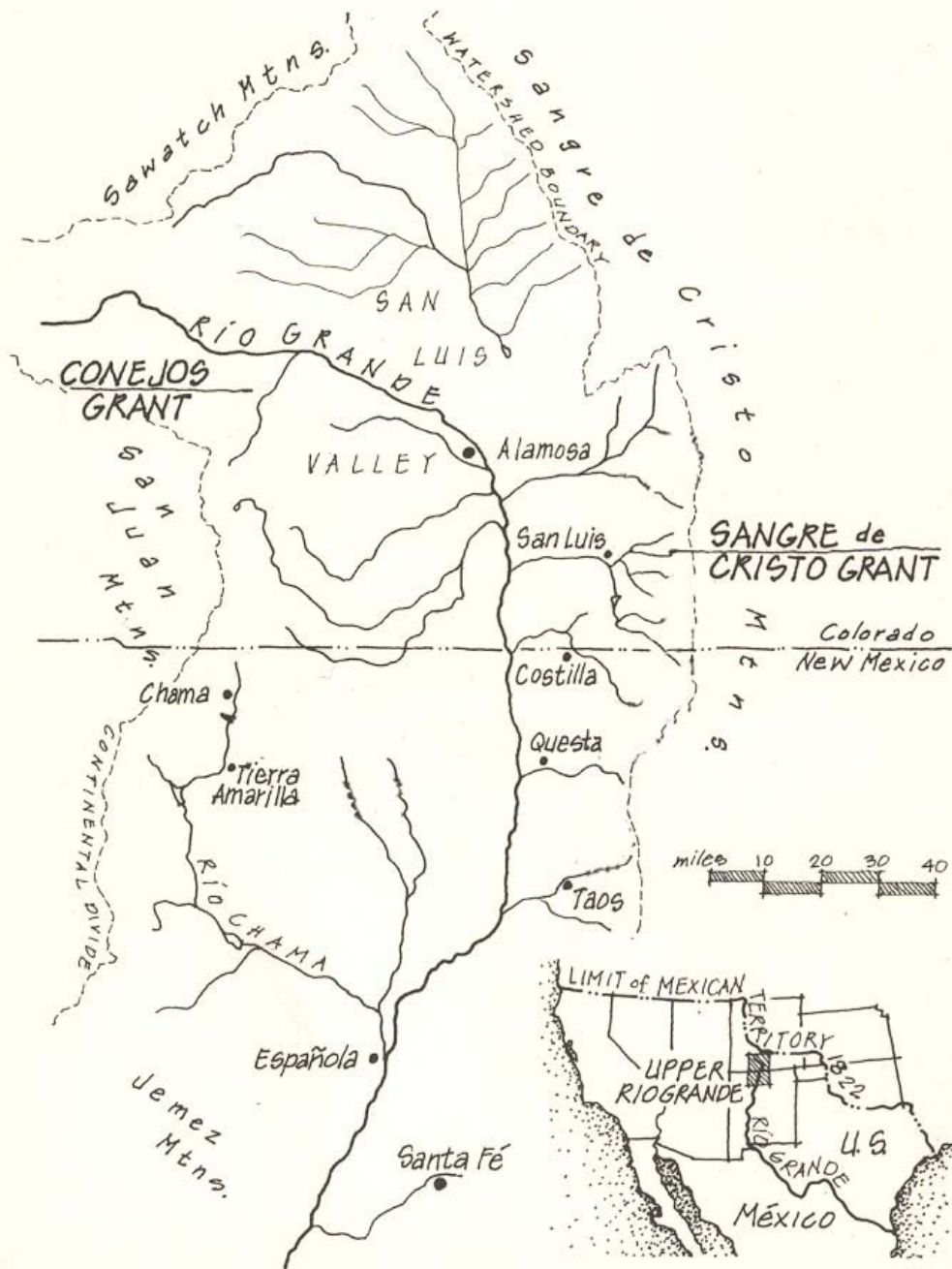


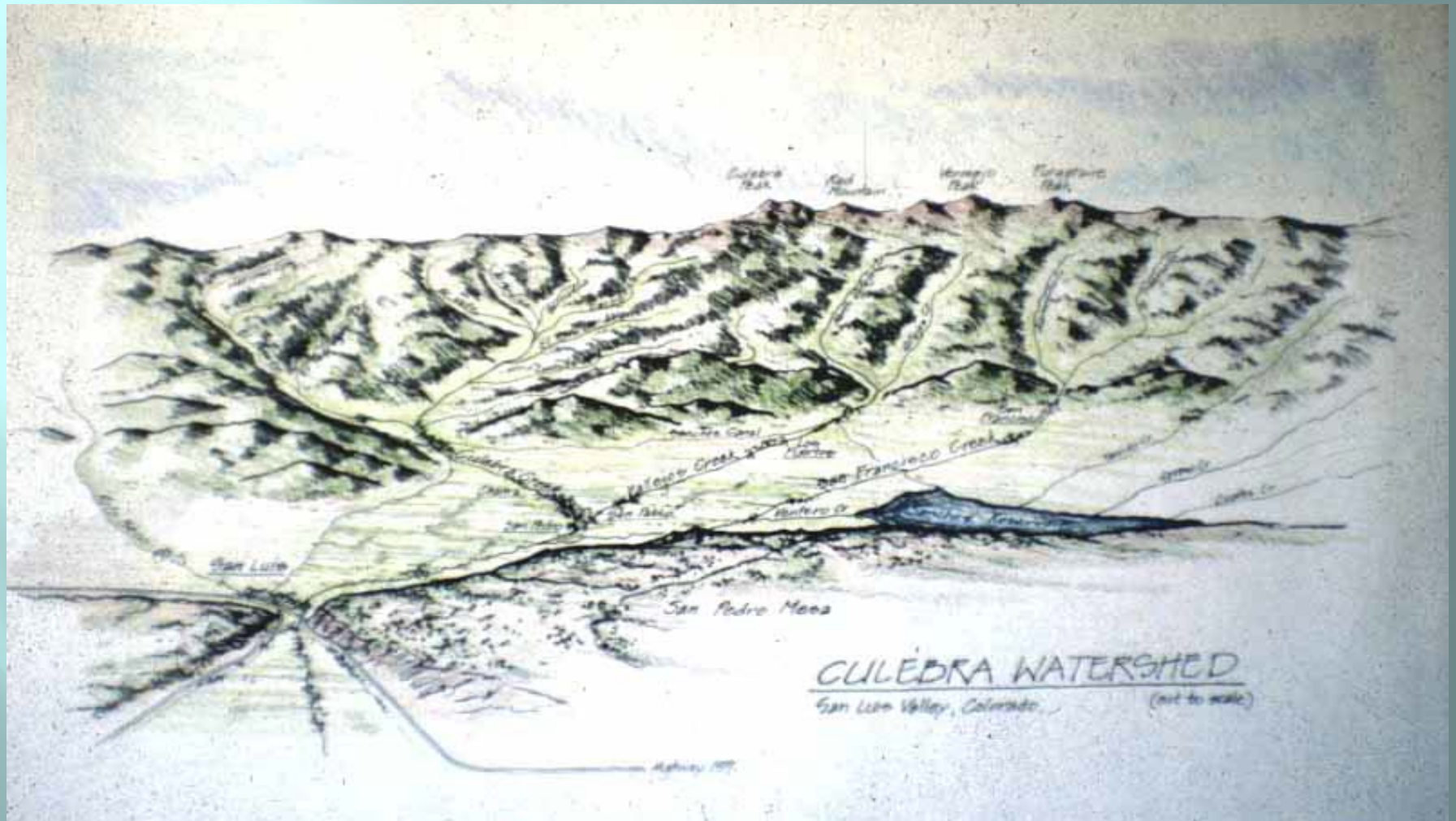
Colorado's 2009 Acequia Recognition Law: Punching a Hole in Prior?



Lecture to the Water Center by Devon G. Peña, Professor of AES,
Anthropology, PoE, University of Washington (March 2, 2010)



Sangre de Cristo Land Grant, Culebra watershed





Culebra Peak, 14,057 ft, and typical acequia bottom lands

Acequia Water Democracy

The acequia is a snow-melt dependent, gravity-driven, community irrigation ditch system managed by local farmers who hold use rights and do not “own” the water itself. These use rights holders are known as “**parciantes**”.

The allotment of water use on the acequia is managed by a “**mayordomo**” (ditch rider or ditch boss) who is elected on the basis of one person/one vote.

Among the customary norms of acequia governance is the principle of “shared scarcity”. In times of drought, every farmer uses less water so that all can share in the limited resource.

Another important norm is cooperative labor and mutual aid. Every year during early spring, the irrigators gather for the collective work of cleaning and repairing the ditch.



