

Post-Aamodt water rights

## Fears of being left high and dry

By Tripp Stelnicki |

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**Edward Romero, mayordomo of the Acequia de las Jollas, opens the sluice gate to release water back into the stream Friday. Romero has been managing this 301-year-old acequia for over 30 years and is continuing the mayordomo tradition of his grandfather. Gabriela Campos/The New Mexican**

NAMBÉ — The workshop was a few minutes behind schedule. There was ground to cover, lots of it, but late-arriving *parciantes*, *mayordomos*, commissioners and secretaries were still streaming in. Seats ran low. There were more attendees than expected and not enough agendas to go around.

At the front of the classroom, in the Nambé Community Center, stood Enrique Romero, an attorney with the nonprofit New Mexico Acequia Association. He was there to smooth out some complexities — as much as any complexities of the Aamodt water-rights settlement can be smoothed out — and answer questions. Mostly, he answered questions.

At the first chance, dozens of hands flew up. Then, for two hours, from the crowd of 50 some men and women with water and livelihoods at stake, the questions came, each one prompting three others, and the formal agenda for the gathering was forgotten.

They asked: Can the state take our water rights away? If we're water banking, will we lose our protection from priority calls? What if we can't irrigate next year? What's considered a valid excuse for not irrigating? What if I'm ill? Who decides how ill is too ill? When will water be curtailed? What has to be in a TBI letter? How is a volunteer *mayordomo* supposed to get a TBI letter together?

## **What is a TBI letter?**

The gathering of acequia community members from the Pojoaque Basin north of Santa Fe last week took place under the shadow of proposed new rules that will soon govern water rights in the basin and might forever change how the traditional acequia communities operate. Some in the acequia communities even say the rules could ultimately hasten their extinction.

Dozens of acequia communities in the Nambé-Pojoaque-Tesuque basin gathered in Nambé last week to discuss forthcoming rules that will implement the Aamodt water-rights settlement — and will change how the traditional ditch communities have operated for hundreds of years. Tripp Stelnicki/The New Mexican

“This is a new world order,” Romero, the staff attorney, told his audience. “We are not used to this level of administration.”

A federal court entered a final decree in the Aamodt settlement to much fanfare earlier this summer, ending more than half a century of litigation and negotiation in one of the longest-running water fights in the country. But even with the decree, a flood of questions lingers over the implementation of the settlement, and the Office of the State Engineer’s proposed rules have touched off particular concern in the centuries-old acequia communities, where there is anxiety about being left high and dry in a post-Aamodt environment.

The communities have operated communal river-diverted irrigation systems in a largely informal and entirely internal fashion for centuries. Many say their localized, community-oriented nature is what makes them special. Some call the acequias, with roots in Spanish colonialism, the oldest form of democracy on American soil.

Now the organizations are racing to interpret what the proposed new regulations will compel them to do, preparing for a public hearing this week that amounts to their last best chance to voice concerns and suggest alterations to the Office of the State Engineer before the rules are promulgated by Sept. 15.

In recent weeks, there have been a few informational meetings for those affected, but members of acequia communities say the rules have come upon them too quickly and, until recent weeks, without sufficient input from the hundreds of *parciantes*, or irrigators, in the Nambé-Pojoaque-Tesuque water district.

“They had the pueblos, the state, the county — everyone. Everyone came before the acequias. We came last,” said Pablo Gonzales, president of the Acequia de los Trujillos. “And unless we go back to fight all this in court again, we’re going to end up being screwed.”

In a statement, the engineer’s office said acequia leaders and irrigators have been invited to participate in “the pending rulemaking process.”

“Like other affected water right owners, they have the opportunity to comment on the proposed rules through the public hearing process,” the statement read, adding that all public comments will be considered before the rules are finalized.

## **‘A big burden’**

The rules concern the distribution and administration of the water supply and water rights in the Nambé-Pojoaque-Tesuque basin. They implement the terms and conditions of the Aamodt settlement agreement and final decree.

One significant change codified in the rules, to be enforced by a water master or masters, is the compilation and submission of an annual report about lands to be irrigated, or TBI, from each acequia.

By March 1 of each year, according to the proposed rules, the *mayordomo*, or ditch boss, of each acequia must provide to the water master a written report about the acreage under the ditch to be irrigated; maps will accompany these TBI letters. The water master or masters in the engineer's office will then determine the maximum diversion rate for each ditch in the system.

The Acequia de las Jollas gates following a recent upgrade on the ditch, which dates back more than 300 years. Acequia de la Jolla is the oldest ditch in the Pojoaque stream basin, according to the New Mexico Acequia Association. Courtesy Photo via New Mexico Acequia Association

But obtaining the information and ensuring its accuracy “places a big burden on the *mayordomos*,” said Edward Romero, *mayordomo* of Acequia de Las Jollas for more than 30 years, referring to the TBIs.

*Mayordomos* and commissioners, many if not all of them volunteers, have always been responsible for maintenance and repairs in each ditch, the division of water, watering schedule and more. But these time-consuming tasks have never before been regulated with meticulous scrutiny or from the outside, Romero said.

