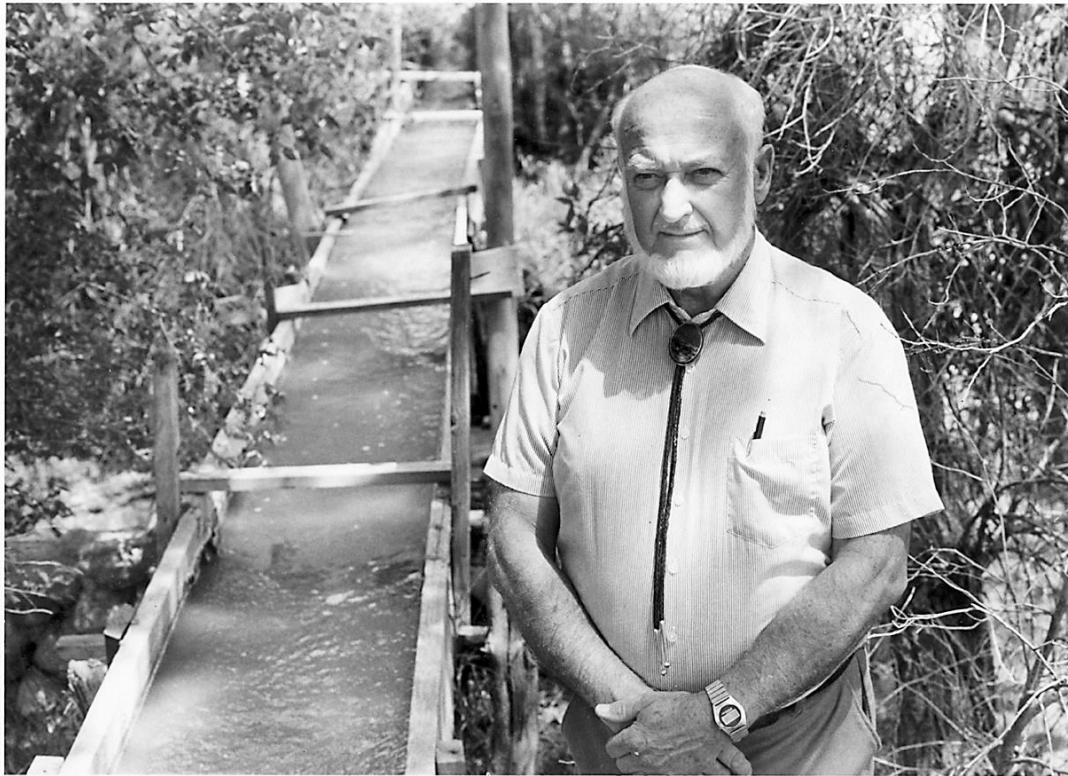


WHAT TOOK SO LONG? THE *AAMODT* ADJUDICATION: PUEBLOS, ACEQUIAS, AND DOMESTIC WELLS

**Gregory C. Ridgley
New Mexico Office of the State Engineer
Western States Water Council
Albuquerque, New Mexico
October 19, 2017**

Aamodt case adjourned

Inside courtroom, end of 51-year-old dispute is celebrated while outside protesters underscore threat of appeal; After 51 years, Aamodt water-rights case adjourned



