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Taos Pueblo Water Rights Settlement

Paul Bossert

Darcy S. Bushnell

University of New Mexico - School of Law

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Taos Pueblo Water Settlement

The Taos Valley lies between the Sangre de Cristo Mountains and the Rio Grande Gorge. It is laced with streams that rush from the mountains, flow across the valley, divide and subdivide for the benefit of agriculture, then converge as they plunge toward the Gorge. The major streams are the Rio Hondo, Arroyo Seco, Rio Lucero, Rio Pueblo de Taos, Rio Fernando de Taos, and Rio Grande del Rancho.

In November of 2010, the Congress passed the Claims Resolution Act and on December 8, President Obama signed it into law. Title V of the Claims Act, the Taos Pueblo Indian Water Rights Settlement Act, settles the Pueblo portion of the *Abeyta* case and approves an agreement signed in 2006 by officials from Taos Pueblo, the State of New Mexico, and other interested water rights owners in the Taos area. The settlement act also helps resolve the non-Indian portion of *Abeyta*. The measure quantifies Taos Pueblo's water rights and protects the interests of local acequias, the Town of Taos, and other water users. In late 2013, the court opened the *inter se* phase of the adjudication of Taos Pueblo's water rights. The Utton Center's Stell Ombudsman Program facilitated public meetings during the *inter se* phase.

History

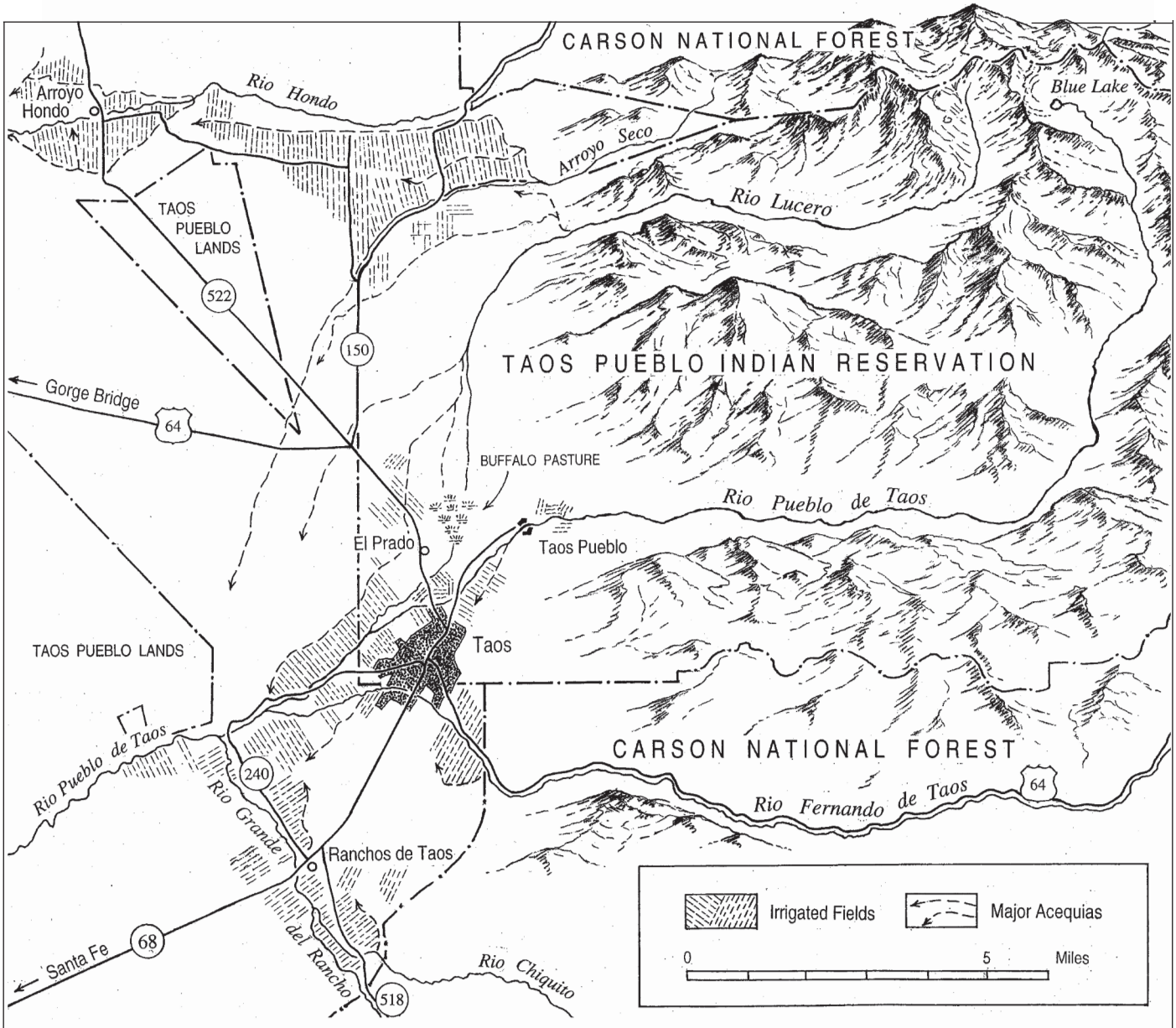
With the impending completion of the San Juan-Chama diversion project, which would bring thousands of acre-feet of new water into the Rio Chama and the Rio Grande—two-thirds of it bound for Albuquerque and the Middle Rio Grande Conservancy District—the State sought to adjudicate water rights throughout the upper Rio Grande and its tributaries in order to administer delivery of the San Juan-Chama water. Adjudications of the Rio Pueblo de Taos and Rio Hondo stream systems were filed in federal court in 1969, titled *State v. Abeyta* and *State v. Arellano*, respectively. The cases were later consolidated and are now often referred to as simply *Abeyta* or *Taos*.

