

La Jicarita

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Self-Governing Commons: Managing Water as a Public Resource

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I went to a meeting last week of the committee that has been working on the Taos Regional Water Plan Public Welfare Statement. This is not the same statement that was originally drafted as part of the Taos Regional Water Plan back in 2006 but the basic criteria for determining what actually constitutes public welfare is in there, and it will now be presented to the “stakeholders” as an official component of the Taos Regional Water Plan.

Public Welfare is one of the criteria the Office of the State Engineer uses to approve or disapprove proposed water rights transfers (the other two are whether the transfer will impair other water rights and/or is contrary to the conservation of water) and has never been defined, either in practice or in legal precedent. Taos County started working on its regional water plan back in 2005, and I participated in the very contentious process to develop a public welfare statement, as a component of the plan, representing the southern part of the county and also covering it for *La Jicarita News*. In 2008 I quit the process when the powers that be and special interest groups high jacked it ([La Jicarita News, March 2008](#)) to block the formation of a Public Welfare Implementation Committee that would review all proposed transfers within and from Taos County and make a recommendation to the State Engineer as to whether the transfer is the best interests of the citizens of Taos County. Why? Because they want to be able to buy and sell water rights with no oversight.

But Taos County took up the gauntlet and promulgated an ordinance that set up a Public Welfare Advisory Board in 2010 to review proposed transfers based on much of the criteria we had devised under the Regional Water Plan: cultural protection, agrarian character, ecological health, long-term economic development potential, recreational tourism, public information, water supply management, conservation, conjunctive management, and minimizing water contamination. Thus far, the committee [disclosure: I am the chair of the committee] recommended to the Taos County Commission that it protest the proposed water appropriation and transfer of the El Prado Water and Sanitation District, a party to the Abeyta settlement, because we believe this movement of water is not consistent with the public welfare of the citizens of Taos County. The proposals seek to increase its water rights from the current amount of 25 acre feet per year (afy) to 575 afy.

Recently, in an e-mail to the Middle Rio Grande Water Assembly (a grass roots all-volunteer organization that focuses on water-related issues for Valencia, Sandoval and Bernalillo counties) listserve, John Brown, editor of the *New Mexico Water Dialogue* [website](#), addressed the idea of public welfare by referring to his “teacher” Lin Ostrom (see David Correia’s *La Jicarita* article “[Elinor Ostrom, Garret Hardin and the Future of The Commons](#)”) “who has shown, citing cases from among thousands of examples of longstanding, self-governing commons around the globe, humans are often able to create institutions for governing common-pool resources that require neither state control nor private ‘ownership’ of rights to those goods.” He goes on to suggest that perhaps the Taos County Public Welfare Ordinance can serve as a model for other “self-governing commons” in the state to define and implement public welfare in water transfer decisions. The Ordinance supports this idea of self-governing: the Office of the State Engineer has acknowledged that it is ill-equipped to assess the local values, concerns, and priorities that make up the local public welfare, whereas the identification of the county’s public welfare criteria reflect numerous public comments from the regional water planning process. The acequia communities of Taos County have a long history of managing water as a shared community resource and living within the means of the local, naturally occurring water supply.



Ditch cleaning crew of the Acequia Abajo de El Valle in the mid-1990s. Photo by Kay Matthews

In a previous article in *La Jicarita*, “[The Political Economy of Acequias: From Democratic Communalism to Business as Usual](#),” I called into question a fundamental conflict within the acequia community, a quintessential self-governing commons: the support of adjudication settlements that depend upon the movement of water from its area of origin by those who believe water is an individual private property right that each owner has the authority to sell on the open market. Brown also addresses this issue in his e-mail by deconstructing the notion of what constitutes “property rights”: “ ‘Rights,’ after all, are socially constructed rules about human

behavior—the action one is obligated, permitted, or forbidden to take under certain conditions, and what benefits or penalties attach to these actions or outcomes.” Custom and tradition within acequia communities, despite New Mexico law which assigns a priority date and ownership of water, still governs the *use* of the water by mayordomos and commissions, and *repartimiento*, or water distribution and sharing, is worked out among communities without state oversight. These settlements expand water markets, involve both state and national oversight, and constrain the conditions of obligation and penalty beyond the realm of custom and tradition.

In the May edition of *Noticias de las Acequias*, Paula Garcia, director of the New Mexico Acequia Association, responded to my editorial. She makes it clear that the NMAA is not going to get involved in adjudications or provide analyses of the settlements. It is crucial that constituents continue to voice their concerns regarding the issue of private property rights and the movement of water: hopefully, the Taos County Public Welfare Ordinance, which, as stated above, encourages us to “live within the means of the local, naturally occurring water supply,” can help maintain the custom and tradition of the self-governing commons.