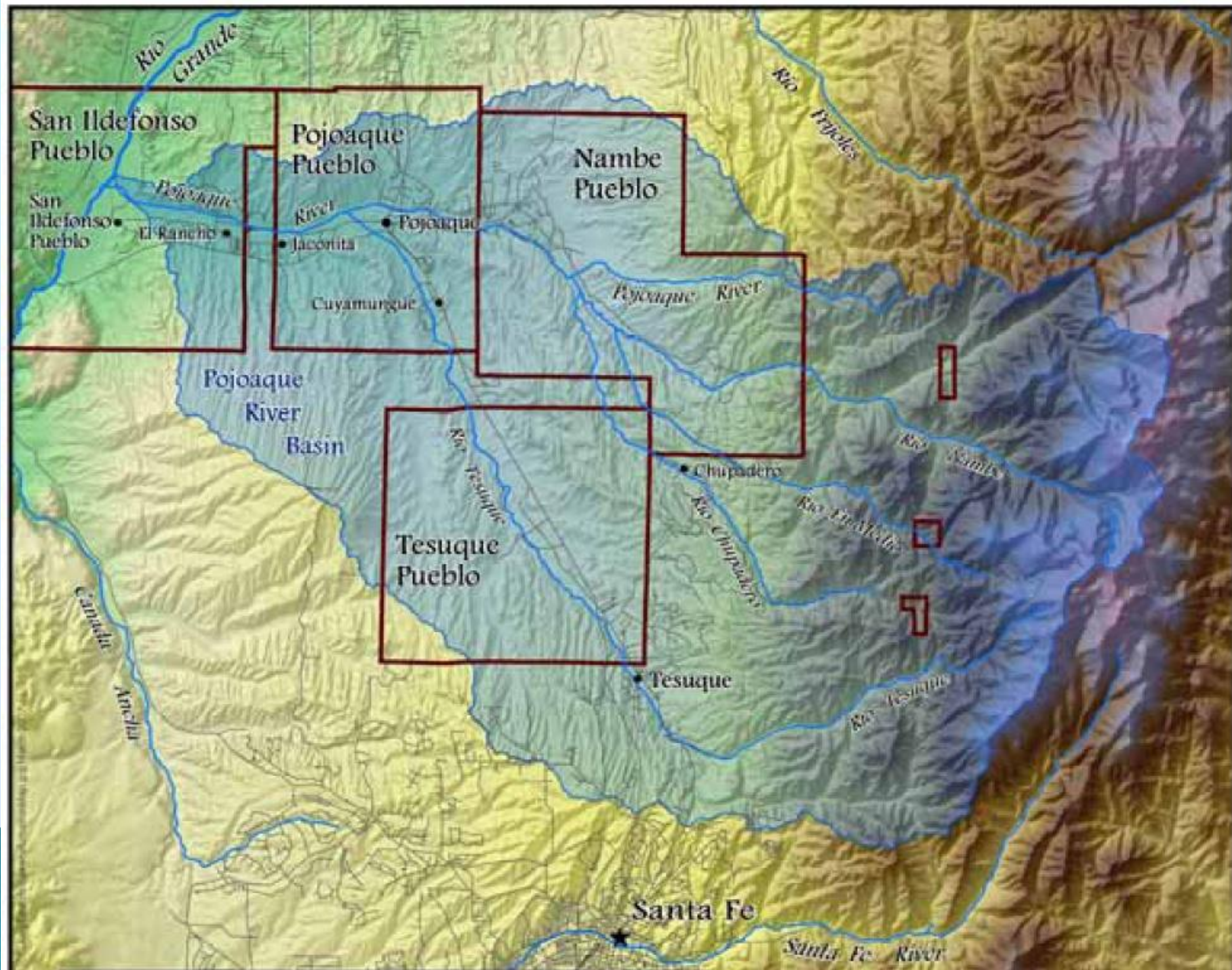
R. Lee Aamodt - w/ "aamodt"

