



La Jicarita

An Online Magazine of Environmental Politics in New Mexico

Taos Acequia Still Objects to Terms of Abeyta Settlement

By KAY MATTHEWS

La Jicarita, 7/15/2016

The Abeyta Adjudication Settlement has been signed and sealed but not yet delivered, and if parciantes on the Acequia Madre del Rio Lucero y del Arroyo Seco have their say it won't be. The settlement agreement calls for transferring water rights from a Questa acequia to two Aquifer Storage and Recovery (ASR) wells that will augment the Acequia Madre's irrigation. The water will be diverted from the Rio Lucero in the winter, stored in ARS wells until spring, then pumped from the wells and transported via pipeline to the acequias. The majority of the parciantes are saying this is a bad idea.



Location of the two proposed Aquifer Storage and Recovery wells in Arroyo Seco

One might ask why, at this late stage of the game—the settlement was signed in 2010—are the parciantes objecting to what would appear to be a beneficial project? Because, according to the parciantes, the water transfer is unnecessary, an abrogation of another community's water, a financial burden on the acequia (in maintaining the ASR wells), and a scheme that was never endorsed by the members of the acequia.

As *La Jicarita* has extensively documented, the Abeyta Settlement was negotiated behind closed doors by representatives of the designated parties: the Town of Taos; Taos Pueblo; El Prado Water and Sanitation District; the mutual domestic associations; and the Taos Valley Acequia Association (TVAA), representing 55 acequias in the Taos Valley.

Palemon Martinez is the chairman of the board of the TVAA and former secretary of the Acequia Madre del Rio Lucero y del Arroyo Seco. Unbeknownst to most of the parciantes on the Acequia Madre, Martinez negotiated a water transfer to the acequia, paid for by the federal government and the state of New Mexico to compensate the ditch for a "taking" by Taos Pueblo in 1935. The transfer is from the Llano Community Ditch in Questa. Martinez contracted with Lawrence Ortega of Questa, as far back as 2005, to transfer 91.592 afy of water rights from his father Bernabe Ortega's estate that were severed from the land in the 1960s. The Interstate Stream Commission (ISC), which controls the funding, distributed \$350,000 to the Acequia Madre in 2008 for the purchase of the water rights.

No one outside of the negotiating team knew about this proposed transfer and contract, including parciantes on the Acequia Madre, until 2013 when Martinez filed an application with the Office of the State Engineer (OSE) to transfer the water. In August of that year I chaired a meeting of the Taos County Public Welfare Advisory Committee to review the proposed transfer. The Advisory Committee was established under the Taos County Public Welfare Ordinance to determine if proposed transfers from or within Taos County are in the best interest of its citizens based on criteria that define the public welfare: cultural protection, agrarian character, ecological health of watersheds, long-term economic development potential, recreational tourism, public information, water supply management, conservation, conjunctive management, and minimizing water contamination. The Committee then makes a recommendation to the Taos County Board of Commissioners as to whether the board should or should not protest the proposed transfer to the OSE.

The three-hour long August meeting was contentious, to say the least. Martinez was at the meeting with TVAA lawyer Rebecca Dempsey (Cuddy & McCarthy law firm) to present his case. Alfred Trujillo, who was one of the founders of the TVAA, was there to debate Martinez over the history of the Acequia Madre (he claims the Arroyo Seco area has the most junior water rights in the Valley) and object to the transfer. Jeannie Masters, a commissioner on the Llano Community Ditch was there to say the proposed transfer would impair the other parciantes on her ditch who have been sharing the water rights for many years. She also had a letter signed by other members of the Ortega family contesting Lawrence Ortega's claim that as the personal representative of his father's estate he owns all the water rights. Lawrence Ortega was there to claim his father had previously offered the water rights to the village of Questa but it turned him down. Joe Cisneros from Questa was there to point out that the molybdenum mine is using all of Questa's water and the area cannot afford to lose any more. Former district judge Peggy Nelson, who lives in San Cristobal, was there to say that during a time of terrible drought water needs to stay in its area of origin. Tony Trujillo of La Llama was there to remind us that this was all paper water we were talking about: for the last several years the acequias hadn't been able to deliver their allotted water to parciantes in the Taos Valley or in Questa.

