2014 Colorado Congreso de Acequias

Centennial School, San Luis, Colorado

I. Welcome and Agenda

Sarah Parmar, Sangre de Cristo Acequia Association

* Thank you to sponsors Natural Resources Conservation Service, Sangre de Cristo National Heritage Area, Colorado Open Lands, Gates Family Foundation, and Getches Wilkinson Center

II. Keynote – Acequia Cohesion and the Colorado Water Plan

Edward Vigil, Colorado Representative

* Rural Colorado is not always represented equally at the State Legislature
  + For this reason, Representative Vigil and others worked on Acequia laws to give representation to rural communities, maintaining local control
* Senate Bill 115, passed this year as part of the Governor’s Water Plan, directed Water Review Committee to visit all water basins in the State
  + The Committee visited these basins and listened to community concerns. Each basin is different and has different concerns. A single water plan would not fit the unique community needs.
* Another part of the Governor’s plan is to examine water conservation standards
  + Acequias are not included in this plan. The plan focuses on urban areas and the Western Slope
  + Comments are still open to the public. Acequia members may submit their comments to the Governor’s office to voice their desires to be part of the Governor’s Water Plan
  + The knowledge and technology of water Acequias has greatly benefitted the Colorado economy and agricultural communities; Representative Vigil asks that Acequia members voice their comments to the Governor’s office while comments are still open
* Bylaws for Acequias give security and guarantees to those who use the water. Without these bylaws, it is very difficult to prove authority to use water. Bylaws are used as a legal authority to prove rights to a ditch and its water.
  + There are future plans to take more water from rural Colorado to support growing populations elsewhere. Protect yourself by acquiring legally recognized water rights so that you may keep what you are using.
  + The Governor’s Water Plan threatens Acequia water. Acequia Associations must fight to be included in the plan so that they may protect their water rights and use.
* Question: You said that in order for Acequias to be recognized, they must be legal. What do you mean by this?
  + Answer: They do not have to be legal, but if they are not legal it makes it easier for the State Engineer to take it as excess water to be used elsewhere.
* Question: A lot of people left 50 years ago. They still own the land but haven’t used the water or paid assessments. There are no water gates. They still have a right to the property. How does this affect the water?
  + Answer: There is a law that says you must use your water on a continuous basis to continue using it.
* Question: We have wanted to expand the Conservancy District. Could you direct us in expanding that board and getting more representation for other drainages? It may be that we want to introduce term limits to enhance representation.
  + Answer: There was a bill last year expanding the Pueblo Conservancy District from 3 members to 9 members. You will want to get a statement that indicates your conservancy district does not represent everyone. A court may order the district to expand so that it may represent more people within the community.
* Question: Can the state take your water without notification?
  + Answer: I am not an attorney. But, I think there is a law that permits the state to take rights to abandoned water.
* Question: The Rio Grande Basin Roundtable funds improvements for ditches in the area. All are welcome to participate in the planning process. Acequias are recognized in the Roundtable’s plans. The Roundtable is committed to keeping water in the basin. Meetings are on the 2nd Tuesday of every month, mostly in Alamosa.
* Water in the valley is under threat. Water people are working to see if they can pump water from the San Luis Valley to the Front Range, where water prices are about 8 to 10 times higher than they are in the Valley.