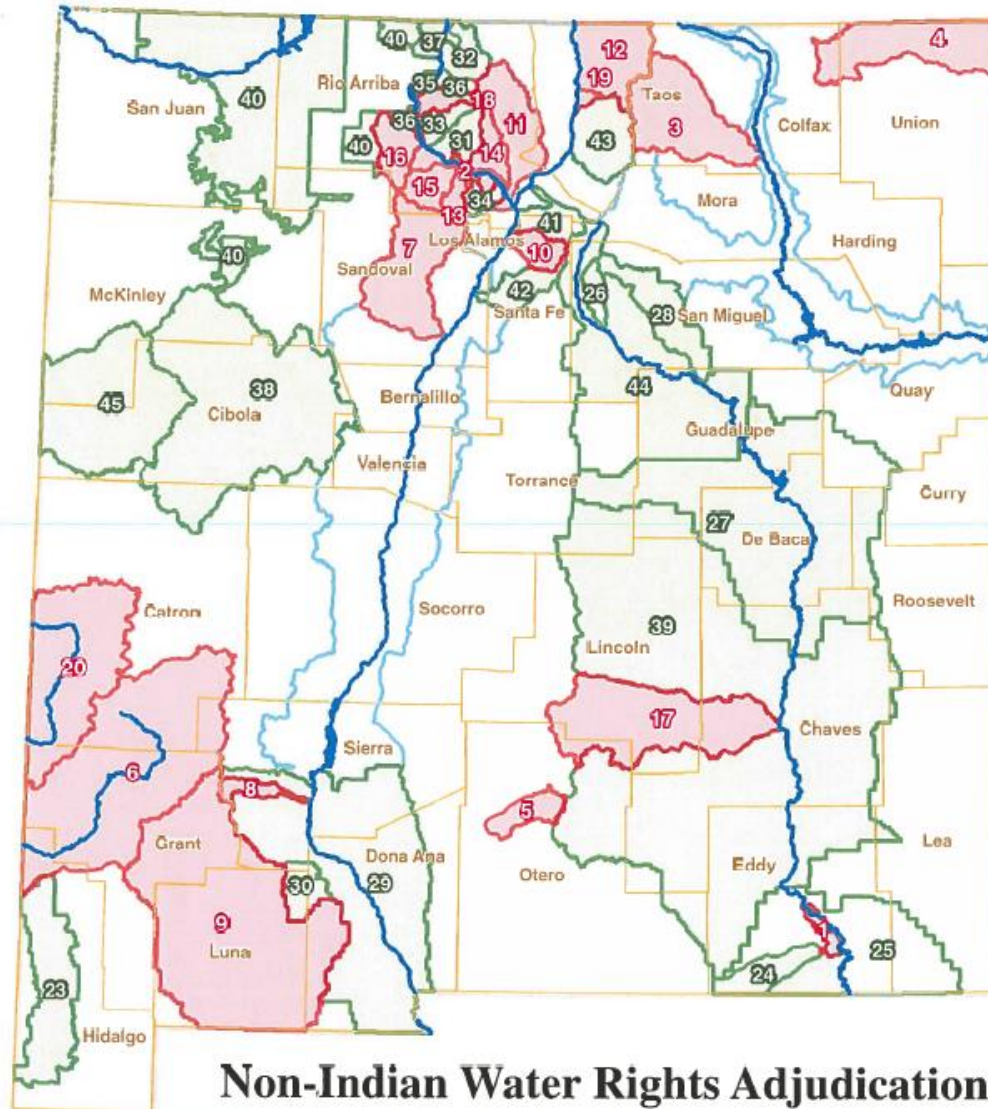
R. Lee Aamodt in 1983. Courtesy photo

Posted Saturday, July 15, 2017 6:20 pm

Aamodt Water Rights Adjudication 2017 Final Decree

- Historic achievement for New Mexico
- Concluded 51 years of litigation
 - 4 Indian Pueblos
 - 5,500 Non-Indian defendants
 - Acequia surface water irrigation rights
(70 ditches, 2,700 irrigated acres)
 - 2,700 Domestic Wells
- *Aamodt* Indian Water Rights Settlement
- AWRM District Specific Rules for allocation of water by State Engineer Water Masters