The Taos Valley's long history of non-Indian acequia-based agriculture constitutes the record of water use for most of the adjudication. The challenge for the State Engineer was to gather and compile all historical information for the adjudication's hydrographic survey of surface water rights. While this was a large undertaking, it was substantially accomplished in a few years. The Taos Pueblo's

“The decades we have spent litigating and negotiating our water rights have put a tremendous burden on the Pueblo's scarce financial resources.... This adjudication commenced before our grandfathers successfully completed the 64-year struggle for the return to Taos Pueblo of the lands now known as the Blue Lake Wilderness Area.”

Nelson J. Cordova, Taos Pueblo,
before the Subcommittee
on Water and Power,
U.S. House of Representatives
(September 9, 2009)

The measure quantifies Taos Pueblo's water rights and protects the interests of local acequias, the Town of Taos, and other water users.



Taos Adjudication—Major Portions of Watersheds
 By Jerold Widdison for the Utton Transboundary Resources Center.

water rights were much more difficult to quantify than the non-Indian rights. Federal law provides that, unlike New Mexico state law water rights, Indian water rights are not limited to the amount of water continuously put to use and federal law does not provide a simple formula for determining the extent of those rights (see “Indian Water Rights” section of Water Matters!).

The Pueblo first submitted its claims to the adjudications court in 1989, and they were extensive, amounting to the entire flow of the Rio Pueblo de Taos and the Rio Lucero. In that same year, the Taos Valley Acequia Association (TVAA) approached the Pueblo

about negotiating, rather than litigating, the extent of the Pueblo’s water rights. The TVAA represented 55 acequias and community ditch associations with approximately 7,000 individual irrigators in the Taos Valley. The negotiations grew to include the Town of Taos, the El Prado Water and Sanitation District, twelve Taos-area mutual domestic water consumers’ associations (all representing another 11,000 Taos Valley residents), and the state and federal governments. By 2003, the negotiations had progressed far enough that the parties brought in a professional mediator to help them reach a settlement.

In May, 2006, an agreement was reached and signed by all parties except the United States, at a historic signing ceremony in Taos. The federal representatives opposed the proposal because, in their view, it did not require non-federal parties to pay costs proportionate to the benefits they receive. Proponents emphasize that the settlement quantifies the Pueblo's water rights, protects the water supply of the other water users in the Valley, and provides a mechanism for the Pueblo to increase its water use gradually up to the full amount of its water rights.

Groundwater Modeling

An essential tool for the negotiations was a computer model of groundwater flows in the Taos Valley developed by the Office of the State Engineer in consultation with a technical team representing each of the parties. The model incorporated the results of recent hydrogeological studies collected by various drillers, agencies, and consultants. The purpose of the model was to calculate the short- and long-term effects of pumping groundwater from existing wells and proposed wells on groundwater levels and surface flows. It will also be used administratively to evaluate future groundwater diversion proposals.

One limitation of the model is that relatively little groundwater has been pumped in the Taos Valley, so there is little drawdown data against which to check the projections of the model. The total pumping of all wells in the valley is approximately 2,500 acre-feet per year, and there is no evidence of regional lowering of groundwater levels. The settlement proposes significant increases in groundwater use, so groundwater levels will have to be carefully monitored to see if the effects of increased use match those predicted by the model, or if the model will need to be revised. The settlement specifies a process for revising the model. To that end, the parties have agreed to collect and share data on diversion amounts and groundwater levels, working toward establishment of a comprehensive monitoring program.

An essential tool for the negotiations was a computer model of groundwater flows in the Taos Valley developed by the Office of the State Engineer in consultation with a technical team representing each of the parties.

