the subject of water allocation in Central Mexico and Spain and provide models with which to compare and evaluate water allocation in New Mexico,[6] while recent books on the related subject of New Mexico land grants explore the relationship between land and water.[7] The unpublished reports of historical experts in water rights adjudication cases are another rich source of material dealing with water allocation in New Mexico.[8]

This article explores the criteria applied to the adjudication of water disputes and incorporated into local water ordinances, especially during water shortages. Some cases deal solely with Hispanic acequias, some cover Pueblo Indian acequias, and a few examine disputes between Spaniards and Pueblo Indians. The time frame begins with the settlement of New Mexico by Spaniards under Juan de Oñate in 1598 and ends with the occupation of New Mexico by Americans under Brigadier General Stephen Watts Kearny in 1846. To understand the legal claims and supporting arguments of the conflicting parties, I include some historical, geographical, biographical, and legal background for each case and the relative location of the disputants on the stream system.[9]

Studies of water rights litigation in colonial Mexico yield different results depending on the region studied. Sonya Lipsett-Rivera reviewed numerous irrigation lawsuits in Puebla, mostly between large *hacendados* (owners of

large agricultual or stock-raising estates) and indigenous communities. She found that it was almost impossible for indigenous communities to share water with large haciendas because of the vast quantities of water required by the hacendados' crop of choice: sugar cane. Moreover, once an upstream user illegally constructed new dams to divert water, the excessive time and expense made difficult fighting such usurpations in court. So the preferred strategy of indigenous communities was to prevent such upstream diversions before they became a fait accompli.[10] For instance, the indigenous community of San Miguel Tilapa was able, through swift defensive action, to prevent the hacienda of San Juan Bautista Colón from building *cajas* (reservoirs from which water was distributed) above them to divert the Ahuehueyo River. But this case was the exception.[11]

Spaniards and Pueblo Indians also used the strategy of prevention of upstream settlement in New Mexico. Both Santa Clara Pueblo and the *vecinos* (Hispanic residents) of Ranchos de Taos were able to obtain upstream grants of land in order to control upstream irrigation.[12] Spaniards and Indians alike realized that keeping new settlers out in the first place was better than trying to assert prior use claims, especially when water was scarce. Prior use claims almost never led to an award of exclusive use, for once an upstream user was in place authorites considered the needs of all irrigators and generally decreed a regimen of water sharing.

Lipsett-Rivera found indigenous peoples to be astute defenders of their water rights against overwhelming odds. Indian communities used the courts when necessary, but they also resorted to self-help when the process of litigation was too slow. They also found they had a better chance of success in court if they joined with other communities to fight a water appropriation by a wealthy hacendado. Sometimes, however, the initial indigenous solidarity gave way to bickering and divisiveness as litigation dragged on for decades. Such a schism occured when in Mexico three Indian villages combined to fight hacendado Martín Calvo in the latter decades of the eighteenth century. After one of the villages was wiped out by disease, the other two battled over the share of the abandoned village until the claimants' wives asked the viceroy for a final decision to end the litigation. The women complained that their husbands were away from home so much pursuing the case that their crops were dying from lack of tending, not lack of water.[13]

Lipsett-Rivera documents numerous instances in which indigenous communities used the judicial system to preempt Spanish strategies that would limit the Natives' future access to water. For instance Indians attempted to

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enforce contracts with Spaniards for water rental and agreements with Spaniards to clean Indian acequias. The Natives designed such strategies to prevent a claim of a servitude (similar to adverse possession) that would allow Spaniards to receive a share of available water in a future *repartimiento* (division of water between Spaniards and Indian communities).[14] However, these tactics usually failed because the concerns of meeting existing needs prevailed in most repartimientos in the long run. Yet, unlike the experience in northern Mexico, Lipsett-Rivera found that "although plaintiffs claimed that they had a dire necessity for water in order to survive, the longest tenure of resources without any legal challenge was the most secure claim to irrigation."[15]

Lippsett-Rivera seems to be saying that prior use was more important than need in the cases she studied, but elsewhere in the book she makes clear that this condition was true only for the early colonial time period and for the region of southern Puebla. Lipsett-Rivera believes that "the doctrine of prior appropriation prevailed in Mexico as it did in Puebla during the colonial period," although she bases this on secondary evidence. Actually the system of Hispanic water law was not appropriative. *Prior appropriation* is a modern term not found in the Hispanic cases. Under prior appropriation, the oldest users get all the water needed, trumping more recent users who might get no water in times of scarcity. Prior use, on the other hand, was just one factor to be considered along with other criteria such as need.[16] In any case, Lipsett-Rivera's basic conclusion is sound: water allocations between haciendas and indigenous communities "had to reflect a certain understanding of fairness, past use, or simply the balance of power. When this equilibrum was forgotten and trampled over without due process, sabotage or sometimes violence resulted."[17]

Michael Murphy has studied irrigation in the Bajío region of central Mexico, coming to somewhat different conclusions than those of Lipsett-Rivera. In the colonial system, Indian communities were assumed to have water rights without the need to produce written titles to support them. Spanish settlers sometimes usurped those water rights, but their encroachments often led to Indian rebellions. Murphy found that the criterion of need was often applied to disputes in northern Mexico, a conclusion not unlike that of William Taylor for central Mexico.[18]

Taylor studied twenty-two water cases from a variety of places within the Audiencia of Mexico spanning the period from 1538 to 1800. He found that these decisions seldom referred to the *Recopilación* but were pragmatic judgments to keep the "peace among the Indians and farmers."[19] (Lipsett-Rivera also echoed Taylor's emphasis on pragmatism and scant mention of the *Recopilación.*)[20] Taylor found that the principles of prior use and need were the most important factors in water distribution and that proximity to the source and protection of Indian communities were important but lesser factors. When prior use was applied, it seldom provided exclusive rights to irrigation water. Instead, Indians and others who claimed prior use were usually required to share available water.[21] For example in a 1705 Puebla case between an Indian community and a Spaniard, the water judge measured both the available water in the river and the amount of water the Indians were using, and assigned an additional portion of water to a sugar mill.[22] In this case as in others cited by Taylor, the pragmatic approach sought to balance the needs of the irrigators with the availability of water.

According to Taylor, need was sometimes tied to prior use in a dynamic way. In repartimientos involving Indian communities, their prior use claims were generally sustained only "for their personal needs . . . [and] for the irrigation of their fields and orchards."[23] The irrigation of land to be acquired in the future, whether Spanish or Indian, was not covered by repartimientos. One example was a repartimiento involving the Indians of Apaseo and the Spaniard Hernán Pérez. He and his descendants were awarded the use of the water needed "for the irrigation of only the lands which they have and possess right now and not those [lands] that they may acquire in the future."[24]

Ward Stavig has studied land and water disputes between indigenous people and their Spanish neighbors in Peru during the seventeenth and eighteenth centuries. Like Mexican Indians, the Peruvian indigenous people skillfully employed the Spanish legal system, sometimes citing specific sections of Spanish law to make their arguments. In water disputes between hacendados and indigenous communities the Indians often won the case, but like the hacendados in Puebla studied by Lipsett-Rivera, the Spaniards in Peru often disregarded government edicts.[25] In one case from 1754, the Indians of Oropesa complained that the upstream haciendas had restricted their water supply contrary to an agreement previously worked out between the parties. Under its terms, the Indian community received water on Monday, Tuesday, and Sunday nights, but the volume was insufficient to water their fields and garden plots, or for the chickens raised as part of their tribute. The Oropesa Indians petitioned for more water and were awarded additional flow—all day on Monday and Tuesday. This increased water allotment, based on need, solved the problem until the hacendados cut off the Indians' daytime supply. Even when ordered to abide by the water-sharing agreement, the hacendados refused.

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Their illegal act so outraged the community of Oropesa that several Spaniards testified on behalf of the Indians in subsequent proceedings. Tomás de Dueñas, a member of an old Spanish family and a resident of Oropesa, testified that the hacendados were cutting off the Indians' water and that the Indians had predated the haciendas. The Spaniards were breaking a water-sharing agreement based on need, which the Indian community relied on as leverage to attain compliance.[26]

Michael Meyer has examined numerous water-allocation cases throughout New Mexico, the greater Southwest, and central Mexico. His analysis isolated seven criteria applied in water-allocation decisions: just title, prior use, need, injury to third party, intent, legal right, and equity.[27] Most, but not all, of these criteria were important to New Mexico cases studied for this article. Just title refers to a written document granting water rights (*merced de agua*), similar to a land grant. Although just title was an important consideration in water disputes in central Mexico, few grants of water rights were made in New Mexico, and none of the cases studied below involved the presentation of a written merced de agua to justify a claim for water.[28]

The principle of prior use or priority, sometimes referred to as *preferencia*, was claimed in several of the cases studied. The criterion of need was mentioned more frequently than any other and was often opposed in the cases to the principle of prior use. The criteria of injury to third party, intent, and equity and the common good are all related to need in the cases studied. For instance, the intent of the government to increase agricultural production so that settlers could be self-sufficient was a concept similar to need. Another principle in Michael Meyer's list of criteria is legal right. Encapsulated in this concept is the tension between the rights and needs of the individual versus the rights and needs of the community. Thus, Meyer's criteria are helpful in understanding the New Mexico cases in most instances.[29]

Daniel Tyler has examined water litigation in New Mexico with an eye to determining the rights of communities. Tyler cites an important section from Mariano Galván y Rivera's 1842 *Ordenanzas de Tierra y Aguas* titled "Special Suggestions to Those Who Measure Out and Divide Up the Waters." It says that the most equitable thing to do when stream flow was reduced or there were numerous water grants on river courses was to "completely forget the antiquity of the respective grants, and considering everyone equal, proceed to prorate the division [of water] by days and nights . . . so that the benefit and loss may be divided up equally amongst everyone." Tyler concludes that in New Mexico water administration, equitable or proportional distribution was the objective and that both Spaniards and Mexicans developed a system of sharing designed to avoid costly litigation. Absolute water rights were inconsistent with Spanish thinking and inappropriate to the New Mexican environment.[30]

This article builds on the work of Tyler, Meyer, Taylor, Lipsett-Rivera, and other colonial Latin American scholars who emphasize the tension between competing principles articulated by the courts and advocated by parties vying for scarce irrigation water. In the cases studied, one of the parties to the conflict had been using the water on a stream system longer than the other party, claiming that prior use justified an award of a large share or all of the available water. However, only in rare cases did the doctrine of prior use prevail. The competing principle of need/equity usually won out in water-allocation decisions. Although the court often recognized the importance of prior use and gave the senior water user some deference and privilege, it generally allocated the water on the basis of need/equity.[31]

Background of Water Allocation in Spain and Mexico

Among the precedents for the allocation of water in New Mexico was the Tribunal of Waters in Valencia, Spain. During the fourteenth and fifteenth centuries this tribunal met every Thursday on the steps of the cathedral of Valencia to make water-allocation decisions and resolve the previous week's irrigation conflicts. The primary function of the Tribunal of Waters, which was made up of the officials of the seven acequias of the Valencia Huerta (irrigated region), was the informal allocation of water among the acequias. Irrigators pleaded their cases without lawyers, and Tribunal decisions were swift and summary and free from appeal. Water allocations were based on customary law—local knowledge and practice—and were not highly technical.[32] According to Thomas F. Glick, "each irrigator received water in proportion to the amount of land he held. . . . All irrigators shared in times of abundance and were equally deprived in times of drought." Likewise in New Mexico two or three centuries later, the lack of lawyers and the remoteness of the province caused irrigators to seek solutions to water conflicts from alcaldes and governors and, on occasion, from the local priest. Just as in medieval Valencia, the administration of justice in both land and water cases in New Mexico was based largely on local custom.[33]

A water judge (*juez de aguas*) was often appointed by municipalities, as authorized by the *Recopilación*, to adjudicate water disputes involving Indians in

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central Mexico.[34] Although the juez de aguas is still found in widely scattered locations in Mexico, the office mostly died out at the end of the sixteenth century. Some communities such as Celaya then followed the example of the Valencia Tribunal of Waters, whereby "water administration and dispute adjustment were assumed by the farmers themselves."[35] The practice of appointing water judges continued into the nineteenth century throughout Mexico and especially in New Mexico. These officials, sometimes called *alcaldes de agua, jueces/veedores,* and *mandadores,* also made their water allocations in accordance with local custom.[36]

Local customary law has always existed alongside a more uniform national law in Spain and the Americas. Customary law helped define more explicitly property rights described abstractly in national law. In this process, local customs accepted over time were then incorporated into written Spanish law. Water rights particularly did not lend themselves to precise formulation in compilations of laws like the *Recopilacíon.* The dialectic between the law of Spain and her colonies embodied in the *Recopilacíon* on one hand and local customary law on the other was often present in New Mexico land and water cases.[37]

Laws and Local Ordinances

The task of making water-allocation decisions in the Spanish colonial and Mexican periods in New Mexico fell most often to local governmental officials, who not only allocated water but also enacted ordinances articulating guidelines for distribution of water. These ordinances were often part of broader sets of rules governing the founding of new settlements and the distribution of land and water within those settlements. Such a body of rules was promulgated for the Villa of Santa Fe in 1609 and for the Villa of Pitic (now Hermosillo, Sonora), in 1781.[38]

The Plan of Pitic contains instructions for the establishment of the Villa of Pitic, the election of a municipal government, the setting aside of common lands within the four square leagues granted to the villa, and the distribution of land and water to the settlers. Article 19 of the Plan of Pitic provided for the distribution of irrigable land and the designation of acequias to irrigate that land, so that each settler would know the headgate by which his land was to be irrigated.[39] Article 19 also provided that settlers shall "not have the right or power to take water belonging to others nor in a greater quantity than is their share."[40] Article 20 provided that an alcalde or mandador be appointed to distribute the water diverted from the *acequia madre* (main ditch) to the branch ditches. That official was required to list the hours of the day and night when each landowner could irrigate. The plan directed the mandador (similar to today's *mayordomo*) to allocate the water "in accordance with the need of each irrigated tract."[41] The Plan of Pitic thus mandated equity and need as the overriding principles of water distribution.

