

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*

State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV-LFG

RIO CHAMA STREAM SYSTEM

Section 1, Chama Mainstream

Acequia de Chamita
Subfile 267, Tract 22.17

**STATE OF NEW MEXICO'S REQUESTED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

REQUESTED FINDINGS OF FACT

1. With authorization from the Spanish Crown, in 1598 Don Juan de Oñate led a large expedition out of San Bartolomé in present Chihuahua to establish a permanent settlement in New Mexico.
2. The *Ytinerario de las minas de Caxco . . . hasta el Nuevo México* (“*Ytinerario*”) is a contemporaneous account of the Oñate expedition written by a Franciscan Friar who was a member of the expedition.
3. In New Mexico the Oñate expedition split into two groups. The advance party with Oñate arrived at the pueblo of San Juan on July 11, 1598. The carts and wagons in the expedition proceeded by a longer route via San Marcos and joined the advance party at the pueblo of San Juan on August 18, 1598.
4. The *Ytinerario* states that on July 11, 1598 the advance party with Oñate traveled two leagues and arrived at a pueblo that the Spanish called “San Juan.”
5. The *Ytinerario* states that the carts and wagons (which had taken a longer route north via San Marcos) arrived at the pueblo of “San Juan Bautista” on August 18, 1598.

6. The references in the *Ytinerario* to “San Juan” and “San Juan Bautista” refer to the pueblo of San Juan located on the east side of the Rio Grande.
7. Between July 13 and August 10, 1598, Oñate explored Northern New Mexico and traveled to a number of Indian pueblos including Picuris, Taos, San Ildefonso, San Marcos, Galisteo, Pecos and Jemez.
8. The *Ytinerario* states that on 10 August Oñate returned to “San Juan.”
9. The *Ytinerario* states that on 11 August, with the assistance of 1,500 Pueblo Indians, the settlers began work on an acequia for the city (“ciudad”) of our Father San Francisco.
10. The entry in the *Ytinerario* on August 11, 1598 describing the city of San Francisco is the first reference in the historical record to this site, and the only such reference in the *Ytinerario*.
11. Use of the term “ciudad” indicates a major urban establishment rather than a lesser population center such as a “villa” or “plaza”.
12. The city of San Francisco described in the *Ytinerario* was intended by Oñate to be the capital city of the new Spanish colony in New Mexico.
13. The *Ytinerario* states that the colonists began the construction of a church on August 23, 1598, which was completed on 7 September. The dedication of the church of “San Juan Bautista” took place the following day.
14. The *Ytinerario* ends in January 1599 without explanation.
15. The *Act of Obedience and Vassalage by the Indians of San Juan Bautista* (“*Act of Obedience*”) is a written account of the loyalty and submission sworn by the Indians at “San Juan Bautista.” The document was prepared by Juan Pérez de Donís, a royal notary and member of Oñate’s staff.
16. The *Act of Obedience* describes an assignment of the Franciscan Friars to the various Indian pueblos on September 9, 1598. Fr. Cristóbal de Salazar was assigned the province of the Tewas including the pueblos of San Ildefonso, Santa Clara, “this pueblo of San Juan Bautista,” “San Gabriel” and others. In addition, Fr. Salazar was assigned “the city of San Francisco de los Españoles, which is being built now.” (“se que edifican”).
17. The *Act of Obedience* specifically distinguished between the pueblo of San Juan, the pueblo of San Gabriel, and the new Spanish city of San Francisco which was said to be under construction. What is described as the pueblo of San Gabriel was the pueblo of Yunque directly west and across the Rio Grande from the pueblo of San Juan.