III. Understanding Bylaws and Incorporation

Sarah Krakoff and Megan Gutwein, University of Colorado Law School

Eugene Jacquez, Acequia del Cerro

* Acequia Recognition Statutes
  + Passed in 2009 – Amendment in 2013. These statutes recognize Acequias as they have been used traditionally. Recognizes community style of irrigation, as opposed to the prior appropriation law used in the rest of Colorado. Allows Acequia users to keep traditional forms of governance
  + Definition of Acequia in statute: an Acequia originated before CO was a state. Acequias treat water as a community resource. One landowner – one vote. Gravity-fed water systems. Parciantes provide labor for ditch maintenance.
  + To benefit from the statutes, an Acequia must either incorporate or pass bylaws in accordance with the statutes
* Benefits of Bylaws
  + Colorado law will recognize the following: one landowner – one vote; particiantes can be required to contribute labor or a fee; water can be allocated on a more communal basis; right of first refusal regarding sale, lease, or exchange of water; option to Impose Requirements on Sale or Transfer (Catlin Bylaw: makes it harder to take water out of the Acequia)
  + Voting bylaw example
    - Option 1: Each member shall have one vote. For voting purposes, each household or parcel of land co-owned by more than one person constitutes one membership, regardless of the number of separate properties owned
    - Option 2: A member’s vote shall be in proportion to the number of shares he or she owns
  + Right of First Refusal example
    - If the Acequia approves the request, and if the Parciante who wants to make a change in water rights is attempting to sell, trade, or exchange that water right, the Parciante must first […]
  + Catlin Bylaw Example
  + Unincorporated Acequia associations are recognized as unincorporated nonprofit associations
    - Therefore Acequias have the same basic protections as Acequia ditch corporations
    - Missed this section: see slideshow
* The most important thing is having the written bylaws ratified by all Parciantes
* Incorporation: giving corporate legal rights to Acequia
  + Requirements to incorporate under Colorado Law
    - Decide what corporate form (usually non-profit corporation)
    - Amend bylaws to include any additional requirements
      * For example, to state a non-profit purpose; to include a dissolution plan (a provision anticipating that if someday the corporation no longer wishes to be a corporation, it has a plan on how to unravel)
    - Draft articles of incorporation according to legal requirements
    - File papers with the Secretary of State and pay fee of $50.00
  + These documents are not too technical or complicated and can be written with help of lawyers and law students
* Why incorporate?
  + Most Acequias will have all the protections they need by adopting bylaws that take advantage of the powers recognized in the Acequia Recognition Statute
  + Some Acequias may want the additional formality of being incorporated
    - Third parties (banks, foundations, government granting agencies) may be more comfortable dealing with a corporate entity than an unincorporated association. Overall, it may be easier for incorporated Acequias to deal with banks and other business entities. Example: creating a business bank account.
      * Some granting entities do not consider unincorporated associations to be appropriate fiscal agents
    - Otherwise, most legal protections are the same
* Incorporation has protected Acequia del Cerro from losing water rights to outsiders who move to the community along the ditch and establish their own water rights.
* The incorporation has allowed Acequia del Cerro to begin construction of cement portions of ditch to help retain water. The Acequia del Cerro must deliver water for four and a half miles, and this construction has helped them achieve that.
* When people leave the community and later return, they sometimes want to change what the community is accustomed to doing with water. We must be proactive in protecting our ditches as populations increase and water becomes scarce.
* Information on the Acequia Association Program: the program helps with drafting bylaws, reviewing and updating bylaws to stay in accordance with Colorado law, assisting with incorporation, reincorporation to take advantage of new Colorado law
* Question: How much will it cost an Acequia to do all of this work?
  + Answer: Thanks to the generous contributions from Gates Family Foundation and other partners, all work to Acequia comes free of charge.
* Question: Which ditches are incorporated and which have bylaws?
  + Answer: Acequia del Cerro, San Luis People’s Ditch, and San Francisco are incorporated. Juan Sanchez is currently working on bylaws. A few others have bylaws.
* Question: If you are incorporated, what are the aspects of the new law that you cannot currently take advantage of without reincorporating?
  + Answer: Voting structure: voting by shares of water owned. Additional powers: ability to require right of first refusal (person who wishes to sell water right must first offer it to Acequia). Look at bylaws and articles of incorporation to make sure that they are up to date with state law.
* Question: Is it now easier to transfer water from Acequia members to outside buyers?
  + Answer: It is not easier. The benefit of adopting bylaws and incorporating is that it notifies outsiders who purchase water rights that the ditch is governed by your bylaws and incorporation rules.
* By incorporating and adopting bylaws, the Acequia becomes the first place the water courts look when determining injury, allowing maximum protection for the Acequia. The new statute makes it easier for the Acequia to create hurdles for individuals who wish to sell their water to outsiders.

IV. Resolving Conflicts on the Acequia

Ryan Golten, CDR Associates

* A story: a mom walks into the kitchen and her two children are fighting over an orange. The wise mom cuts the orange in half and gives one half to each child. One child is happy; he walks away, eating the orange and throwing the rind away. The other child is sad; she starts to grind up her half of the orange rind and throws the rest of the fruit away. What did the mom not do? She did not ask what each child wanted.
* In the hypothetical situation between T. Ortiz and M. Garcia, there is a dispute over whether M. Garcia can access Ortiz’s land so that Garcia can clear the weeds from his/her section of the ditch. Garcia wants access to water, and Ortiz wants clear communication and respect from those who wish to use his land to access the ditch.
* When considering people’s interests, there are procedural interests, psychological interests, and substantive interests. The substantive interest: what do you want? The procedural interest: how do you want the process to happen? The psychological interest: what emotional, social, or communal needs do you want to be met with an interaction?
* In Acequia dealings, there can be many considerations. What are the established rules? What do neighbors expect from each other? What role does the Mayordomo have in helping to resolve disputes? When you listen to each other’s needs and consider everybody’s position, the relationship may improve and you may make more effective communication.
* Structure (how do things work?), values (what belief systems do we hold?), relationships (how do we want to interact with each other?), and data (what is happening now, and what will happen in the future, with the real world?) must be considered in resolving disputes.