The instructions given by Viceroy Luis de Velasco to Governor Pedro de Peralta in 1609 for the founding of Santa Fe contained a similar provision. The alcaldes and *regidores* (councilmen) of the villa were to delineate house lots and garden sites and apportion "the water necessary for the irrigation" of the irrigable tracts. Again, need was the leading criterion mentioned in these viceregal instructions.[42] Santa Fe was settled in 1610, and by April or May the Spaniards had dug the two main acequias: the Acequia Madre south of the Santa Fe River, and what came to be known as the Acequia Muralla north of the river. Over the next two and a half centuries, more explicit water distribution ordinances were enacted for all the Santa Fe acequias.[43]

In 1722 alcalde Francisco Bueno de Bohórquez y Corcuera promulgated an ordinance dealing with water distribution for the two Santa Fe acequias.[44] When the Santa Fe River became low and water scarce by mid-July, the alcalde appointed two men to act as water judges/inspectors, one for the acequia north of the river and the other for the acequia and springs in the Analco district to the south. Their charge was to examine the fields irrigated by each acequia and to allocate the water, each "responding always to the greatest need."[45] The larger the field, the more water it would receive, but unweeded fields foreshadowing a lost crop would receive no water until the jueces/veedores saw fit. The judges/inspectors were cautioned that the poor widows should receive their share of water and that under no circumstances should they favor their relatives or "mistreat anyone in word or in deed."[46] They were to be impartial, "giving to every one what they need."[47] Should anyone be rude to the judges, he or she would be subject to a twenty-five peso fine and eight days in jail. However, this ideal of equitable water distribution despite gender, age, or wealth did not always hold up in practice.[48]

Alcalde Bueno de Bohórquez named Tomás Jirón de Tejeda as judge/inspector for the acequias north of the Santa Fe River and Nicolás Ortiz for the acequias south of the river in the Analco barrio. A year later Ortiz, who owned land north of the Santa Fe River on the northern acequia, incurred the wrath of Jirón de Tejeda and alcalde Bueno de Bohórquez for violating the water regulation he had been appointed to enforce. The trouble began

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on a Sunday night in July 1723. While Cristóbal Armenta and several other *pobres* tried utilizing their turn on the upper acequia to irrigate their fields, they suddenly realized that there was no water in the ditch. The next morning, when Armenta walked up the acequia to find out who was diverting the water, he found that Nicolás Ortiz himself had turned the acequia into his own wheat field. Armenta complained to alcalde Bueno de Bohórquez who sent Jirón de Tejeda and another water distributor (*repartidor*) to investigate. Finding the acequia blocked with sod (*céspedes*), the inspectors told Ortiz to report to the alcalde the next day and explain his violation of the water regulations, of which he was certainly aware. However, Ortiz did not appear until the next evening, and when alcalde Bueno de Bohórquez asked why he had not reported that morning, Ortiz claimed that the midday sun made him ill. For this insolence Bueno de Bohórquez tried to arrest Ortiz and place him in the guardhouse, where he would find ample shade, but Ortiz defiantly drew his sword and raced across the plaza to the parish church, where he would receive asylum and immunity from arrest.[49]

After his dramatic flight across the Santa Fe plaza Ortiz petitioned Lieutenant Governor Juan Páez Hurtado for relief. Páez Hurtado allowed Ortiz to leave the church without fear of arrest and assigned the case to Governor Juan Domingo Bustamante, who was away from the capital. Unfortunately, nothing in this case file reveals Governor Bustamante's ruling and Ortiz's fate, but the lack of a final decree by the governor leaves the impression that the elite Captain Nicolás Ortiz escaped punishment, in spite of his insubordination and flagrant disregard of the Santa Fe water regulations.[50]

Although the Ortiz case indicates that the Spanish elite could sometimes violate water-allocation rules with impunity, the opposite was true in fact. As the thickness of this criminal *expediente* (court file) testifies, alcalde Bueno de Bohórquez seriously enforced his own water regulations, which decreed the equitable distribution of water between the poor and the elites. It is unlikely that after a lengthy public investigation Captain Nicolás Ortiz would be able easily to steal someone else's water, especially when alcalde Bueno de Bohórquez displayed such a readiness to put him in jail. Certainly the poor people on the upper acequia north of the Santa Fe River were able to irrigate freely during the time that Ortiz was taking refuge in the parish church. The pobres learned that reporting infractions to the alcalde would initiate legal action against offenders. Nicolás Ortiz also complained that during his asylum in the church, his untended crops and livestock were in jeopardy and that one of his cattle died. Perhaps he learned that defying a determined alcalde did not pay in the long run.[51]

Another example of the passions aroused by a lawsuit over water was an 1833 case concerning an acequia near Santa Cruz de la Cañada. This time, the issue was the location of an acequia, not water allocation. Diego Pacheco had peremptorily moved the acequia in question to a new location, but the *ayuntamiento* (town council) of Santa Cruz de la Cañada decided that the acequia should return to its old location. This decision was agreed to by almost everyone, except Diego Pacheco, who told the ayuntamiento that he would continue using the prohibited acequia even if he had to kill someone. The ayuntamiento's response demonstrates the connection between religion and the administration of water. The ayuntamiento told Pacheco that "God did not order the taking of lives [even for] just causes."[52]

Almost fifty years after alcalde Bueno de Bohórquez decreed the 1722 Santa Fe water regulations, the same water-distribution problems still plagued the villa, and new issues had developed. In 1768 Governor Pedro Fermín de Mendinueta issued a *bando* (edict) covering a range of agricultural problems including irrigation and the thorny issue of animal damage to planted fields. Given that many fields were unfenced, it was difficult to keep cattle and pigs from getting into irrigated farmlands, and pigs and other smaller animals still easily invaded the few fields enclosed by primitive fences. Governor Mendinueta provided that owners of animals causing damage would be fined if their livestock was found harming "planted fields so necessary for the subsistence of the people." Experts appointed by alcalde Felipe Tafoya would survey the damage and assess the fine.[53] Governor Mendinueta then dealt with some new concerns, one of which was "the number of thefts that take place in the cornfields and gardens of those who take the trouble to plant and cultivate their lands."[54] Settlers who lost their gardens to weeds may have been among the agricultural thieves. The governor, well informed about the problem (possibly he himself had been a victim of vegetable theft), detailed a plan for solving it that included penalties for those caught stealing produce. Whites (*blancos*) would suffer public shame (*vergüenza*) at the pillory (*picota*) with the stolen vegtables hanging from their necks, and mestizos (*de color quebrado*) would receive twenty-five lashes.[55] Mendinueta also attempted to limit access to planted lands by would-be produce thieves.[56]

A key part of Governor Mendinueta's agricultural plans involved water distribution. First, Mendinueta ordered all vecinos "to plant and cultivate [their farmlands] on time."[57] Second, the governor directed the alcalde to apply a water-distribution standard relating to the amount of work an irrigator had performed on his field. The alcalde was to distribute scarce water

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with equity (*con equidad*), but Mendinueta instructed, "If someone should ask for water and their cornfields or gardens are lost and incapable of producing because of failure to cultivate, [the water] will be denied them."[58]

This regulation clearly expresses the connection between equity and need as principles of water allocation. Equity did not mean that the available water would be divided equally between irrigators. Rather, the concept meant that only farmers who invested labor in their fields would be allocated the water their crops required. The overriding principle was sustaining the crops to produce food for the subsistence of the people. The need of the fields could be ascertained in a concrete way, allowing the alcalde to define more narrowly the abstract concept of equity. This idea also seems to have had religious overtones, tying the principle of equity to a divine equity or balance that, if properly applied, would bring the rain, as we will see in the Santa Fe water regulations from the late 1820s still to be discussed.[59]

Another group of water allocation and acequia ordinances was issued by the Santa Fe ayuntamiento in the late 1820s and early 1830s. These regulations often dealt with flooding of streets by acequias that lacked *canoas* (culverts) or flumes or whose banks were not high enough. Another concern was the relationship between public health and maintaining clean acequias. An 1833 decree of the Santa Fe ayuntamiento, drafted by Antonio Barreiro, provided that "acequias and streams must be kept clean and persons prevented from polluting or befouling them with garbage, dead animals or whatever else."[60] In a time when sanitation was almost nonexistent, such measures were necessary, if not always effective.[61]

On the issue of water allocation, the Santa Fe ayuntamiento had shifted from the concept of equity as defined in eighteenth-century New Mexico to a criterion that was closer to equality. In 1829 the ayuntamiento promulgated an ordinance concerning water distribution and acequias containing the usual provision requiring canoas where acequias crossed roads and trails. Although noting that acequia overflows were causing little swamps to appear all over Santa Fe, the ayuntamiento made no connection between the scarcity of irrigation water and the loss of acequia water from lack of proper canoas. The emphasis in these 1829 regulations was on the appointment of an official to distribute the water "in an orderly and completely efficient [manner]."[62] As in Governor Mendinueta's decree sixty years earlier, the encouragement of farming was a primary object of the ayuntamiento, but instead of applying the principle of equity (equidad), the ayuntamiento told the water distributor (*repartidor de agua*) to allocate the water "equally without excepting anyone."[63]

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By declaring a new water-distribution standard—equality—the ayuntamiento hoped to avoid complaints from individuals not receiving any water as well as accusations that the elites were receiving more than their share. Excluding no one from the distribution of water set an impossible task for the water distributor, which is why the job of mayordomo was (and still is) so difficult.[64] The broad principle of equity differed in application, depending on whether the concept was *igualdad* (equality) or equidad. Equidad implied a broad sense of fairness, allowing the kind of interpretation found in Governor Mendinueta's ordnance, in which the need of the fields was a modifying standard that authorities could objectively determine. Igualdad, as used by the 1829 Santa Fe ayuntamiento, did not allow such latitude in practice and meant that irrigators would receive roughly the same amount of water regardless of their fields' condition. Since the result of igualdad was often impractical, especially when water was scarce, it best fits the analysis of Michael Meyer: "the doctrine of equity and the common good encompassed lofty and perhaps unattainable ethical goals."[65] In any case, the broad principle of equity and fairness, whether equidad or igualdad, was usually in opposition to the criteria of prior use as a water-allocation principle.[66]

Equity was also identified with the common good. An 1841 report by the Santa Fe Water Commission recommended that a grant be made to Guadalupe Miranda because he helped travelers with water and supplies and the grant would be "in the common good."[67] The 1829 Santa Fe ayuntamiento went even farther. It said that water distribution based on igualdad would lead to "good harmony [so] God our lord will increase its [flow]. Otherwise, He will punish us."[68] Equal water distribution would lead to harmony, which in turn would lay the groundwork for divine intervention on behalf of the community as a whole. This emphasis on community well-being and harmony as among the highest social values was in accord with the key concepts of the Hispanic legal system of that time.

