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Congreso de Acequias Recognizing Regional Challenges

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Dickinson argued that the political process further complicates the problem, because unhappy water consumers are demanding reduced water prices from their political representatives. Although the cost of water continues to rise faster than any other basic utility, political officials are failing to adequately increase water rates to adjust for increased costs. Rather than incrementally increasing water rates every two to three years, political pressure has postponed adjustments based on political cycle. Aging municipal water systems are forcing officials to make drastic adjustments (often a decade's worth of budget increases all at once) in order to keep municipal systems financially viable. Dickinson explained that many political representatives must decide between yielding to their constituents' pleas to keep water prices down and alienating their constituents by raising water prices during a recession. Because consumers today do not fully understand the true cost of water, educating consumers about infrastructure costs in concert with detailed adjustment plans from municipalities should help remove some pressure from political representatives, allowing them to develop better long-term solutions.

Andy McFadden

CONGRESO DE ACEQUIAS RECOGNIZING REGIONAL CHALLENGES

San Luis, Colorado

October 19-21, 2012

The Sangre de Cristo Acequia Association held the first Annual Congreso de Acequias ("Congreso") in San Luis, Colorado in October. The Congreso created a forum for water users who irrigate using the acequia method to identify strategies protective of acequias based on section 7-42-101.5 of the Colorado Revised Statutes ("Acequia Recognition Law"). The acequia irrigators in attendance were from the same four counties referred to in the statute: Conejos, Costilla, Huerfano, and Las Animas. The Congreso was open to all acequia irrigators in these counties.

An acequia is a gravity fed, earthen ditch irrigation system used to carry snowmelt and rainwater run-off from arid canyons and mountainous areas to agricultural fields. The method is prevalent in the four Colorado counties mentioned in the Acequia Recognition Law, and many parts of New Mexico. Unlike New Mexico, however, Colorado never recognized acequia irrigating as a distinct beneficial use, and Colorado's prior appropriation system does not protect acequias. The Congreso discussion topics included challenges each county faces in maintaining traditional knowledge of the land and water use within each community.

CONEJOS COUNTY: LAWRENCE D. GALLEGOS

Mr. Lawrence Gallegos ("L. Gallegos") introduced himself as a fifth generation acequia farmer from Taos, New Mexico. Stating that the greatest method of protecting water rights, hence protecting an acequia, is from a Congressional land grant, L. Gallegos gave a brief history of the unpatented land grant in Conejos County.

L. Gallegos explained that in 1842, the Mexican government created the Mercedes and Conejos land grants, as well as the Sangre de Cristo, St. Vrain, and other grants recognized in Colorado today, in opposition to the United States' policy of Manifest Destiny.

L. Gallegos further explained that in 1848, the United States created the Surveyor General's office to adjudicate land grants. The grantees of the Conejos Land Grant made an application in 1861 to have their land grant patented, but did not receive due process. The grantees made another application for a land grant patent in 1898. In 1902, the United States Supreme Court denied both applications for a patent on the Conejos Land Grant. L. Gallegos said, based on the transcripts from the trial, it was the government's fault that Conejos County did not receive the patent because the United States government misplaced the paperwork and did not accept verbal testimony, including the testimony of Narciso Beaubien, as conclusive evidence on the record. The acequias in Conejos County consider this a travesty. Nevertheless, L. Gallegos is hopeful the paperwork evidencing the land grant will surface in the future.

L. Gallegos said the problems Conejos County acequias face today stem from the enactment of the Rio Grande Compact of 1938 ("Compact"). Colorado, New Mexico, and Texas entered into the Compact to provide for delivery of a specific amount of water at each upstream party's border. The Colorado State Engineer's Office ("SEO") determined there were sufficient flows in the rivers in Conejos County acequias to satisfy Colorado's proposed Compact obligations. Between the 1950s and the 1980s, after the states negotiated the Compact, the SEO allowed thousands of non-acequia farmers to drill irrigation wells. L. Gallegos noted that the "high capacity irrigation wells" in the San Luis Valley near Conejos lowered the water table enough to affect the surface waters in the area, which, as a result, diminished return flows depended on by the acequias. To compound the issue, by the mid-1960s, Colorado fell almost 1 million acre-feet behind on its Compact delivery obligations. Beginning in 1969, these problems prompted the SEO to curtail acequias to help provide enough water to downstream states to satisfy the Compact.