V. Community Engagement and Local Water Organizations

Ronda Lobato, Costilla County Conservancy District (CCCD) Board

Sarah Parmar, Sangre de Cristo Acequia Association

* The Costilla County Conservancy District
  + Formed in ’76 by a petitioned court order.
  + The CCCD protects, preserves, and sustains our water and land. It supports education of conservation practices and issues
  + The Conservancy District is a taxing entity located in the southern half of Costilla County funded by money collected from mill levy dollars from properties within the district boundaries.
  + Conservancy District governed by a 3 member board (court appointed and mandated by district water judge): Maclovio Martinez – President; Earl Valdez – Treasurer; Ronda Lobato – Secretary
    - John McClure has served as attorney
  + Operates under the Conservancy Law of Colorado – Flood Control. Colorado Revised Statutes Title 37-2-101.
  + General Powers and Duties are listed in CCCD brochure
  + Recent projects include Congreso sponsor, 2012-2014; assist SDCAA with various Acequia projects; Cerro Ditch Project; San Luis People’s Ditch Project; Vallejos Ditch Structure Project; litigation with Battle Mountain; and litigation with Water Court filings
  + Future project ideas: watershed assessment and strategic planning for future projects; parks and recreation assessment and implementation
  + CCCD Board Meetings are held on the last Friday of the month at 12:30. Agendas are posted at the San Luis Post Office, Community Bank, R&R Market, and EDC Office entrance
  + Please call Ronda at 719-588-4772 for requesting placement on the agenda
  + Please visit the CCCD website at [www.costillacccd.org](http://www.costillacccd.org)
  + Question: Does CCCD purchase lands?
    - Answer: No. CCCD purchases tax liens to protect properties with water rights from outside investors who would sell the water rights after buying the land
  + The CCCD appreciates and considers community input and would like for interested community members to attend meetings. The CCCD will appoint appraisers in the future to represent ditch associations
  + The CCCD will not give out money to junior ditches that are not incorporated because of financial concerns
    - Unincorporated ditches (with President, Treasurer, Secretary, and bank account) will not receive grant money from the CCCD. The CCCD cannot send a check to a single property owner because there is no legal or financial accountability that the funds will be used responsibly and taxed.
  + Question: If your ditch is not incorporated, will the CCCD allow for that ditch to go through the Acequia association as a fiscal agent to grant CCCD funds?
    - Answer: Yes. The ditch will still have to go through the application website. There is paperwork on the website.
* Sangre De Cristo Acequia Association aims to enhance conversations across county boundaries and water boundaries to unify communities that are working with the same issues. There are water issues, agricultural issues, and more. Together, communities may tackle larger questions and challenges to preserve community values and traditions.
  + The New Mexico Acequia Association, for example, took about 10 years to get going and to become strong. It now receives federal funding for ditch projects. Their mayordomo project teaches younger generations who wish to return to the communities to farm how they can farm well.
* The Sangre De Cristo Acequia Association meets the second Tuesday of every month. The Board opens its doors to all participants. The Association is considering a membership where each ditch is represented at the Congreso and at Board meetings.
* The Bylaws allow up to 11 board members
* The Association will help Acequias with bylaw creation for free and with water rights litigation for a small fee.
  + With other issues, the Association will help where it is able. Otherwise, it will try to guide Acequias to people who can help

VI. NRCS Programs and Partnerships

Charlie Maestas, landowner; Jenny Stricker, NRCS: Season extender successes using EQIP

* Seasonal High Tunnels to extend the season for vegetable and specialty crop production in Costilla County
  + Charlie Maestas Farm: set up Tunnels (greenhouses) and planted tomatoes, lettuce, chilies, watermelons, cantaloupes inside. The crop yield was very successful
  + The Tunnel took some learning to install, and the Maestas family had to learn new ways to grow crops. However, the tools worked very well for farming.
* National Resources Conservation Service (NRCS) officers Seasonal High Tunnel assistance and aids in the installment of efficiency increasing systems.
  + Offers technical assistance from experienced engineers and financial incentives to provide to landowners
  + The NRCS has assisted in the installment of several Seasonal High Tunnels for vegetable or specialty crop production for seasonal extension
  + Several community members have participated in these projects

