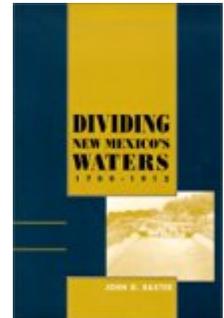


John O. Baxter. *Dividing New Mexico's Waters: 1700-1912.* Albuquerque: University of New Mexico Press, 1997. viii + 135 pp. \$24.95, paper, ISBN 978-0-8263-1747-6.



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Dividing New Mexico's Waters seeks to examine how problems involving allocation of scarce water resources arose and were solved during the Spanish Colonial, Mexican, and Territorial periods of New Mexico. Based on extensive archival research, the work provides many interesting and enlightening examples of allocation and dispute resolution. Baxter's goal was to provide insight into current problems in New Mexican water administration by examining the evolution of water policy. Unfortunately, the book's many problems prevent fulfillment of this goal and limit its usefulness.

Water, or the lack of it, is an important issue facing the American West. Ever since Walter Prescott Webb wrote *The Great Plains* in 1931, historians have examined the role played by water in the transformation of the Great American Desert into a green oasis of farms, subdivisions, and cities. A substantial number of books and articles have been written on this topic, and many conferences have contained water-based sessions. A quick look at the message threads on H-net, es-

pecially H-West, also shows that water issues continue to be a source of debate.

Many important and necessary elements are missing from this work. Most noticeable is a lack of context. New Mexican water law is unique, a point not clearly presented in this work. When the territorial government was created, the existing Hispanic elite gained control of the legislature and codified existing customs and traditions regarding water resources. This is in contrast with other areas of the West created about the same time, such as California, where an Anglo elite was in place and seized control of the legislative process. While Baxter does mention that traditional water practices made a matter of law, its importance is not stressed, nor is its uniqueness discussed.

Another contextual problem is the lack of clear definitions or explanations for key concepts. No clear explanation of the Spanish legal principle of equity is given, nor is Spanish water law delineated. The many examples from the Colonial period only vaguely refer to a village's or landholder's prior right to water from the stream. Eng-

lish common law is also mentioned with no explanation of how it differs from the Spanish concept of equity. One of Baxter's best examples, the conflict between longtime Hispanic farmers and Anglo developers for control of the Tularosa (pp. 97-104), reflects this problem. As New Mexico's population increased rapidly with the arrival of railroads in 1878, conflicts over control of scarce water resources intensified. Inevitably, this conflict took the form of Anglo developers promising progress and economic growth through large scale water projects against the antiquated system of the Hispanic farmers who controlled water rights through their Spanish land grants.

Baxter's example, clearly a watershed event in New Mexico water law, illustrates how control over water allocation and dispute resolution was removed from the community and its equity basis and transferred to district courts based on English common law. This moved control of community resources out of the hands of those who understood communal traditions and the need to minimize local friction and placed it in the hands of outsiders. The appointed Anglo judges, who did not understand local conditions and customs, imposed decisions based on points of law instead of what might be in the best interest of the community. To protect their interests, the Hispanic population was forced to work within a foreign system in a foreign language using American lawyers. It is difficult, however, for a reader who does not have a good understanding of the differences between Spanish and English concepts of law to understand the importance of this example and its long term consequences. An explanation of the relevant legal concepts would eliminate this problem.

Also missing is the importance of Native American claims to water in New Mexico. An examination of the agendas from recent conferences concerning water issues in New Mexico shows that this issue is important today in deciding whose rights are primary. In addition, there

are many books whose entire subject is Indian water rights (see Lloyd Burton *American Indian Water Rights* and Dumars, O'Leary, and Utton *Pueblo Indian Water Rights*, which is listed in the Baxter's bibliography). A good example of this is the case of the Don Fernando de Taos grant. In 1797, the grantees won an award for the surplus water from the Rio Pueblo and the Rio Lucero, streams used by the Taos Indians to irrigate their fields. In 1871, Baxter notes, the citizens of Don Fernando petitioned the courts, claiming the Indians had restricted the flow of water to the plaintiff's fields. The court, instead of enforcing the citizens' rights only to the surplus flow, instead granted them a permanent flow at the expense of the Indians. In 1878, the citizens again went to court, claiming the flow was still insufficient for their crops. This time the judge ordered the Lucero divided equally between the Indians and the farmers. The Indians had lost, in just under a century, the primary right to the water and now only possessed an equal right. This is a great loss for them, yet Baxter ignores its consequences.

In the two chapters covering the Colonial and Mexican eras, additional problems occur. One example is the description of the role of the *alcaldes* during the Mexican era. Baxter says that they sometimes assumed judicial power while presenting a water case from 1831. Although the constitution of 1824 did call for the establishment of district courts with trained, knowledgeable judges, the Mexican government did not have the resources to implement this change. The *alcaldes* continued in their previous role as frontier judges (see David Weber's *The Mexican Frontier, 1821-1846: The American Southwest Under Mexico*, pp. 37-38). This, and other similar problems, make this work problematic for those without a good foundation of the governmental structures in Spanish New Mexico.

By ending the discussion at 1912, any useful connections with current water problems in New Mexico are also limited. While Baxter does say

that some of the conflicts over water allocation he illustrates are still being contested, the reader has no means of making the connection. By taking his examples up to the present, Baxter could have shown the linkages and still retained his emphasis on the origins of the disputes. Another problem with stopping in 1912 is the elimination of the big water projects of the twentieth century from discussion. The reshaping of the western landscape with dams and reservoirs must have affected the allocation of traditional water resources as well as created conflict between the traditional holders of those rights and the government. As space is not a problem in this work, the lengthening of the time period under discussion would have been possible.

The problems of context and scope in this work severely limit its usefulness. This work alone does not provide as complete a picture of water problems in New Mexico, or in the West generally, as can be obtained from many other sources (See Michael Meyer, *Water in the Hispanic Southwest* or Donald Worster, *Rivers of Empire*). Used in connection with other sources, the examples are interesting and illustrate many principles. It is unfortunate that Baxter did not clearly describe or analyze these principles.

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