

## Water rights transfer pitting acequia users against wealthy oilman

By Rebecca Moss, The New Mexican

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PECOS — Down a winding road lined with dense trees, the village of Pecos emerges. A bank, a Dairy Queen, the Church of Christ and two competing dollar stores flank the roadside. Many of the buildings look new. But Pancho Adelo, who runs a gas station in Pecos, has watched as businesses have closed one by one. And, Adelo says, the village is in danger of drying up in another way: It's losing water to downstream development.

It's another chapter in the long-running conflict between the old and the new in New Mexico when it comes to water, a story made famous by the novel *The Milagro Beanfield War*. This time it's residents of the Northern New Mexico village of Pecos versus a wealthy Texas gas and oilman who says he's building a trout fishing ranch "second to none" downstream.

Just behind Adelo's gas station, a narrow acequia diverts off the snaking Pecos River. The acequia users have worked since 1799 to maintain the West Pecos Ditch. For generations, the water that runs through it has been used to water fields, largely producing alfalfa and vegetables. Cattle graze on some of the land.

But many Pecos residents feel that a plan by one user of the acequia to sell his share of the water to the oilman's ranch, formerly owned by actor Val Kilmer, will fundamentally alter the DNA of Pecos, leaving land fallow and compromising the future of agriculture in the area. They fear worse economic times.

Once the water is severed from the land, "It's a way of life that disappears completely," Adelo says. "So the option in the future to farm these properties is gone."

Last year, Pecos resident and Village Council member Herman Gallegos agreed to sell rights to 20 acre-feet of water to a 5,328-acre ranch owned by Benjamin A. Strickling III of Midland, Texas. The rights amount to more than 6.5 million gallons that would be diverted down the Pecos River to Strickling's ranch annually for irrigation.

Strickling and his attorney, Kyle Harwood, say the water rights transfer is well within the rule of law and won't change how the water is used. Nor would it affect the water rights of residents upstream or downstream of the ranch, they say.

"Our goal is and always has been to continue the traditional use of water to irrigate fields to benefit wildlife, control erosion and support agriculture," Strickling said in a statement, adding that for years, wildlife has stayed away from the ranch because of a lack of vegetation.

Strickling says he's thinned overgrown woodland, reseeded natural grasses and partnered with the Santa Fe Conservation Trust to preserve a significant portion of the ranch. Strickling is a director of the trust.

A nearly six-mile stretch of the Pecos River runs through the Strickling ranch, but the water in the river belongs to other landowners along the Pecos, many who have held rights to that water for more than a century. Strickling says having access to the river but not rights to any of its water is the great irony of the land.

This is the second water transfer the ranch has sought, and the state engineer is scheduled to hear the ranch's application in June. Harwood said there are discussions about entering into mediation with a number of the petitioners before that time. Gallegos transferred another 10 acre-feet to Strickling in 2014.

The oilman purchased the property from Kilmer for \$18.5 million in 2011. The property has a 11,296-square-foot, seven-bedroom ranch house, and documents filed in San Miguel County show Strickling planned to renovate the house at a cost of \$4.5 million, including the addition of a swimming pool. Kilmer had used rental cabins on the property as a \$200-per-night bed-and-breakfast with guided horseback rides, biking trips and Jeep tours. The property also includes a 640-acre grazing lease.

In 2012, soon after the purchase, Strickling told *The New Mexican* he hoped to create "a trout fishing ranch second to none" while increasing the wild game population.

Pecos residents say the water transfers could limit the amount of water available to farmers and ranchers downstream from the ranch. They say it is hard for the state engineer to enforce just how much water the Strickling ranch pumps out or ensure that Gallegos stops using the water upstream.

"The farmers downstream are completely up in arms," says Wes Thompson, a vegetable farmer in Pecos. "There is a lot of worry — are we going to get enough water?"

No one contested the 10-acre transfer in 2014. Those protesting the new transfer of 20-acre feet say they weren't given sufficient notice of the first transfer. The state only requires that notice of such a transfer be published in the legal section of a local newspaper. Residents say they didn't see it.

This sole requirement for giving notice might not be the best way to reach the public, says Paula Garcia, director of the New Mexico Acequia Association.

Under New Mexico law, a water-rights transfer in the state cannot harm public welfare, alter water conservation or impair the water right itself. Many of the rights to water from the acequias in the region are senior rights, dating back to 1698. People in Pecos believe transferring rights away from an acequia weakens it and makes the land more susceptible to development rather than agricultural use.

These issues become more complex in a drought-prone state, Garcia says.

"In New Mexico, because we are water-scarce for the most part, all of the water in New Mexico is spoken for," she says. "There is no new water [in a transfer]. That water has to come from somewhere."

The Strickling transfer, she says, "brings up a lot of issues about sustainability and the future of water and the future of communities."

Adelo says Pecos has the natural resources to revitalize the economy without development. While the tradition of working the land has waned in recent decades, he says Pecos has the potential to tap into the emerging farm-to-table movement and supply organic produce to local buyers.

But without water rights, he says, “We’d lose all this agriculture.” He adds, “One person sells, the next person might want to cash out, as well. It’s just tumbling dominoes.”

Ralph Vigil, whose family has farmed in Pecos since the 1840s, says, “It’s hard when you are dealing with a guy like [Strickling] because he is very, very wealthy, and most people in acequias don’t have money to hire an attorney. It puts us at a disadvantage and allows one main landowner to dictate what happens to our community.”

Vigil adds that Gallegos is not the only acequia *parciante* who has been approached by Strickling’s land manager and a former conservation officer for the state, Phil Howes, about selling their water rights — just the first to agree.

Initially, 19 parties objected to the transfer, but about 10 dropped out, unable to obtain legal representation or the money to handle processing fees. Some held community raffles, and Thompson says he is in the process of setting up a legal fund.

Harwood, Strickling’s attorney, says state water law is designed to protect private interests. While public welfare and water conservation cannot be compromised in a water transfer, that area of the law is not well defined, he says.

It “is a very difficult topic, particularly when you are talking about water rights,” he says. “Water is obviously critical in New Mexico. There is a lot of emotion that goes along with water rights and moving water around.”

He says Gallegos followed all the rules in seeking to transfer his water rights and says there would be no change for other users of water.

Harwood says it is hard to see how opponents of the water transfer will succeed legally and that their concerns extend beyond this one transfer. “It is a lot of people representing very earnest concerns,” he says. “They are concerned about drought; they are concerned about the transfer of water in general.”

But Pecos residents say their general concerns about drought and water transfers are relevant and that water is integral to the future of Pecos.

Adelo says Strickling may promise conservation on his land now, but “who’s to say what the next user will do?”

By then, if the transfer is approved by the state engineer, the water will no longer run through the West Pecos Ditch.

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**Wes Thompson checks the acequia gate for his Pecos farm field. Users of an acequia in Pecos are protesting a water rights transfer to a ranch formerly owned by Val Kilmer. They worry that a water transfer could threaten the future of farming in the area. Luis Sánchez Saturno/The New Mexican**