Non-Indian Water Rights Adjudications

Number	Name	Completed Adjudications	Active Adjudications
1	Carlsbad Irrigation District		
2	Chama Mainstem		
3	Cimarron/Redado		
4	Dry Cimarron		
5	Fresno/La Luz		
6	Gila River		
7	Jemez		
8	Las Animas Creek		
9	Mimbres Basin		
10	Nambe/Pojoaque/Tesuque		
11	Ojo Caliente		
12	Red River - Cabresio Creek - West Ladr		
13	Rio Chama - Carones Creek		
14	Rio Chama - El Rio		
15	Rio Chama - Rio Gailina		
16	Rio Chama - Rio Nueces		
17	Rio Chama - Rio Puerto		
18	Rio Hondo - Bonito - Huidoso		
19	San Cristobal		
20	San Francisco River		
21	Animas Valley		
22	Black River		
23	Carlsbad Underground		
24	Cow Creek		
25	Fl. Summer		
26	Gallinas River		
27	Lower Rio Grande		
28	Mud-Hickel		
29	Rio Chama - Canjon Creek		
30	Rio Chama - Rio Brazos		
31	Rio Chama - Rio Cebola		
32	Rio Chama - Rio Del Oro		
33	Rio Chama - Rutherford		
34	Rio Chama - Tierra Amarilla		
35	Rio Chama - Village of Chama		
36	Rio San Jose		
37	Roswell Artesian		
38	San Juan		
39	Santa Cruz/Triunfos		
40	Santa Fe		
41	Taos/Hondo/Grande		
42	Upper Pecos		
43	Zuni		
44			
45			

Legend

- Streams
- County
- Completed Adjudications
- Active Adjudications
- Not Adjudicated



You heard that right – 51 Years

- ▶ *Aamodt* was longest running suit in US federal courts
- ▶ Why did it take so long?
- ▶ Special adjudication challenges and issues that NM faces that other western states do not:
 - Acequia surface water rights
 - Domestic wells
 - Pueblo Indian water rights
 - Federal Court adjudication forum

Acequias in New Mexico

- ▶ Spanish term derived from Arabic “assaquyah,” irrigation ditch
- ▶ Earliest European irrigation in western US
- ▶ Over 800 acequias (community ditches) in NM today
- ▶ Most located in north central portion of State
- ▶ Special legal status in NM water code

Early Acequia System – ca. 1909

(Courtesy of Albuquerque Museum)



Log Dam On Hernandez Acequia Near Española, NM

(Courtesy of NRCS)



Log Flume Near Córdoba, NM

ca. 1940 (Courtesy of Museum of New Mexico)