The Settlement

The settlement confirms nearly all existing uses of water, allowing all parties to continue to use the amount of water they currently use. It describes conditions and procedures under which various uses shall continue and evolve. It describes procedures for shortage-sharing and provides a framework for settling disputes, which the parties have agreed to use in lieu of making priority calls. It also settles all disputes over priorities and past over-appropriations.

The settlement calls for the use of groundwater to compensate for surface water shortages. Most groundwater users in the Taos Valley draw from a shallow aquifer. Water to supplement surface flows will come from new wells that will be drilled into a deeper aquifer, which the computer model predicts will not impair shallow wells or surface flows. As the deep aquifer is hydrologically connected to the Rio Grande, the proposal requires the parties to acquire and retire water rights on the Rio Grande to offset the impact of these deeper wells.

The Pueblo's Water Rights: Taos Pueblo's surface water consumption right is set at the amount needed to irrigate a maximum number of acres per year. However, the Pueblo has agreed to limit irrigation to the 2,322 acres currently under irrigation, approximately 40 percent of its total entitlement. The Pueblo further agrees to extend irrigation only after acquiring and retiring offsetting water rights in the Valley. Subject to some restrictions, any of the Pueblo's surface rights may be transferred to groundwater diversion.

The Pueblo may continue to use 315 acre-feet per year of groundwater presently withdrawn

The Pueblo has agreed to offer the Town of Taos the first opportunity to purchase any water that the Pueblo intends to market.

from twelve municipal and industrial wells, seventy-six domestic wells, and twelve wells for livestock watering. Additional groundwater shall be available to the Pueblo for development. The Pueblo will contract with the Interior Department for San Juan-Chama Project water to offset depletions to the Rio Grande.

The Pueblo also has water rights for the protection of Buffalo Pasture, a spring-fed wetland situated west of the Pueblo village near El Prado Water and Sanitation District (EPWSD) and the Town of Taos. Water flows have declined at this site, and the hydrological model attributes the decline to Town and EPWSD wells nearby. The Town and EPWSD have agreed to replace pumping near the Buffalo Pasture with pumping from wells further away. The settlement provides that the Pueblo may divert water from the Rio Pueblo de Taos outside the irrigation season and store it for Buffalo Pasture recharge. All the parties will collaborate in acquiring water rights on the Rio Grande to offset the effects of Buffalo Pasture recharge efforts. The settlement includes funding for construction of recharge infrastructure.

The Pueblo's water rights are not subject to forfeiture or abandonment, may be used for any purpose including maintaining stream flow, and may be temporarily marketed in or outside the Valley. The Pueblo has agreed to offer the Town of Taos the first opportunity to acquire any water that the Pueblo intends to market.

The Pueblo will enact and publish a water administration code that shall provide notice to water users in the Valley of any actions taken on the Pueblo's rights under the settlement. This code will provide a process for non-Pueblo water users to object based on impairment of water rights. The code will include due process and rights to present evidence and cross examine witnesses.

The Other Parties: The needs of the other parties will be addressed by a system of deep aquifer mitigation wells used to supplement acequia flows during irrigation season and to augment the supply of all local water systems (Pueblo, Town, EPWSD, and mutual domestic water consumer associations (MDWCAs)). The wells will be located so as to serve all the streams in the Valley. This system is intended to shift some of the hydrological impact of Valley water use to the Rio Grande, via the deep aquifer. Users of the mitigation wells will have to acquire offsetting water rights on the Rio Grande mainstem.

One of the mitigation wells will supply the Arroyo Seco Arriba Aquifer Storage and Recovery Project. This project provides new water to resolve disputes over the Rio Lucero. It involves the acquisition and storage of Rio Grande water rights, either underground or on the surface, for use in the irrigation season.

The settlement describes the surface users' shares of surface flows and shortage sharing procedures. All parties agree to resolve disputes through the procedures in the settlement and to refrain from making priority calls. The TVAA agrees to cooperate with the Pueblo in the Pueblo's acquisition of surface rights in the Valley in order to expand the Pueblo's irrigation to the full extent of its settled right.

The settlement allows the twelve area MDWCAs, the Town, and EPWSD to continue to draw water from existing wells in their current amounts of usage, subject to mitigation of impacts on surface flow and relocation of production for Buffalo Pasture recharge. The total volume of groundwater withdrawn in any one area is restricted and any new wells may not be located too close to existing wells. Several longstanding disputes are resolved by proposed acquisition of water rights for eleven MDWCAs and EPWSD, funded by the State. EPWSD and the Town will contract for San Juan-Chama Project water to offset impacts of the Settlement on the Rio Grande.

Legislative History and Funding

Legislative History: In November of 2010, the Congress passed the Claims Resolution Act which, among other things, included the Taos Indian Water Rights Settlement. President Obama signed the Act into law on December 8, 2010.

