# Appendix D

# Legal Background

# Appendix D1

# Water Law and Regional Planning

# Appendix D-1. Water Law and Regional Water Planning

This appendix outlines the basic concepts of water law in New Mexico in an effort to provide general background information for stakeholders in the water planning region,. An understanding of basic legal background is particularly important for regional water planning because all regional planning efforts are subject to "laws relating to impact on existing water rights" (NMSA 72-14-44C(5)). New Mexico water law is codified in Chapters 72 (Water Code) and 73 (Special Districts) of the New Mexico Statutes Annotated. Chapter 73 details the powers and authorities of various water management agencies in the State such as conservancy districts, irrigation districts, and soil and water conservation districts.

Article XVI of the New Mexico Constitution establishes the basic principles underlying New Mexico water law, including prior appropriation and beneficial use: until appropriated, all water belongs to the State of New Mexico. Thus, the State has the sole authority to grant or recognize rights to use that water.

Two tenets based on the Constitution (N.M. Constit. Art. XVI Sec. 2) are that (1) water rights "are subject to appropriation for beneficial use, in accordance with the laws of the state" and (2) "priority of appropriation shall give the better right.".

- The concept underlying the principle of prior appropriation is that the first person to use water for a beneficial purpose has a prior right to use that water against subsequent appropriators. "First in time, first in right" is the phrase often used to describe prior appropriation. Water rights acquired through this system of prior appropriation are a type of property right and may be sold or leased. In all cases, however, the essential basis of water right ownership is "beneficial use."

- The principle of beneficial use is that a water right arises out of a use that is productive or beneficial, such as agricultural, municipal, industrial, and domestic uses, among others. "Beneficial use shall be the basis, the measure and the limit of a water right" (N.M. Constit. Art. XVI, Sec. 3). This provision has also been incorporated into case law, which is the law developed by New Mexico courts. As recognized in *State ex rel.*

*Reynolds v. Mendenhall,* beneficial use is the "measure and limit of the right to the use of waters" (68 N.M. 467, 473 (1961)).

The State Engineer, through the Office of the State Engineer (OSE) administers water rights for the State of New Mexico, as discussed in Sections C.1 through C.4.

## D.1 Administration of Groundwater and Surface Water in New Mexico

### *D.1.1 Groundwater*

To actively manage groundwater resources in New Mexico, the State Engineer has the authority, as set forth in the Water Code, to delineate groundwater basins that require a permit for groundwater withdrawals. These are referred to as "declared underground water basins." The basins that fall within the Mora-San Miguel-Guadalupe planning region are depicted on Figure 4-1 in the body of this report. To withdraw water from these declared basins, a user must have put water to beneficial use prior to the declaration of the basin or must obtain a water permit from the OSE that specifies (1) how much water a user can withdraw within any given year, (2) the location and type of well that will be used to withdraw the water, and (3) the use to which the water will be put. Many water right permits have special conditions that further define the use and quantity of water allowed under the permit.

Transfers of valid water rights must not be "contrary to the conservation of water within the state and not detrimental to public welfare of the state" (NMSA 72-5-23, 72-12-3(D)). Further, and of critical importance, is the requirement that any transfers not impair existing rights. Methods of obtaining water rights are discussed in Section D.2.

Water rights files are public records and can be reviewed in the OSE District Offices, as well as in the main OSE office in Santa Fe. Also, general information about water rights for New Mexico is compiled in the OSE Water Administration Technical Engineering Resource System (WATERS) database, which can be accessed through the internet (<http://iwaters.ose.state.nm.us:7001/iWATERS/>). The database is a useful tool for understanding general information about the water rights. However, water rights files are complex and the database does not necessarily provide verification of the current status of the

water rights. Consequently, it cannot be used to validate water rights. To determine whether a water right is valid, the paper water rights file must be reviewed and abstracted through both OSE and county records.

### *D.1.2 Surface Water*

Like groundwater, the diversion of water from New Mexico's surface waters requires either a declaration, a permit, a license, or a court decree to divert the water. Surface water appropriations follow the same standards as groundwater rights in that a transfer or lease cannot impair existing water rights and must not be contrary to public welfare or conservation (NMSA 72-5-23, 72-12-3(D)).

Many of New Mexico's surface waters are governed by interstate compacts that require set amounts of water to be delivered to specified delivery points. The Interstate Stream Commission, an adjunct commission to the OSE, has responsibility for ensuring that specific rivers in New Mexico meet their obligations under their respective interstate compacts.

## D.2 Water Rights Ownership

Ownership of water rights by individuals or other entities is established by diversion and application to beneficial use. It may be demonstrated administratively through the declaration or permit process. In the case of groundwater rights, a declaration may be filed for water uses that were instituted prior to the declaration of the groundwater basin. In the case of surface water, a declaration may be filed for water uses that were instituted before 1907, the year the State Engineer assumed jurisdiction over all surface water use in New Mexico. A water right declarant may make and file with the OSE a declaration in a form with the date of first application to beneficial use, continuity thereof, location of the source of water, and description of the land where used (NMSA 72-1-3). However, this declaration constitutes a claim of ownership only; it does not guarantee that the declarant will be entitled to the entire amount of water claimed.

Individuals or entities who wish to acquire a new water right must file a permit application with the OSE and go through the entire permitting process (described in Section D.2.1). Permits for

new appropriations (as opposed to permits to transfer existing rights) are granted only for unappropriated waters of the State. The judicial recognition of water rights on a stream system takes place through an adjudication. An adjudication is a “suit for the determination of a right to use the waters of any stream system" (NMSA 72-4-17). Upon completion of the adjudication proceeding, an order and decree are entered establishing the priority, amount, purpose, periods and place of use, and specific tracts of land to which the right is appurtenant.

The water right permitting process is discussed in more detail in Section D.2.1. Although the permitting process is the primary method of obtaining water rights for water in declared groundwater basins and for surface water, the right to use water may also be obtained through purchase, lease, or through the pre-1907 surface water declaration process, as discussed in Section D.2.3. The loss of ownership of a water right is discussed in Section D.2.4.

### *D.2.1 Water Right Permitting Process*

The water right permitting process includes the following steps:

1. The applicant submits an application to the OSE.

2. The OSE issues a notice of the filing of the application, which is published in a general circulation newspaper by the applicant. This provides public notice to allow individuals or entities who believe their rights would be impaired by the approval of the permit, or believe that the granting of the permit would be detrimental to the public welfare or contrary to the conservation of water, to have the opportunity to submit a protest to the application.

3. If no protest is submitted and if the OSE determines that the water exists and that its appropriation would not impair other water rights or adversely impact public welfare and conservation, the OSE approves the water right application.