The parties to the Abeyta Settlement, in particular Martinez, fought against the establishment of a Public Welfare Advisory Committee. Because the TVAA, as well as El Prado Water and Sanitation District, would be seeking water transfers as part of the settlement, they wanted unfettered access to water wherever they could find it. (El Prado Water and Sanitation District applied to transfer Top of the World Water rights near Questa). The Public Welfare Committee voted six to two to recommend that the Board of County Commissioners protest this application based upon our evaluation of its impact on the public welfare of Taos citizens. One of the committee members who voted against the recommendation represented the Arroyo Seco subregion and is a parciante on the Acequia Madre, and the other member who voted against the transfer cited the need to fulfill the terms of the Abeyta Settlement. At the Advisory Committee meeting one of the members asked Martinez, "How do you feel about taking water rights from another acequia?" He responded, "They're private rights."

Unfortunately, the county commission and staff caved into the power brokers behind the Abeyta Adjudication Settlement and failed to schedule a hearing to consider the Public Welfare Advisory Committee's recommendation that it protest Martinez's application (full disclosure: I resigned as chair of the Committee shortly thereafter). As I wrote in my August 30, 2013 [La Jicarita article](#), then Deputy County Manager Rick Bellis wrote me that the Advisory Committee had "gotten away from the general concern of the Commission and intent of the ordinance to monitor water rights to minimize or prevent them leaving the county or watershed." I wrote Bellis back pointing out that the Public Welfare Ordinance stipulates that the Advisory Committee "evaluate the public welfare and conservation of proposed water appropriations and changes in point of diversion, place of use or purpose of use of water from and *within* Taos County (emphasis added)."

The Llano Community Ditch, along with the Cabresto Irrigation District, filed protests of the transfer to the OSE. Several individual protests were filed as well but were either deemed untimely or dismissed for lack of standing.

While all of this was transpiring at the county administrative level, the parciantes of the Acequia Madre del Rio Lucero y del Arroyo Seco were educating themselves about the terms of the Abeyta Settlement and taking a more proactive role in the acequia's management. In March of 2015 the parciantes ousted Martinez as a commissioner and treasurer Fermin Torres resigned. Leo Valencia and Chris Pieper were elected to replace them. The new commissioners began the process of updating the acequia bylaws and investigating the ditch's fiscal management. One parciante raised the issue of a conflict of interest regarding Martinez: as chair of the TVAA he negotiated the state funding to facilitate the Questa water rights transfer to the ditch on which he served as commission secretary.

Over the course of 2015 there were confrontations between the new commission and Martinez and Dempsey, who continued to push for the new commission's approval of the Ortega transfer. Contract documents with the Ortega estate needed to be executed and a Trust established for payments for both the water rights purchase and to pay Dempsey's law firm for her services by December 31 of 2015 or the funding would revert to the state. The contract wasn't executed until June of 2016 but the funding remains in two Acequia Madre accounts. I called the OSE to try to find out why the contract wasn't rescinded but the Public Information Officer never returned my call (media must go through a PIO and are not allowed to speak directly to any staff). The commissioners accused Martinez and Dempsey of proceeding without the approval or necessary signatures of the commissioners. Complicating all of this is the fact that while Dempsey officially represents the TVAA, she doesn't have a separate contract with the Acequia Madre del Rio Lucero y del Arroyo Seco. Attorney Charles Lakins, who represented the Cabresto Irrigation District, told me, "This a real issue out there that no one has addressed."

In August of 2015 new acequia bylaws were approved that include the 2003 state statutes that allow acequia commissions to deny transfers of water rights from the acequia if they are deemed detrimental to the acequia and its members and to set up a water bank to temporarily re-allocate water for beneficial use within the acequia.

In March of 2016 the Llano Community Ditch and Cabresto Irrigation District reached a settlement on their protest of the Ortega water transfer and the OSE approved the transfer, although the amount of water that the OSE deemed transferrable was reduced from the original application of 91.952 afy to 23.917 afy. Final payment for these rights was set at \$250,000, which comes to almost \$10,500 per acre foot.