The idea of compromise, equity, and community welfare were in direct opposition, however, to the prevailing values of the Anglo American society that began to penetrate New Mexico with the opening of the Santa Fe Trail in 1821. The American law at this time emphasized the individualism displayed in an adversarial struggle between the opposing parties. The contest would lead to a decision with clear winners and losers. In contrast, the Spanish and Mexican system of justice relied heavily on compromise and conciliation to reach an outcome in which each side got something of what they wanted.[69] The tension between two legal systems, one emphasizing individual rights and the other the rights of the community, was similar to the opposition of prior use and need/equity as principles of water distribution. The water allocation principle of prior use was more in step with the Anglo winner-take-all approach to justice. An examination of specific water allocation cases provides an opportunity to assess the relative importance of prior use and need/equity in their outcome.

Water Allocation Between Competing Irrigators

In 1762 Antonio Baca was placed in possession of a land grant at Nuestra Señora de la Luz de la Lagunitas on the Río Puerco. When alcalde and cartographer Bernardo de Miera y Pacheco placed boundary markers (*mojoneras*) at the four corners of the grant, he placed the fourth mojonera on the north bank of Agua Salada Creek. The property of another grantee, Juan Tafoya (Altamirano), embraced the south bank. Agua Salada Creek was apparently an intermittent stream with a scanty flow, so alcalde Miera y Pacheco specified in the act of possession that "these two adjoining settlers shall have the use of the said water in equal proportions due to its scarcity."[70] Having received his grant, and settled and farmed it prior to the Antonio Baca grant, Tafoya enjoyed prior use, but alcalde Miera y Pacheco mandated a water-sharing regime based on need/equality.[71]

Another instance of water allocation by an alcalde took place in Socorro in 1827. The allocation involved competition between prior use and need/equity claims. Manuel Trujillo petitioned Governor Antonio Narbona, asserting several claims "as one of the first re-settlers who has cultivated the land."[72] At the time Trujillo was feuding with alcalde Santiago Torres over several matters, most but not all dealing with water. According to Trujillo, alcalde Torres had given water "to others who have just settled in the jurisdiction, completely denying us the first [settlers], the use of the water from the spring by which the land is irrigated."[73] Trujillo added that Torres had also hired someone to spy on him and to report on his extramarital affairs. In an unusually sophisticated turn of phrase, Trujillo accused the alcalde of acting "with the despotism of a Robespierre."[74]

In his response alcalde Santiago Torres laid out the other side of the story, describing a long series of run-ins with Trujillo. In one instance Torres contacted the *asesor* (legal advisor) of New Mexico and two impartial experts to assist the settlement of another acequia dispute involving Trujillo. Although the settlement had been reduced to writing in Trujillo's presence, he had

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refused to abide by the agreement. Regarding water allocation, Trujillo charged that the alcalde took the water from Trujillo and his companions and gave it to those who had just arrived. Denying Trujillo's claim, Torres countered that water scarcity moved him to follow principles of water distribution laid down by his predecessors. The alcalde's water allocation plan was to divide the water equally, so that each *parciante* could irrigate a garden twelve paces wide by two hundred paces long. Torres wrote, "If there was surplus water [available after the gardens were irrigated], [the alcalde] gave it to those who sow corn and wheat."[75] Given that Governor Narbona did not respond to alcalde Torres's report, he probably agreed with the alcalde's water allocation plan. Indeed, delegating authority over water distribution to a local official was common practice at that time.[76]

The effect of this distribution, based on need was to give available water to irrigators in accordance with the nature of their crops. With personal gardens providing for the daily needs of the settlers, even a small garden (roughly 12 x 200 yards) was important. In some instances, when water was scarce, the surplus water after irrigating the gardens would not be sufficient to irrigate the fields of corn and wheat. In that case irrigation preference was given to those who sowed wheat because "what ought not to be lost is the wheat fields."[77] That allocation was to be made without regard to the prior use, despite Trujillo's request for such a preference.

In Santa Fe another allocation between different uses was made by the ayuntamiento in 1832. Unlike the 1722 water regulations under which the alcalde appointed a water judge/inspector for each of the two Santa Fe acequias, in 1832 each barrio was to appoint a water distributor who would allocate the water with equality. In times of scarcity "the gardens were not to be given preference over the farmlands."[78] The difference between Santa Fe's and Socorro's water allocations probably related to the age of the Villa of Santa Fe established in 1610 versus Socorro founded about 1817. The Socorro alcalde could cap the size of its residents' gardens since that community was still in the process of being settled. The size and number of gardens in Santa Fe, however, had been established for a long time. Located near the residences, the Santa Fe gardens could be irrigated with rainwater collected from the roofs and channeled into the gardens (*chorreras*).[79]

Another case pitting prior use against need/equity involved the Pueblo of Santa Ana and several Spanish irrigators at Angostura southeast of the pueblo. The Spanish landowners had acquired from San Felipe Pueblo land that had long been the subject of dispute and litigation between Santa Ana and San Felipe. The Guadalajara Audiencia finally heard the matter in 1818, confirming an earlier decision ordering the Spaniards who had purchased lands from San Felipe to restore them to Santa Ana. Most Spaniards accepted other lands at Algodones.[80]

However, a few stayed at Angostura. Among that number were Pablo Montoya, Antonio Montoya, and Juan Pablo Archibeque, who not only remained on the land but continued to farm it. Not surprisingly, these Spaniards (especially Pablo Montoya) were involved in water disputes with Santa Ana Pueblo.[81] To settle the first dispute in April of 1824, Governor Bartolomé Baca signed a temporary settlement (*composición*) of water use between Santa Ana and the Angostura irrigators to preserve the crops that had already been planted. Baca's solution was "to join [the Hispanic vecinos] as co-owners of the [Santa Ana] acequia with the same limits as last year."[82] In 1829 another dispute between Santa Ana and Pablo Montoya was resolved by ordering that Montoya be required to work on the acequia and be allowed to continue irrigating from the Santa Ana acequia.[83] Five years later in 1834, the Montoyas and Archibeque asked Governor Francisco Sarracino (1833–1835) to implement Governor Baca's 1824 decree. The Montoyas and Archibeque told the governor that their farmlands were adjacent to Santa Ana's irrigable lands and both could be irrigated from Santa Ana's acequia. According to the petitioners, the 1824 decree, mandating joint ownership of the acequia, had still not been executed. They asked Sarracino "in view of our . . . necessity, to provide that we join together with said Pueblo Indians in the work on the acequia so that we can irrigate our planted fields that are in existence right now."[84] In response, the governor ordered that the alcalde should "do the most suitable justice" so that the Angostura settlers would not lose their planted fields.[85]

Although Pablo Montoya and the other Angostura residents had probably been able to irrigate during the period that they were fighting with Santa Ana over water, they did not receive an allocation of water until 1836 when they petitioned alcalde José Andrés Sandoval. The Angosturan's 1834 petition had emphasized the necessity of irrigating their planted fields. Recognizing their need, Sandoval notified the mayordomo of the Santa Ana acequia that "in the distribution of water [the mayordomo shall] be guided by the greatest need."[86] Two years later, Pablo Montoya complained to the alcalde of Santa Ana "that he had lost his farmland for the lack of water,"[87] although he had a right to the acequia. Alcalde Salvador Montoya ordered that the Santa Ana mayordomo give Montoya the water because "even if he did not have any right, necessity is the highest of all laws."[88]

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It would appear that Pablo Montoya and his neighbors had been irrigating their fields informally over the ten years from 1824 to 1834, but the pueblo had not granted them formal status as irrigators on the Santa Ana acequia. Every time the Angostura settlers requested a more formal water allocation, they were allowed to continue their informal practice but granted nothing more. The 1836 and 1838 declarations of the principle of necessity, emphasizing the irrigation of planted fields, are among the strongest of all the cases studied. In spite of the prior use of Santa Ana and the highly questionable nature of Pablo Montoya's title, he and his neighbors were still allowed a share of water from the Santa Ana acequia based on their need, as long as they performed their share of work on the acequia.

In 1837, Governor Albino Pérez rendered a similar decision concerning the Santo Domingo acequia, although he emphasized the rights of the pueblo in this case. Apparently the pueblo had complained to Pérez about interference with its acequia by its Hispanic neighbors. The governor's interim ruling gave the pueblo the right to continue using its acequia without interference until the case was formally decided. The governor adopted formulaic language used in many water allocation decisions in the 1820s and 1830s, stating that the purpose of his interim decrees was to "protect respectively the rights of the mentioned parties, without ignoring [the right] that because of antiquity and seniority protected the Pueblo of Santo Domingo."[89] Similar language was used in a series of decisions affecting Taos Pueblo and its Hispanic neighbors rendered in 1815 and 1823. In these decisions, strong prior use language on behalf of the pueblo did not preclude water sharing between Taos Pueblo and its neighbors.

Water Allocation in the Taos Valley

As we have seen, during the late 1820s and early 1830s the Santa Fe ayuntamiento passed several water allocation ordinances in which the criterion of need/equity was paramount. The underlying theme of these local laws was that attempting to satisfy the needs of every irrigator was in the best interest of the community. The rhetoric of allocating water in an equitable manner according to need did not always work out in practice, but the idea had been present in Santa Fe water ordinances as early as 1722. Thus, by the 1820s Santa Fe had a history of over two centuries of water allocation among relatively few acequias.[90]

The situation in Taos was different. Ute and Comanche raiding had prevented substantial population growth in the Taos area until Spaniards made a lasting peace with the Comanches in 1786. Between 1790 and 1821 the number of Spaniards in the Taos region quadrupled from a little over three hundred to more than twelve hundred persons.[91] New settlements grew up on the grants surrounding Taos Pueblo with farmers irrigating from the Río Hondo, Arroyo Seco, Río Fernando, Río Chiquito, Río Grande del Rancho, Río Lucero, and Río Pueblo. Water on the latter two streams passed through the heart of Taos Pueblo and was shared between the pueblo and its Hispanic neighbors.[92] The influx of population into the Taos Valley in the first decades of the nineteenth century was one of the factors causing the alcaldes and the Taos ayuntamiento to render fairly conservative water allocation decisions "favoring well-established landowners, to the great disappointment of outsiders eager for new farmlands."[93] Another factor affecting the water allocation decisions in Taos was Governor Alberto Máynez and his bold but sometimes unrealistic land and water decrees.[94]

The year 1815 was a watershed for Governor Máynez. He made the Arroyo Hondo grant along the Río Hondo north of Taos Pueblo, and he ordered the alcalde of Taos to measure the Taos Pueblo league and evict the Spaniards within its limits.[95] No Spaniards were evicted, however, and the Arroyo Hondo grant was made by Governor Máynez on 2 April 1815, after he was assured by the petitioners that the land requested "was distant from the league of the Indians."[96] However, Taos Pueblo was not notified either at the time of the Arroyo Hondo petition or, as was customarily done, at the time of the act of possession on 10 April 1815. On that spring day, forty-one settlers were placed in possession of the Arroyo Hondo grant on tracts of land averaging one hundred varas along the Río Hondo.[97]

When Taos Pueblo found out about the Arroyo Hondo grant, its leaders complained to Governor Máynez on 11 April 1815, the day after the Arroyo Hondo act of possession. The pueblo, through its governor, José Francisco Luján, did not mention the Arroyo Hondo grant directly but simply asked that its "league of land to the four cardinal points" be measured and delivered to them, "so that our families can expand their planted fields and our animals can have ample pasture."[98] Governor Máynez knew that Arroyo Hondo was on Luján's mind, however, for in a notation following his decree he stated, "If the damages that the Indians of Taos have described result from the planting permitted to the residents in the *ciénega* of Arroyo Hondo, they would not be able to plant."[99] Governor Máynez had just made the grant to the Arroyo Hondo settlers five days earlier without consulting Taos Pueblo and now, without notifying the Arroyo Hondo settlers, he was threatening to

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revoke the grant. In addition, Máynez told alcalde Pedro Martín to measure the Taos Pueblo league (approximately seventeen thousand acres surrounding the pueblo), and if the fields and homes of any Spaniards were found within the league, they would "have to lose their labor, leaving the land free [for the Indians of Taos Pueblo]."[100]

This decree caused immediate turmoil in Taos and beyond. The local priest and the *Protector de Indios* represented the pueblo in the ensuing negotiations, but no one represented the Spaniards who would be displaced if the Máynez decree were followed to the letter. Alcalde Martín, who had the responsibility of resolving this impossible situation, told the governor that three communities of Spaniards, numbering almost two hundred families, would be dispossessed and suggested a compromise whereby the Spaniards would stay put in return for a onetime payment of forty-five head of livestock to the pueblo.[101] Taos Pueblo immediately rejected that offer, although its governor and the interpreter had earlier agreed to it. The frustrated alcalde thus had no compromise to lay before Governor Máynez, but he did point out that the Arroyo Hondo grant, "ten thousand varas distant from the league [of Taos Pueblo]," did not injure the pueblo.[102] Governor Máynez refused to budge regarding Spaniards on the pueblo league but did relent on the Arroyo Hondo grant. His position was that "Arroyo Hondo shall be populated by farmers if it can be done without damage to third parties."[103]