4. In the case of a protest, the permit application goes through the contested hearing process before a hearing examiner. The OSE is a party to this proceeding, and its Hearings Unit evaluates whether the applied-for water right would meet the statutory

criteria for approval (no impairment and no adverse effects on public welfare and conservation). Through the examination of the specific conditions of the application and the protestants, the hearing officer makes a determination, and the application is either granted or denied.

5. If a water right is granted, the OSE may place specific conditions in the permit to protect surrounding water rights holders (*City of Albuquerque v. Reynolds,* 71 N.M. 428, 440 (1962)). Examples of conditions placed on permit holders may include monitoring or metering requirements, restricting use to certain months of the year, or disallowing use under specific conditions (low flow, for example). Further, the State Engineer retains jurisdiction over the permit, to ensure that the permittee complies with permit conditions.

### *D.2.2 Other Types of Water Rights*

In addition to water rights established through the permitting process, discussed above, two other types of water rights exist in New Mexico. These water rights, prebasin wells and domestic and livestock wells, are established as described below.

#### *D.2.2.1 Prebasin Wells*

Since many of the underground water basins were declared after wells had been drilled and water put to beneficial use, the Water Code recognizes these rights as valid. Section 72–12-4 states that "existing water rights based upon application to beneficial use are hereby recognized." Even if actual beneficial use does not take place prior to the declaration, actions that demonstrate an intent to appropriate are sufficient to establish a prebasin water right. The priority date of this water right will "relate back" to these actions (*State ex rel. Reynolds v. Mendenhall,* 68 N.M. 467, 475 (1961)).

#### *D.2.2.2 Domestic and Livestock Watering Wells*

As in many other western states, most New Mexico homeowners with private wells are allowed to use up to 3 acre-feet per year of groundwater for household use or for limited irrigation or livestock watering (NMSA 72-12-1.1 to 1.3). This rule applies except in areas where there are court restrictions on domestic wells, a situation which sometimes occurs during an adjudication.

*Domestic wells.* In non-restricted locations, homeowners must file a document indicating that they will use the water, but these domestic use applications are granted automatically by the OSE and are neither published nor subject to protest (NMSA 72-12-1). Local municipalities have some control over domestic well permitting. By statute the State Engineer can issue domestic well permits, provided that permits for domestic use within municipalities are conditioned to require the permittee to comply with all applicable municipal ordinances (NMSA 72-12-1.1).

The OSE does not allow a change in place of these domestic well uses; that is, it does not allow the water right to be moved to another location. In that sense, the domestic well is a right of use only and is not to be sold separately from its intended location and purpose of use. However, non-permitted prebasin domestic wells (Section D.2.2.1) are not subject to this limitation and may therefore be transferred.

*Livestock watering*. Until recently, individuals could impound water for livestock purposes using the 72-12-1 application process, which does not require review and approval from the State Engineer. However, the New Mexico legislature has addressed this loophole in New Mexico water law by amending the water code and requiring permits for this use. The OSE now requires a permit for surface water impoundments of any kind, including livestock water impoundments (NMSA 72-9-3 and NMAC 19.26.2.14). If an application for a livestock pond is made in a perennial stream, the applicant must comply with the surface water appropriation regulations.

To address the issue of so-called livestock ponds built for aesthetic and recreational purposes, the regulations specifically state that water for livestock does not include “”the impoundment of surface or groundwater in any amount for fishing, fish propogation, recreation, or aesthetic purposes.” (NMAC 19.26.2.14). No special provisions apply to fishing or recreational ponds. A valid water right is required to fill such structures and an application must be submitted to the OSE and reviewed under the existing surface water regulations or groundwater regulations should the applicant wish to use groundwater to fill a pond. Given the over-appropriation of surface water (and hydrologically connected groundwater) in the region, it is unlikely that any such application would be approved. Furthermore, such an impoundment could not impair existing senior water rights holders. A landowner wishing to construct a fishing or recreational

pond could seek instead to purchase an existing water right, and transfer the water right to the new place and purpose of use.

### *D.2.3 Water Rights Transactions*

Water rights transactions include transfers to other users, through sales or leases, and changes in point of diversion or in purpose or place of use. These transactions must follow an administrative procedure similar to the one used for appropriating a new water right. An application is filed, and notice is published that provides a certain time limit within which a protest must be submitted. The standards for reviewing these applications are impairment, public welfare, and conservation.

Legislation passed in 2004 gives acèquias and ditch associations the authority to deny water right transfers if it would be "detrimental to the acèquia or community ditch or its members." (NMSA 73-3-4.1). To implement this legislation, however, the acèquia or ditch association must first pass by-laws establishing this review process. The statute provides no definition of "detrimental" and it appears that the commissioners have the discretion to determine the meaning of this term on a case-by-case basis.

The OSE is prohibited from approving applications for changes or transfers of water rights in acèquias and community ditch associations if the applicant has not complied with existing rules of the acèquia or association (NMSA 72-5-24.1).

### *D.2.4 Loss of Water Rights*

The Water Code specifies that non-use for a period of four consecutive years when water is physically available may lead to forfeiture of the water right. Prior to 1965, water rights were automatically forfeited following a four-year period of non-use. Legislation passed in 1965 requires the OSE to notify a water rights holder that the right is subject to forfeiture. After the OSE has provided notice, the water user has one year to put the water to beneficial use; however, if the non-use continues after the OSE has provided notice, the water right is forfeited (NMSA 72-5-28, 72-12-8).

The forfeiture provision of the statute contains several exceptions. Of particular interest to the regional water planning community is the exemption for placing water in "state engineer approved water conservation plans" (NMSA 72-5-28(G), 72-12-8(D)). This provision applies to individuals and entities that own water rights, conservancy and irrigation districts, and acèquia and community ditch associations. Further, municipalities, counties, water user associations, public utilities, community water systems, and state universities are protected from claims of forfeiture by implementing 40-year water plans (NMSA 72-1-9, 72-5-28(C), 72-12-8(F)) (Section D.3).

Water rights may also be lost through abandonment. Abandonment requires an intent to abandon in addition to discontinued use by the owner of the water, whereas forfeiture does not require an intent to relinquish the right (*State ex. rel. Reynolds v. South Springs Col.,* 80 N.M. 144 (146-47)). An example of abandonment would be the development of land formerly used for irrigation into a building, parking lot, or housing complex, thus clearly demonstrating that the owner of the land no longer intends to put their irrigation water right to use.

### *D.2.5 City and County Regulation of Water*

The availability of an adequate water supply is a potential limiting factor on population growth and development expansion. The provision of an adequate water supply poses physical constraints on growth but it may also impose even further constraints as a regulatory mechanism that may be used to manage growth. Both counties and cities have the authority to adopt ordinances conserving and regulating the use of water within their jurisdictions.