In closing, L. Gallegos stated that the passage of Senate Bill 422 ("SB 422") in 2004 created an opportunity to create sub-districts, which could assist with the problem. Based on SB 422, the SEO set up a water management plan in 2012 to mitigate surface depletions stemming from groundwater withdrawal. L. Gallegos stated that despite this progress, today the underlying aquifer is 1.2 million acre-feet below the Compact's "zero point," and there is no sign of a decrease in water mining. Therefore, Conejos County acequia farmers face serious and imminent water shortages.

COSTILLA COUNTY: JOSEPH GALLEGOS, COSTILLA COUNTY COMMISSIONER

Mr. Joseph Gallegos ("J. Gallegos") introduced the issues in Costilla County with a short discussion on the geographical differences between Conejos and Costilla County. The Culebra watershed in Costilla County is a steeper, shorter watershed than the nearby Conejos watershed, which requires that the water be put to use more quickly. It is not subject to the Compact

because the land was patented under the Sangre de Cristo Land Grant. J. Gallegos returned to his acequia and its inherent challenges in 1986.

When J. Gallegos rejoined his community, it just finished litigation opposing an industrial user trying to purchase water rights to supply, via the San Marcos Pipeline, a coal slurry in Texas. Following this litigation, the SEO began abandonment proceedings against acequia farmers in the Culebra watershed. In response, the acequeros (acequia farmers) formed the Costilla County Conservancy District in the 1970s.

J. Gallegos first recognized certain environmental issues emerging in the 1970s that continue to affect the Costilla County acequias today. Colorado passed a law in the 1970s that allowed developers to subdivide land into five-acre parcels. This intensive land use increased sediment load and water pollution in the acequia.

In the 1980s, a mining company posed a serious threat to Costilla County acequia farmers' water quantity and quality. As a result, J. Gallegos stated, the acequeros learned more about portions of Colorado's prior appropriation laws than ever before, including augmentation, point of diversion changes, and substitute water supply plans. Furthermore, an "old timer" told J. Gallegos augmentation is "un palabra hecho a los ladrones" - a word made by crooks. In the 1990s, a logging company damaged the Culebra watershed by stripping La Sierra of its trees while telling acequeros the logging company was practicing better land management than the acequeros.

J. Gallegos went on to say the acequia farmers in Costilla County want to see water quality become an element of Colorado's statutory water scheme because poor water quality injures an acequia farmer's ability to irrigate. Moreover, he said water impoundment by "outsiders" moving into the community is another issue the community faces. He feels this problem will only grow as the community faces an influx of people unfamiliar with prior appropriation and the acequia method.

J. Gallegos believes that legal battles and lawyers are not the answer to the issues facing acequias in Costilla County. In fact, the Sangre de Cristo acequia farmers try to mediate as much as possible to avoid litigation. They feel paying lawyers and court fees, and potentially losing the water anyway, siphons precious resources out of the community. Therefore, the farmers formed the Sangre de Cristo Acequia Association, a non-profit organization to serve as a community resource (see www.sangreacequias.org). J. Gallegos described acequia life not as socialism, but as a community that shares a resource. They exist, J. Gallegos stated, not because there is money, but because they band together, keep everything "in-house," and have social mores to enforce their rules. After decades of acequia farming, J. Gallegos stated he appreciates the sustainable method of acequia farming, and celebrates the natural, sustainable environment supporting the community where he lives.

LAS ANIMAS COUNTY: JACK CHAVEZ

Mr. Jack Chavez ("Chavez") claimed it is sad that a police officer can pull a person over on any dirt road, or in any County, and look up that person's

history and know the person's mother's name, but farmers cannot find information about their water rights.

Chavez asserted that greed is the motivating factor for adverse effects on Las Animas acequias. Chavez said the CF Mining Company picked up the Maxwell Land Grant and injected big money into water appropriations in Las Animas County. He explained that after this happened, the mining company and other industrial users cloaked their water rights in secrecy in order to maintain control of them. Therefore, no acequia farmers know what their water rights are in Las Animas County.