According to Esther Garcia of the Cabresto Irrigation District, the OSE put pressure on her commission to drop its protest as it “wasn’t their fight, it was Llano’s fight,” even though the Llano Ditch is dependent upon Cabresto water availability. According to Lakins, Cabresto’s attorney, the OSE argued that the small amount of transferred water realistically won’t affect the amount of wet water that Cabresto can rely on and that the Llano Community Ditch’s protest was “hypothetical” in that the land appurtenant to the transferred water had been dried up for decades and again, the amount of wet water Llano would get would probably not be impacted by the loss of the 23.917 acre ft. of water in the transfer.

Llano agreed to settle and was awarded \$27,764 to cover the loss of ditch fees that the Ortegas would have paid over the years. When I called the Llano ditch attorney, John Draper, to verify this, he told me that information had to be communicated by a commissioner. I called Commissioner Jeannie Masters, but she, too, wouldn’t talk to me. And the OSE Public Information Officer never called me back about this question, either.

Garcia also told me that minutes from the Cabresto meetings regarding the protest reveal that the majority of the parciantes were against settling, but without the Llano Ditch leading the charge the commission made the decision to sign off.

The Acequia Madre is still weighing its options regarding opposition to the transfer of water rights to the ASR wells. The Acequia is authorized to purchase up to 100 afy in the terms of the Abeyta Settlement for the wells, so if the ASR well project moves forward additional water rights will have to be found. In a recent letter to OSE attorney Arianne Singer, and cc’d to various local officials, Commissioner Pieper laid out these objections:

“The costs of the ASR operation are way beyond the capability of our acequia. Schlumberger Engineering in Florida that specializes in ASR wells gave us a generic estimate based on the proposed well depths and GPM of over \$100,000 a year. Our yearly budget is a fraction of that. The Abeyta Settlement provides ‘up to’ \$121,000 for well assistance.

- The 90’x140 metal building that will house the treatment equipment for the injection well will dramatically affect the visual landscape of our small rural community.
- The injection water will be chlorinated and chemically treated to adjust its pH to match the ground water. Our community does not want chemically treated water injected into our aquifer.
- Our bylaws specifically state that acequia water is gravity fed stream water only. We cannot allow ground water to be pumped into our acequia – period.
- There is a strong possibility that water pumped from 1,000 ft will contain uranium and other toxins. It is not known how chlorinated, oxygenated water will react with ground water at that depth.”

The letter also objected to the settlement alternative of a reservoir should the ASR wells prove unfeasible, and the fact that both storage options “call for the historic Rio Lucero ditch to be replaced with a 6,500 foot plastic culvert pipe. The Rio Lucero ditch was hand dug in 1759 and is a testament to our history with Taos Pueblo. It is also a living stream system supporting a healthy riparian habitat.”



Acequia Madre Mayordomo Arnold Quintana and Commissioner Chris Pieper at the Rio Lucero Ditch.
Photo by Anwar Kaelin

Pieper asked that the commission “meet with the State Engineers Office to pursue the return of these water rights to the state and investigate other options to protect acequia water.”

When I spoke with Pieper he gave me a copy of a 2002 letter from Taos Pueblo Governor Vincent Lujan to Acequia Madre del Rio Lucero del Arroyo Seco Commissioner Fermin Torres. The letter was in response to a request from the Acequia that the Pueblo allocate additional water to fill the acequia parcientes’ livestock ponds because of drought conditions and to maintain a continuous flow of water in the acequia. The letter says, “in the spirit of cooperation and good will and our desire to help you minimize the hardship that this drought has placed on all of us, we agreed that we could divert additional flows into the Acequia Madre del Rio Lucero for two days out of the week without affecting our people.” Pieper lamented that this, the traditional custom of repartimiento, could have obviated priority administration adjudications and settlements that call in the lawyers and engineers to move water out of watersheds and run up the big bucks. But that’s not how it works anymore.