For example, subdivision and other land use approvals are increasingly being conditioned upon the developer demonstrating an adequate water supply. In 1996, the New Mexico legislature amended the State Subdivision Act to require that county subdivision ordinances obligate a subdivider seeking approval of a preliminary plat to show that the subdivider can furnish water of sufficient quantity and quality to meet the needs of the subdivision (NMSA 47-6-11 (F)). As part of the approval process, both the OSE and the New Mexico Environment Department must review the subdivider's documentation demonstrating satisfaction of these requirements (NMSA 47-6-11 (F)).

Likewise, municipalities are charged by State law with the power to adopt city ordinances governing land platting, planning, and zoning (NMSA 1978, 3-19-1 through 12; NMSA 3-20-1 through 3-20-16). Specifically, municipal subdivision regulations may govern the extent and manner in which water will be provided to the subdivision as a condition of plat approval (NMSA 3-19-6 (B)(5)(b)).

County and municipal regulations may also be important in the regulation of domestic wells. Under the New Mexico Water Code, an applicant may receive a domestic well permit from the State Engineer without acquiring commensurate groundwater rights or retiring surface water rights to offset the effects of domestic well pumping on hydrologically connected surface water (NMSA 72-12-1). Since a domestic water right permit is granted by the State Engineer as a matter of right, it is viewed by many both as a loophole in the regulation of groundwater withdrawals and as an obstacle to the use of water supply as a growth management tool.

Municipalities do have the power to restrict the drilling of new domestic water wells. Municipal water providers have the authority to deny new domestic well permit applications where the property is located within the exterior boundaries of the municipality and the applicant's property line is within 300 feet of the provider's existing water distribution lines (NMSA 3-53-1.1(A)).

A municipality may not deny a new domestic well permit if the total cost to the applicant of extending the municipal water lines, installing a meter, and hooking up to the system exceeds the cost of drilling a new well (NMSA 3-53-1.1(B)). In addition, a municipality declining to authorize a new domestic well must provide domestic water service within 90 days at regular rates (NMSA 3-53-1.1(C)). Existing wells are not affected by this law.

To exercise this authority, a municipality must adopt a well regulation ordinance and file it with the OSE. An applicant in a municipality with a new well ordinance must obtain a permit to drill from the municipality subsequent to State Engineer approval (NMSA 3-53-1.1(E)). A municipality must notify the State Engineer of its denial of drilling permits, and an applicant may appeal a denial to the district court (NMSA 3-53-1.1(G)). The State Engineer has the power to grant a permit for a domestic well within municipal boundaries provided it conforms to all applicable municipal ordinances (NMSA 72-12-1.1, NMSA 3-53-1.1).

Furthermore, municipalities and counties may regulate water use by assuming responsibility for supplying water to their residents. By owning and operating a water utility, a county or municipality may regulate water use, including imposition of conservation measures. Municipalities may also exercise their powers of eminent domain to establish or expand water utilities. A municipality "within and without the municipal boundary" may condemn, under certain conditions, various water supplies, water rights, rights-of-way "or other necessary ownership for the acquisition of water facilities" (NMSA 3-27-2(A)(1)). However, condemnation of water rights in a public water supply has not occurred in New Mexico (Clark, 1987).

Counties may also own utilities. County authority arises from statutory law providing that all "counties are granted the same powers that are granted municipalities . . . [including those powers] necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants" (NMSA 4-37-1). Certain class B counties are specifically authorized by statute to purchase, own, operate, and sell water and sewer utilities (NMSA 4-36-8). Furthermore, counties are specifically empowered to condemn water rights (NMSA 72-4-2). Incorporated and class H counties also have the power to condemn property for water facilities because they are included in the definition of a municipality in the water code (NMSA 3-27-2(A), 3-1-2(G)).

### *D.2.6 Federal Water Rights*

Certain water rights are created under federal law. These include federally reserved rights and water rights through federal regulation, most importantly the Endangered Species Act. These rights are discussed in Sections C.2.6.1 and C.2.6.2.

#### *D.2.6.1 Federal Reserved Rights*

The doctrine of federally reserved water rights developed over the course of the 20th Century. Simply stated, federally reserved rights are created when the United States sets aside land for specific purposes (thereby withdrawing the land from the general public domain) and there is an implied, if not expressed, concomitant intent to reserve that amount of water required to fulfill the purpose for which the land was set aside. Federally reserved water rights are not created by or limited by State law.

On federal lands (e.g., Indian reservations, U.S. Forest Service lands, National Park Service lands), water rights are reserved by the United States for use on those lands. The priority date of federally reserved water rights is the date on which the United States reserved the land for the particular use. In some cases, the United States may have State law rights under the prior appropriation system if, for instance, the United States acquires lands with existing water rights.

In *United States v. New Mexico* (438 U.S. 696, 700 (1978)), the United State Supreme Court stated that federally reserved claims must be "carefully examined" for their "primary purposes" and that reserved water rights should not be implied unless "without the water the purposes of the reservation would be entirely defeated." In that case, which involved federal claims in the Gila National Forest, the court found that the primary purposes of the national forest did not include fish, wildlife, recreation, or aesthetic purposes, but only timber production and watershed protection.

*D.2.6.2 Endangered Species Act*

Western states, including New Mexico, have traditionally recognized the right to put water to beneficial use on land. Such water rights are proprietary in nature and are a form of real property. Even federal and Indian water rights have been tied to lands reserved by the federal government for a specified purpose and are called federal and Indian reserved rights. In contrast, over the last three decades a new federal water right has emerged, based not on land ownership but on the preemptive effect of federal regulatory authority. This right is known as a federal "non-reserved" right or a federal regulatory right (Tarlock, 1985).

Federal regulatory rights may be created through three major federal legislative schemes: Section 404 of the Clean Water Act, the Federal Power Act, and of particular importance to the planning regions, the Endangered Species Act. The regulatory water rights created by these statutes differ significantly from proprietary rights, whether held by the government or by private entities. All property rights share common characteristics, but the difference between regulatory and proprietary water rights has prompted concerns in the western states about integrating these rights with traditional state-created water rights. For example, although federally reserved rights have a priority date, regulatory rights have no priority date and may supersede prior appropriative rights. Furthermore, they are not subject to the beneficial use or reasonableness requirement (Tarlock, 1985).

Pursuant to regulatory water rights, minimum stream flows may be required to meet water quality standards, avoid jeopardy to protected species, or satisfy hydroelectric licensing requirements.

The Endangered Species Act (ESA) (16 U.S. C. §§ 1531-1544 (2000 and 2002 Cum. Supp.)) can play a prominent role in determining the allocation of water, especially of stream and river flows. The ESA was enacted in 1973 and, with limited exceptions, has remained in its current form since then.