Briefly, the Taos Pueblo Indian Water Rights Settlement Act

- resolves the water right claims of the Taos Pueblo and authorizes the Taos Settlement Agreement;
- allocates 2,215 acre-feet of San Juan-Chama contract water to the Pueblo and 406 acre-feet to the other settlement parties;
- provides approximately 12,000 acre-feet per year of total water rights to the Pueblo;
- provides \$66 million in funding and authorizes an additional \$58 million for Pueblo and non-Pueblo water development and conservation projects;
- authorizes federal funding for the planning, design, and construction of water infrastructure projects known as “Mutual-Benefit Projects,” which provides that the non-reimbursable federal share of total costs will be 75 percent and the non-federal share may include in-kind contributions;
- Federal funding will be accomplished through two funds: (1) the Taos Pueblo Infrastructure and Watershed Fund for providing grants to the Pueblo for Mutual-Benefit Projects; and (2) the Taos Pueblo Water Development Fund for the Pueblo’s costs for projects such as water rights acquisition, rehabilitation of existing infrastructure, and various watershed protection activities including Buffalo Pasture revitalization.
- authorizes funding for grants to non-Pueblo entities for Mutual-Benefit Projects.

Funding: In 2009, Congress authorized the “Water Settlements Fund” in the Omnibus Public Land Management Act of 2009. This fund will be managed by the Bureau of Reclamation (Reclamation) and will serve as the major federal funding vehicle for the

three Indian water rights settlements in New Mexico (San Juan River/Navajo, Aamodt, and Abeyta). As enacted, the fund offers some potential for supplemental money for the Taos Settlement beginning in year 2020.

The Taos Water Rights Settlement Act includes \$66 million to purchase water rights and construct a number of projects to help improve water use efficiency, groundwater management, and water quality in the Taos Valley. The Pueblo will use its funding to assist with management of its water resources as specified in the settlement. The Act authorizes an additional \$58 million in future spending, subject to the appropriations process to implement the settlement fully.

The State of New Mexico will contribute approximately \$20 million to implementing non-Indian benefits in the settlement. In 2005, the legislature created the Indian Water Rights Settlement Fund for the State’s contribution to present and future Indian water right settlements. In 2007, the legislature appropriated \$10 million for the Fund but withdrew the funds in 2009 and authorized Severance Tax Bonds in the same amount. The ISC certified the sale of \$10 million in bonds to the Board of Finance in June of 2011. The legislature appropriated an additional \$15 million for the fund in 2011 and an additional \$10 million in 2013. Thus, the total amount of State appropriations to date is \$35 million. The State’s total contribution for all three settlements will be \$130 million in un-indexed dollars. The total amount of money needed for the State’s contribution to the Aamodt, Navajo, and Abeyta settlements will require continued annual appropriations of \$15 million through 2017.

Implementation

Following the enactment of the Taos Indian Water Rights Settlement Act, the settling parties have reconciled the settlement agreement and all its attachments with the Settlement Act. All settling parties except one acequia, the Spring Ditch, signed the reconciled agreement in December of 2012.

Inter Se Phase: The adjudication court is proceeding with the inter se phase of the adjudication. The court had a procedural order and an objection form served on all known parties. Before the deadline for filing objections, the settling parties held two public informational meetings. The time for objections has closed, and the court will be scheduling further proceedings. For more information please see the Stell Ombudsman web page for the Taos Adjudication.

Construction Phase: Pursuant to Title V of the Claims Resolution Act, Reclamation's Albuquerque Area Office is working on implementing Reclamation's responsibilities under the Settlement. Reclamation has entered into San Juan-Chama Project water contracts with Taos Pueblo, the Town of Taos, and El Prado Water and Sanitation District. The contracts were signed by the Secretary of the Interior in July of 2012 at a ceremony at Taos Pueblo.

Reclamation has also been working with the local parties to assist in the planning and

design of some of the Mutual-Benefit Projects. Upon the Enforcement Date, Reclamation will provide financial assistance in the form of grants on a non-reimbursable basis to eligible non-Pueblo entities to plan, permit, design, engineer, and construct the Mutual-Benefit Projects in accordance with the Settlement Agreement. The Enforcement Date is the date on which the Secretary publishes in the Federal Register giving notice that certain conditions precedent have been met. As of December of 2013, conditions that remain to be completed include: federal funds have been appropriated or provided; the New Mexico legislature has fully appropriated and deposited the state contributions; the State has enacted legislation regarding leasing of Pueblo water rights; and the court has entered the Pueblo's Partial Final Decree, and it has become final and non-appealable.

By Paul Bossert, Esq. (2009)

Latest Update by
Darcy S. Bushnell, Esq. (2013)

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Contributors

Arianne Singer, Managing Attorney,
NNM Adjudication Bureau,
N.M. Office of the State Engineer

Tanya Trujillo, Esq.

Jerold Widdison