

La Jicarita

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The Public Weighs in on Proposal to Move Questa Acequia Rights to the Taos Valley

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It was one of those meetings that Taos County is famous for. The tension was palpable and the people generating it were some of Taos County's high profile movers and shakers who came to state their case. It lasted three hours and only one item on the agenda was addressed.

The meeting of the Taos County Water Advisory Committee on August 19 was a hearing on the proposed water transfer by an association of 12 acequias in the Valdez and Arroyo Seco area of Taos Valley from the Llano Irrigation Community Ditch in Questa. The Acequia Madre del Rio Lucero y del Arroyo Seco has contracted with Lawrence Ortega of Questa to transfer 183.183 acre feet per year (afy) of water rights from his father Bernabe Ortega's estate that were severed from the land in the 1960s. As far as I can tell the water rights were intended to serve a proposed subdivision that never came to fruition, but no one I asked was able to confirm that. According to the contract these rights were "reserved" in the Red River Adjudication and are available for sale.

Who's buying the water rights is a little ambiguous. The Acequia Madre del Rio Lucero y del Arroyo Seco is a member of the Taos Valley Acequia Association. Palemon Martinez is the chairman of the board of the TVAA and the secretary of the Acequia Madre. As a party to the Abeyta Settlement Martinez negotiated the right to transfer water to the Acequia Madre, paid for by the federal government and the state of New Mexico (purportedly half a million dollars), to compensate the ditch for a "taking" by Taos Pueblo in 1935.

Palemon was at the meeting with TVAA lawyer Rebecca Dempsey to present his case. Alfred Trujillo, who was one of the founders of the TVAA, was there to debate Palemon over the history of the Acequia Madre (he claims the Arroyo Seco area has the most junior water rights in the Valley) and object to the transfer. Jeannie Masters, a commissioner on the Llano Irrigation Community Ditch was there to say the proposed transfer will impair the other parciantes on her ditch who have been sharing the water rights for many years. She also had a letter signed by other members of the Ortega family contesting Lawrence Ortega's claim that as the personal representative of his father's estate he owns all the water rights. Lawrence Ortega was there to claim his father had previously offered the water rights to the village of Questa but it turned him down. Joe Cisneros from Questa was there to point out that the molybdenum mine is using all of Questa's water and the area cannot afford to lose any more. Former district judge Peggy Nelson, who lives in San Cristobal, was there to say that as we struggle through this terrible drought water needs to stay in its area of origin. David Rael was there to accuse the TVAA and the Abeyta Settlement of discriminating against his acequia. Tony Trujillo was there to remind us that this is all paper water we're talking about: for the last several years the acequias haven't been able to deliver their allotted water to parciantes in the Taos Valley or in Questa.

The Taos County Water Advisory Committee was there to determine if this proposed transfer is in the best interest of the citizens of Taos County based on criteria that define the public welfare: cultural protection, agrarian character, ecological health of watersheds, long-term economic development potential, recreational tourism, public information, water supply management, conservation, conjunctive management, and minimizing water contamination. The Committee then makes a recommendation to the Taos County Board of Commissioners as to whether the board should or should not protest the proposed transfer to the Office of the State Engineer.

The Advisory Committee is the only one of its kind in the state. It's genesis lay in the Taos Regional Water Plan whose Public Welfare Committee proposed that a committee comprised of representatives of the subregions of the county who are knowledgeable about water issues provide public notice and

oversight of water transfers within the region. Acequia advocates have fought for years to get legislation that would require better public notice when transfers are proposed to the OSE. All that is required now is a notice in the legal section of a paper published in the region of the transfer for three consecutive weeks. A glaring example of the lack of public awareness allowed Santa Fe County to buy Top of the World (TOW) water rights in northern Taos County to transfer to the Pojoaque Valley to meet the terms of the Aamodt Settlement. This happened in 1999 and was protested by a collation of acequias and individual parciantes. The application has lingered in the OSE without any action taken. A second transfer application of these original water rights, 588 afy, as well as additional water rights the county subsequently acquired from TOW, 1,100 afy, will be filed as soon as revisions to the Aamodt Settlement are completed (whenever I ask Santa Fe County attorney John Utton when this might be he says “soon”).

The parties to the Abeyta Settlement fought against the establishment of a public welfare advisory committee, however. Because several of the parties would be seeking water transfers as part of the settlement they wanted unfettered access to water wherever they could find it. Unfortunately, where they’ve been finding it is in the northern subregion of Questa. El Prado Water and Sanitation District is seeking to transfer additional TOW rights to serve its water users in Taos and now the TVAA is buying the Oretga water rights to serve its parciantes in the Valley. As I mentioned previously regarding the TVAA transfer, the feds and the state will pay for the purchase of the water rights as well as the Aquifer Recovery and Storage (ARS) Project that is part of the TVAA deal: water will be diverted from the Rio Lucero in the winter, stored in ARS wells until spring, and then pumped from the wells to the acequias. The settlement parties, as well as various water brokers, managed to exclude the public welfare committee from the Taos Regional Water Plan, but Taos County stepped up to the plate and passed the Public Welfare Ordinance in 2010 setting up the Public Welfare Advisory Committee to review all water transfer applications within and from Taos County. The Ordinance was amended in 2013 to increase the responsibility of the committee to “assist and advise the County . . . with regards to long-term water planning, . . . water resource management, development-related impacts to water resources and as regards to water conservation.”

A year ago the committee reviewed El Prado Water and Sanitation District’s proposed transfers and recommended that the county protest several of them, which it did. In my article [“A Letter to Butchie”](#) in July I explained that the reconstituted 2013 commission decided to revisit the protest based on Commissioner Tom Blankenhorn’s opinion that the transfer of water rights are “a necessary mechanism” for the implementation of the Abeyta Settlement. El Prado Water and Sanitation District also filed an

appeal of the commission's decision, but I just found out last week that John Painter, the district's manager, had requested the appeal be tabled.

So there we (I'm a member of the committee) were on the 19th judging whether *another* Abeyta Settlement provision should be protested. After hearing what everyone in the room had to say, and trying to keep everyone on message (which is why the meeting lasted three hours), the committee voted six to two to recommend that the Board of County Commissioners protest this application based upon our evaluation of its impact on the public welfare of Taos citizens. One of the committee members who voted against the recommendation represents the Arroyo Seco subregion and is a parciante on the Acequia Madre, but also based his decision on the fact that the Llano Irrigation Community Ditch never officially leased the Ortega water rights and therefore could not claim the transfer would impair the ditch. The other member who voted against the transfer also cited this fact as well as the need to fulfill the terms of the Abeyta Settlement.

The committee submitted its report to the commissioners last week and a special meeting of the board was scheduled for today, Tuesday, August 27. Protests of proposed water transfers must be submitted to the OSE within 10 days of the last required publication of the proposal in the legals section of a local newspaper (in this case the *Taos News*). But late Friday afternoon I received an e-mail from the Public Information Officer in Taos that the meeting had been cancelled "due to a lack of quorum and conflict for administration." As of today, I haven't been able to find out what "the conflict for administration" means, but if the commission doesn't meet this week to hear the committee's recommendation and render a decision, the protest period will have ended. It's anyone's guess at this point whether administrative logistics or political movidas will thwart the process. Stay tuned and I'll hopefully have a more informed report next week.