The dispute over the pueblo league was never fully resolved, though Máynez remained firm to the end and stated that the Pueblos' "rights to the league which his majesty has granted them is incontestable."[104] The governor seemed to modify his position a bit, however, by announcing that he would not make a final ruling unless he was backed up by a judgment from the Audiencia of Guadalajara. The governor sought a compromise that would satisfy both the Indians and Spaniards, but since both sides wanted the land and Taos Pueblo would accept nothing less, reaching a settlement seemed impossible.[105] Faced with similar situations, earlier governors like Tomás Vélez Cachupín had been able to compel a compromise that upheld the four-square-league principle and required the most egregious Spanish trespassers to move, realizing that rigid enforcement of the pueblo league was not always practical.[106]

"Word of Máynez's Taos Pueblo decision sent shock waves up and down the spine of New Mexico's nervous system, the Río Grande," according to legal historian G. Emlen Hall.[107] Antonio Canjuebes, living inside the league of Santa Clara Pueblo, feared that he might be evicted by Governor

Máynez and "his peculiar ideas" (*sus raras ideas*). So Canjuebes, a Spanish-speaking Indian, took the initiative and filed a petition with the *commandante general* in Durango, intimating that the Taos decision had so agitated the Pueblos that violence could break out at any time. Canjuebes may have been exaggerating, but he certainly knew about the Máynez decision and believed that he had to go outside New Mexico to get a fair hearing. His case did not relate to water rights, but when the Durango court ordered Canjuebes off his land unless he established membership in the pueblo to Santa Clara's satisfaction, it seemed to vindicate Governor Máynez's absolutism regarding the pueblo league.[108] The effect of Governor Máynez's ruling regarding the Taos league was far reaching and influenced water as well as land distribution. Less than ten years after the Taos Pueblo litigation, two water rights allocations, involving parties to the 1815 Taos Pueblo lawsuit and others, were made by local Taos officials. Again the rhetoric of absolute rights was sounded, but with water rights absolutes were even harder to enforce in practice.[109]

When two leading residents of Arroyo Seco entered into an agreement concerning water rights they claimed on the Río Lucero, both Taos Pueblo and Fernando de Taos contested Arroyo Seco's claim in a lawsuit that dragged on for years. Finally, on 30 December 1823 the ayuntamiento of Taos rendered a water allocation decision containing strong language in support of the prior use rights of Taos Pueblo and reminiscent of the absolutist stance of Governor Máynez in 1815. Unlike Máynez, however, the Taos ayuntamiento led by Juan Antonio Lobato, showed some flexibility when it outlined the respective rights of the parties. As in other lawsuits involving water the advancement of agriculture was the most important consideration, and that broad principle meant specifically that "none of the parties should lose their fields."[110] According to Lobato, Taos Pueblo had a strong claim of prior use of the Río Lucero because its irrigation from that river dated from "the foundation of the pueblo."[111] In addition, Taos had purchased land directly north of the pueblo known as the Tenorio tract. Ownership of that parcel, Lobato said, gave the pueblo a new right to the Río Lucero. As a result, "since time immemorial [the pueblo members] have been absolute owners with a complete right to the water of the Río Lucero," according to the ayuntamiento.[112] As for Arroyo Seco, the ayuntamiento decided that its settlers had acquired their land through a grant made by Governor Codallos y Rabal "but had not made use of the granted land for a long time," and in 1815 began to use their land.[113] Nevertheless, the ayuntamiento suggested that "one surco of water

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shall be allowed them [settlers at Arroyo Seco] from the Río Lucero when the water is abundant and in times of scarcity it shall be given to them proportionately."[114] This water allocation took into account the need of the Arroyo Seco settlers while recognizing the prior use claims of Taos Pueblo.

This water allocation in December 1823 and another in Arroyo Hondo six months earlier contain the strongest language concerning absolute water rights of any New Mexico cases. Nevertheless, the end result was a water-sharing compromise in which "no petitioner received all he asked for but no one was left empty-handed."[115] The ayuntamiento, so eager to make a strong statement on behalf of prior use, seemed to overemphasize land ownership as a measure of water rights. Unlike the decree a little more than a decade later by alcalde José Andrés Sandoval in connection with the Santa Ana acequia, the rights of Arroyo Seco and Taos Pueblo seemed to be based as much on land ownership as water usage. Pablo Montoya did not have clear title to his land near the Santa Ana acequia but was allowed to share the water in that acequia with Santa Ana Pueblo because his planted fields needed water. The purchase of the Tenorio tract by Taos Pueblo, which gave the pueblo access to the Río Lucero, would not usually establish water rights unless the owners diverted and used water from the river.[116]

The Taos ayuntamiento may also have been acting, as did later governors of Mexican New Mexico, "as a counterbalance in slowing down the rush of greedy vecinos to possess Indian property."[117] The Indian property in question was unused land, lying within the pueblo league, that vecinos began requesting as early as 1821, in the wake of the liberal legislation of the Spanish Cortes that remained in force in independent Mexico.[118] Another factor was the tendency, mentioned earlier, to favor established landowners in competition with newcomers for scarce land and water. The purpose seemed to be to discourage new settlement in the Taos Valley, and strong statements about the rights established by prior use were made equally in cases involving Taos Pueblo, where the prior usage was considered to be from time immemorial, as in others like Arroyo Hondo, where the prior usage period was not even a decade.[119]

After the initial settlement of Arroyo Hondo, a second settlement, known as San Antonio, was established upriver in 1823. The San Antonio settlers received authorization from Governor José Antonio Vizcarra (1822–1823) for the new settlement and were placed in possession of their private tracts by alcalde Vicente Trujillo in late May 1823. About that same time the settlers dug two acequias that still irrigate their farmlands, the San Antonio Acequia

to the north and the Prando Acequia south of the Río Hondo. These acequias, and another dug from the Río Hondo by Arroyo Seco settlers, threatened Arroyo Hondo's water supply, causing settlers to complain to the Taos ayuntamiento.[120]

On 23 July 1823 alcalde Juan Antonio Lobato made a water allocation between Arroyo Hondo, San Antonio (upper Arroyo Hondo/Valdez), and Arroyo Seco. His decision contains some of the strongest prior use language of any of the water cases studied. Foreshadowing his Río Lucero allocation in December of the same year, Lobato first decided the relative rights of the Arroyo Seco settlers vis-à-vis both Arroyo Hondo settlements. According to the ayuntamiento, "Arroyo Hondo [both settlements] has a complete and absolute right to the water from its source": Arroyo Hondo because of its antiquity and San Antonio because of the possession authorized by Governor Vizcarra.[121] The ayuntamiento continued, "Without the permission and consent [of Arroyo Hondo] the settlers of Arroyo Seco cannot use the acequia which they have taken out of the said river," for the water belonged to those who cultivated lands on the banks of the river.[122] This presented Arroyo Seco (and Desmontes two miles to the east) with a potentially crippling water rights problem, which was apparently resolved, for these communities have continued to irrigate from the Cuchilla acequia.[123] It is interesting to note the similarity in the language between this July case and the December Taos Pueblo–Arroyo Seco water allocation. Alcalde Lovato and the ayuntamiento did not distinguish between the prior use of an Indian Pueblo and that of a relatively recent Hispanic community, but used strong absolutist language in both cases.

Water Allocation Between the Pueblos

Some pueblos asserted the principle of prior use against other pueblos, and in a dispute between Acoma and Laguna Pueblos, each one claimed prior use over the other. Since Laguna was founded, the two pueblos had been fighting over the water from the Río San José. In 1757 Governor Marín del Valle ruled in favor of Acoma on land irrigated at Cubero but recognized that Laguna should have "the privilege of irrigating their sowings in case the running water subsides."[124] When fray Francisco Atanasio Domínguez made his visitation to Acoma in 1776, he reported that Acomas at Cubero were irrigating with water from the Río San José and noted that Cubero was three leagues from Laguna and five to six leagues from Acoma. At Cubero the Acoma

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Indians "sow all they can . . . on both sides of the river that flows to Laguna . . . and harvest very reasonable crops."[125] In 1788 fray Juan Agustín Morfí described the land at Cubero as "the best which they [the Acomas] possess, as much because of the good quality of the land as because they utilize the irrigation which the spring of El Gallo makes easy for them." According to Morfí, the irrigated fields at Cubero were "two short leagues wide from east to west and a half-a-league long from north to south."[126] Laguna and Acoma were apparently sharing water, with Laguna retaining a right to surplus water under the 1757 Marín del Valle decree.

By 1827 Laguna had become dissatisfied with this arrangement. In a petition to Governor Narbona, the Lagunas stated that Acoma irrigated its large cultivated gardens near the pueblo from springs at the foot of the pueblo when seasonal rain (*de temporal*) was insufficient. Laguna had no dispute with Acoma over those springs and fields, but in relation to the Cubero lands, Laguna spokesmen asked the governor for a preference over water from the Río San José although the Lagunas would allow the Acomas to "plant a small tract so as not to impede the flow of water." Lying downstream on the Río San Jose, Laguna claimed prior use—but not exclusive use—over its water and believed that Acoma was impeding its flow. No decision was made on the Laguna petition.[127]

Remaining unresolved throughout the Mexican period, the Acoma-Laguna dispute became one of the earliest water rights cases filed in the territorial courts of New Mexico. In 1854 Acoma filed suit against Laguna to determine the ownership of land and water rights near the Ojo del Gallo. Acoma claimed that its ancestors, known as the Pueblos of Tsiam-a, had settled on the Río del Gallo more than two hundred years before. Sometime later, the Acomas claimed, Laguna Pueblo was established on the same stream below the Pueblo of Tsiam-a. Laguna initially claimed only the Río del Gallo's surplus water not used by Acoma but later asserted equal or exclusive entitlement to the water in that stream. Disputing many of the historical claims made by Acoma, the Lagunas argued that Acoma had lost some water rights through abandonment. Nevertheless, in this case Laguna did not claim a preferential or exclusive right but rather a right "in common with the Acoma people."[128]

In the case brought by Acoma, the territorial district court of New Mexico decided that Acoma owned most of the land in dispute and that its people were in fact the descendants of the Pueblo of Tsiam-a. The court enjoined Laguna from using the land in question but awarded it the surplus water.

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However, the decision did not settle all the land and water problems between Acoma and Laguna. Water rights issues were often resolved through self-help. At one point, when the Lagunas tried to take their share of water, the Acomas violently expressed their disagreement with the amount of water diverted. Invading Laguna farms, a band of Acomas began tearing up onions and corn, burning houses, and taking hoes, plows, and blankets.[129] Acoma alleged trespass by Laguna and, in connection with the Acoma-Laguna water wars, filed several cases. These lawsuits show some animosity between the pueblos, but all cases were settled, demonstrating that both pueblos continued the practice of water-sharing. Although there was a long history of acrimony over land and water rights between Acoma and Laguna, the two pueblos were eventually compelled to share water out of necessity.[130]

Attempts to Prevent Upstream Irrigation

Most New Mexico settlers realized that, once a junior water appropriator was settled upstream from a senior water user and had begun farming, the principle of need/equity would override prior use and lead to water sharing, especially in times of scarcity. Accordingly the first settlers on a river often tried to prevent any settlement upriver from them. One example of this type of preventative action involved the Juan Tafoya (Altamirano) and San Fernando grants. In 1767 settlers on the San Fernando grant asked that the boundaries of the Tafoya grant be measured, claiming encroachment on the San Fernando grant. Finding at least two and a half leagues between the grants, alcalde Bartolomé Fernández rejected the San Fernando protest.[131] However, the root of San Fernando's objection was that they did not want anyone irrigating upstream from them. San Fernando farmers understood that, once upstream irrigators were in place, downstream irrigators would likely be constrained to share available water in spite of their prior use.[132] The settlers on the San Fernando grant also protested adjoining grants to Luis Jaramillo and to settlers from Atrisco. In their objection to the Luis Jaramillo grant the San Fernando settlers referred to their lack of water as one of the reasons for the protest.[133]

In 1795, the residents of Ranchos de Taos tried a different strategy to preempt irrigation upstream from their settlement. Instead of waiting until Spanish authorities made an adjoining grant, the settlers protested that they had "information indicating that other vecinos intended to request a grant [upriver from Ranchos de Taos], or had already requested a grant."[134] This

would cause Ranchos de Taos settlers great damage, they said, "because our majesty knows that said river goes dry and our planted fields are large."[135] Not limiting themselves to this protest, however, the Ranchos de Taos settlers filed another petition asking that the land upriver (later known as the Rancho del Río Grande grant) be granted to them for grazing and not for farming, "because of the scarcity of the water in the river and because [the river] often goes dry." Governor Fernando Chacón made the grant to the petitioners, who were placed in possession on 9 April 1795. Now the problem of avoiding upstream irrigators seemed to have been solved.[136]