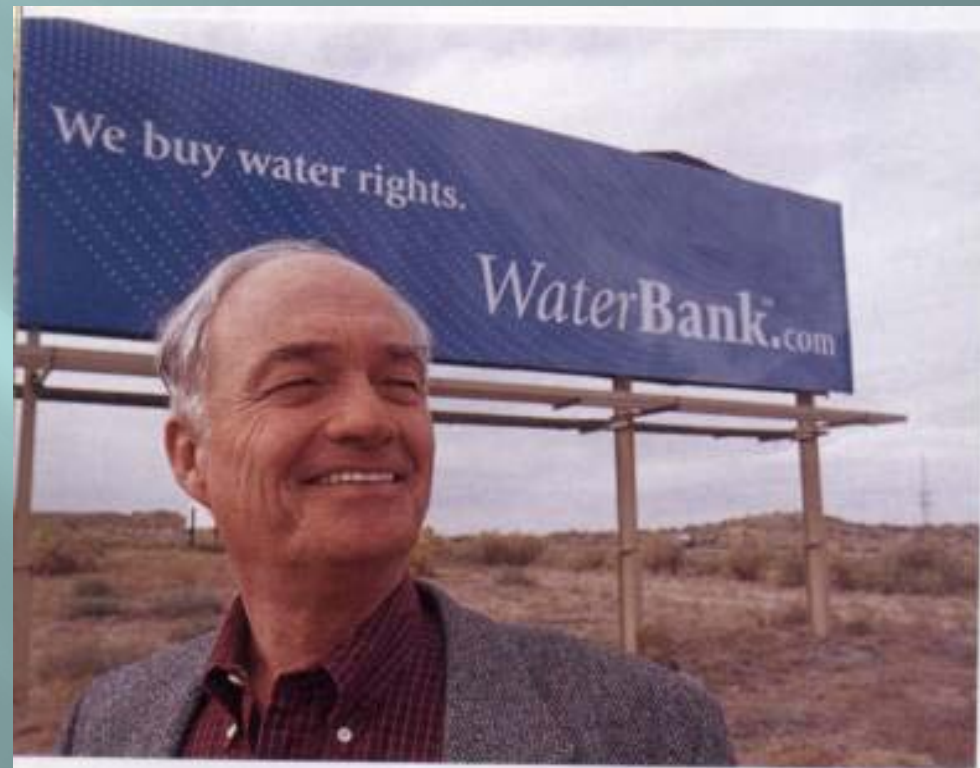
Annual limpieza y saca de acequia. San Luis Peoples Ditch, April 27, 2009

Acequia • from the Arabic, *as-Saquiya*, the water bearer or the one who carries the water; also: the barmaid.



The struggle for the “last Commons”



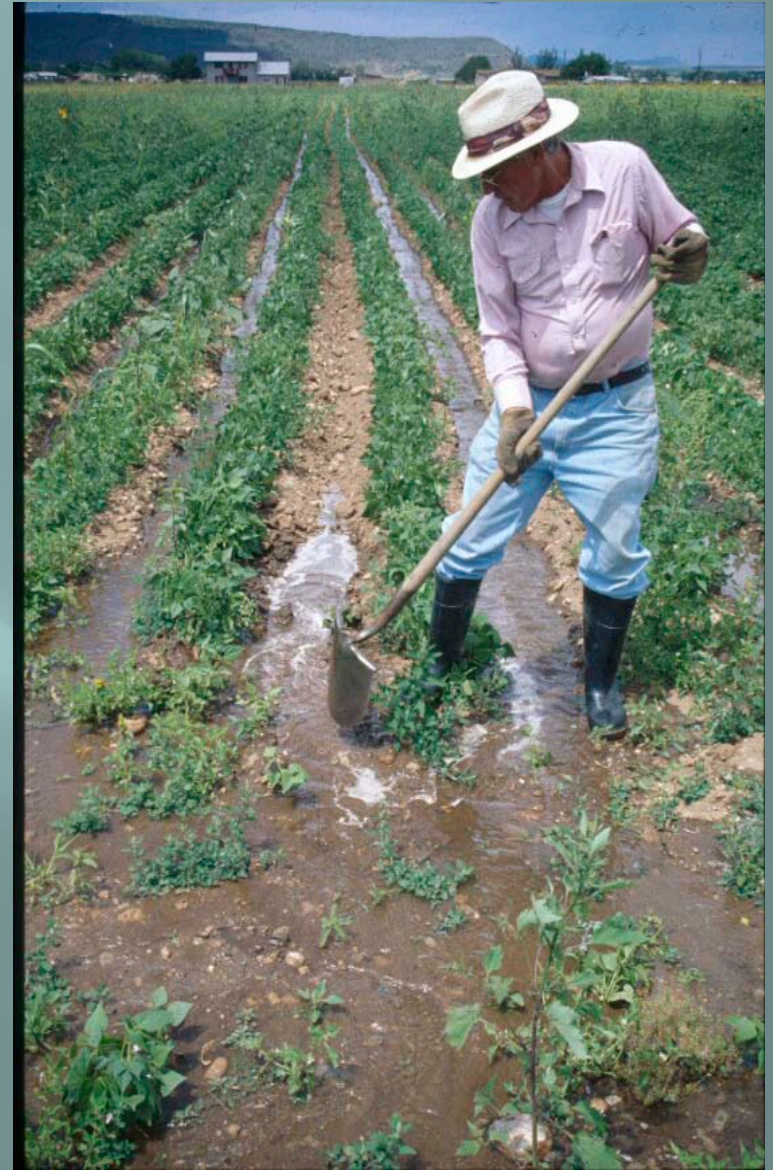


Water is considered an asset-in-place and cannot be severed from the landscape; it is a community asset and not a commodity.





