

Acequias, well owners look at ways to move forward as a settlement in Taos Pueblo water rights claims takes effect

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This spring marks the first irrigation season when the Taos Pueblo Indian Water Rights Settlement Act is "effective and enforceable." Signed into law in 2010, the act was officially published Oct. 7, 2016, in the Federal Register.

That means the longstanding water rights claims of Taos Pueblo are settled.

The disputes over water rights between Taos Pueblo and other water users in the valley go back centuries. Seeking to avoid a protracted lawsuit, the principal parties began negotiations in 1989, though some of the parties joined later.

The Abeyta Settlement Agreement, on which the law is based, was brokered initially in 2006 by the town of Taos, Taos Pueblo, Taos Valley Acequia Association (representing 55 acequias), El Prado Water and Sanitation District and 12 mutual domestic water consumers associations. The agreement was updated in 2012 and is available on the state engineer's website.

The agreement -- together with all its maps, attachments, exhibits and court documents -- is less a thing and more a living tapestry of the story of the people of Taos Valley. Follow one thread and you encounter the Blue Lake law of 1970 that returned Blue Lake Wilderness to Taos Pueblo. Another thread leads to the infamous Arthur Manby land purchases in 1910 while another ties into the 1893 Río Lucero decree. Still another part of the agreement links back to the years before the Pueblo Revolt of 1680 and to a certain Spanish settler and sargento mayor, Diego Lucero De Godoy, who gave his name to both a land grant and a river.

Understanding the agreement and its implications to the future of Taos Valley often means seeing how you, your family and your ditch (or mutual domestic or water district) may be wrapped up in it.

In the end, it's personal. And yet, we're all in this together.

Quantifying how many people are affected is a daunting task. According to renowned acequia historian, Jose A. Rivera, some 4,300 claimants were named as landowner-defendants. According to the Office of the State Engineer, "Collectively, the parties to the [Abeyta] Settlement Agreement represent the vast majority of water users in the Taos Valley."

Ongoing concerns

Some Taos community members continue to voice concerns they first entered as objections to the agreement back in 2013. The court accepted objections until October 2013, though it took another two years for them to wind their way through the system. From among the total number of claimants, 88 objections were filed. Of these, 26 were expanded into statements of issues.

Simplified, these issues comprise eight themes:

- Concerns about wells, including production, mitigation and aquifer storage and recovery.
- A desire for improved water and land conservation measures.
- Concerns about a lack of water quality monitoring mechanisms.
- Disputes about Taos Pueblo's aboriginal and historical use claims to the Río Hondo.
- Priority dates on some ditches.
- Lack of communication by the acequia association to member acequias, or ditch associations, within the valley.
- Lack of communication by acequia commissioners to their parciantes, or ditch members.
- Lack of a statement of limits as to where Taos Pueblo might potentially market its water rights.

Three Arroyo Hondo acequias - Acequia Madre del Llano, Acequia de la Plaza and Acequia de Atalaya -- ended their representation by the TVAA lawyer and struck out on their own with a new counsel, A. Blair Dunn, of Albuquerque. The dispute centered on the historical irrigated acreage and impoundments from the Río Hondo claimed by Taos Pueblo and whether, in fact, any water was ever diverted by the Pueblo.

By 2014, most of the objectors declined to go further. Only a handful entered full-blown briefs. In the end, the federal court denied the objections.

What now?

Now that the Pueblo's water rights have been settled, there remain adjudication issues among and between water rights holders on certain valley streams. These inter se (Latin for "among or between themselves") proceedings will allow neighbors to contest other neighbors' priority dates, water rights or other issues. Also on the horizon for the valley is how the state eventually may determine how much water a domestic well user has a right to use. Water experts estimate there are as many as 2,000 domestic wells in the Taos Valley, each a straw sipping from the aquifer.

In these early stages of implementation, some advise caution. According to one source active in water issues in the valley, "There is nothing lost and much to be gained in making carefully considered decisions about the feasibility and ecological soundness of the settlement's acequia projects."

Officials of the Acequia del Río Lucero y del Arroyo Seco raised questions about the settlement's projects during the annual meeting March 11. Some 100 community members attended and the majority voted to

nix one of the agreement's projects, the fiercely contested aquifer storage and recovery wells. These wells, unique to this acequia, would store surface water by injecting it into the deep aquifer and then repumping it to the surface as needed.

Chris Pieper, ditch commissioner, confirmed by email: "In order for the decision to stand, the meeting must be official and comply with the standards of the Open Meetings Act ... so our next step is to have another meeting and approve the minutes." The acequia association will decide later whether or not to go forward with its second storage alternative of putting the water in surface reservoirs.

