

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

STATE OF NEW MEXICO, <i>ex rel.</i>)	
State Engineer)	69cv07941-MV/KK
)	RIO CHAMA STREAM SYSTEM
Plaintiff,)	
)	Section 3, Rio Cebolla
vs.)	
)	Subfile Nos. CHCB-001-0007,
ROMAN ARAGON, <i>et al.</i> ,)	CHCB-002-0001B, CHCB-002-0002C,
)	CHCB-002-0009
Defendants.)	
_____)	

AFFIDAVIT OF JOHN BAXTER, PH.D.

I, John O. Baxter, having been duly sworn, state the following:

1. The State of New Mexico has retained me as an expert regarding the history of the settlement and irrigation of the Rio Cebolla.

2. In this case I prepared a report dated July, 2014 entitled “*Settlement and Irrigation on the Rio Cebolla* (Section 3, Rio Chama Hydrographic Survey)”. I also prepared a report dated May, 2014, entitled “*Report Concerning the Old Valdez Ditch and the Alfalfita Ditch, Rio Cebolla, Rio Chama Hydrographic Survey.*”

3. A current copy of my curriculum vitae is attached as Exhibit 28 to the *State’s Motion for Partial Summary Judgment.*

4. I have been accepted as an expert historian and testified as to my expert opinions in numerous water rights cases in New Mexico.

5. The purpose of this affidavit is to set forth certain facts concerning the history of two irrigation ditches known as the “Old Valdez” ditch and the “Alfalfita” ditch that are the subject of the *State’s Motion for Partial Summary Judgment.*

6. My research consisted of a review of relevant documents, including homestead records in the National Archives, deed records at the Rio Arriba County Courthouse, water rights files at the State Engineer's Office, and case files from Rio Arriba County District Court. I also conducted a site visit of the area in question on April 2, 2014. The site visit consisted of a walking tour of the various ditches and irrigated lands at issue in these subfile proceedings, including the Old Valdez and Alfalfita ditches.

**Research concerning the Old Valdez ditch and the Alfalfita ditch,
Rio Cebolla, Rio Chama hydrographic survey.**

7. During research I conducted at the request of the State concerning irrigation from the Rio Cebolla, I reviewed the history of two acequias originating near the upper end of the watershed. Known as the "Old Valdez" and the "Alfalfita", both ditches have been included in the hydrographic survey conducted by the State Engineer in 2000. As shown by the survey, the Old Valdez begins in the Rito del Tanque to irrigate fields located in the N 1/2 SE 1/4, Sec. 24, T27N, R4E, part of a homestead claimed by Juan Desiderio Valdez. From its source, the Old Valdez ditch flows southwest, irrigating 11.8 acres east of the Rito del Tanque before terminating at the south boundary of the homestead.

8. The second ditch, the Alfalfita, has its source about 200 yards south of the Juan Desiderio Valdez homestead in lands settled by his nephew, Canuto Valdez. According to the hydrographic survey, the Alfalfita receives water from springs and tail water out of a ditch established by Canuto Valdez. The "Canuto Valdez" ditch originates in the Rito del Medio, another tributary of the Rio Cebolla that originates in the mountains to the east of the Rio Cebolla. As it runs southwest, the Alfalfita irrigates a strip of land on the east bank of the Rito del Tanque, ending at the site of a former alfalfa field for which it was named.

9. At the present time, the Old Valdez and the Alfalfita ditches are connected so that water from the Rito del Tanque supplements the Alfalfita's flow from the other sources. The conjunction of the two ditches is not indicated on the hydrographic survey map because the Office of the State Engineer does not consider them as a single ditch, a conclusion disputed by the landowners concerned.

10. Settlement of the area under consideration began in 1878, when Juan Desiderio Valdez claimed a homestead in Sec. 24, T27N, R4E. After his arrival, Valdez built a house, made some other improvements, and began to cultivate five acres of crops.¹ Heading on the east boundary of the homestead, the Old Valdez ditch runs southwest, across the claim, serving lands along the Rito del Tanque. After Juan Desiderio Valdez, years passed before other settlers took homesteads nearby. In 1884, Gabriel Valdez occupied 160 acres in the SW 1/4 of Sec. 24, just west of Juan Desiderio Valdez, his older brother.² The southeast quarter of the original Gabriel Valdez homestead is presently traversed by the Alfalfita ditch. Two years later, Jose Leandro Montoya claimed a tract of the same size in Sec. 25, just south of Gabriel.³ Later, Gabriel Valdez's son, Canuto Valdez, established a claim that included the S 1/2 SE 1/4, Sec. 24, immediately below Juan Desiderio Valdez. His entry also extended east into the S 1/2 SW 1/4, Sec. 19, T27N, R5E.⁴ From the beginning, each homesteader farmed a few acres of land to sustain his family.