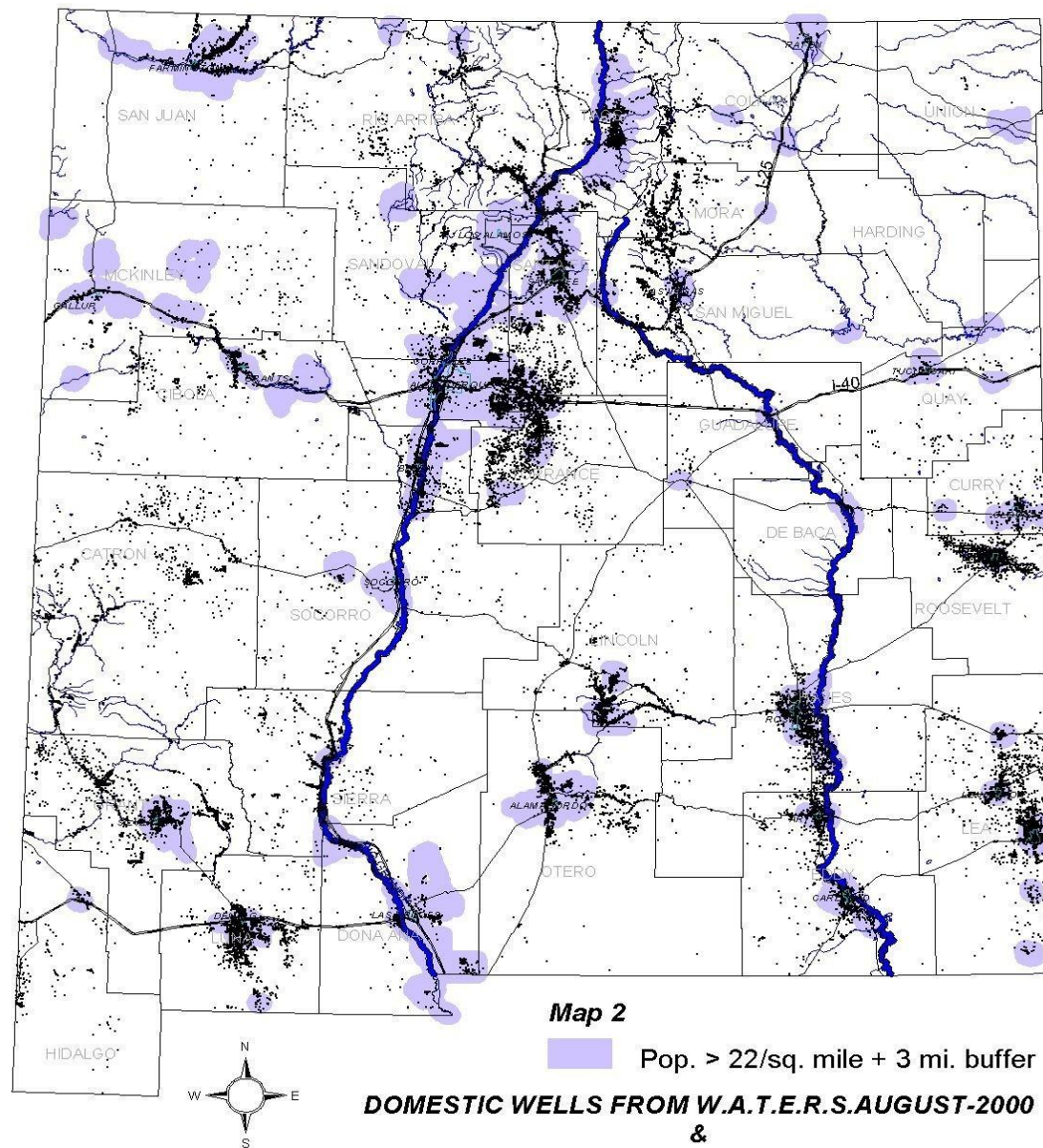


Acequias – challenges in adjudications

- ▶ *Snow v. Abalos* (1914) – WRs owned by irrigators
- ▶ Politically influential in NM legislature
- ▶ Extremely early priority dates
 - *E.g.* Chamita ditch fight (1598 vs. 1600)
 - In *Aamodt*, priorities range from 1716 to 1907
 - -> Testimony of expert historians critical
- ▶ Treaty of Guadalupe–Hidalgo
- ▶ Despite these challenges, adjudication of non-Indian acequia WRs was mostly completed early (1970s) in *Aamodt*

Domestic Wells

- ▶ Water Code authorizes domestic well permits for the diversion and use of groundwater for:
 - Domestic or household use; or
 - irrigation of not to exceed one acre of noncommercial trees, lawn or garden(Section 72-12-1.1 NMSA)
- ▶ Statute requires State Engineer to issue permit upon application
- ▶ Until 2006, permits allowed up to 3 AFY



Domestic wells in *Aamodt*

- ▶ Early adjudications did not address domestic wells
 - Some excluded as de minimis
 - Some allowed adjudication if requested
- ▶ *Aamodt* first to include all domestic wells
 - Pueblos concerned about cumulative impact on GW supplies
 - 1983 injunction – new permits for indoor use only
- ▶ Ultimately, 2,700 domestic wells adjudicated
 - 900 over the last decade

Domestic wells and *Aamodt* Settlement

- ▶ Actual domestic well usage (from metering):
0.3 AFY
(1 / 10 of permitted amount)
- ▶ Small but vocal minority of domestic well owners critical of settlement
- ▶ Political opposition
- ▶ Was it worth it to adjudicate domestic wells?