Sarah Parmar, Colorado Open Lands: Protecting land and water with ALE

* Conservation Easements: Preserving Agricultural Land and Water
  + A conservation easement is a legal document whose purpose is to protect specific conservation values of land (including agriculture) by restricting certain uses of the land that are not consistent with these values
  + The legal document represents a relationship between you, a landowner, and the “holder” of the conservation easement – a land trust or government agency.
  + Typical restrictions: no subdivision or limited subdivision; limited homes and other buildings within areas; prohibition or restrictions on mining; water rights must be kept with land (cannot sell or change use of water)
  + What a Conservation Easement is NOT: a quick and easy way to make money through tax benefits; a way for a land trust or government to gain control of your property – land can still be used, sold, mortgaged, and passed on to future generations
  + Why a conservation easement? Land trust/government perspective
    - We want to protect those things that make Colorado special. We believe that ranchers and farmers are the best owners and managers of their land. Conservation values: agricultural operations; relatively natural wildlife habitat; open space; public education and outdoor recreation; historic site preservation
  + Why a conservation easement? Landowner perspective
    - You care about keeping your land open for future generations. Keep land and water for agriculture and have peace of mind knowing that land wont be turned into a subdivision
  + How is a conservation easement valued? “Before value” – “After value”
    - Before value is what your property would sell for today based on comparable sales. After value is what your property would sell for with the conservation easement restrictions on it.
    - The difference is the value of the rights you are giving up in the conservation easement
    - Key question: whether the conservation easement really changed the highest and best use of the land
  + What does process look like?
    - Contact a land trust – COL, RiGHT
    - Costs and Tasks – average cost of conveying an easement is $40,000
    - Landowner Assistance
    - Funding – NRCS, GOCO, private
    - Time involved – at least 6 months for a donated conservation easement; often 2 years for a funded conservation easement
  + NRCS Agricultural Land Easement Program
    - Provides funding up to 50% of the conservation easement value for qualifying cropland and grassland
    - Land trust applies for this funding to pay landowner for conservation easement
    - Farm Bill program and new program rules are still being set

VII. Historical background and status of research on the Hallett Decrees (“Freehold Water”)

Will Davidson and Julia Guarino, University of Colorado Law School

Allan Beezley, P.C.

Peter Nichols, Berg, Hill, Greenleaf & Ruscitti, LLP

* What are the Hallett Decrees, and do they matter to you?
  + What is going on with the Hallett Decrees and the Freehold Water?
* Goals of presentation:
* 1. Provide brief history of Hallett Decrees
* 2. Update community on the work on the issue
* 3. To invite you to share any historical information you have about the Hallett Decrees
* The Hallett Decrees are a set of settlement agreements
  + Between parciantes on 16 Rio Culebra acequias and freehold land and Emigration Company
  + Entered into federal court by Judge Moses Hallett on July 17, 1900
* Sangre de Cristo Land Grant
  + 1844: Mexican government gives Sangre de Cristo Grant to Carlos Beaubein of Taos
  + 1850s: Settlers in the San Luis area begin irrigating with acequias
  + 1860s: Beaubien grants vara strips to some of the early settlers in the San Luis area
  + 1870: US Freehold Land and Emigration Company purchases remaining unoccupied land in the Costilla Estate – the southern part of the Sangre de Cristo Grant
* 1889: The First State Water Rights Adjudication on Rio Culebra
  + Decree issued June 14, 1889
  + Most acequias were awarded 1 cfs of water per 40 acres based on historic use of the water
  + Freehold only appeared as one of the claimants on the Montez Ditch
* After 1889 decrees were finalized in state water court, Freehold filed a lawsuit in federal court against the acequias claiming that they owned the water because they had purchased the unoccupied parts of the Costilla Estate (Spanish Land Grant) along the Rio Culebra
* After 10 years fighting in court, Freehold and the acequias settled, and the federal court approved the Hallett decrees
* Parciantes along the acequias agreed to give Freehold part of the water rights in the settlement. Usually the acequia retained a little over half of the water rights.
* *Vigil v. Swanson* (1917)
  + A group of parciantes sued the State Engineer to prevent him from enforcing the Hallett Decrees
  + The local state court judge found:
    - That the Hallett Decrees were binding between the parties (like a sale of water rights)
    - BUT 1889 Decree governs the use of the water
  + What does Vigil v. Swanson mean for the Freehold Hallett Decree rights?
    - We are working to figure this out
    - It depends on what has happened since then and who owns the water rights now
* Who owns the Freehold Hallett Decree rights?
  + 1900-1902: Freehold Land and Emigration Co.
  + 1902-1908: Costilla Land Investment Co.
  + 1908-1909: Costilla Estate Development Co.
  + 1909-1956: San Luis Power & Water
  + 1956-present: we’re working to figure that out
* What’s next?
  + We are working to figure it out. Please share any historical information that you may have, whether oral history or paper documents.
* Contact Julia Guarino, (203)246-6481, [Julia.Guarino@colorado.edu](mailto:Julia.Guarino@colorado.edu)