

## Sharing the shortage

### **Acequias offer guidance for water managers seeking resilience in an uncertain future**

By J.R. Logan

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Norbert Ledoux beams with pride when he sees his acequia brimming with spring runoff on a sunny May morning.

Ledoux, a young farmer from Talpa, has 2 acres of beans, peas and other vegetables planted. Water in the ditch likely means a bountiful harvest. Enough crops to feed his friends and family, with plenty left over to sell at his roadside farm stand.

“This year, we have such an abundance that we can’t possibly use it all,” says Ledoux. “Everybody is content.”

Three years ago, things weren’t so cheerful.

On this same day in 2013, there was less than one-fifth the flow in this stream, the Río Grande del Rancho, which feeds more than a dozen other acequias — community-operated irrigation ditches that double as political subdivisions in New Mexico. By the middle of June, there was almost no water at all.

Amid that devastating drought, acequia leaders revived a water sharing agreement originally drafted to weather the brutal drought of the ‘30s.

At the time, Ledoux was a mayordomo – a ditch boss who monitors and manages an acequia. He says that first deal was struck to help the whole valley get through the dry spell.

“Everybody was losing their crops,” Ledoux explains. “So a few ancestors of mine – uncles of mine and my grandfather – got together with the mayordomos and implemented this water share project.”

Under the deal, each ditch agreed to take turns diverting the bulk of the river’s flow. Acequias are fed by gravity, and it’s hard to push water to fields and gardens when the river just doesn’t have enough oomph. By taking turns and using the water only for gardens and orchards, acequia users 80 years ago could make the most of the trickle and still grow enough food to survive.

When the sharing agreement was reinstated three years ago, Ledoux was responsible for deciding who got water and when. He says the sharing model worked, even if plenty of irrigators felt they were getting shortchanged.

But Ledoux says sharing water has always been customary. Taking more than your fair share would have simply been wrong.

This notion of sharing is not intrinsic to water law in the American West. In fact, it's just the opposite. But some believe the collaborative approach modeled by the acequias is a more logical and sustainable way to administer water in an increasingly challenging environment.

Most Western states, including New Mexico, have water law founded upon the notion of "prior appropriation," legal jargon that loosely translates to "first come, first served."

Under existing law, each water user is assigned a water right that includes a "priority date" meant to reflect when water was first put to some kind of use. If your priority date is older than your neighbor's, you get first dibs when there's not enough to go around — even if that means leaving your neighbor dry.

It's an antagonistic system that pits water users against one another.

"It does create essentially a caste system, a hierarchy," says Adrian Oglesby, a water law attorney and director of the Utton Transboundary Resources Center at the University of New Mexico. When water is scarce, some people win and some people lose.

Oglesby says the priority date system has its advantages. For instance, priority dates add certainty for farmers. If it's shaping up to be a dry year, those with older water rights have some assurance they'll get the water they need, and those with junior rights can prepare to go without.

While other states routinely cut off junior water rights holders, Oglesby points out the "harsh reality" of a priority call is almost never used in New Mexico. In part, that's because New Mexico's system for water administration is considerably less sophisticated than those of other states, making priority calls much harder to enforce.

Also, Oglesby says New Mexico water users themselves often come up with voluntary agreements, as Ledoux and the acequias in the Ranchos Valley did. Such resource-sharing agreements bypass the need for a priority call.

Proponents of the collaborative, community-based approach fostered by acequias argue such negotiations add a human element to the cold, inflexible logic of the priority date system. Within the acequia system, sharing is fundamentally rooted in the cultural notion of "auxilio" — helping when others are in need.

"For a lot of people, it's inconceivable that they would receive water at the expense of their neighbor," says Paula Garcia, executive director of the New Mexico Acequia Association (NMAA). "It just seems very counterintuitive to the concept of an acequia." In fact, state law includes language that offers flexibility to acequias so they don't have to strictly adhere to the priority date system.