18. The location of the intended town site for the capital city of San Francisco is uncertain, but it was most likely to be situated near the pueblo of San Juan on the east side of the Rio Grande where it would not intrude on the fields and lands of the Pueblo Indians.
19. The acequia described in the *Ytinerario* to serve the city of San Francisco was located on the east side of the Rio Grande near the pueblo of San Juan.
20. Soon after the arrival of the wagons and carts on August 18, 1598, the settlers began to complain bitterly about the conditions of the settlement. Most of the food supply had to be extorted from their Pueblo neighbors and there was fear of starvation. According to testimony given in July 1601, the dissatisfied settlers refused to take part in the construction of the city of San Francisco.
21. In the spring of 1599 Oñate send a delegation led by Gaspar de Villagr a to the viceroy in New Spain to report on his discoveries and to request reinforcements. The delegation took with them a series of documents prepared by Oñate and his staff in January and February of 1599. All of these documents state that they were prepared “at the pueblo of San Juan Bautista.” The last such document was dated February 28, 1599. In addition to the reports and other documents that were taken to New Spain by the delegation, Oñate sent several letters to the viceroy and to the King that were dated in March and April of 1599. These letters either do not state where they were prepared, or state only that they were prepared in New Mexico. A final letter from Oñate to Villagr a was date lined “At the capital, May 30, 1599.” None of these documents or letters mention the pueblo of San Gabriel. Villagr a never returned to New Mexico. After he returned to Spain, he published *Historia de la Nueva M xico* in 1610. Villagr a’s History of New Mexico contains several references to San Juan, the pueblo of San Juan, or San Juan the capital, but it does not mention the pueblo of San Gabriel.
22. When the relief party that been requested by Oñate from New Spain arrived at the colony on December 24, 1600 (Christmas Eve), the Spanish were occupying the pueblo of San Gabriel across the Rio Grande and directly west of the pueblo of San Juan.
23. In March 1601, a second small delegation left the colony for New Spain. A letter to the viceroy from Captain Velasco sent with that delegation, and probably smuggled out, was written at San Gabriel on March 22, 1601. Later in the fall of 1601 when Oñate returned from explorations as far away a present day Kansas, he found that most of the colonists and friars had deserted and left for New Spain. Oñate sent Vincente de Zald var to force the colonists to return, but Vald zar was unable to overtake them in time. Zald var continued to Mexico City and carried with him three sets of documents that had been prepared earlier in New Mexico, documents that were presented to the audiencia in April 1602. The third set of documents (testimony by Zub a, Ba uelos and Fray Francisco de San Miguel) state that they were prepared “at the pueblo of San Gabriel” in July 1600.
24. The documents prepared at the pueblo of San Gabriel in July 1600 are the earliest known

historical documents that indicate the occupation of San Gabriel by the Spanish colonists. No known documents were said to be signed or prepared at the “pueblo of San Juan,” “San Juan” or “San Juan Bautista” after February 1599.

25. As of the end of February 1599, the new colony and Oñate’s headquarters were located at the pueblo of San Juan (Okey) on the east side of the Rio Grande. Sometime between the spring of 1599 and July of 1600, the colony was relocated across the Rio Grande to the pueblo of San Gabriel (Yunque).
26. Soon after the relocation of the colony and the occupation of the pueblo of San Gabriel, the settlers constructed an acequia with waters taken from the Rio Chama. San Gabriel was located in the area now known as Chamita. Although the exact date of the construction of this acequia is not known, the historical record supports a construction date of 1600 based on the letters carried to Mexico City by Vincente de Zaldívar in 1601 and the approximate time of the move to San Gabriel from San Juan Bautista.
27. The acequia constructed by the settlers at San Gabriel is now known as the Acequia de Chamita. The Acequia de Chamita is the source of irrigation water for Tract 22.17 (Subfile 267) owned by Defendants David Ortiz and Cecilia O. Ortiz.
28. The known historical record for the Spanish settlement at San Gabriel does not support a claim of irrigation on Tract 22.17 (Subfile 267) owned by Defendants David Ortiz and Cecilia O. Ortiz earlier than 1600.

REQUESTED CONCLUSIONS OF LAW

1. The priority date of the water rights appurtenant to Tract 22.17 (Subfile 267) owned by Defendants David Ortiz and Cecilia O. Ortiz is 1600.

Respectfully submitted,

/s/ Ed Newville
EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 867-7444 telephone
(505) 867-2299 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February 2013, I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM-ECF participants in the manner indicated.

Via first class mail, postage prepaid addressed as follows:

David Ortiz
Cecilia Ortiz
P.O. Box 1082
San Juan Pueblo, NM 87566

/s/ Ed Newville
EDWARD G. NEWVILLE