Since the Rancho del Río Grande grant remained unsettled, it was a tempting target for landless Hispanos seeking farmland. Nicolás Sandoval was the first to give in to that temptation, submitting unsuccessful petitions in 1827 and 1837 to secure the Rancho del Río Grande land for settlement and farming. In his second petition, Nicolás Sandoval told Governor Albino Pérez that he and his fellow settlers were "not asking for any waters [from the river] for the irrigation of [their] fields" but would rely on springs in the mountains for irrigation.[137] When the ayuntamiento was asked for a report, its representatives said a grant to Nicolás Sandoval and associates would damage "about 300 families who have lands below . . . as the springs which irrigate the [Rancho del Río Grande] tract are very small and always scanty and would not be sufficient to irrigate their fields."[138] The implication of the ayuntamiento's report was that the lack of sufficient irrigation water from springs on the grant would require new settlers to divert water from the river, forcing downstream users at Ranchos de Taos to share scarce water that was already inadequate for their needs. Based on this report Governor Albino Pérez rejected the petition of Nicolás Sandoval. By means of the Rancho del Río Grande grant Ranchos de Taos irrigators were able to prevent upriver settlement and the water-sharing regime that would inevitably result.[139]

Often, however, downstream irrigators were unsuccessful in preventing new upriver settlements and were compelled to share water with the new settlers. In 1752 Juan de Gabaldón asked Governor Vélez Cachupín for a grant of uncultivated land on both sides of the Río Tesuque east of Tesuque Pueblo. Gabaldón needed irrigated farmland to support his family but was unable to find any in Santa Fe due to "the great scarcity of water" there.[140] When alcalde José Bustamante Tagle summoned the neighboring landowners to investigate the feasibility of making the grant, Juan Benavídez, a landowner downriver from both Gabaldón and Tesuque Pueblo, objected to the Gabaldón grant. According to Benavídez, "if the cañón were settled, not a

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drop of water would reach him or his fields."[141] In spite of Benavídez's and Tesuque's objections, Governor Vélez Cachupín made the grant to Juan Gabaldón, because in his opinion Tesuque Pueblo would suffer no prejudice and the land should not be left unsettled. Gabaldón had promised to construct a reservoir (*tanque*), with the help of Tesuque Pueblo and Benavídez, but Vélez Cachupín ordered him not to "dam [the river] or impede the course of the water that may be necessary for the cultivation and irrigation of the land of the two ranchos adjoining on the south and north."[142] The governor had received "other private reports" (*otros reservados*) bringing to his attention the existence of several springs on the Gabaldón grant that could augment the supply of irrigation water downstream. (This contrasts with the Rancho del Río Grande grant and the Sandoval petition in which a determination was made that the springs there would not increase the flow of the river.) Governor Vélez Cachupín's instructions were characteristically precise about water sharing on the Gabaldón grant:

> When it shall become necessary to dam the flow from the springs of water that may be within his boundaries which may serve for purposes of irrigation with some other *vecino* who has no other water . . . they shall make an agreement about who can irrigate with said waters.[143]

Thus the governor clarified what had been a vague promise by Gabaldón to construct a reservoir with the help of his neighbors. The tanque was to be filled with water that flowed from the springs on his grant, and the tanque was to be built with the help of Gabaldón's neighbors, who lacked water and would be able to irrigate with water from the reservoir. Most importantly, the parties building the tanque had to enter into a water-sharing agreement covering what land was to be irrigated with that water. However, when alcalde Bustamante Tagle placed Juan Gabaldón in possession of his grant, there was no mention of the reservoir or of a water-sharing agreement. Instead Gabaldón was ordered "not to injure any of his neighbors by cutting off from them the water running in the river during the time they need it, especially from the Indians of the pueblo of San Diego de Tesuque."[144]

It is interesting to observe the different emphasis placed on the issues of water distribution by alcalde Bustamante Tagle and Governor Vélez Cachupín. The alcalde had brought the Benavídez protest to the governor's attention, yet Veléz Cachupín made no finding about whether Juan Benavídez would suffer a loss of water if the Gabaldón grant were made. The governor

was most concerned with the practicalities of finding irrigable land to relieve the population pressure in Santa Fe where irrigation water was scarce.[145] Governor Vélez Cachupín realized that there was some hope of increasing the water supply at Tesuque by damming the runoff from springs on the Gabaldón grant. In any case successful agriculture in the area would require a water-sharing regime, and alcalde Bustamante Tagle was the one who would initially have to administer it. When issuing his decree, Vélez Cachupín had to take into account the entire province, while the alcalde focused more on his own jurisdiction. In the end, however, both officials helped sanction the settlement of Juan de Gabaldón upriver from Tesuque Pueblo, Juan Benavídez, and other Spanish settlers. Consequently, downstream prior use would be ineffective against the imperative of water sharing. However, the water-sharing schedules that were developed over the next four decades seemed to respect the right of Tesuque Pueblo to a substantial share of the available water, while the Spanish settlers' portion expanded and contracted depending on the circumstances.[146]

The Pueblos also used the tactic of obtaining an upriver grant of land to protect downriver irrigators. In the case of Santa Clara Pueblo, their grant of upriver land, known as the Cañada de Santa Clara, came about in a less direct way than did the Rancho del Río Grande grant. The history of the Cañada de Santa Clara grant illustrates the near inevitability of a water-sharing problem to a downstream user when upstream lands are in different hands. In 1724 a grant was made to Cristóbal Tafoya upstream from Santa Clara Pueblo on the condition that the land be used only for grazing. From 1724 to 1763 several different Spaniards grazed cattle on the grant. In 1763, the priest at Santa Clara Pueblo, fray Mariano Rodríguez de la Torre, told Governor Vélez Cachupín that the Spaniards were not abiding by the grazing limitation but were now farming upriver from Santa Clara.[147] Vélez Cachupín was outraged at the violation of the grazing-only condition and declared the upstream grant null and void. Not only was the no-farming condition broken, but the upriver grant was closer than a league and one-half to the Pueblo. Accordingly, the governor decreed that the area would henceforth "be for farmlands and ejido of the Pueblo," in addition to the pueblo league, and "no vecinos are to be allowed to settle on the land or be given a grant there."[148] Governor Vélez Cachupín was in effect making a new grant to Santa Clara Pueblo to protect its water source. Now theoretically, any upriver irrigating would be done by Santa Clarans. But in 1780 Governor Juan Bautista de Anza reaffirmed Vélez Cachupín's decree prohibiting grants to Spaniards within the area covered by the

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Cañada de Santa Clara grant, because the priest had complained that another Spaniard was occupying this land.

The Cañada de Santa Clara grant was confirmed to Santa Clara Pueblo by the Court of Private Land Claims in 1894 "for all the lands in the valley between the foothills on each side of the Santa Clara River westward from the west boundary of the Pueblo of Santa Clara grant as far as the foot of the mountains." This land was first surveyed at over 1800 acres but later reduced to 490 acres.[149] Although the area of the confirmed grant was probably reduced far beyond the acreage originally intended, the purpose of the grant was achieved, at least through 1885, when the pueblo indicated that the prohibition of settlement had protected the Santa Claran water supply.[150] Both Santa Clara Pueblo and the residents of Ranchos de Taos were aware that they could not rely on prior use to prevent the sharing of water once upstream irrigators were in place.

Conclusion

Water allocations in Hispanic New Mexico generally involved competition between the two rival principles of prior use and need/equity. The first settlers often raised prior use as an argument, while irrigators who settled later advocated need and equity. These later settlers typically claimed that their survival depended on the ability to irrigate their crops. Lacking the right to claim prior use, they argued that available water should be apportioned equitably, especially in times of scarcity, to irrigate the gardens and fields of all families in need.

Usually the principle of need/equity prevailed over prior use and each side was allowed some irrigation water. The nature of the need/equity criterion led to a water-sharing tradition, whereas at the core of the prior use argument was an element of exclusivity foreign to New Mexico's water regulations and decisions. Spanish colonial and Mexican water litigation revealed a flexible, community-based water allocation system in New Mexico. A system breakdown could become a matter of life and death, and a period of drought tested the cohesion and cooperation of a community. From digging the acequia to rotating the irrigation, the level of a community's cooperation could determine its viability and survival.[151] This was especially true in northern New Spain where the country's aridity made water one of the most precious resources. But community was equally precious. A rigid winner-take-all water system was inimical to community solidarity, and without community there was no surviving the harsh realities of frontier life.[152]

The concept of water sharing is still applied on many of New Mexico's community acequias. Taos acequias have obtained official sanction for their customary water-sharing regimes based on a 1991 court hearing before Special Master Frank Zinn. One of the acequia commissioners at that hearing testified: "We share water based . . . on need. If we feel that a field needs some water, we can help that person. . . . Those are the customs that were developed and used by our ancestors."[153] The cases and regulations reviewed here tend to corroborate that statement. Although New Mexico irrigators have fought over water during times of drought, the water allocation regime they followed in the end was one of "sharing the shortages."

Notes

N.B. Spanish orthography has been standardized in citations from primary sources.

1. Sonya Lipsett-Rivera, *To Defend Our Water with the Blood of Our Veins: The Struggle for Resources in Colonial Puebla* (Albuquerque: University of New Mexico Press, 1999), 89–90.
2. For a case in which violence was threatened see testimony of Rafael Gallegos, *Quintana v. León*, Taos County Civil Cause No. 343 (1887), Transcript of Testimony, p. 11. Legal Files, Taos, Southern Pueblos Agency, Albuquerque, discussed in Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1994), 57.
3. John O. Baxter, *Dividing New Mexico's Waters, 1700–1912* (Albuquerque: University of New Mexico Press, 1997), passim. The "water is for fighting" aphorism is on the back cover.
4. *Recopilación de Leyes de los Reynos de las Indias* (Madrid: Ivlián de Paredes, 1681). Several authors have made the mistake of applying modern water allocation terms such as *prior appropriation* to water allocation problems in Spain and the colonies. Allowing water to be claimed by anyone who can put it to beneficial use, the doctrine of prior appropriation was adopted in the West to encourage the development of irrigation and its core concept, 'first in time is first in right,' and "paralleled the way in which miners established property rights to minerals in the public domain." Stephen F. Williams, "The Law of Prior Appropriation: Possible Lessons for Hawaii," *National Resources Journal* 4 (October 1985): 913. Theodore Downing states that "the Mexican state follows the doctrine of prior appropriation." See his "Irrigation and Moisture-Sensitive Periods: A Zapotec Case," in *Irrigation's Impact on Society*, ed. Theodore E. Downing and McGuire Gibson, Anthropological Papers of the University of Arizona, no. 25 (Tucson: University of Arizona Press, 1974), 113. A review of Downing's evidence, however, discloses a misunderstanding of the term, *prior appropriation*. Downing refers to a system in which every irrigator received a "fixed number of hours . . . on a first come-first served basis." That water-sharing regime appears to be based on equity/need. Downing, "Irrigation and Moisture-Sensitive Periods," 117–18. Lipsett-Rivera follows Downing's statement regarding

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prior appropriation. Lipsett-Rivera, *To Defend Our Water*, 25 (see note 16 below for more on the prior appropriation confusion).