The protections of the ESA are triggered by listing a species as "threatened" or "endangered." The goal of the Act is to protect threatened and endangered species and the habitat on which they depend (16 U.S. C. § 1531(b) (2000)). The Act's ultimate goal is to "recover" species to the point that they no longer need protection under the Act.

The ESA provides several mechanisms for accomplishing these goals:

- The Act makes it unlawful for anyone to "take" a listed species unless an "incidental take" permit or statement is first obtained from the Interior Department (16 U.S.C. §§ 1538, 1539 (2000)). "Take" is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct" (16 U.S.C. § 1532(19) (2000)).

- In addition, federal agencies must use their authority to conserve listed species and must make sure that their actions do not jeopardize the continued existence of listed species or destroy or harm habitat that has been designated as "critical" for such species (16 U.S.C. § 1536 (2000)).

Federal agencies are also required to consult with the United States Fish and Wildlife Service (USFWS) to determine whether federal actions or federally sponsored actions will affect or jeopardize threatened or endangered species or critical habitats. Whenever a private or public entity undertakes an action that is "authorized, funded, or carried out," wholly or in part, by a federal agency, the consultation requirement is triggered and the potential impacts of the

undertaking on threatened and endangered species are analyzed by the USFWS (16 U.S.C. § 1536(a)(4)(2000)).

*D.2.6.3 Pueblo Water Rights*

The United States recognizes and protects the right of the Pueblos to make their own laws and be governed by them (*Williams v. Lee,* 358 U.S. 217, 223 (1959)). In order for Pueblos to maintain their essential right of self-governance, courts recognize that the Pueblos' water rights must remain independent of the State allocation rules and State administration of those rules, including the planning process (*State of New Mexico v. Aamodt,* 537 F. 2d 1102 (10th Cir. 1976)) (hereinafter referred to as "Aamodt I"). (The Pueblo water rights described herein are analogous to the "pueblo water rights" discussed in Section 4.2.1 of the Mora-San Miguel-Guadalupe water plan; both involve the concept of an "expanding" water right afforded to pueblo forms of government.) However, without at least some cooperative efforts among different tribes and non-Indian communities, the purposes of regional water planning may not be realized. One of the primary reasons is that the Pueblos are the senior-most users on a river. At least one court has ruled that the water supplies that can be tapped to meet federally recognized rights include all water, surface or ground, on tribal lands or outside tribal lands, where the diversion affects resources on tribal lands (*New Mexico v. Aamodt,* 618 F. Supp. 993, 1010 (D.N.M. 1983)) (hereinafter referred to as "Aamodt II"). Thus, if groundwater was available in the past to satisfy a tribe's federally protected right and is not reasonably available now because of pumping outside the tribe's lands, those pumpers can be enjoined. Any regional water plan must take this fact into consideration to reflect the availability of water for the future of the region.

*D.2.6.3.1 Pueblo Aboriginal Rights.* Pueblos have aboriginal rights to water that arise from the Pueblos' aboriginal existence as autonomous societies and the use of their lands and waters. When the United States entered into the Treaty of Guadalupe-Hidalgo (ratified May 30, 1848, proclaimed July 4, 1848, 9 Stat. 922-43), the nation accepted the obligation to recognize and respect the aboriginal rights of tribes in areas acquired from Mexico. For tribal settlements, specifically the Pueblos, the Spanish and Mexican governments recognized and protected a prior right to sufficient water to meet their needs. As their needs changed over the years, those prior holdings were recognized, thereby extending federal protection to existing Pueblo rights to land and water. These rights exist based upon the original sovereignty of the Pueblos.

In *State ex rel. Reynolds v. Aamodt* (Aamodt II, supra), the court held that these rights were not extinguished by any of the acts of Spain or its successor, Mexico. Therefore, when the United States became the sovereign entity after the treaty, it was obligated to recognize and protect these original rights. The Pueblos' rights include irrigation uses, in-stream or non-diversionary uses, stock watering, and municipal and domestic uses. Federal law explicitly preserved these rights (Section 9, Pueblo Lands Act of May 31, 1933 (48 Stat. 108, 73rd Congress, First Session, Chap. 45)) each of which are briefly discussed below.

- *Historically irrigated acreage, ditch rights.* The Aamodt court concluded that as to aboriginal irrigation uses, the Pueblos had a prior right to all water necessary to irrigate their farmlands, but that the expanding nature of this right was cut off by the Pueblo Lands Act of 1924. These aboriginal water rights are measured by the amount of water necessary to irrigate all lands irrigated when the United States took sovereignty in 1846, plus any additional lands put into irrigation up to 1924 (Aamodt II, supra). In addition to these rights, Pueblos also have senior water rights for any irrigated lands or water rights associated with the loss of lands pursuant to the Pueblo Lands Act of 1924 and the 1933 Pueblo Compensation Act, where lands or water rights have been reacquired (*State ex rel. Reynolds v. Aamodt,* U.S.D.C.N.M. No. 6639, Mem. Op. & Order (Feb. 26, 1987)). These are referred to as "replacement" water rights.

  As against all non-Pueblo users, these are senior priority rights. Generally, all rights prior to the 1924 cutoff are "aboriginal" or "time immemorial" rights (Aamodt I, supra). The Aamodt court has also found that Spanish law modified the aboriginally based right, because it expressly recognized all Pueblo uses as having a first right, or "right of primacia" (Aamodt II, supra, at 999). By virtue of the Treaty of Guadalupe-Hidalgo, the United States was obligated to recognize and protect the senior priority.

- *Non-ditch or "ak-chin" water rights.* The Pueblos have made claims for "ak-chin" or aboriginal water use that did not rely on diversions from the rivers to ditch systems for delivery of the water to the land. Through temporary catchments and use of rocks to direct water flow, various aboriginal water uses were supplied, including but not limited to irrigating small plots at different times. Aboriginal or first priority rights can be claimed for them. In 1997, the Aamodt court determined that even non-diversionary aboriginal

use, if capable of being proved, could be the basis for a first priority right (*State ex rel Reynolds v. Aamodt,* U.S.D.C.N.M. No. 6639, Mem. Op. & Order (January 17, 1997)). Although most of these uses do not relate to water directly flowing into a river, and under some circumstances would meet the State law definition of "private water" or "developed water," these uses can give rise to tribal and federal claims within the larger river drainage basin.

- *Stock watering.* Congress recognized a "prior right" for "Pueblo Indians for domestic, stockwater, and irrigation purposes for the lands remaining in Indian ownership" (Section 9, Pueblo Lands Act of May 31, 1933 (48 Stat. 108, 73rd Congress, First Session, Chap. 45)).

