



Settlement water rights a liquid asset

Why Taos Pueblo passed on offer to avoid controversial water transfer

By J.R. Logan

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In June 2007, representatives from Taos Pueblo sat in the windowless basement of a drab government building in Santa Fe. It was well after midnight, and the tribe was in a stalemate with officials from four other pueblos who sat in a conference room two floors up.

Nambe, Tesuque, Pojoaque and San Ildefonso pueblos needed Taos to give up valuable water rights so they could all move ahead with settlements that took decades to hash out. But the Taos Pueblo delegation showed little interest in compromise.

“They were holding the line,” remembers retired Arizona judge Michael Nelson, who was one of three mediators carefully trying to craft a deal. The stakes were so high and things were so tense, Nelson says, the two groups had to parley from separate rooms. “There’s certain things you can’t do face-to-face,” Nelson says. “Certain times you can’t show weakness.”

In the wee hours of the morning, a deal was finally reached. Almost a decade later, the wheels of that complex agreement are in motion.

Three months ago, Santa Fe County and the four neighboring pueblos filed an application asking the state for approval to move 1,752 acre-feet of water rights from Top of the World Farm in northern Taos County to be put to use in a massive water system in the Pojoaque Basin 80 miles downstream. The proposal would essentially dry up the farm’s wells so faucets could flow in the area north of Santa Fe.

The transfer has raised the hackles of Taos County activists and leaders, who are categorically opposed to seeing a big pile of water rights go south.

But those behind the transfer say it wasn’t their first choice. They argue moving agricultural water rights across county lines is their only option, in part because of those late-night negotiations eight years ago: Taos Pueblo simply refused to trade water rights they could more easily lease downriver.

'Work it out'

All this wrangling is rooted in two separate settlements — one in the Taos Valley and another north of Santa Fe — meant to resolve pueblo water claims while ensuring a supply for existing residents and future growth. The idea was to negotiate rather than fight it out in court.

Under state law, pueblos have a senior right to water. That means in times of drought, the tribes could conceivably leave their neighbors — from acequias parciales to domestic water systems — completely dry.

The threat of such a showdown is a serious concern, especially for fast-growing communities in Northern New Mexico.

In the Taos Valley, Taos Pueblo spent almost two decades haggling with nearby irrigators and domestic water providers to quantify and secure the tribe's rights (a grand bargain known as the Abeyta Settlement). Independently and at the same time, the four Santa Fe-area pueblos were trying to reach a similar compromise in the Pojoaque Basin (the Aamodt Settlement).

Around 2006, both groups managed to come up with settlement terms they could live with. But there was a problem: In order to serve current and future water users, the Aamodt needed about 1,000 acre-feet of additional water rights so it could divert more water from the Rio Grande.

Those water rights are essential to accommodate future consumers. In theory, the state has already determined who has a right to use the available water in the basin, meaning any new diversion must be balanced by stopping someone else from using the same amount of water.

Meanwhile, the Abeyta parties were sitting pretty. Their deal called for more well pumping — which would also require more water rights — but they were expecting the federal government to hand over 2,990 acre-feet from the San Juan-Chama Project to make sure they balanced the books.

The San Juan-Chama Project takes water that originates in the Colorado River Basin, diverts it through manmade tunnels beneath the Continental Divide and drops it into the Rio Chama. Eventually, that water makes its way to the Rio Grande just upstream of Espanola.

Every year, 96,200 acre-feet of San Juan-Chama water is contracted to users up and down the Rio Grande, mostly to municipalities. Even though the San Juan-Chama water never flows through Taos County, water managers agreed it could be used to offset new well pumping around Taos prescribed under the Abeyta.

While the Aamodt and Abeyta parties independently resolved their differences in the mid-2000s, both settlements needed Congress to approve millions in federal funding to bring them to life.

When each group asked then-Sen. Jeff Bingaman, D-NM, to sponsor legislation to get the money, he told them to find a solution to the Aamodt shortfall first.

Either both settlements were going to happen, or neither would.

“Word came down from Sen. Bingaman that he was not going to introduce legislation until we had all the water rights for the settlement identified,” says John Utton, a water attorney representing Santa Fe County in the Aamodt. “Bingaman threw it back in our laps and said, ‘You guys need to work it out.’”

Marketable water

For two groups already weary from battling among themselves for years in their respective valleys, more compromise was a lot to ask.

Both groups wanted to see their settlements go through, but Taos Pueblo and the Abeyta parties seemed to have the upper hand.

Under the draft Abeyta settlement, Taos Pueblo, the town of Taos and El Prado Water and Sanitation District agreed to split the 2,990 acre-feet of available San Juan-Chama water, with the pueblo taking the lion’s share.

After the Aamodt parties realized they were short, they started hustling. The U.S. Bureau of Reclamation commissioned a study to see if it could shake loose some San Juan-Chama water rights. Every year, some of that water is released into the Rio Grande to make up for water lost to evaporation at Cochiti Lake. Engineers recalculated that loss, and figured they could reduce the release by 710 acre-feet, and put the leftover amount toward shoring up the Aamodt. (San Juan-Chama water enters the Rio Grande upstream of where the Aamodt parties want to divert it into their water system).