5. Michael C. Meyer and Michael M. Brescia, "The Treaty of Guadalupe Hildalgo as a Living Document: Water and Land Use Issues in Northern New Mexico," *New Mexico Historical Review* 73 (October 1998): 321–45; Baxter, *Dividing New Mexico's Waters*; Daniel Tyler, "The Spanish Colonial Legacy and the Role of Hispanic Custom in Defining New Mexico Land and Water Rights," *Colonial Latin American Historical Review* 4 (Spring 1995): 149–65; Daniel Tyler, "Underground Water in Hispanic New Mexico: A Brief Analysis of Laws, Customs, and Disputes," *New Mexico Historical Review* 66 (July 1991): 287–301; Daniel Tyler, *The Mythical Pueblo Rights Doctrine: Water Administration in Hispanic New Mexico* (El Paso: Texas Western Press, 1990); and Daniel Tyler, "Ejido Lands in New Mexico," in *Spanish and Mexican Land Grants and the Law*, ed. Malcolm Ebright (Kansas: Sunflower University Press, 1989), passim; Michael C. Meyer, *Water in the Hispanic Southwest: A Social and Legal History* (Tucson: University of Arizona Press, 1984); and Malcolm Ebright, "Manuel Martínez's Ditch Dispute: A Study in Mexican Period Custom and Justice," *New Mexico Historical Review* 54 (January 1979): 21–34.
6. Michael E. Murphy, *Irrigation in the Bajío Region of Colonial Mexico* (Boulder, Colo.: Westview Press, 1986); William B. Taylor, "Land and Water Rights in the Viceroyalty of New Spain," *New Mexico Historical Review* 50 (July 1975): 189–212; Thomas F. Glick, *The Old World Background of the Irrigation System of San Antonio, Texas* (El Paso: Texas Western Press, 1972); and Thomas F. Glick, *Irrigation and Society in Medieval Valencia* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1970).
7. Ebright, *Land Grants*; Tyler, "Ejido Lands in New Mexico"; Charles L. Briggs and John R. Van Ness, eds., *Land, Water, and Culture: New Perspectives on Hispanic Land Grants* (Albuquerque: University of New Mexico Press, 1987); Victor Westphall, *Mercedes Reales: Hispanic Land Grants of the Upper Rio Grande Region* (Albuquerque: University of New Mexico Press, 1983); and G. Emlen Hall, *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800–1933* (Albuquerque: University of New Mexico Press, 1984).
8. Daniel Tyler, "Land and Water Tenure in New Mexico: 1821–1846" (unpublished report on file in *New Mexico v. Aamodt*, No. 6639, Federal District Court for New Mexico, 1979); Michael C. Meyer and Susan M. Deeds, "Land, Water, and Equity in Spanish Colonial and Mexican Law: Historical Evidence for the Court in the Case of the State of New Mexico vs. R. Lee Aamodt, et al." (unpublished report); John O. Baxter, *Spanish Irrigation in Taos Valley* (Santa Fe: New Mexico State Engineer Office, 1990); John O. Baxter, *Spanish Irrigation in the Pojoaque and Tesuque Valleys During the Eighteenth and Early Nineteenth Centuries* (Santa Fe: New Mexico State Engineer Office, 1984); Iris H. W. Engstrand, "Historical Analysis of the Development of the California Pueblo Water Right Doctrine" (unpublished report prepared for *Martinez v. Las Vegas*); and Hans W. Baade, "The 'Pueblo Water Rights' of the City of Las Vegas, New Mexico" (unpublished report prepared for *Martinez v. Las Vegas*); William B. Taylor, "Colonial Land and Water Rights of New Mexico Indian Pueblos" (unpublished report on file in *New Mexico v. Aamodt*, No. 6639, Federal District Court for New Mexico, 1979).

9. The approach is similar to that followed by Meyer in *Water in the Hispanic Southwest*, chap. 8."
10. Sonya Lipsett-Rivera, "Indigenous Communities and Water Rights in Colonial Puebla: Patterns of Resistance," *The Americas* 48 (April 1992): 478–79.
11. Sonya Lipsett[-Rivera], "Water and Social Conflict in Colonial Mexico: Puebla, 1680–1810" (Ph.D. diss., Tulane University, 1988), 75.
12. See pp. 28–32 for a summary of these and other attempts to prevent upstream irrigation in New Mexico.
13. Lipsett-Rivera, "Water and Social Conflict in Colonial Mexico," 78–79.
14. Lipsett-Rivera, "Indigenous Communities and Water Rights," 479–80.
15. Lipsett-Rivera, *To Defend Our Water*, 25.
16. For a more complete discussion of the use of the term, *prior appropriation*, by Lipsett-Rivera, see Michael M. Brescia's review of her *To Defend Our Waters with the Blood of our Veins: The Struggle for Resources in Colonial Puebla*, in *Colonial Latin American Historical Review* 9 (Winter 2000): 143–45. Brescia states that the misunderstanding of *prior appropriation* "reveals the difficulties of viewing the Hispanic water regimen through a modern lens tinted by common law notions of water rights." He correctly points out that Lipsett-Rivera (along with other scholars) probably confused prior appropriation with prior use. Although the doctrine of prior appropriation was not part of Hispanic civil law, neither was it a prominent part of English common law, as was the doctrine of riparian rights (the idea that a landowner has a property right in the water that flowed through his land). M. Catherine Miller, *Flooding the Courtrooms: Law and Water in the Far West* (Lincoln: University of Nebraska Press, 1993), 10–11. Peter Reich has shown how the courts have been partially responsible for the idea that prior appropriation had some basis in Hispanic law: "Arizona judges justified the doctrine [of prior appropriation] by citing Hispanic law, despite their awareness of appropriation's inconsistency with actual Spanish and Mexican community water-sharing." Peter Reich, "The Hispanic Roots of Prior Appropriation in Arizona," *Arizona State Law Journal* 27 (Summer 1995): 650.
17. Lipsett-Rivera, "Water and Social Conflict in Colonial Mexico," 82.
18. Michael Murphy, "Irrigation in the Bajío Region of Colonial Mexico" (Ph.D. diss., University of California, Berkeley, 1978), 311.
19. Taylor, "Land and Water Rights in the Viceroyalty of New Spain,"200–201.
20. Lipsett-Rivera, "Water and Social Conflict in Colonial Mexico," 22–23. She discusses cases in which the parties refer to Spanish codes—in 1789 Pedro José Anchoa won his lawsuit through the citation of such a code—but her source confuses the citation of Ley 17, Título 31, of the third *partida* of *Las Siete Partidas* with the *Recopilación*. Lipsett-Rivera, *To Defend Our Waters*, 92.
21. Taylor, "Land and Water Rights in the Viceroyalty of New Spain," 201–3.
22. *Indians of Agueguetzingo v. Nicolás de Torres Castillo Merlín*, Puebla, Jurisdiction of Chietla, 1705, is discussed in Taylor, "Land and Water Rights in the Viceroyalty of New Spain," 203.
23. "En la provisión necesaria para sus personas . . . para el riego de sus siembras y huertas." Taylor, "Land and Water Rights in the Viceroyalty of New Spain," 204 n. 47.

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24. *Indians of Apaseo v. Hernán Pérez* is discussed in Taylor, "Land and Water Rights in the Viceroyalty of New Spain," 205.
25. Ward Stavig, *The World of Túpac Amaru: Conflict, Community, and Identity in Colonial Peru* (Lincoln: University of Nebraska Press, 1999), 101–4. I am grateful to Rick Hendricks for bringing Stavig's work to my attention.
26. Stavig, *The World of Túpac Amaru*, 103–4 citing don Joseph Cusipaucar Maita, cacique principal de Oropesa, 1754. Archivo Arzobispal del Cuzco. Corrg. Prov. Leg. 66, 1752–65.
27. Meyer, *Water in the Hispanic Southwest*, 145–67.
28. One example of a merced de agua in New Mexico is connected with the don Fernando de Taos grant made in 1796. The Taos settlers had requested a grant of the surplus waters of the Río de Taos and the Río Lucero, and in November 1797 alcalde Antonio José Ortiz stated that Governor Fernando Chacón had ordered him to make the merced de agua "for their [the Taos grantees'] greater protection." Certification by alcalde Antonio Joseph Ortiz, Pueblo of San Gerónimo de Taos, 7 November 1797, New Mexico State Archives and Records Center, Santa Fe, N.Mex, Spanish Archives of New Mexico (hereafter SANM), I:883. Another example of a water grant was part of the Cañada de Salitre grant, which overlapped the 1835 Las Vegas grant. Juez de paz (Justice of the Peace) Santiago Ulibarrí made a grant of land, 2000 varas in circumference, to Manuel de Herrera. Ulibarrí instructed Herrera that only he could use the water there because of its scarcity. San Miguel County Courthouse, Las Vegas, N.Mex., San Miguel County Deed Records, Book 1, p. 46.
29. Meyer, *Water in the Hispanic Southwest*, 146–64.
30. Tyler, *The Mythical Pueblo Rights Doctrine*, 41–42, passim.
31. Daniel Tyler, letter to author, 21 December 1999.
32. Thomas F. Glick, *Irrigation and Society in Medieval Valencia*, 64–68.
33. Malcolm Ebright, "Frontier Land Litigation in Colonial New Mexico: A Determinant of Spanish Custom and Law," *Western Legal History* 8 (Summer/Fall 1995): 199–226; Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700–1810* (Albuquerque: University of New Mexico Press, 1995), 34–35; and Meyer, *Water in the Hispanic Southwest*, 160–61.
34. *Recopilación de Indias*, Libro 3, Título 2, ley 63.
35. Murphy, *Irrigation in the Bajío Region*, 18–19.
36. Decree of alcalde Francisco Bueno de Bohórquez y Corcuera, Santa Fe, 16 July 1722, SANM II:317A; and Meyer, *Water in the Hispanic Southwest*, 64–65.
37. Ebright, "Frontier Land Litigation," 199–204, especially nn. 15, 16; and David Guillet, "Rethinking Legal Pluralism: Local Law in the Evolution of Water Property Rights in Northwestern Spain," *Comparative Studies in Society and History* 40 (January 1998): 45–48. I am grateful to David E. Vassberg for bringing this article to my attention.
38. Both Iris H. W. Engstrand and Jane C. Sánchez discuss the background to the Plan of Pitic in the same issue of the *Colonial Latin American Historical Review*: Engstrand, "A Note on the Plan of Pitic," *Colonial Latin American Historical Review* 3 (Winter 1994): 73–78; and Sánchez, "The Plan of Pitic: Galindo Navarro's Letter to Teodoro de Croix, Comandante General de las Provincias Internas," *Colonial Latin American Historical Review* 3 (Winter 1994): 79–89.
39. The laterals diverting water from the acequia madre under Article 19 of the Plan of Pitic were called *albollones*.
40. "No puede ni tiene facultad para tomar el agua de otro destino ni en mayor cantidad que la que cayere a la suya." Plan of Pitic, Chihuahua, 20 January 1800, SANM I:1265.
41. "A proporción de la necesidad que tuvieren de este beneficio." Article 20, Plan of Pitic, Chihuahua, 20 January 1800, SANM I:1265.
42. "Para el riego de ellas el agua necesaria." Ireneo L. Chaves, trans., "Instructions to Peralta by Vice-roy," *New Mexico Historical Review* 4 (April 1929): 178–87.
43. Lansing B. Bloom, "When Was Santa Fe Founded?" *New Mexico Historical Review* 4 (April 1929): 188–94.
44. Decree of alcalde Francisco Bueno de Bohórquez y Corcuera, Santa Fe, 16 July 1722, SANM II:317A.
45. "Acudiendo siempre a la mayor necesidad." Decree of alcalde Francisco Bueno de Bohórquez y Corcuera, Santa Fe, 16 July 1722, SANM II:317A.
46. "Ni maltratar a nadie de palabra ni de obra." Ibid.
47. "Dándole a cada uno aquella que necesitare." Ibid.
48. If the insubordinate person was female, the judges/inspectors were to notify the alcalde so that he could deal with the situation. Ibid.
49. Criminal proceedings against Nicolás Ortiz, Santa Fe, 13 July 1723, SANM II:317A.
50. Ibid.
51. This file, forty-five pages long, is discussed in Baxter, *Dividing New Mexico's Waters*, 19–21. Criminal proceedings against Nicolás Ortiz, Santa Fe, 1723, SANM II:317A. For a discussion of the right of asylum in New Mexico, see Elizabeth Howard West, "The Right of Asylum in New Mexico in the Seventeenth and Eighteenth Centuries," *New Mexico Historical Review* 41 (April 1966): 115–54. The Nicolás Ortiz case is discussed at pp. 131–32. This article also appeared in the *Hispanic American Historical Review* 8 (August 1928): 357.
52. "Dios no mandaba se quitaran las vidas por cosas justas." *Rafael Espinosa v. José Ortega and Cornelio Vigil*, Santa Cruz de la Cañada, Sender Collection, 121, New Mexico State Records Center and Archives, Santa Fe.
53. "Los sembrados tan necesarios para la subsistencia de las gentes." Decree of Governor Pedro Fermín de Mendinueta, Santa Fe, 12 March 1768, SANM II:637.
54. "Los considerables robos que se ejecutan en las milpas y huertas de los que ponen su eficacia y trabajo en sembrar y cultivar sus tierras." Decree of Governor Pedro Fermín de Mendinueta, Santa Fe, 12 March 1768, SANM II:637.
55. Ibid.
56. There were penalties for building houses in suspicious places (presumably near fields with easy access to crops) including the destruction of the house or *jacal*. Ibid.
57. "Siembren y cultiven a tiempo." Ibid.
58. "Si alguno o algunas pidiesen el agua y sus milpas o huertas estuvieren perdidas e incapaces de dar fruto por falta de cultivo se la negará." Ibid.
59. Juan Rafael Ortiz, Journal of the ayuntamiento of Santa Fe (Domingo Fernández,

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secretary), 1 May 1829 Mexican Archives of New Mexico (hereafter MANM), roll 9, fr. 1216, New Mexico State Archives and Records Center, Santa Fe.