- *Domestic (municipal) use.* The Pueblos are governments with all of the responsibilities of providing for municipal uses for Pueblo residents and for making water available for the construction of homes and the operation of businesses. The Aamodt court decided that the measure of the Pueblos' domestic or municipal water rights was cut off by the Pueblo Lands Act of 1924 (*State ex rel. Reynolds v. Aamodt,* U.S.D.C.N.M. No. 6639, Mem. Op. & Order, pp. 4-5 (Jan. 31, 2001)). The court stated that the right included the Pueblos' cumulative use, not just the maximum used in any one year, and that all planned uses as of the date of the Act survived (*State ex rel. Reynolds v. Aamodt, id.* pp. 6-7).

*D.2.6.3.2 The Pueblos' Federally Reserved Water Rights.* The Pueblos can also have federal reserved water rights where lands outside Pueblo grants have been reserved for them by the United States. These rights are known as "Winters reserved rights" and reserve sufficient water for the present and future needs of the Pueblo based on the "practically irrigable acreage" of the lands reserved for the Pueblo or some other appropriate measure depending on the purposes of the creation of the reservation (*Winters v. United States,* 207 U.S. 564, 574-8 (1908); *Arizona v. California,* 376 U.S. 340, 343-7 (1963)). Several courts have held that Winters rights are not the same as other federally reserved rights, because of the many purposes served by federally created Indian reservations. Where no specific purpose is identified, there is always the implicit purpose of setting aside a tribal homeland, and in these instances, the "practically irrigable acreage" standard is used.

The priority date for a "Winters" water right is the date the reservation was created or, where applicable, the date that the land is set aside primarily for a tribe's use. The Aamodt court recognized the existence of a federally reserved right to capture intermittent flows, but did not decide the transferability of such a right (*State ex rel. Reynolds v. Aamodt,* 618 F. Supp. 993 (D.N.M. 1985)). At least one federal court has interpreted "Winters" to also apply to either federal or tribal reservations of rights, thereby allowing an aboriginal priority date for some "Winters" rights (United States v. Adair, 723 F.2d 1394, 1398, 1412 (9th Cir. 1983)).

*State Law-Based Rights.* The Pueblos may have State law-based rights where they privately acquire lands with appurtenant pre-existing State law water rights. This applies, however, only where the lands would not qualify as "replacement lands." In those instances, the senior priority reasserts itself once the Pueblo reacquires the land.

## D.3 Setting Aside Water for Future Use

Through various provisions in the Water Code, the New Mexico legislature has created a mechanism to allow certain organizations to set aside water for use in the future. Although this notion is contrary to the well-known "use it or lose it" concept at the heart of the prior appropriation system, it is essential for long-term water planning.

The entities that have acquired special status for water planning under the code are municipalities, counties, state universities, member-owned community water systems, special water users' associations, and public utilities supplying water to municipalities or counties. These entities are allowed a 40-year water use planning period, and water rights for these entities are based upon a water development plan, which must be implemented within the 40-year period (NMSA 72-1-9(B)). This provision of the statute will allow entities in the Mora-San Miguel-Guadalupe regional water planning area to legally appropriate and preserve water that they cannot currently use, but will need to meet projected water requirements for the region. These entities will be required to develop a 40-year water plan for their individual water supplies. The future demand study component of a 40-year plan can serve as partial justification for the appropriation. The Mora-San Miguel-Guadalupe regional water plan's future demand study could also support an application to appropriate water for future use.

Municipalities and counties are specifically exempt from forfeiture of unused water rights if those rights have been appropriated for the implementation of a water development plan or for preservation of water supplies (NMSA 72-12-8 (F)). These provisions are the same for both surface water and groundwater (NMSA 72-5-28(C)).

Conservancy districts also have special provisions that allow them to manage water without application of the forfeiture provisions. NMSA 72-5-28 (G) allows "periods of nonuse when water rights are acquired and placed in a state-engineer approved water conservation program" by a conservancy district organized pursuant to NMSA, Chapter 73, Articles 14 through 19.

## D.4 Conjunctive Use

Conjunctive use is the legal and administrative recognition that a hydrologic connection exists between surface water and groundwater. Because of this recognition, New Mexico water law has evolved to incorporate a system whereby the State Engineer can manage groundwater and surface water in conjunction, as opposed to other western states such as Texas and California, which manage groundwater and surface water resources separately (Archer and Patrick, 1994, p. 152). From a water resources management perspective, the authority to manage these resources conjunctively has great benefit.

The recognition of the impact of groundwater pumping on surface flows extends back to early cases in New Mexico. For example, in *Templeton v. Pecos Valley Conservancy District* (65 N.M. 59 (1958)), groundwater pumping reduced the flow of the Rio Felix such that a senior surface water right holder could not fully exercise his water right. The water right holder applied to drill for water in the aquifer that was hydrologically connected to the river. The court agreed that exercising the water right by drilling a well was merely a change in point of diversion of the surface water right, thus recognizing the interconnection between the shallow aquifer and the river itself.

The State Engineer incorporated the concept of conjunctive management by requiring applicants for groundwater in stream-related basins to purchase surface water rights in an amount equivalent to the proposed application in order to offset the impacts the groundwater pumping would have on the river. The City of Albuquerque challenged these conditions when

its application for 6,000 acre-feet of groundwater was conditioned upon an offset of surface water. In *City of Albuquerque v. Reynolds* (71 N.M. 428 (1962)) the court upheld the State Engineer's decision, stating that the OSE has the authority to impose these conditions.

The OSE has subsequently integrated this policy into its groundwater administrative criteria in various basins, which require that applicants purchase surface water rights that would offset groundwater pumping in a permit application. In other stream-related basins, the OSE has developed criteria to manage groundwater appropriations in order to protect surface water rights.

## D.5 Water Quality

Federal and state laws and regulations govern water quality within all planning regions within the State. Most water quality laws have their genesis in federal law. An understanding of the federal water statutes and how they interrelate with state law is critical to understanding the regulation of water quality in the area. In particular, water quality can have a specific impact on the quantity of water within a planning region, since minimum instream flows may be necessary to meet water quality standards.

### *D.5.1 The Clean Water Act*

Several federal laws address water quality issues. Clearly, the most significant federal law is the Clean Water Act (CWA) (33 U.S.C. §§ 1251 to 1387 (2002)). The CWA is a 1977 amendment to the Federal Water Pollution Control Act of 1972, which set the basic structure for regulating discharges of pollutants to navigable waters of the United States. "Navigable waters" has been broadly defined to include every creek, stream, river, or body of water that may in any way affect interstate commerce, including arroyos or ditches (*Friends of Santa Fe County v. LAC Minerals, Inc.,* 892 F. Supp. 1333, 1355-6 (D.C.N.M. 1995)).