Chavez explained that when a single farmer sells a water right, it hurts the entire community because acequia farmers flood irrigate based on the amount of time it takes to draw a certain volume of water. Flood irrigation requires additional water in the ditch because it takes existing water in the ditch to force water through the ditch. Colorado does not recognize this when measuring acequia water rights and has curtailed them based on the amount of time rather than the amount of water. Thus, farmers who sell their rights to parties off the land hurt the entire community.

Chavez believes the Las Animas community's water resource is often used not to raise families, but is transferred to locations as far away as Denver because rights holders sell out for personal financial gain. He also stated "outsiders," lawyers, and large companies like Nestle, take advantage of fractures in the community when attempting to purchase water as an investment vehicle. When Colorado allowed the subdivision of land, lawyers speculated on water rights by taking advantage of disputing farmers who irrigate from the same acequia. As a result, Las Animas communities are gradually becoming non-producing agricultural communities.

Chavez' bases his concern for Las Animas on his perception that corporate greed and fractured communities allow for "water grabs." Las Animas County, said Chavez, needs assistance researching historical consumptive use to regain water back from developers.

HUERFANO COUNTY: AMOS MACE

Mr. Amos Mace ("Mace") said he remembers being a child and seeing snow in the mountains deep into the summer. Mace diverts out of the Huerfano River, and noticed that his diversion gets smaller every year. Mace and his father work as a team to improve the situation for their community through the Arkansas Valley Roundtable and through filing appropriations for the benefit of the community.

Unlike Costilla and Conejos County, Mace said that, until recently, nobody filed for an appropriative right in Huerfano County. In order to maintain their agricultural output, the acequia irrigators in Huerfano County had to apply for augmentation, changes, and substitute water supply plans.

Mace explained what would help Huerfano County most is finding a way to utilize historic consumptive use data to legitimize a senior priority date for diversions filed late or not at all.

CONCLUSION

The four counties' issues overlap, yet each has a unique history providing insight into the importance of the Acequia Recognition Law and the acequias' need for stronger, more direct protection and representation in Colorado.

This Conference Note focuses on the panel discussion that related to the overall purpose of the Congreso. I would like to offer acknowledgement of Dr. Devon Pena, an acequia farmer on The San Luis People's Ditch and Professor of Anthropology at the University of Washington. Dr. Pena gave crucial testimony at the senate hearings for H.B. 09-1233, worked tirelessly with Sarah Parmar of Colorado Open Lands to create this first annual Congreso de Acequias, supported the Congreso with a grant made possible by The Acequia Institute, and strengthened the relationship between Colorado's acequias and the New Mexico Acequia Association.

Jonathan Culwell

**THE ROCKY MOUNTAIN ASSOCIATION OF GEOLOGISTS
HORIZONTAL DRILLING AND COMPLETION FALL SYMPOSIUM**

Denver, Colorado

October 23, 2012

NIORARA WATER USE AND REUSE

At the Horizontal Drilling and Completion Fall Symposium in Denver, John Jaffee, the Water Manager for Anadarko Petroleum Corporation's Rocky Mountain Region operations, gave a presentation on the Niobrara Wattenberg Field's water treatment plan. His presentation focused primarily on water use in shale play horizontal slickwater hydraulic fracturing ("fracing") and related water-sourcing challenges.

Jaffee began his presentation by explaining that the same general rules for drilling a vertical well apply to horizontal drilling, except that horizontal wells require more water and larger production casings. Each horizontal well operation requires a total of 48,000 to 120,000 barrels of water, as opposed to 2,400 to 24,000 barrels for each vertical well. Fracing injects highly pressurized frac fluid into the wellbore to create small cracks or fractures in the shale formation. These cracks release hydrocarbons such as oil or gas trapped within the formation. Water is the most effective frac solution solvent because it is inert. Approximately twenty percent of the total water injected into a formation returns to the surface as flowback. Multiple layers of cemented steel casings in the wellbore protect ground water from the migration of injected frac fluid, returned backflows, and hydrocarbons.

Jaffee next addressed water-sourcing issues in Colorado. "Slickwater" refers to fracing solution that contains surfactants, which decrease surface tension, thereby increasing the fracing rate into the formation. Slickwater fracing is a completely consumptive use of water because flowback is briny and contains too many frac fluid contaminants to return the water to the water cycle. In Colorado, different types of water sources implicate different laws, regulations, and water availability. Almost all surface water supplies in Colorado are over-