60. Marc Simmons, "Antonio Barreiro's 1833 Proclamation on Santa Fe City Government," *El Palacio* 76, 3 (1969): 26.
61. Marc Simmons, "Hygiene, Sanitation, and Public Health in Hispanic New Mexico," *New Mexico Historical Review* 67 (July 1992): 205–25. See especially his discussion on pp. 206–8.
62. "Con toda eficacia y buen orden." Decree of the ayuntamiento of Santa Fe, 1 May 1829, MANM, roll 9, fr. 1216.
63. "Con igualdad sin acetación [*sic*] de personas." Juan Rafael Ortiz, Journal of the ayuntamiento of Santa Fe (Domingo Fernández, secretary), 1 May 1829, MANM, roll 9, fr. 1216.
64. For a perceptive description of the problems of a mayordomo today, see Stanley Crawford, *Mayordomo: Chronicle of an Acequia in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1988), 147–49 and passim.
65. Meyer, *Water in the Hispanic Southwest*, 163.
66. "[Equity provided] a basis for discretionary judgment when local conditions seemed to dictate that title, legal right, or prior use should be subordinated to more immediate environmental exigencies." Ibid.
67. "Por el bien procomunal." Report of Santa Fe Water Commission, Santa Fe, 23 December 1841, cited in Meyer, *Water in the Hispanic Southwest*, 163.
68. "Buena armonía, Dios nuestro señor la aumentará de lo contrario nos castigará." Juan Rafael Ortiz, Journal of the ayuntamiento of Santa Fe (Domingo Fernández, secretary), 1 May 1829, MANM, roll 9, fr. 1216.
69. David Langum, *Law and Community on the Mexican California Frontier* (Norman: University of Oklahoma Press, 1987), 131–44; Ebright, *Land Grants and Lawsuits in Northern New Mexico*, 69.
70. "Se han de servir de dicha agua estos dos colindantes por iguales partes por ser muy escasa." Nuestra Señora de la Luz de las Lagunitas Grant, New Mexico Land Grants-Surveyor General [hereafter NMLG-SG], report 101, roll 22, fr. 1608 and New Mexico Land Grant-Private Land Claims [herafter NMLG-PLC], case no. 70, roll 41, fr. 480.
71. José Tafoya's prior possession of his grant is indicated by the fact that his house was located on the line between the third and fourth boundary markers and he had planted his land in 1762. Ibid.
72. "Como uno de los primeros recentados a la tierra que ha sabido cultivar . . ." Manuel Trujillo to Governor Antonio Narbona, Santa Fe, 12 March 1827, SANM I:1010.
73. "A otros que acaban de radicarse en la citada jurisdicción negándonos a los primeros absolutamente que nos aprovechemos de la agua del ojo que baña el terreno." Ibid.
74. "Con el despotismo de los Robespierres." This flowery rhetoric was probably composed by someone other than Manuel Trujillo since Trujillo was unable to write and signed with an X. Ibid.
75. "Si sobrara se les da a los que siembran maíz y trigo." Trujillo to Narbona, San Miguel del Socorro, 31 March 1827, SANM I:1010.
76. "Local governments acted as delegates of the sovereign in matters of water allocation. The specifics of administration were left to local officials who frequently responded to political and social pressures, personal interpretations of the laws, and customs in force at the time." Tyler, *The Mythical Pueblo Rights Doctrine*, 20.
77. "Lo que no se debe perder es las huertas del trigo." Trujillo to Narbona, San Miguel del Socorro, 31 March 1827, Narbona, SANM I:1010.
78. "Las huertas no se deben preferir sobre labor[es]." Minutes of the ayuntamiento of Santa Fe, 12 April 1832, MANM, roll 14, fr. 990–92.
79. In the act of possession for the community of San Antonio (present day Valdez), houselots were distributed together with an average of twelve varas for *chorreras*.
80. The disputes between San Felipe and Santa Ana over land at Angostura are summarized in Laura Bayer, Floyd Montoya, and the Pueblo of Santa Ana, *Santa Ana: The People, the Pueblo, and the History of Tamaya* (Albuquerque: University of New Mexico Press, 1994), 90–95.
81. For a summary of these repartimientos and a transcription and translation of each, see William B. Taylor, "Notes on Land and Water Cases for Angostura and the Indian Pueblos of Santa Ana and San Felipe," (unpublished manuscript, 1979).
82. "Mancomunicándolos en la acequia en los mismos términos que estuvieron en año pasado." Decree of Governor Bartolomé Baca, Santa Fe, 27 April 1824, Julius Seligman Collection, doc. 1, Center for Southwest Research, University of New Mexico [hereafter Seligman Collection].
83. Order of alcalde Pedro José Perea, Bernalillo, 18 July 1829, doc. 2, Seligman Collection.
84. "En vista de nuestr[a] . . . necesidad disponga al que nos incorporemos con dichos naturales en el trabajo de la acequia para poder regar nuestros sembrados que existen en aquel presente." Pablo Montoya, Antonio Montoya, and Juan Pablo Archibeque to Sarracino, Santa Fe, 11 July 1834, doc. 3, Seligman Collection.
85. "Hará la justicia mas conforme." Decree of Governor Sarracino, Santa Fe, 1 August 1834, doc. 3, Seligman Collection.
86. "Que en el reparto de agua se atienda a la mayor necesidad." Order of José Andrés Sandoval, San Isidro, 30 June 1836, doc. 4, Seligman Collection.
87. "Que tiene su labor perdido por falta del agua." Decree of alcalde Salvador Montoya, Jemez, 1 August 1838, doc. 5, Seligman Collection.
88. "Aun cuando no tuviera derecho la necesidad es la suprema de todas las leyes." Ibid.
89. "Favorecer respectivamente los derechos de las partes contenidas sin olvidarse del que por antigüedad y mayoría ampara al Pueblo de Santo Domingo." Governor of New Mexico to the agent and leader of the Pueblo of Santo Domingo, Santa Fe, 6 April 1837, MANM, roll 21, frs. 774–76.
90. Decree of alcalde Bueno de Bohórquez y Corcuera, Santa Fe, 16 July 1722, SANM II:317A; and decree of Governor Mendinueta, Santa Fe, 12 March 1768, SANM II:637.
91. Baxter, *Dividing New Mexico's Waters*, 33.
92. For a discussion of irrigation along each of these streams see Baxter, *Spanish Irrigation in Taos Valley*, passim.
93. Baxter, *Dividing New Mexico's Waters*, 33.
94. Alberto Máynez served two terms as governor of New Mexico, a short one in 1808 when he received an interim appointment and a second term from 1814 to 1816. White, Koch, Kelley, McCarthy, and the New Mexico State Planning Office, *Land Title Study* (Santa Fe: State Planning Office, 1971), p. 15.

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95. Arroyo Hondo grant, NMLG-PLC 5, roll 33, fr. 652 et seq.; Proceedings in connection with measurement of the Taos League, Taos, 11 April 1815, SANM I:1357.
96. "Estar distante de la Legua de los Indios." Petition of Nerio Sisneros, Taos, 27 March 1815, Arroyo Hondo grant, NMLG-SG 159, roll 29, fr. 207.
97. Act of possession by alcalde Pedro Martín, 10 April 1835, Arroyo Hondo grant, NMLG-SG 159, roll 29, frs. 203–306. There were two Acts of Possession, one dated 6 April 1815 and the other dated 10 April 1815. Both were accepted by the Court of Private Land Claims for they were included in the opinion confirming the grant. I have relied primarily on the second Act of Possession because it is more detailed. Although the 6 April document states that there were forty-four settlers, there were only forty-three, several of whom do not appear on the 10 April list. Three new names appear on the second list. PC 29–301, folder 4, box 1, Catron Collection, Center for Southwest Research, University of New Mexico Library, Albuquerque.
98. "Legua de tierras por los cuatro vientos;" "para que nuestras familias se extiendan en las siembras, y nuestros animales puedan pastarse con amplitud." Petition of José Francisco Luján, Governor of Taos Pueblo, 11 April 1815, SANM I:1357.
99. "Si de la siembra permitida a los vecinos en la ciénega del Arroyo Hondo resultan los perjuicios que me han manifestado los indios de Taos, no podrán sembrar." Decree of Governor Alberto Máynez, Santa Fe, 15 April 1815, SANM I:1357.
100. "Deber perder lo trabajado, dejándoles su suelo libre." Ibid.
101. The three communities referred to were probably El Prado/Los Estiércoles, Taos Plaza/La Loma, and Cañón (Dolores).
102. "Por distante de las legua más de diez mil varas." Report of alcalde Pedro Martín, Taos, 3 May 1815, SANM I:1357.
103. "El Arroyo Hondo se poblará de labradores, si pudiere ser sin perjuicio de tercero." Decree of Governor Máynez, Santa Fe, 6 May 1815, SANM I:1357.
104. "Sus derechos a las legua que su Majestad le mercenó,[*sic*] son incontestables." Decree of Governor Máynez, Santa Fe, 22 May 1815, SANM I: 1357.
105. Ten days after the Spaniards notified the governor that the offer of forty-five cattle had been rejected, they notified Máynez that the Spanish vecinos had raised their offer to fifty head of cattle, including horses, and that the pueblo had also rejected that offer also. Máynez was notified that, if the litigation was not settled and the governor let his eviction order stand, "the result would be a sensational [battle] between the vecinos and the Indians" (puede resultar una grande sensación entre vecinos e indios). Alcalde Pedro Martín and fray José Benito Pereyro to Governor Máynez, Taos, 13 May 1815, SANM II:2596.
106. *San Ildefonso v. Juana Luján, Antonio Mestas, Marcos Lucero et al*, February 1763, SANM I:1351.
107. G. Emlen Hall, "Land Litigation and the Idea of New Mexico's Progress," in *Spanish and Mexican Land Grants*, ed. Ebright, 51.
108. Antonio Canjuebe's grandfather, Roque Canjuebe, had started the problem when he asked Governor Joaquín Codallos y Rabal to emancipate him from the Pueblo of Santa Clara and grant him the land he worked as if he were a Spaniard. It was determined that Canjuebes spoke Spanish and had accepted the Catholic faith. Since the pueblo did not object to the Canjuebes grant, the grant was made in 1744. After the 1815 Taos decision Santa Clara changed its position regarding Canjuebes. Merejildo Tafoya to commanding general Bernardo Bonavia, [N.D.], SANM I:213.
109. Certification of Arroyo Hondo grant by alcalde Juan Antonio Lovato, Taos, 23 July 1823, Arroyo Hondo grant, NMLG-SG 159, roll 29, fr. 206; *Taos Pueblo and Fernando de Taos v. Arroyo Seco*, SANM I:1292.
110. "No pierdan ni unos ni otros sus labores." Ayuntamiento of Taos to Governor Bartolomé Baca, Taos, 30 December 1823, SANM I:1292.
111. "Desde que fundaron su pueblo." Ibid.
112. "Desde tiempo inmemorial son dueños [d]espóticos y tiene un total derecho a la agua del Río Lucero." Ibid.
113. "No habiendo hecho uso de su terreno mercenado en tan dilatado tiempo." Ayuntamiento of Taos to Governor Bartolomé Baca, Taos, 30 December 1823, SANM I:1292.
114. "Se les esceda un surco de agua del Río de Lucero cuando esté en abundancia, y cuando esté escaso se les dará a proporción." Ayuntamiento of Taos to Governor Bartolomé Baca, Taos, 30 December 1823, SANM I:1292. A *surco* was a measurement of water defined variously as the amount of water sufficient to fill the "aperture at the hub" of a wheel of a cart, or sufficient to fill a twelve-inch pipe. Baxter, *Dividing New Mexico's Waters*, 34. For more on the surco see John O. Baxter, "Measuring New Mexico's Irrigation Water: How Big Is a Surco?" *New Mexico Historical Review* 75 (July 2000): 397–413. See also, José A. Rivera, *Acequia Culture: Water, Land, and Community in the Southwest* (Albuquerque: University of New Mexico Press, 1998), 231.
115. Baxter, *Dividing New Mexico's Waters*, 34.
116. Under the riparian doctrine, the ownership of the bank of a stream carried with it the right to the water in the stream, but the doctrine was not followed in Spanish civil law. Miller, *Flooding the Courtrooms*, 10–11. Reich, "The 'Hispanic' Roots of Prior Appropriation in Arizona," *Arizona State Law Journal* 27 (Summer 1995): 649 n. 1.
117. Daniel Tyler, "Land and Water Tenure in New Mexico" (unpublished report on file in *New Mexico v. Aamodt*, Federal District Court for New Mexico , case no. 6639), p. 32.
118. This legislation and the Constitution of 1824 made Indians and vecinos equal as citizens of the Mexican republic but also provided that up to fifty percent of the common lands of the Pueblos within their league could be privatized if the Pueblos did not need these lands. In 1821, prior to the adoption of the Mexican Constitution of 1824, the Mexican government "found it expedient to declare that the Spanish Constitution and the acts of Cortes of Cádiz would remain in force in independent Mexico." Between 1821 and 1825 the Mexican government of New Mexico received applications from Hispanic vecinos for land within the pueblos of Pecos, Nambé, San Felipe, and Santo Domingo, but only those requests for land within the Pecos Pueblo League were granted and only during the term of Governor Bartolomé Baca. G. Emlen Hall and David J. Weber, "Mexican Liberals and the Pueblo Indians, 1821–1829," *New Mexico Historical Review* 59 (January 1984): 7–10.
119. Arroyo Hondo water allocation by alcalde Juan Antonio Lobato, 23 July 1823, Arroyo Hondo grant, NMLG-SG 159, roll 29, fr. 206.
120. Baxter, *Spanish Irrigation in Taos Valley*, 28.