The Act's objective is to "restore and maintain the chemical, physical and biological integrity" of the waters of the United States (33 U.S.C. § 1251(a) 2002). The CWA has several ways to reach this goal:

- It allows water quality standards for specific segments of surface waters (33 U.S.C. § 1313 (2002)).

- It makes it unlawful for a person to discharge any pollutant into waters without a permit (33 U.S.C. § § 1311, 1342 (2002)).

- It allows for the designation of "Total Maximum Daily Loads" (TMDLs) for pollutants threatening the water quality of stream segments (33 U.S.C. § 1313(d) (2002)). TMDLs are identified for those waters where an analysis shows that discharges may result in a violation of water quality standards (33 U.S.C. § 1313(d)(1)(C) (2002)). The TMDL process can be best described as determining and planning a watershed or basin-wide budget for pollutant influx to a watercourse.

By enacting the CWA, Congress gave the United States Environmental Protection Agency (EPA) broad authority to address water pollution. With this authority, the EPA has developed a variety of regulations and programs to reduce pollutants entering surface waters. For example, applicable water quality standards, discharge permit requirements, and TMDLs are all defined by regulation.

Groundwater pollution is not specifically addressed by the CWA, and pollution such as mining, agricultural, and construction runoff (referred to as "nonpoint sources") is addressed mainly through voluntary management efforts, called "best management practices," and state regulation rather than through federal regulation (40 C.F.R. § 130.2 (2002)). Nonetheless, a recent court decision found that the EPA and states have the power to list and issue TMDLs for waters polluted only by nonpoint sources of pollution (*Pronsolino v. Marcus*, 91 F. Supp 2d. 1337, 1356 (N.D. Ca. 2000), affirmed by *Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir. 2002)).

The CWA also calls for effluent limitations. Simply speaking, an effluent limitation is a restriction on discharges into surface waters from the "end of the pipe," or point source. These discharges are regulated through the issuance of National Pollutant Discharge Elimination System (NPDES) permits (33 U.S.C. § 1342 (2002)). These permits limit the discharge of a variety of pollutants and control the characteristics, such as temperature, of the discharge. NPDES permits also regulate stormwater discharges entering surface water (33 U.S.C. § 1342(p)

(2002)). Although EPA can delegate the administration of the NPDES program to individual states (33 U.S.C. § 1251(b) (2002)), they have not done so with New Mexico.

The CWA allows the EPA to delegate many permitting, administrative, and enforcement aspects to state and tribal governments (33 U.S.C. §§ 1251(g), 1377 (2002)). For example, states and tribes have the power to adopt water quality standards for surface waters within their jurisdictions. A water quality standard generally is a standard that is established to sustain and protect existing or sustainable uses of surface water. A water contaminant is any substance that alters the physical, chemical, biological, or radiological qualities of the water (NMSA 74-6-2 (A)). A contaminant becomes a pollutant when it exceeds an acceptable concentration or standard. Under the CWA, states are required to adopt water quality standards that protect certain designated uses for each river, stream segment, and lake (33 U.S.C. § 1313 (2002)); New Mexico has adopted its own surface water quality standards (20.6.4 NMAC). Tribes meeting certain criteria under the CWA have those same powers for waters within tribal lands (33 U.S.C. § 1377(a) (2002)). Designated uses include recreation, wildlife habitat, domestic water supply, irrigation and livestock water, or in the case of Indian tribes, culturally significant or sacred uses. The water quality standards must protect the designated use for the surface water at issue. Standards must be reviewed every three years and be modified or replaced as appropriate (33 U.S.C. § 1313(c)(1) (2002)). This process is known as the "Triennial Review."

### *D.5.2 The Safe Drinking Water Act*

The Safe Drinking Water Act (42 U.S.C. § 300f et seq. (2002)), protects the quality of drinking water in the United States. This law focuses on all waters actually or potentially designed for drinking use, whether from surface or underground sources. The Act authorizes EPA to establish safe standards and requires all owners or operators of public water systems to comply with the standards. New Mexico has promulgated drinking water regulations that adopt, in part, federal drinking water standards (20.7.10 NMAC).

### *D.5.3 Groundwater Standards and Regulations*

As noted in Section D.5.1, the CWA focuses primarily on surface water pollution. Groundwater pollution not caused by hazardous waste is addressed directly by the State and tribes, pursuant

to the New Mexico Water Quality Act and its regulations (NMSA 74-6-1 et. seq.; 20.6.2 NMAC). In New Mexico, groundwater pollution is caused by a number of sources, including septic tank systems and cesspools, spills and leaks of hazardous materials, solid waste disposal sites, overuse of fertilizers and pesticides, and mines. Except for hazardous and liquid wastes, which are regulated separately, these sources are required to have discharge plans under the Water Quality Act and its implementing regulations (NMSA 74-6-1 et. seq.; 20.6.2 NMAC).

Improperly installed or maintained domestic septic systems can be a source of groundwater pollution in New Mexico. New Mexico's Environmental Improvement Board is charged with writing regulations for liquid waste disposal and has promulgated regulations applicable to domestic septic systems (NMSA 74-1-8; 20 7.3 NMAC). Releases of hazardous wastes are regulated pursuant to regulations found at 20 4.1 NMAC.

## References

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# Appendix D2

# Acéquias and Community Ditches by River Section

**Appendix D-2. Acequias and Community Ditches by River Section**


## A. Pecos River Drainage Basin within San Miguel County

Section I. Pecos River, Headwaters to Irwins Gaging Station

Panchuelo Ranger Station
Simmons Ditch (U.S. Forest Service)

*Ditch/water users identified by Hope Decree for which present use could not be confirmed:*
Ribera Ditch
Viles Diversion
Irwin or Irving Ditch
Indian Creek Ditch

Section II. From Irwins Gaging Station to Mouth of Cow Creek

West Urban Ditch
Valley Ranch Ditch
Rincon Ditch
East Ditch at Pecos
West Pecos Community Ditch
Molino Ditch

*Ditches/water users currently not in use:*
Epifanio Gonzales Ditch
Bernardo Martinez Ditch
American Metals Co. of NM
Romecio Sandoval Ditch
Cesario Lujan Ditch
East Urban Ditch
Juan Sandoval Ditch
T.P. Gable Ditch
Ruter Ditch
Herch or Austin Ditch
Atchison Topeka & Santa Fe Railroad Pumping Station at Rowe

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

**Appendix D-2. Acequias and Community Ditches by River Section**


Section III. Cow Creek and Bull Creek

Bull Creek Ditch
Las Colonias Ditch (Cow Creek)
Pellio Fernandez Ditch (San Isidero Ditch #7)
East Justo Gonzales Ditch (San Isidero Ditch #5)
La Aceq de los Seguras (San Isidero Ditch #6)
La Acequia de la Placita (San Isidero Ditch #8)
Los Gonzales Ditch