“I’m afraid that at some point some of us are going to get so fed up with having this burden that we just give up the positions,” Romero said. “And who is going to want to fill in behind us, if anybody?”

“Even as it is right now,” Romero added, “people are not jumping up to be a *mayordomo* or commissioner. That’s one of the problems. ... If there are less people to do maintenance on some acequias, pretty soon the rest of them are going to say it’s not worth it to maintain acequias or have water in them, or whatever. Slowly, they’ll start dying out. The whole process is depressing.”

Paula Garcia, executive director of the New Mexico Acequia Association, said the nonprofit has been pushing for irrigators to make their concerns about the proposals heard at this week’s hearing. All comments will be considered before a final draft is promulgated.

“The parties are trying to find ways to manage a scarce resource,” Garcia said, referring to the water district rules. “I can see the rationale for some of these provisions, but we just want to make sure that whatever becomes institutionalized isn’t so burdensome for acequias that we place them at risk of being unraveled little by little over the years.”

### **Vague rules**

Another concern for acequias in the proposed rules is protection against priority enforcement by the pueblos. A priority call is the rarely used mechanism, reserved for times of scarcity, in which junior water rights are curtailed so more senior water rights can be met. It “should be a measure of last resort,” according to the state engineer’s website.

Romero, the nonprofit attorney, said a section of the settlement protects *parciantes* against priority calls by those with more senior water rights, whether pueblos or other acequias — but not if the water right “is not beneficially used for more than five consecutive years,” according to the rules.

If a beneficial use in a consecutive five-year time period cannot be proven, the water right would be “bumped” down the priority list, Romero said.

How beneficial use will be determined was a cause for concern at the Nambé gathering. Water banking is not addressed in either the settlement or rules, Romero said, and it is unclear as yet whether it will qualify for protection against losing priority.

The need for more documentation of acequia water use than has been compiled in the past, then, becomes ever more important under the proposed rules, Romero said.

“We kind of view all of these provisions as adding more pressure in general to acequias,” Garcia said. “In particular to those individuals who serve as *mayordomos*, commissioners. They will have to step up their game.”

The state engineer’s rules come out of the terms of the Aamodt settlement, an agreement reached between the United States government, the state, Santa Fe County, the city of Santa Fe and four Northern pueblos — Nambé, Pojoaque, San Ildefonso and Tesuque. The settlement established priority water rights for the pueblos, and all water rights in the Pojoaque Basin north of Santa Fe were adjudicated.

But Aamodt developments were hardly finished with the entrance of the final decree in July.

First, the rules governing the administration of water rights in the basin will be finalized.

Hurdles remain, namely the construction of a multimillion-dollar regional water system that is part of the settlement, the funding of which hinges on both state appropriations and the resolution to roadway disputes between pueblos and Santa Fe County. And domestic well users have expressed concerns about the proposed rules, as well. Ongoing road disputes over rights-of-way between the county and some pueblos have also clouded the settlement proceedings.

State Rep. Carl Trujillo, a Democrat from Santa Fe whose district encompasses part of the basin, said some qualifications for approving the historic beneficial use of water are either vague or would incur costs he said many people could not afford. He’ll co-host a town hall meeting this week with a federal official on the county-pueblo roadway disputes and the settlement implementation.

“I’m concerned about the many unintended consequences,” Trujillo said.

### **A new era**

No matter what happens with the water system and settlement in coming years, acequia communities will move forward into a new era, one with more red tape. But not all are entirely anxious. Pat Beasley, longtime *mayordomo* of the Acequia Madre Tesuque, which has a water-sharing agreement with Tesuque Pueblo, said that while the additional requirements for acequias were frustrating, he hoped water-rights business in the basin could simply move forward.

“After 51 years of this stuff, I’m like, ‘Let’s just get it over with,’ ” Beasley said. “It’s unfortunate the powers that be have squandered all this time and money, and nothing’s really been accomplished except more rules.”

Garcia, of the New Mexico Acequia Association, said members will have the nonprofit’s help in jumping through whatever hoops might come. And Romero, the attorney, said the proposed rules might encourage acequia communities to grow closer together.

“There is a chance for a renaissance in small agriculture,” Romero said. “There are obstacles to overcome, but we can get there.”

But Julia Takahashi, a *parciante* in an acequia in Nambé, echoed many attendees of the gathering in Nambé last week, saying life would be made more difficult for acequia leadership and ditch communities in general by whatever rules might come.

“When they’re creating these rules, they don’t think long term,” she said. “Our acequias are 300, 400 years old, and we have to think about what will happen to them down the road. Will they last that long? There is the potential for acequias to be put out of use.”

*Contact Tripp Stelnicki at 505-428-7626 or [tstelnicki@sfnewmexican.com](mailto:tstelnicki@sfnewmexican.com).*

*Editor’s note: Robin Martin, owner of The New Mexican, is a party to the Aamodt litigation.*