Planning, engineering and construction for proposed infrastructure and new projects under the agreement are possibly years away. First, environmental review and public input under the National Environmental Policy Act is required for many of the projects. The Bureau of Reclamation will oversee the federal environmental review. Next, the application process, expected to be extensive, has yet to be outlined by the federal agency, though that could begin later this spring.

Available state and federal funds may not be used on any project not outlined in the Abeyta agreement.

Managing the water

Of the 12 mutual domestics, 11 gained more water rights largely to make up for inequalities in the past. They have acquired nearly all the rights allotted to them. The mutual domestics of Llano Quemado, Upper Ranchitos and Upper Arroyo Hondo will operate three of the five proposed mitigation wells. The town of Taos and the Río Chiquito Acequia will operate the other two.

Mitigation wells would pump water from deep aquifers and then allow that water to flow into streams or domestic water lines as needed. Offsets would be calculated from the Río Grande main stem instead of from valley tributaries, thus reducing reliance on acquiring and retiring water rights from acequias. Rebecca Dempsey, TVAA attorney, called the mitigation wells the "lynchpin of the agreement."

In addition, the agreement authorizes 11 production or municipal wells for various parties.

The El Prado Water and Sanitation District has most of the water rights it needs to go forward. In return for limiting its production from its wells near Taos Pueblo's Buffalo Pasture and to make up for lost potential of its El Torreon well, the district is allowed to seek permits for two new production wells. John Painter, board member, said the district is ready to move forward, but "seven unprotested applications have been sitting on the state engineer's desk for two years." No engineering or construction has begun on their two new wells, Midway and Río Grande, to be located near the Taos airport. Painter continued, "When the wells come online, we won't be pumping much more water than is currently being used by our customers. However, that usage can ramp up in the future as more customers want to hook onto EPWSD's water system."

The town of Taos will begin to shift pumping from its in-town well field to a proposed future water supply field of four new wells. The shift is to protect depletion of the Pueblo's sacred Buffalo Pasture wetland. The town may also apply for a fifth well, the Taos regional airport well, though there is no funding through the agreement for that project.

Francisco "French" Espinoza, director of the town's Public Works Department, said, "We're in the preliminary phase of long-term planning and implementation. It's a lengthy, in-depth process that will involve multiple approvals from the Bureau of Reclamation and the state."

Town Councilor Fritz Hahn said the town is committed to revitalizing the town's acequias. "Abeyta will not negatively impact our acequias in town as long as the mitigation process works," he said. "Abeyta is a huge collaborative venture. It's about relationships and family - and the future."

The Abeyta agreement allows Taos Pueblo 24 months after the enforcement date to enact a Pueblo Water Code, which would include rules for management, regulation and control of its water resources. It would also provide for a permit application "for any change in point of diversion or place or purpose of use of a Pueblo water right."

By the enforcement date, the Pueblo may acquire and retire more than 677 acre-feet of non-Pueblo irrigation surface water rights. (One acre-foot is equal to about 325,800 gallons of water.) An update from the Pueblo on water rights acquisition was unavailable by press time. Under the agreement, "The Pueblo shall give the town of Taos first and timely written notification when it has water available for marketing."

In addition to the Pueblo's other water rights, it has aboriginal rights to 1,300 acre-feet a year of groundwater, 1,060 acre-feet a year of which may come from its seven existing wells or their replacements and from the existing four municipal supply wells. The agreement allows that "any portion not diverted from these wells may be diverted from no more than four additional wells that may be located within a north-south corridor one to three miles from the Rio Grande and whose southern boundary is the canyon of the Rio Pueblo."

TVAA's board is engaged in education and outreach. It has planned a series of visitas to acequia communities on six major stream systems. The goal is to learn more about parciantes' concerns, challenges and needs. At the first visita on Feb. 19, some 40 parciantes, commissioners and mayordomos of Río Chiquito met with board members over biscochitos and coffee at the Talpa Community Center.

Patricia Quintana, TVAA vice president, facilitated the meeting. Among those who joined the discussion was John MacArthur, who spoke about the importance of keeping water rights on the acequia and how the state no longer has funds to help with annual audits. Christine Abeyta said beavers are a big problem. Art Coca expressed concerns about low water flow on the Río Chiquito and Sam DesGeorges spoke about watershed health.

Watch for announcements of future meetings to discuss the Abeyta water rights settlement.