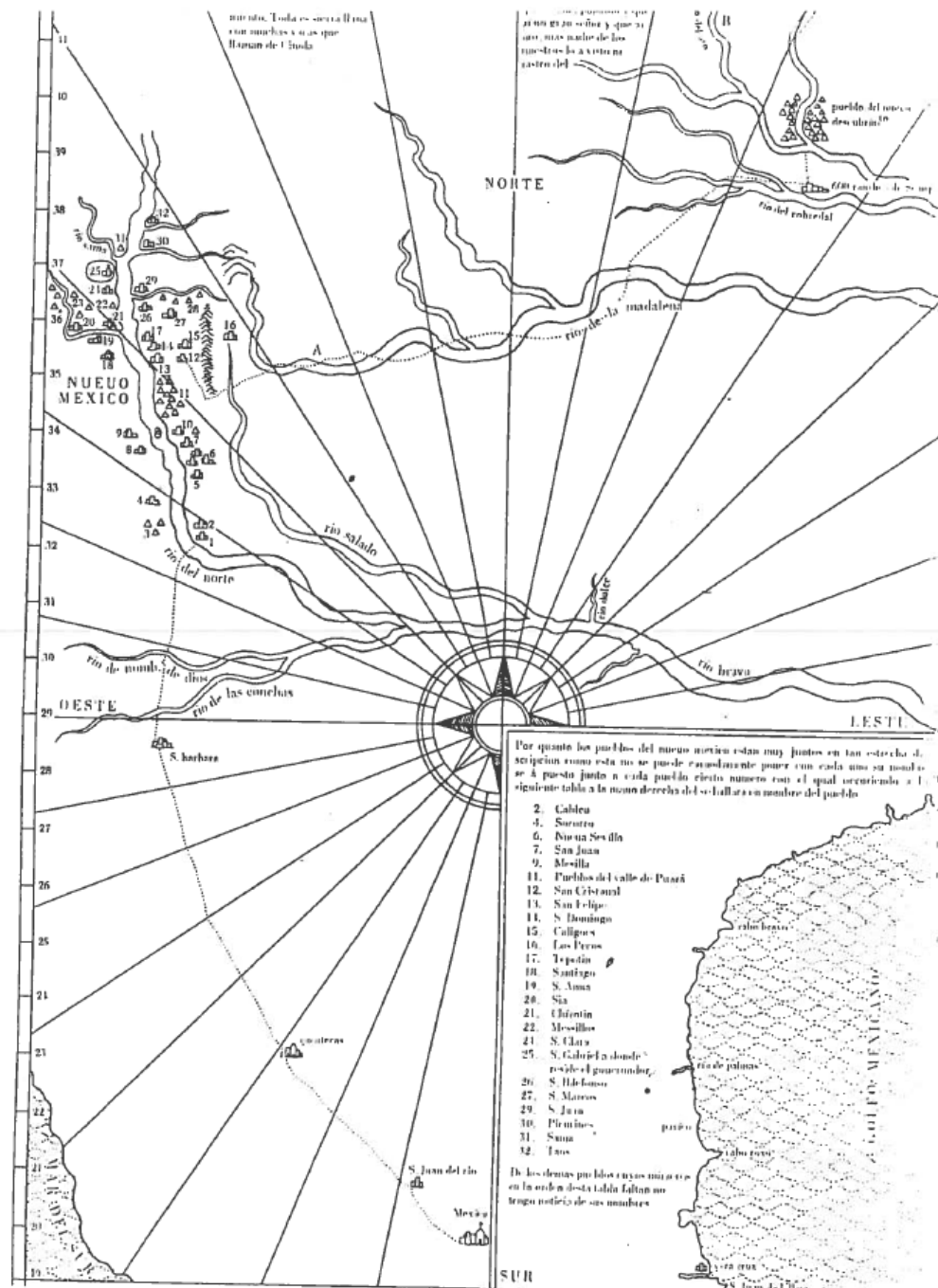
Mexico

IN 1602

a original document
lexico Records

Green Diamond Co

·7 MAP OF 1602



Pueblo Water Rights

- ▶ 19 Pueblos in New Mexico
 - 4 in NPT Basin
 - Nambe
 - Pojoaque
 - Tesuque
 - San Ildefonso
- ▶ Continuous occupancy since before European contact
- ▶ Lands recognized by Grants from King of Spain
 - Four square leagues
 - Not reservations by US Gov't
- ▶ Treaty of Guadalupe Hidalgo – 1848