Acequias provide a wide-range of ecosystem services























Pan de horno from Las Comadres de San Luis



Semilla sagrada: bioregional seed savers exchange

Wildcrafters: *La sierra* as source of medicinal and edible plants, mushrooms, and tree nuts.



2009 Colorado Acequia Recognition Law



- ▣ HB 1233-09 was passed by the Colorado legislature in April 2009 and signed by Governor Ritter.
- ▣ The law declares that acequia institutions are among the oldest forms of local self-governance in the Western U.S. It admits that they represent an older alternative to the doctrine of prior appropriation since acequia customary norms emphasize equity and fairness and not just priority in the allocation of water rights.
- ▣ The law also establishes that acequias and their farming communities are worthy of protection and preservation.

- ▣ The law allows for the establishment of acequia ditch corporations.
- ▣ These may adopt by-laws that restore some of the most significant customary norms of the acequia water institution including: (1) one farmer, one vote; (2) expectation of cooperative labor and mutual aid; and (3) shared scarcity.
- ▣ The law **does not** allow acequias to restore customary norms by adopting by-laws that would prohibit the sale or transfer of water away from an acequia.
- ▣ The law allows acequias the “right of first refusal” and ditch corporations may raise the funds to purchase water rights that could be sold to non-acequia users.

Initial critique

- ❑ Most striking about the law is the tension between the very generous and embracing descriptions of historical acequia norms and practices and the rather constrained set of substantive powers conferred on the newly authorized acequia ditch corporations.
- ❑ Acequia corporations have a new right under the statute to purchase water proposed for transfer, not a right to bar the transfer.
- ❑ The right to purchase, necessarily at a fair market price and within a reasonable period of time, is not the same as a recognition that acequia water is a communitary asset, created by and belonging to the acequia, with the irrigator having a usufructuary right to the water only during the time of her occupancy of the irrigated land.

- ▣ The conferral of a right to purchase is a significant new right, important because it recognizes the existence of community claims on water, but it does not represent a revival of the older Mexican communitary law.
- ▣ The law is rather carefully couched in other respects, by leaving intact the core structure of appropriative rights and making the creation of acequia ditch corporations a matter of election by irrigators, but arguably undermining something of the essential subversiveness of acequias with their long history of under-the-radar governance and off-the-board communitary water allocation practices.
- ▣ Thus the new acequia law offers legal recognition of heretofore informally constituted local water institutions, and supports more effective action by them as quasi-governmental entities, but at the cost of their absorption into the body of the law and of the possible loss of their virtues as voluntary and autochthonous associations.

The Recognition Law and other threats to acequia resiliency

- ▣ Despite the limits of the Acequia Recognition Law, there is local enthusiasm for testing some of the other implications the statute has for matters of acequia self-governance.
- ▣ One critical example is the possibility that the new law also conveys on acequia associations the right to serve as “referral agencies” in the determination of land use, planning, and zoning activities at the county level.
- ▣ This has HUGE implications since the pace of subdivision development has accelerated in the region over the past two decades.

Other threats...

- 1) Accelerating land development within critical and sensitive watershed areas;
- 2) A newly emerging possibility that the 80,000-acre historic commons constituting the watershed for acequia irrigation might be purchased by the federal government and managed as a National Forest;
- 3) Continued defections from the norms of acequia self-governance among newcomer parciantes;
- 4) Lack of communication between the directors of the regional acequia association and member parciantes as a result of weak institutional capacity and engagement;
- 5) Lack of investment of energy and commitment by parciantes in governance and management of irrigation systems;
- 6) The need for education of acequia leadership and parciantes on the content, meaning, and political possibilities of the new Recognition law.

Concluding remarks

- ▣ The perpetuation of local, place-based knowledge is essential to the long-term functioning and flourishing of acequia irrigation communities, this narrative indicates how much the prospects for acequias are situated in a landscape defined by law and the social consequences of law.
- ▣ Parciantes sense that the new recognition law did not go far enough. A particular concern is the issue of banning the transfer of water away from the acequias. All the irrigators understand that the law may celebrate acequias as a part of the cultural and historical heritage of the state but fails to respect and reintegrate vital aspects of customary practice.
- ▣ There is awareness that acequia law and the prior appropriation regime are incompatible and that some sort of accommodation is yet to be realized, and that efforts at reform should continue.





Moonrise over Rio Culebra at Rancho Dos Acequias,
home of Acequia Institute 200 acre farm



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www.acequiainstitute.org

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Sin agua no hay vida.