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121. "Arroyo Hondo tiene un total y absoluto derecho a la agua de su fuente." Arroyo Hondo water allocation by alcalde Juan Antonio Lobato, 23 July 1823, Arroyo Hondo grant, NMLG-SG 159, roll 29, fr. 206.
122. "Sin permiso y consentimiento los del Arroyo Seco no podrán usar de la acequia que de dicho río tienen sacada." Ibid.
123. Baxter, *Spanish Irrigation in Taos Valley*, 29.
124. Ward Alan Minge, *Ácoma: Pueblo in the Sky* (Albuquerque: University of New Mexico Press, 1991), 34–35, citing an Archivo General de la Nación document translated by Eleanor B. Adams.
125. Eleanor B. Adams and fray Angélico Chávez, *The Missions of New Mexico* (Albuquerque: University of New Mexico Press, 1956),194.
126. Fray Juan Agustín Morfí, "Geographical Description of New Mexico," in Alfred Barnaby Thomas, *Forgotten Frontiers: A Study of the Spanish Indian Policy of Don Juan Bautista de Anza Governor of New Mexico, 1777–1787* (Norman: University of Oklahoma Press, 1932), 105.
127. "Hacer unas cortas siembras que no impidan el curso de la agua." Petition of Juan Miguel, cacique; Toribio; and Vicente Romero on behalf of Laguna Pueblo to Governor Antonio Narbona, Santa Fe, 15 June 1827, SANM I:1372.
128. *Acoma Pueblo v. Laguna Pueblo*, Valencia County case no. 74, Valencia County District Court Records, New Mexico State Records Center and Archives, Santa Fe; Edward D. Tittman, "The First Irrigation Lawsuit," *New Mexico Historical Review* 2 (October 1927): 367.
129. *Acoma v. Laguna*, Valencia County case No. 74, Valencia County District Court Records, SRCA.
130. The governor of New Mexico and the Indian agents fanned the flames of enmity between the two pueblos. W. W. H. Davis, governor in the mid 1850s, blamed the courts, stating that the Pueblos' "recourse to our courts of law appears to have inflamed the mind of these people against each other to a higher degree than before." Still siding with Laguna, Davis described Acoma as the aggressor and indicated that "Laguna would be justified in resorting to force if Acoma won the case." In 1849 the Indian agent in Santa Fe reported to the commissioner of Indian Affairs in Washington that "Mexican officials intentionally kept Acoma and Laguna embroiled over boundaries." Minge, *Ácoma,* 60.
131. Petition of twenty vecinos of Nuestra Señora de la Luz, San Fernando y San Blas to Governor Mendinueta, San Fernando, June 1767, and report of alcalde Bartolomé Fernández, Nuestra Señora de Guadalupe, 6 July 1767, SANM I:692. For the 1753 San Fernando grant, see SANM I:688.
132. For a brief history of the contentious San Fernando grant, see Malcolm Ebright, "Breaking New Ground: A Reappraisal of Governors Vélez Cachupín and Mendinueta and Their Land Grant Policies," *Colonial Latin American Historical Review* 5 (Spring 1996): 216–22.
133. Protest of Luis Jaramillo grant by Antonio Montaño, Marcos Baca, José de Jesus Montaño, Antonio Durán, Felipe Baca, Juan Candelario, José Antonio Castelo, Tomás Gurulé, Agustín Gallego, Mariano Gallego, and Juan Bautista Montaño to Antonio Sedillo, [San Fernando, July 1769], SANM I:421. Protest of Atrisco grant to Governor Mendinueta, [1768], PC 29–301, #45, folder 2, Box 8, Catron Collection, Center for Southwest Research Collection, University of New Mexico Library, Albuquerque; NMLG, roll 26, fr. 1035 et seq.
134. "Tenemos razón que algunos de los vecinos quieren pedir o han pedido en real posesión." Petition of Nicolás Leal (on behalf of the residents of San Francisco del Río de Las Trampas) to alcalde Antonio José Ortiz, Rancho del Río Grande grant, NMLG-SG 58, roll 19, frs. 50–51.
135. "Porque bien sabe Vuestra Merced como dicho río se seca y nuestros labores grandes." The settlers pointed out that, from the end of August through September, they suffered lack of water. Their petition was directed to alcalde Antonio José Ortiz who forwarded it to Governor Fernando Chacón. Petition of Nicolás Leal (on behalf of the residents of San Francisco del Río de Las Trampas) to alcalde Antonio José Ortiz Rancho del Río Grande grant NMLG-SG 58, roll 19, frs. 50–51.
136. "Por cuanto la fuente del río sea poca y hallamos que tan bien se seca." Grant by Governor Chacón, 9 April 1795, Rancho del Río Grande grant, NMLG-SG 58, roll 19, fr. 56.
137. "No pidiendo lo más leve de las aguas para los riegos de nuestros labores." Petition of Nicolás Sandoval (for himself and four others), San Gerónimo de Taos, 13 March 1837, Rancho del Río Grande grant, NMLG-SG 58, roll 19, fr. 52.
138. Rafael de Luna, Juan Antonio Aragón, and Juan Antonio Lobato on behalf of the ayuntamiento of Taos to Governor Albino Pérez, San Gerónimo de Taos, 31 March 1837, Rancho del Río Grande grant, NMLG-SG 58, roll 19, fr. 55.
139. Decision by Governor Pérez, Santa Fe, 20 April 1837, Rancho del Río Grande grant, NMLG-SG 58, roll 19, fr. 52.
140. "Por la mucha escasez de la agua." Gabaldón had lived in Santa Fe for twenty-one years and could not find land for farming either inside or outside the villa. Petition of Juan de Gabaldón to Governor Vélez Cachupín, [n.d.], Juan de Gabaldón grant, NMLG-SG 65, roll 19, frs. 1273–74.
141. "Que poblándose el cañón no le pasará gota de agua para sus sementera." Report of alcalde Bustamante Tagle, Río de Tesuque, 7 June 1752. Juan de Gabaldón grant, NMLG-SG 65, roll 19, frs. 1273–74. Alcalde Bustamante Tagle told the governor that "not a drop could reach him [Benavídez] at this time [anyway], as it is all very near the head." "No le podrá llegar gota por al presente por estar todo muy a los principios." Report of alcalde Bustamante Tagle, Río de Tesuque, 7 June 1752, Juan de Gabaldón grant, NMLG-SG 65, roll 19, frs. 1273–74.
142. "Ni tanquear y impedir el curso de las aguas que puedan ser útiles al beneficio del cultivo y riego de las tierras de los dos ranchos lindantes de sur y norte." Grant by Governor Vélez Cachupín, Santa Fe, 16 June 1752, Juan de Gabaldón grant, NMLG-SG 65, roll 19, frs. 1276–78.
143. "Cuando sea preciso tanquear la vertiente de algunos ojos de aguas que estén dentro de sus linderos y con ellas pueda regar algún vecino que no tenga otras aguas . . . concordándose entre sí el que pueda regar con ellas." Grant by Governor Vélez

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Cachupín, Santa Fe, 16 June 1752, Juan de Gabaldón grant, NMLG- SG 65, roll 19, frs. 1276–78.

144. "No dará perjudicar a ninguno de sus vecinos, atajándales el agua que corre por dicho río el tiempo les pueda servir ni menos a los Indios del pueblo San Diego de Tesuque." Act of possession by alcalde Joseph Bustamante Tagle, Puesto de Río de Tesuque, 17 June 1752, Juan de Gabaldón grant, NMLG-SG 65, roll 19, frs.1280–82. Alcalde Bustamante Tagle noted that the adjoining landowners had exhibited their documents to him and that the grant "would not damage [Juan] Benavídez" ["No recibir ningún perjuicio el referido Benavídez"]. Act of possession by alcalde Joseph Bustamante Tagle, Puesto de Río de Tesuque, 17 June 1752, Juan de Gabaldón grant, NMLG-SG 65, roll 19, frs. 1276–82.

145. In 1751 the governor had made the Las Trampas grant to twelve petitioners mostly from the Analco section of Santa Fe, because "there was insufficient land and water to maintain [the population] and no other employment or means of [their] support but agriculture" ["No hay ya tierras ni aguas para su mantenación ni tienen otro modo de trato oficios ni comercios que la agricultura"]. Granting decree for the Las Trampas by Governor Vélez Cachupín, Santa Fe, 15 July 1752, NMLG-SG, Las Trampas grant, report 17, roll 16, fr. 259.

146. In the 1770s the Benavídez family was allowed to take whatever water it needed for twenty-four hours every eight days with the pueblo having the exclusive irrigation rights the rest of the time. Governor Juan Bautista de Anza increased the Spanish settlers' share, but in 1788 under orders from Governor Fernando de la Concha, alcalde Antonio José Ortiz set up a new schedule that cut back Hispano water usage to a period from (first) daylight Monday to sundown Tuesday. Baxter, *Dividing New Mexico's Waters*, 21–22.

147. Cañada de Santa Clara grant, NMLG-SG 138, roll 25, frs. 1484–86.

148. "Sea para labor de siembra y ejido de dicho Pueblo . . . . sin que en ella se pueda introducir ningún vecino no dar de merced." Decree of Governor Vélez Cachupín, Santa Fe, 19 July 1763, Cañada de Santa Clara grant, NMLG-SG 138, roll 25, fr. 1488.

149. J. J. Bowden, "Private Land Claims in the Southwest" (L. L. M. thesis, Southern Methodist University, 1969), 3:556–61.

150. On 28 November 1885, Pueblo Indian Service agent Dolores Romero said that the pueblo would be deprived of its water supply if upstream settlement was allowed. Senate 49th Cong., 2nd sess., Senate Executive Document no. 26, 2–6, 33–34, cited in Bowden, "Private Land Claims," 3:559.

151. An example of communities that have died for lack of cooperation and/or lack of water are La Liendre downstream from Las Vegas on the Río Gallinas. See Lynn I. Perrigo, *Hispanos: Historic Leaders in New Mexico* (Santa Fe: Sunstone Press, 1985), 28. Another was the 1765 Los Quelites land grant that was revoked by Governor Tomás Vélez Cachupín because of factionalism and lack of zeal in making the settlement a success. Malcolm Ebright, "Breaking New Ground: A Reappraisal of Governors Vélez Cachupín and Mendinueta and their Land Grant Policies," *Colonial Latin American Historical Review* 5 (Spring 1996): 214–16.

152. "The philosophical focus of the Spanish and Mexican laws was on the reconciliation of conflict and the accommodation of conflicting interests, serving the greater interest in the community and its harmony." David J. Langum, *Law and Community on the Mexican California Frontier: Anglo-American Expatriates and the Clash of Legal Traditions, 1821–1846* (Norman: University of Oklahoma Press, 1987), 271.

153. Testimony of Candido Valerio, Santa Fe, 20 May 1991. *State of New Mexico v. Eduarto Abeyta and Celso Arellano*, Civil Cause No. 7896, U. S. District Court for the District of New Mexico, quoted in José A. Rivera, *Acequia Culture: Water, Land, and Community in the Southwest* (Albuquerque: University of New Mexico Press, 1998), 168.

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