Gov. Mariano
Carpintero, Sandia
Pueblo, 1899
(Smithsonian Institution)



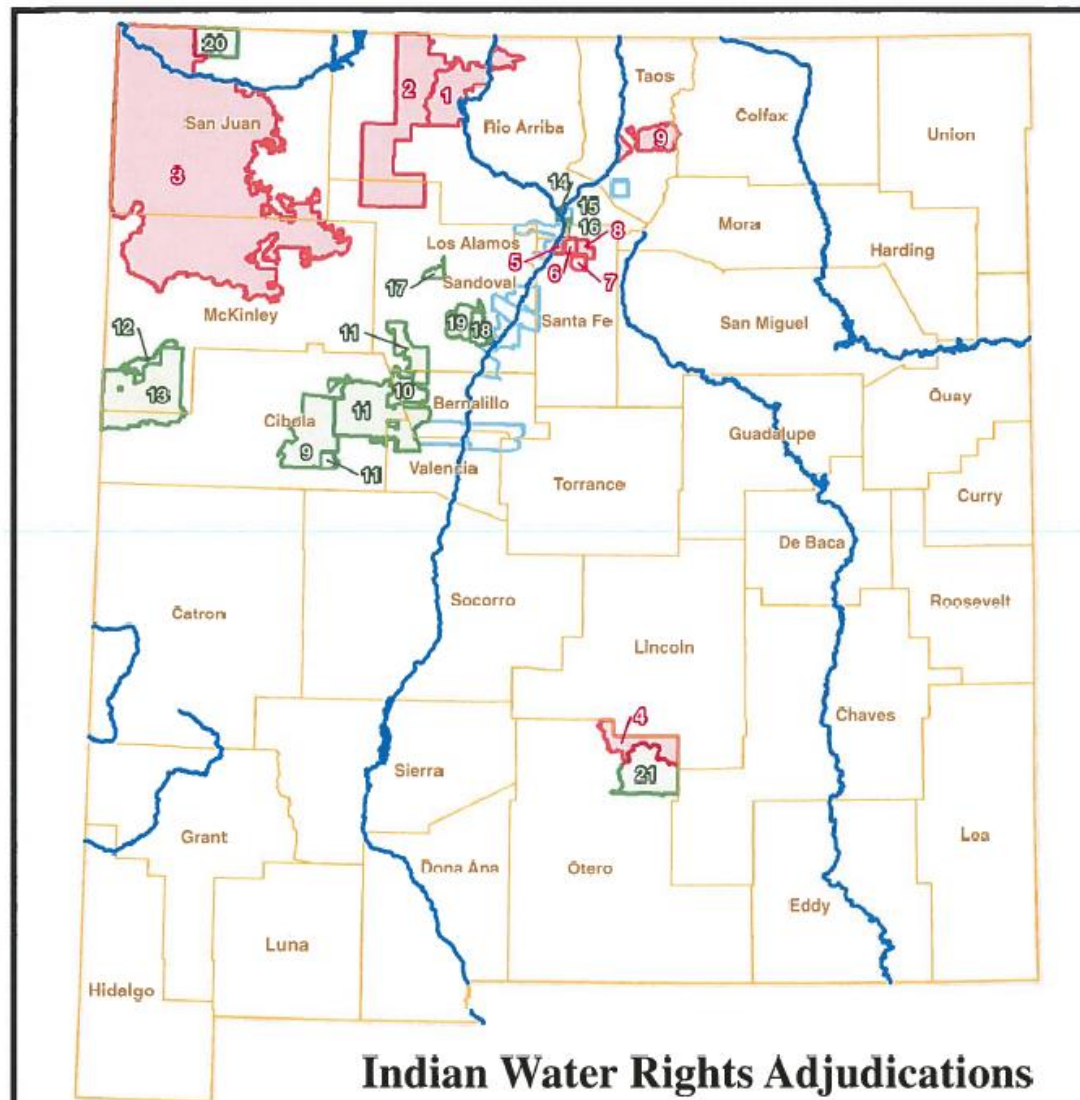
Gov. Jesus Antonio
Moya, Santa Ana
Pueblo, 1899
(Smithsonian Institution)