Plus, in 2006, Santa Fe County dropped \$5 million to buy Top of the World Farm (near Costilla in northern Taos County); its 1,752 acre-feet of groundwater rights once were used to grow hundreds of acres of crops in the Sunshine Valley.

Even with the new math at Cochiti, and Top of the World in their pocket, the Aamodt parties were still about 300 acre-feet shy. And Taos’ San Juan-Chama water appeared to be the only remaining option. That’s when the negotiations in 2007 began.

The Aamodt parties say they saw the talks as a chance to not only resolve the shortfall, but make water rights transfers under both settlements a little more logical and less controversial.

“We actually offered to trade Top of the World water for San Juan-Chama water,” says Santa Fe County attorney Utton. “San Juan-Chama water that doesn’t even go through Taos County was being allocated to Taos. Meanwhile, we have these rights in Taos County [Top of the World]

that we're trying to move down here.”

“This was a way for Top of the World water to stay in Taos County,” says Peter Chestnut, an attorney representing San Ildefonso Pueblo in the Aamodt. “From a water standpoint, it made the most sense.”

But from a business standpoint, the deal looked like a loser for Taos Pueblo.

“Taos Pueblo’s view was that the San Juan-Chama water was more valuable,” says Nelson, the Arizona judge who helped mediate an agreement. “They saw their water right as an asset they could use to generate income, and there were limits on transfers of Top of the World right.”

Theoretically, unused San Juan-Chama rights held by Taos Pueblo could easily be leased to anyone that already has a San Juan-Chama contract. That includes huge consumers like the city of Albuquerque, the city of Santa Fe, Los Alamos County, and farmers with the Middle Rio Grande Conservancy District.

In fact, the Abeyta Settlement specifically gives Taos Pueblo permission to lease water rights to anyone inside or outside Taos County under contracts that can last up to 99 years.

By contrast, when Taos Pueblo was asked to trade, the idea of moving Top of the World water rights to Santa Fe County had already taken a lot of heat. Santa Fe County previously tried to move about 600 acre-feet of the farm’s rights south. The proposal met a tidal wave of protest.

Getting those rights to Pojoaque, let alone farther south, was obviously going to be an ordeal.

“It’s much easier to lease San Juan-Chama water than it is to fiddle with Top of the World,” says John Painter of El Prado Water and Sanitation District, which is an Abeyta party and was involved in the negotiations with the Aamodt. “They wanted Taos to give up some of its San Juan-Chama water, and the pueblo would have been absolutely stupid to do that.”

‘Not our first choice’

Gilbert Suazo, one of Taos Pueblo’s chief Abeyta negotiators, declined to comment for this story. But in testimony given to Congress in 2008, Suazo said the San Juan-Chama water was “essential” to ensure “sustainable and less-disruptive growth in the Taos Valley. He made no mention in his testimony of leasing water rights the pueblo was not immediately going to need.

Written comments sent to the Bureau of Reclamation in 2011 by Suazo’s colleague and fellow negotiator, Nelson Cordova, suggest the pueblo is very protective of its ability to freely market San Juan-Chama. “The pueblo’s right to subcontract [water rights] was negotiated with the federal administration and expressly authorized by Congress in the Settlement Act,” read Nelson’s comments.

Taos Pueblo's apparent preference for San Juan-Chama water was likely a big reason the 2007 negotiations were a drawn-out affair and almost failed.

Bill Hume was another mediator of the 2007 agreement between the tribes. Hume was then-governor Bill Richardson's right-hand man on water issues, and he'd been tasked with getting the deals done. But after several sessions, Taos Pueblo remained unwilling to budge. The future of both settlements was in limbo. Hume was starting to lose hope.

"The longer it went, the more it felt like it was slipping away," Hume remembers.

But early that morning, after hours of talks, Hume said there were signs of progress. Inch-by-inch, the mediators got Taos Pueblo, the town of Taos and El Prado to recognize they would have to give something if they wanted their settlement to go forward.

In the end, those three groups gave up a combined 369 acre-feet from their San Juan-Chama pool.

It was enough to salvage decades of negotiation and get both settlements on to Washington for approval.

"Hot damn. We got it," Hume remembers exclaiming as he literally skipped his way back to his capitol office in the pre-dawn darkness.

According to the Aamodt parties, the deal was more bittersweet.

They weren't exactly thrilled their already tenuous agreement hinged on Top of the World — probably one of the most controversial water transfers in state history.

But they didn't see any other way out. "We got to the point where we were comfortable going forward with it, but it was not our first choice," says Peter Chestnut, the attorney for San Ildefonso.

A written (but unsigned) agreement provided by Utton spells out how the two settlements would resolve the shortfall.

The agreement specifically says none of the parties will protest the Aamodt's Top of the World transfer.

However, the transfer will now face the fierce protests of those in Taos County who weren't at the negotiating table.