*Ditches not in use:*
Nameless Ditch
San Isidero Norte Ditches
A. Huiquo #1
B. Encino #2
C. Los Gomez #3
D. El Ranchito #4

Section IV. Sebedilla Creek (series of small ditches)

Section V. Pecos River from Mouth of Cow Creek to San Miguel-Guadalupe County Line

El Gusano Ditch
Los Trujillos Ditch
El Llano de la Presa
Acequia de la Agua Caliente
Acequia Ancon de Sarasino
San Miguel Ditch
El Ranchito de los Quintanias Ditch
Los Trijos Ditch
La Acequia del Pueblo
El Garambuyo
La Fragua
Gonzales Community Ditch
South Villanueva Community Ditch
Northside Community Ditch
El Cierrito Community Ditch
Tecolitito Community Ditch

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

**Appendix D-2. Acequias and Community Ditches by River Section**


*Ditches/water users currently not in use:*
San Jose Community Ditch
Atchson Topeka & Santa Fe RR Pumping Station at Ribera
Ribera Ditch at Ribera

Section VI. Tecolote River and Tres Hermanos Creek

San Geronimo Ditch (Tecolote River)
Acequia de los Lopez (Tecolote River)
Tecolote Ditch (Tecolote River)
El Empedrado (Spring Tecolote River)
Los Chupaderos Ditch (Spring near Tres Hermanos Creek)

*Ditches/water users currently not in use:*
Upper Lesperance Ditch
Lower Lesperance Ditch
Aragon Ditch
Stern & Nahm Ditch
La Cueva Ditch
Tecolote Ditch above Tecolote
East Lagunita Ditch
West Lagunita Ditch

Section VII. Gallinas River

Judge Long Ditch
Placita Arriba Ditch
Lower Harvey Ditch
Upper Maestas Ditch
El Porvenir Ditch
Max Hordhaus Ditch
Gallegos Ditch
Farmers Ditch
LV Water Users Association (no longer accurate)
Storrie Project W.U.A. plus (no longer accurate)
Acequia Madre de los Vigiles
Vigil Ditch
Grzelachowski Ditch
Acequia Madre del los Romeros

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

**Appendix D-2. Acequias and Community Ditches by River Section**


Nuestra Senora de Las Vegas
Acequia Madre de Las Vegas
Round House Ditch
Pappen Ditch
D.U. Harris Irrigation Project
Los Valles de San Augustine Ditch
Ancon del Gato Ditch
Upper La Liendre Ditch
West Chaparito Community Ditch (Duran Ditch)
Acequia Arriba
GR-40 unnamed
GR-11 unnamed
GR-10 unnamed

*Ditches/water users currently not in use:*
Ranger Station
Lower Maestas Ditch
El Porvenir Ranch Ditch
El Porvenir Hotel Ditch and Pipeline
Felipe Martinez Acequia
Montezuma College Pipeline
Baca Ditch
Asylum (Baca) Ditch
Gallinas and Mora Rd. Ditch
Saturnia Sena Ditch
Los Fuertes Ditch
La Bereda Blanca above San Augustin
La Concepcion Ditch near San Augustin
Don Tomas Ditch
La Liendre Community Ditch
Acequia del Llano
Los Torres Community Ditch
East Chaparito Community Ditch

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

Section VIII. The Pecos River from Dilia to the Guadalupe Gaging Station including the Santa Rosa Swamps

Las Colonias Community Ditch
Puerta De Luna
East Ditch at Puerto De Luna
West Puerto de Luna Ditch
Total Puerta de Luna
All other
West Side Swamp Ditch
Santa Rosa Swamp Ditch
Hormigoso Community Ditch
Bado De Juan Pais Ditch
Baca Swamp Ditch
Cage Spring Ditch
Twin Lakes Ditch
Casaus Ditch
Labadie Ditch
Ortega Ditch
Giddings Ditch

## B. Canadian River Drainage Basin: San Miguel and Mora Counties

Section I. Sapello River and Tributaries: Rito San Jose aka Gascon Creek Maestas Creek, Sparks Canyon Creek, Manuelitas Creek, and Sapello Creek

*Section I-A*

*Maestas Canyon*
Hoffer Ditch
Sammy Martinez Ditch
Richard Maestas Ditch
Alan Lujan & Dick Maestas Ditch
Adelado Trujillo & Lucio Zamora Ditch
Ted Maestas & Robel Garcia Ditch
Johnny Ortiz Ditch
Ted Maestas & Joe Maestas Ditch
D.L. Curtis Ditch
Hutchison Ditch

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

*Sparks Canyon*
Arturo Alire Ditch
Adan Lujan Ditch
Lucio Zamora & Ted Maestas Ditch
Robel Garcia & Johnny Ortiz Ditch

*Section I-B: Gascon Creek & Rito San Jose (Ditch in both Mora & San Miguel Counties)*

Gascon Ranch Ditch
Spring Pasture
Meadow Ditch
House Meadow Ditch
Lovato Ditch
Stein Ditch
Lucero Ditch
Herrera Ditch
Middle Canyon Ditch
High Canyon Ditch
Northrop Ditch
Acequia del Molino de Padilla
Old Manuel Valerio Ditch
Acequia del Sombrillo
Acequia de San Jose
Florencio Gonzalez Ditch
Acequia del Jardin

*Section I-C: Maulitas Creek*

Acequia Madre del Canyon aka Los Martinez Ditch
Herrera Ditch
Acequia de la Resolana
Canyoncito del la Manuelita Ditch
El Alcantar Ditch
Jose Maria Sanchez Ditch
Acequia del Medio el Manuelitas aka Acequia de los Padillas

*Section I-D: Sapello Creek*

Rackley Ditches
San Ignacio Ditch

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

Acequia de las Chimayosas Ditch
David/Pena Ditch
Sanguinuela Ditch

*Section I-E: Sapello River*

McLaughlin Ditch
Acequia del Llano Ditch
G.M. Jones Big Ditch
Kronig Northside Ditch

Section II. Santiago Creek aka Cebolla Creek and Rito Murphy aka Rito San Jose

*Section II-A: Santiago Creek (Cebolla Creek)*

Mountain Ditches
La Canada Ditch
La Aguila Ditch
La Bandita-Monte Ditch
Aplanado Ditch
Martinez and Pacheco Ditch
San Jose Abajo Ditch

*Section II-B: Rito Murphy aka Rito San Jose*

Acequia de la Isla y Molino
Acequia de San Jose
North Carmen Community Ditch
La Canada Seca Ditch
La Rinconada Ditch