Pueblo Canes



Inscription: "A. Lincoln, Pres. US a Zia 1863"



Completed Adjudications		Active Adjudications	
Number	Name	Number	Name
1	Jicarilla Apache - Rio Chama	9	Acoma - Rio San Jose
2	Jicarilla Apache - San Juan	10	Canoncito - Rio San Jose
3	Navajo - San Juan	11	Laguna - Rio San Jose
4	Mescalero Apache - Rio Hondo	12	Navajo - Zuni River
5	San Ildefonso - NPT	13	Zuni - Zuni River
6	Pojoaque - NPT	14	Ohkay Owingeh - Rio Chama
7	Tesuque - NPT	15	Ohkay Owingeh - Santa Cruz/Truchas
8	Nambe - NPT	16	Santa Clara - Santa Cruz/Truchas
9	Taos - Rio Pueblo/Rio Hondo	17	Jemez - Jemez River
		18	Santa Ana - Jemez River
		19	Zia - Jemez River
		20	Ute Mountain Ute - San Juan
		21	Mescalero Apache - Rio Felix/Rio Penasco

Legend

- Streams
- County
- Completed Adjudications
- Active Adjudications
- Not Adjudicated



Pueblo Water Rights

- ▶ Land grants, not reservations
 - –> *Winters* federal reserved right doctrine does not apply
- ▶ No treaties with US
 - –> *Winans* Indian reserved right doctrine does not apply
- ▶ No precedent to determine and quantify Pueblo WRs

Pueblo Water Rights

- ▶ *Aamodt* was supposed to be lead case to develop precedent
- ▶ Two decades later – didn't work out as hoped
 - Went up to 10th Circuit twice
 - Litigating over aboriginal rights
 - Mechem doctrine – Historically Irrigated Acreage (HIA)
- ▶ Settlement negotiations began in 2001
- ▶ Initial settlement agreement 2005

Why is *Aamodt* in federal court?

- ▶ 6 NM adjudications in federal court
- ▶ Prompted by San Juan–Chama Project and Rio Grande tributary units
- ▶ Filed in 1960s, before US Supreme Court confirmed that McCarran Amendment waiver extends to Indian WR claims
- ▶ Compromise to avoid jurisdictional fights:
 - State filed suit in federal court
 - US and Pueblos moved to re-align as plaintiffs

“Every calculation based on experience elsewhere fails in New Mexico.”



Lew Wallace, NM Territorial Governor, 1881





Aamodt Settlement

- Quantifies the water rights of the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque in the Nambé-Pojoaque-Tesuque Basin.

Existing rights based on court-recognized
Historically Irrigated Acreage (HIA)

- Protects existing water rights
Acequias and domestic well uses
- Authorizes 1,079 AFY of water supply contracts from the San Juan Chama Project to satisfy future needs
- Funds construction of Regional Water System as domestic water supply in the basin
- Up to 4,000 AF imported into NPT Basin

Aamodt Settlement

- ▶ Regional Water System/ RWA
 - ▶ 30% San Juan-Chama Project water
 - ▶ 70% Rio Grande water

The portion of the system which will serve the Pueblos will be paid for entirely by the United States and will deliver about 2,500 AFY to them.

State and County appropriations will fund the non-Pueblo portion of the system which may deliver up to 1,500 AFY.

Implementation

- ▶ In July and August, 2017, the State Engineer issued permits to the Regional Water Authority for the diversion and consumptive use of at least 2,381 afy by the Pueblos, including 1,079 afy of water supply contracts from the San Juan–Chama Project.
- ▶ September 12, 2017: State Engineer promulgated administrative Rules for the Nambe–Pojoaque–Tesuque Water Master District: Active Water Resource Management
- ▶ October 3, 2017: Metering Order for metering of all wells in district