Sylvia Rodriguez, professor emerita of anthropology at UNM and author of "Acequia: Water Sharing, Sanctity, and Place," believes the acequia model is more conducive to sustainability and resilience in a semiarid climate afflicted by frequent scarcity.

"We have the wrong world view here in the West, the idea of unlimited expansion, and it just doesn't work," she says. "I think land-based people who generally live on a small scale know that there's a limited good. The basic idea is that shortages are shared."

But can the acequia system endure the vagaries of Western water law? While acequias enjoy relatively senior water rights, some users worry urban areas will still get their way if water managers are ever forced to choose between shutting off cities or rural farmers. There are also fears that acequia water rights will eventually be bought up to feed urban centers downstream, leaving Northern New Mexico farmers dry.

For years, Garcia and the NMAA have advocated for the acequia model of cooperation as a way to resolve conflicts on a grander scale. They hope the same approach could avoid scenarios that end with clear winners and losers.

Other districts offer some evidence that a collaborative approach can work.

The same year the Ranchos acequias agreed to share water, ditches up and down the Río Chama, including some of the oldest acequias in the state, struck a similar deal. By agreeing to a rotating schedule, the acequias managed to avoid a priority call that could have left as many as 14 of the 17 ditches in one acequia association dry.

“In times of shortages, people have to get together,” says Fred Vigil, chairman of the Rio Chama Acequia Association, which was part of the agreement.

Both the governor and the state engineer pointed to the Chama agreement as a model for cooperation to get through the years-long drought.

But even the best collaborations rarely result in unanimity, and not everybody on the Chama ended up thrilled with the deal.

On July 25, 2013, David Ortiz walked into the State Engineer’s Office in Santa Fe and asked to make a priority call. Ortiz is a *parciante*, an irrigator with water rights, on the Chamita Ditch, which has a priority date around 1600 and is among the oldest non-Native American water rights in New Mexico.

Ortiz tried to hand over a letter and petition demanding water users upstream be cut off. State officials refused to accept the documents and said that because of the water sharing, the Chamita Ditch was receiving its full allocation of water.

Before the issue could be resolved in court, the summer monsoons hit. Ortiz withdrew his request. Though the priority call was rendered moot, the episode highlighted the discord that can linger around even the most harmonious acequia.

John Fleck, formerly a reporter with the Albuquerque Journal, wrote about the Ortiz incident for a front-page column in August 2013.

During the worst of the drought, Fleck says he was surprised to find several examples of voluntary cooperation.

Fleck just published a book “Water is for Fighting Over and Other Myths about Water in the West” that highlights successful collaborations for managing water up and down the Colorado River Basin.

Prior appropriation law might set the stage for a battle royal, but in most cases, Fleck says, the fight never materializes. Instead, they sit down and compromise.

Fleck says the basic principles behind water sharing among acequias already exist on a much larger scale.

He points to the Metropolitan Water District of Southern California, which serves about 19 million people in 14 cities. On paper, those coastal urban consumers compete for water with the Palo Verde Irrigation District, which serves farmers who own senior water rights and who grow crops on the other side of the state.

In 2004, the two districts reached a deal under which farmers could be paid to fallow land, allowing water that would have gone to irrigation to flow instead to coastal homes and businesses. Taps keep flowing in Southern California cities, farms remain financially viable, plus the farmland is still available for wetter years.

“It’s a hard-nosed business deal, I guess. But it’s also neighbors sharing with each other in this collaborative structure,” Fleck says.

Fleck says these partnerships go largely unnoticed because they’ve managed to avoid the conflict narrative that dominates discussions in the region.

By approaching the issue more optimistically, Fleck hopes to build momentum for new, more creative collaborations. “It’s really important that we nurture those and pursue them,” Fleck says, noting that climate change and continued population growth will likely make water management in the Southwest more challenging.

If cooperation-minded approaches do become more common, water managers might look to the acequias for guidance in crafting models that emphasize sustainability and community survival.