Section III. Rio de la Agua Negra and tributaries to junction of Rio de la Agua Negra and Rio de la Casa

*Section III-A: Lujan Creek*

Acequia de Donaciano Medina y Benito Lujan
Acequia de las Colonias
Leyba Ditch
Lujan Ranch Ditch
Romero Ditch

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

**Appendix D-2. Acequias and Community Ditches by River Section**
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*Section III-B: Luna Creek*

Acequia de los Lunas
Acequia larga de Las Cruces

*Section III-C: El Quemado Canyon*

Acequia del Rito Gregio y la Sierra
La Joya Community Ditch
Old Juan Benito Ortega Ditch

*Section III-D: Rito Agua Negra (Upper Reaches of Mora River)*

Acequia de los Borregos
Acequia del Molino
Acequia de los Ortegas
Acequia Lovats/Romero
Lovato/Raton Ditch
Acequia del Medio
Acequia de los Romeros
Acequia Madre de Holman
Arellano/Essary Ditch aka Los Martinez Ditch
Acequia de la Morada
Acequia de Tramperos
Acequia del Medio de San Antonio
Cassidy Ditch

*Section III-E: Vigil Canyon-Rio Pueblo (Trans Mountain Diversion)*

La Acequia de la Sierra

*Section III-F: Encinal Canyon-Canyoncito (Trans Mountain Diversion)*

Encinal Community Ditch
Canyoncito Community Ditch

Section IV. Rio de la Casa

Acequia de los Vallecietos de San Ysidro
Alto Ditch aka El Alto/Martinez Ditch
Acequia de los Martinez
Acequia de San Antonio

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

**Appendix D-2. Acequias and Community Ditches by River Section**
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Section V. Mora River from the Junction of the Rio de la Casa to Golondrinas

Cassidy Mill Ditch
Mora Valley Northside Ditch
La Acequia del Medio
Acequia de la Orilla aka Acequia de los Luceros
Acequia de Santiago de Alto de Talco
Middle Road Ditch
La Vega de Mora Drainage System (El Estero)
Canoncito de la Cueva Ditch
Buena Vista Ditch
South Golondrinas Ditch (del Lado Sur)
North Golondrinas Ditch
Sandoval & Wethers Ditch

*Section V-A: The La Cueva System (Salmon Ranch-irrigation system diverts above Buena Vista Ditch on Mora River)*

La Cueva Community Ditch (private)
Porter Tract (capable of diverting from Mora River or Coyote Creek)

Section VI. Mora River below Golondrinas to County Line

Larrazola Ditch
Loma Parla Ditch
Upper Clyde Ditch
Middle Clyde Ditch
Lower Clyde Ditch
Phoenix Ditch
Ft. Barclay Ditch
Crowley Ditch
Tipton Ditch
North Shoemaker
Cherry Valley South Ditch

Section VII. Coyote Creek

Santo Tomas #1
Santo Tomas #2
Los Cocas Ditch

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

Santa Rita Community Ditch
Montoya Ditch aka Acequia de Los Montoyas
Rainsvill Community Ditch North
Rainsvill Community Ditch South
Porter Tract (Salmon Ranch)
North Golondrinas Ditch (Thal Ranch)
South Golondrinas Ditch (Thal Ranch)
Mares and Wethers Ditch

Section VIII. Ocate Creek and Tributaries

*Section VIII-A: Los Hueros Creek*

Los Acequia del Norte Sur de Los Hueros

*Section VIII-B: Los Le Febres Creek*

Los Febres Community Ditch
Upper Lower Trujillo Ditch

*Section VIII-C: Wheaton Creek*

Stanly Ranch (Two Ditches)
Acequia de las Piedras Colordas
Bonita Canyon Ditch

*Section VIII-D: Manueles Creek*

Romero Ditch
Mares Ditch
Ortega Ditch

*Section VIII-E: Vaderitas Creek*

Lower Garcia Ditch
Middle Garcia Ditch
Upper Garcia Ditch

*Section VIII-F: Ocate Creek*

Lopez Ditch
Hern Ditch
Smith Ditch

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

## C. Mora and San Miguel County Canadian River Basin

Section I. Sapello River and Tributaries (acequias not active)

*Section I-A: Manuelitas Creek (San Miguel County)*

La Tegua Ditch

*Section I-B: Rociada Creek (San Miguel County)*

Rociada Paniente Ditch
Rociada Oriente Ditch
Ramirez Ditch

*Section I-C: Rito Colorado (San Miguel County)*

Rito Colorado Ditch

*Other Acequias on Sapello River for which declaration of water rights filed but could not confirm existence or use:*
Lower Manuelitas Community Ditch (Manuelitas Creek)
Bookout Irrigation Ditch (Sapello River)
Pritzlaff Ditches (Sapello River)

Section II. Santiago Creek aka Cebolla Creek and Rito Murphy (acequias not active) (Mora County)

North El Carmel Ditch
Robinsons Ditch
Walker and Robinson Ditch

Section III. Rio de la Agua Negra (Mora River; upper reaches) and Tributaries to Junction of Agua Negra and Rio de la Casa (acequias not active)

La Acequia de Arriba
Garcia Ditch

Section IV. Rio de la Casa

*Did not identify any acequias that are not active or out of existence*

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).

**Appendix D-2. Acequias and Community Ditches by River Section**
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Section V. Mora River from Junction of the Rio de la Casa to Golondrinas (acequias not active)

Webris Lower Ditch
Charles Weber Ditch

Section VI. Mora River below Golondrinas to county line

*Did not identify any acequias that are not active or out of existence*

Section VII. Coyote Creek (acequias not active)

Teodore and Eusiloio Romero Ditch
Santo Tomas #3 Ditch
Antonio Espinosa Ditch
Los Cianeros Ditch
Los Medinas Ditch
East and West Side Coyote Creek Ditch & Spring Ditch
Romero Irrigation System
Morgan-Weathers Ditch

Section VIII. Ocate Creek and Tributaries (acequias not active)

Upper Ditch (Manueles Creek)
Ortiz Ditch (Manueles Creek)
South Ditch (Manueles Creek)
Community Ditch (Manueles Creek)
Sandoval Ditch (Los Le Febres Creek)
Upper Ditch (Las Hueras Creek)
Lower Ditch (Las Hueras Creek)
Well Ditch (Wheaton Creek)
North Ocate Ditch (Ocate Creek)
Naranjos Ditch (Ocate Creek)
Guadalupe Duran Ditch (North Ocate Creek)
Area C Mora County
Area C San Miguel County

Source: Martinez, 1990 (Mora and San Miguel Counties) and 1933 Hope Decree (Guadalupe County).