

Adjudication of Water Rights

Taos Valley Acequia Association Fact Sheet*

An adjudication is a lawsuit, usually filed by the State, for determining who owns what water rights in a river system. Each different stream system has its own separate lawsuit. When the Office of the State Engineer (OSE) files an adjudication suit, each water right owner becomes a defendant and must establish the amount and extent of his or her water rights. This includes not only Acequia parciantes in the particular stream system, but also well owners, towns and municipalities, tribes, Pueblos, and the United States (if the adjudication involves federal water rights on federal lands).

Adjudications often take decades to complete. The adjudication of the Rio Nambe-Pojoaque-Tesuque stream system was filed in 1966 and has still not been completed. In any adjudication there can be hundreds or even thousands of defendants, and each water right owner has separate elements of his or her water right that must be defined. In addition, the judges or “special masters” are often involved in multiple adjudications, and so there can be long periods in which the court’s attention is focused on a different adjudication. The State Engineer, as the “plaintiff,” can strongly influence the amount of activity or inactivity in each adjudication. Also, if an adjudication deals with new or complicated legal issues, it can take years to conduct hearings, gather briefs from the different parties, and make a decision. For example, in the Rio de las Gallinas adjudication, the question of whether the City of Las Vegas has a unique water right based on Spanish and Mexican law has taken many years to litigate. In the Nambe-Pojoaque-Tesuque adjudication, determining the water rights of the Pueblos raised extremely complicated legal issues, and several decisions concerning the Pueblos’ water rights have been appealed over many decades. Further, courts often allow parties many years to try to reach a settlement on particular issues.

For each water right, the adjudication court must determine (1) the source of water (i.e., which stream or tributary); (2) the place of use (i.e., which tract of land and how many acres); (3) the purpose of use; (4) the point of diversion; (5) the priority date (i.e., date water was first put to use on that particular land); (6) the amount of water (i.e., the limit on the volume of water that can be used per acre); and (7) any other defining features of the water right. Some of these elements are decided routinely (purpose of use, for example), while others are often contested.

Some of the contested issues that generally arise in an adjudication are:

- *Does the defendant have a water right? How much water rights?* Often the OSE indicates on its maps only a portion of a parciante’s water rights without including other portions. The parciante will have to prove that there is a history of irrigation on the omitted tract to show that he or she has a valid water right on it. Or the State Engineer will claim that the entire water right has been forfeited or abandoned through a long period of non-use. The parciante will have to prove that the requirements of forfeiture and abandonment have not been met in order to maintain the water right.

- *What is the correct priority date?* The priority date of a water right is the date the water was first put to beneficial use on the land. This is a very important element of water rights in New Mexico, because the older (more senior) water rights on a stream system get preference in times of shortage. For water rights on Acequias, the priority date is the date the Acequia was constructed. When there are no written records of this, the court must estimate the priority date based on testimony and documentary evidence about when the community was settled. Acequias often hire historians to review these documents and testify in court, especially if the OSE is arguing a priority date that seems too late in time.
- *What is the correct amount of water?* There is a limit on the amount or volume of water that can be put on irrigated land (often called “duty of water”). Once that limit is established, any amount used over the limit will be considered “waste” and is considered unlawful. This limit is different for each region of the state, depending on the length of the growing season, elevation, and other factors in that region. In some adjudications involving Acequias, there is a separate issue of how much water can be taken at the Acequia’s point of diversion on the stream.
- *What are the water rights of town or municipalities in the stream system? Of the tribes or Pueblos in the stream system? On federal lands?* As indicated above, these questions can sometimes take years or decades to resolve.

Obviously it can be a challenge to make sure each element of your water right is adjudicated correctly, especially if you are arguing against the state and its experts. Because of this, the Acequia and Community Ditch Fund was established by the state legislature. If the majority of Acequias in an adjudication join together, they can apply for funding for any adjudication expenses, such as their own lawyers, hydrologists, historians, etc. Some of these “regional Acequia associations” also hire “field people” to help parciantes understand and respond to the legal papers they are served with.

*Adapted from a fact sheet provided by the New Mexico Acequia Association