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Cultural History on the Vanguard for a Sustainable Future: Acequia Communities in Northern New Mexico

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Pamela Emsden is a second year law student at the University of Colorado Law School. Prior to attending law school, Pamela worked as a Rural Development Specialist with Rural Community Assistance Corporation. Her work focused on providing technical assistance to small drinking water systems for rural communities (aka Mutual Domestic Water Associations) and tribal communities. Most of these communities faced deteriorating infrastructure, risk of water contamination, insufficient budgets, and unclear water rights.

ABSTRACT

New Mexico is a desert state with a limited supply of water; it is the third driest of the fifty states. In spite of this, New Mexico continues to be one of the fastest growing states in the nation with its population expected to grow by more than 20% in the next ten years. As New Mexico's residential and business population grows, the competition for water in this arid region is forcing the state and others to consider how to best allocate water. This challenge has prompted policymakers and water seekers to focus on the creation and facilitation of water markets. Though the need for a water market is real, economically driven markets threaten to slowly destroy some of the oldest communities in New Mexico.

The United States acquired this region in 1848 under the Treaty of Guadalupe-Hidalgo, but centuries before this, Pueblo and Spanish colonies developed small irrigation systems, *acequias*, to sustain their communities. Today, many of these communities still exist and they remain viable, rural villages. Under the state's prior appropriation doctrine, acequia-based communities have some of the oldest, and therefore most legally secure, water rights. Because they possess secure water rights, they are often looked to as a source for those wanting to buy or lease water.

Emerging water markets threaten to sever water rights from acequias, which are land-based communities. To sever water rights permanently from irrigable land of an acequia is antithetical to how these communities were settled and made agriculturally possible in this dry region as well as to the source of water pressure that makes the gravity flow acequia function. For hundreds of years, acequias have followed Spanish customary law, which embrace two important ideas: 1) community-based management of water, and 2) water cannot be severed from the land. Under the Treaty, these customs were to be protected, but modern state water law does not recognize communal water rights. Furthermore, the general trend has been to encourage moving water from a low-use area to a high-use one.

This paper provides a history of acequia communities and the challenges they face today. Exploring how these systems operated for centuries reveals lessons for sustainable resource management. However, the state prior appropriation law neglects how these communities work, which raises concerns of environmental justice for these typically resource rich and cash poor communities. This paper aims to illustrate the need for policymakers to integrate cultural values as well as traditional economic ones when planning for a shared sustainable and equitable future.