SLIDES: Restoring the Acequias: Fixing What Wasn't Broken

Will Davidson

Follow this and additional works at: http://scholar.law.colorado.edu/innovations-in-managing-western-water

Part of the Agriculture Law Commons, Business Organizations Law Commons, Dispute Resolution and Arbitration Commons, Hydrology Commons, Natural Resources and Conservation Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, Public Policy Commons, State and Local Government Law Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
Restoring the Acequias:
Fixing What Wasn’t Broken
☆ What is an acequia?
☆ Challenges facing Colorado acequias
☆ The Acequia Assistance Project
What is an acequia?

- as-Saquiya: “water bearer”
- Earthen irrigation ditch
- Usually hand built
- Gravity fed
A philosophy as well as an irrigation technology

- Water viewed as a communal resource
- “Tierra es la Madre y la Agua es su Sangre” – Earth is the Mother and Water is her Blood.
- Right of Thirst – all living things with thirst have a right to water
A connection to the community

- Communities work together to construct and maintain acequias
- Each parciante (irrigator) must contribute labor, and each is entitled to receive water
- Water is distributed on the basis of equity and need
- Scarcity is shared
A system of self government

* Elected mayordomo (ditch rider) coordinates operation and maintenance of acequia and enforces rules
* Votes are distributed on the basis of one parciante, one vote, not on the basis of water shares
* Parciantes often informally resolve conflicts and enforce norms through networks of community relationships
A relationship with the land

* Acequia irrigation requires and fosters intimate knowledge of how water moves across and through the landscape
* Relatively low-impact system of agriculture that maintains habitat for wildlife
* Water rights viewed as tied to the land and the community – they may not be transferred
Acequias are...

* An alternative model of water administration and use
* A means of providing a vital resource that is also a cultural institution
* A historical and cultural resource
Acequias in Colorado

- As Spanish and Mexican settlement spread north from the Middle Rio Grande, settlers established many acequia communities in what is now Northern New Mexico and Southern Colorado.
- In Colorado, acequias exist in Costilla, Conejos, Huerfano, and Las Animas counties.
A Colorado territorial law applicable to Costilla, Conejos, Huerfano, and Las Animas counties recognized and accommodated acequias:

- Acequias given priority over other diverters during irrigation season
- Law required parciantes to contribute labor and laid out the duties of Mayordomos
- Benjamin Eaton, an important early water developer in northeast Colorado, was reportedly influenced by observing acequia systems in New Mexico
San Luis, the oldest town in Colorado, was founded as an acequia community in 1852

The first irrigation ditch in Colorado, La Acequia de la Gente de San Luis, or San Luis People’s Ditch, was constructed the same year
Historically operated informally, so rules and norms may not be recorded

Where written rules exist, they may not reflect the way an acequia actually operates

Lack of fit with some aspects Colorado water law
  * Equitable v. priority based distribution
  * Water rights as personal property
  * Transferability of water rights
  * Share-based v. one irrigator one vote voting system
Acequia Recognition Act

- C.R.S. § 7-42-101.5
- Passed by Colorado General Assembly in 2009
- Recognizes historic and cultural value of Colorado’s acequias
- Declares that continued operation of acequias is an “essential foundation for the sustenance of the local economy”
- Provides for formal recognition of acequias in Costilla, Conejos, Huerfano, and Las Animas Counties
The ARA allows acequias to:

* Organize as an “acequia ditch corporation” or an “acequia ditch association”
* Adopt bylaws that:
  * Provide for one parciante one vote system
  * Provide for distribution of water based on equity and need
  * Give the acequia the right of first refusal if a parciante seeks to sell or transfer water rights
  * Include a “Catlin” provision
Acequia Assistance Project

* Created by the Sangre de Cristo Acequia Association, Getches-Wilkinson Center, and Colorado Open Lands
* Provides low or no-cost legal services and educational materials to Colorado acequias
* Seeks to engage with acequias on their terms to help them take advantage of the powers granted by the ARA
* Also helps parciantes document their water rights, or if they lack adjudicated rights, to apply for them
Accomplishments

* Educational Materials: Created handbook outlining water law basics for parciantes
* Drafting Bylaws: Currently assisting nine acequias
* Incorporation: One completed, one ongoing
* Water rights applications: One application granted, five ongoing
* Annual Congresso de las Acequias: Participated since 2012
* Water Rights Research: Assist parciantes with documenting their water rights
What are the “Freehold” or “Hallett” Decrees and what do they mean?
The Hallett Decrees

- **1844**: Mexican government conveys Sangre de Cristo Grant to Charles Beaubein
- **1850s**: Beaubien recruits settlers from Northern New Mexico and the settlers establish acequia communities along the Culebra and its tributaries
- **1862-64**: William Gilpin purchases the Grant from Beaubien’s estate, promising to respect the rights of the settlers Beaubien recruited
- **1871**: Gilpin sells the southern half of the Grant to the United States Freehold Land and Emigration Company
A Splendid Opportunity
awaits you in the famous
San Luis Valley
(Colorado)

The Costilla Estate
is open for settlement
548,780 Acres for the Homeseeker and Investor
The water is there now
to irrigate 100,000 acres
1889: Original San Luis acequias gain adjudicated water rights in first general adjudication for the Rio Culebra. Together, the acequias are decreed 197 cfs

1890: Freehold sues the acequias in federal court, claiming that the acequias’ decreed rights are excessive, and that Freehold has superior rights because it owns the Costilla Estate
1900: Judge Moses Hallett (future first dean of Colorado Law) approves consent decrees memorializing a settlement between Freehold and each acequia

Collectively, the acequias gave Freehold 91 cfs of the 197 cfs they obtained in 1889
After the Hallett Decrees

- Rights granted to Freehold were passed down from successor to successor, but were never transferred out of the original acequias
- **1917**: *Vigil v. Swanson*: Colorado district court case regarding the meaning of the Decrees and their effect on water rights administration
- **1984**: State Engineer places Freehold Rights on the abandonment list, but the rights are removed after an extended and inconclusive legal process
What is the status of the Freehold Rights?

- Litigation regarding the Freehold Rights likely would be lengthy, costly, and divisive
- It may be possible to resolve the dispute over the Freehold Rights through an equitable settlement process that is fair to all stakeholders
- Such a settlement could benefit the community by removing the uncertainty and tension created by the disputed status of the Freehold Rights
Next steps

* Acequia Project participants have met with current parciantes on the affected acequias to report our findings and conclusions
* What, if anything, happens next is up to each affected acequia
* Any settlement process will likely require further research into the details of the dispute
Acequia Project Founders & Participants

* Allan Beezley, Attorney, Allan C. Beezley, P.C.
* Professor Sarah Krakoff, Colorado Law
* Peter Nichols, Partner at Berg, Hill, Greenleaf and Ruscitti
* Sarah Parmar, Director of Conservation, Colorado Open Lands
* Marie Vicek, Paralegal, Allan C. Beezley, P.C.
* Blake Busse, Colorado Law Class of 2015
* Julia Guarino, Research Faculty, Colorado Law
* Many more attorneys and CU Law Students
Questions?