

Land Grants, Acequias and the Law CLE

From Diversion to Desague: Contemporary (and not-so-contemporary) Issues

Surrounding the Acequia Easement

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- I. What is the “acequia system” and how does the law protect its integrity?
 - a. The “acequia system” includes the acequia’s point of diversion or headgate (*presa*); main stem or mother ditch (*acequia madre*); lateral ditches (*venitas*, *linderos*); drainage (*desague*)
 - b. Sources of law: State statute, local land use ordinances, acequia bylaws, caselaw, federal law for easements on federal land (precedential and non-precedential)

- II. Why are acequia easements and their protection important?
 - a. Protection of water rights: Beneficial use of water requires unimpeded access to wet water
 - i. NM Constitution
 - ii. Water Code § 72-8-3, NMSA; Acequia Statutes §§ 73-2-5 and -64
 - b. Protection of real property rights: water right, private and public easements
 - c. Acequia governance

- III. Acequia, or irrigation ditch, easements are created by statute:
 - a. Section 73-2-5, NMSA 1978: “statutory prescriptive easements”; both affirmative and negative easement
 - b. See also §72-8-3, NMSA 1978: “convenient access”
 - c. See generally §73-2-64, NMSA 1978
 - d. Case law on prescriptive easements

- IV. Local land use ordinances protect acequia easements
 - a. Taos County – good
 - b. Village of Taos – better
 - c. Proposed Española Irrigated Lands Protective Overlay District (ILPOD) – best

- V. Case law cited
 - a. Precedential
 - i. *Albuquerque v. Garcia*, 1913-NMSC-006, 17 N.M. 445, 130 P. 118 (S. Ct. 1913)
 - ii. *Posey v. Dove*, 1953-NMSC-019, 57 N.M. 200, 257 P.2d 541 (S. Ct. 1953)

- iii. *Cox v. Hanlen*, 1998-NMCA-015, 124 N.M. 529, 953 P.2d 294 (post-1941 amendment)
- iv. *Archibeck v. Mongiello*, 1954-NMSC-104, 58 N.M. 749, 276 P.2d 736 (S. Ct. 1954) (pre-1941 amendment)
- v. *Archuleta v. Jacquez*, 103 N.M. 254, 704 P.2d 1130 (Ct. App. 1985)
- vi. *Deaf Smith County Grain Processors v. Dixon*, 116 N.M. 523, 864 P.2d 812 (Ct. App. 1993)
- vii. *Eli Sanchez v. Board of County Commissioners of Taos County and Edmund Healy*, A-1-CA-37995

b. Non-precedential

- i. *Alberto Duran and Acequia de la Puebla v. Clyde Vigil et al.*, D-101-CV-201801305 (*desague* case)
- ii. *State v. Bitsui*, 2019 N.M. App. Unpub. LEXIS 430

VI. Special Cases

a. Middle Rio Grande Conservancy District

- i. *Middle Rio Grande Conservancy Dist. V. Chavez*, 1940-NMSC-016, 44 N.M. 240, 101 P.2d 190 (S. Ct. 1940)
- ii. MRGCD Policies