11. After the first wave of settlement, land ownership in the area remained stable for many years. Changes began after the death of Juan Desiderio Valdez, when his heirs conveyed title to the south half of his claim, that part bisected by the Old Valdez ditch, to Josefa Valdez de Garcia, daughter of Desiderio's brother Gabriel Valdez. Then, in 1926, after

Gabriel and his wife had died, their children divided his homestead into four 40-acre parcels oriented north and south. Beginning on the east side, Eufemia Valdez de Benavides, the youngest daughter, received 40 acres. Next, Josefa Valdez de Garcia was given 40 acres immediately to the west, followed by Canuto Valdez, the only son, who was awarded the third parcel.⁵ Finally, Patricio Chacon secured the western-most tract as the legitimate heir of his mother, Rayes Valdez de Chacon, Gabriel's oldest daughter.⁶ In 1919, Chacon had purchased approximately 70 acres at the north end of Jose Leandro Montoya's claim that was located south of his 40-acre inheritance.⁷ Part of these lands are irrigated from the Alfalfita ditch. In 1937, Patricio Chacon became the neighborhood's largest landowner when he bought the south half of Desiderio's claim from his aunt, 80 acres known afterward as "El Rancho de Tia Josefa."⁸

12. In 1944, Canuto Valdez sold 40 acres, the E 1/2 E 1/2 SW 1/4 of Sec. 24, to Luis and Dulcinea Quintana. Evidently Canuto Valdez had obtained title to this parcel from his sister Eufemia. The deed specifically included "all rights to water belonging to said land."⁹ In 1926, Josefa Valdez de Garcia had sold her share of the homestead to Luis Quintana for \$350.00. This deed made no mention of water rights.¹⁰ Luis Quintana had then acquired the east half of the Gabriel Valdez homestead, 80 acres.

13. At about the same time as the first sale to the Quintana's, Canuto Valdez conveyed his share of his father's land to his son, Gabriel, namesake of his grandfather.¹¹ Again, the deed noted that irrigation rights were included in the deal. Then, in 1949, Canuto Valdez transferred title to his own homestead to Gabriel. The claim included the S 1/2 SE 1/4 of Sec. 24, T27N, R4E and the S 1/2 SW 1/4 of Sec. 19, T27N, R5E, 157.04 acres that extended

one mile east from his father's lands.¹² In 1926, Canuto Valdez filed a declaration with the State Engineer claiming rights to water for the irrigation of three acres within his homestead. The water came from the Rito del Medio.¹³

14. During the years after Canuto Valdez filed his declaration, other landowners began to submit similar claims for rights in various ditches along the Cebolla. In 1932, 15 parciantes from the Acequia Pinavetal submitted a declaration for rights to water for "domestic, stock watering and irrigation purposes." Originating from the Rito del Tanque a few miles above the Valdez homesteads, the Pinavetal serves a large acreage west of the river. Signers of the 1932 declaration included Canuto Valdez, Luis Quintana, and Patricio Chacon.¹⁴ As presented, the original declaration failed to indicate the individual tracts held by each parciante, but that information was provided in 1949 by an amendment recorded with the State Engineer. The amendment was supported by a plat drawn by Walter G. Turley, a professional surveyor, that showed each parcel irrigated from the Pinavetal.

15. As set forth on Turley's plat, Luis Quintana watered 30 acres of the 80 he owned in the Gabriel Valdez claim. The younger Gabriel Valdez irrigated 13 acres within the tract he had received from his father. Patricio Chacon depended on water from the Pinavetal to serve two locations: 10 acres in the northwest corner of the Jose Leandro Montoya homestead, and 12 acres upstream in the northwest corner of the Tia Josefa ranch.¹⁵ Concurrent with submission of the amendment, Patricio Chacon filed another declaration of water rights from the Old Valdez ditch that irrigated seven acres on the other side of the Rito del Tanque.¹⁶ Turley's plat shows the full length of the Old Valdez, which runs back into the river just below Chacon's field. As recorded by the State Engineer, the plat carried an endorsement to its

accuracy signed by five commissioners of the Pinavetal, including Patricio Chacon. In 1949, Patricio Chacon also owned lands located on the north end of the former Jose Leandro Montoya homestead. These lands are now traversed by the Alfalfita ditch. Patricio Chacon did not declare any water rights for these lands on the 1949 declaration. Likewise, although the Alfalfita ditch now traverses lands owned by Luis Quintana and the United States Department of Interior in 1949, neither of these property owners claimed irrigation rights from the Old Valdez ditch on the 1949 declaration. Patricio Chacon was the only landowner who claimed irrigation rights from the Old Valdez ditch in the 1949 declaration, for seven acres located on the former Juan Desiderio Valdez homestead.

16. When Gabriel Valdez received his father's lands, he recognized that the two tracts were separated by the 80 acres sold to Luis Quintana. In 1956, he was able to negotiate an exchange that consolidated his property. Under the terms of the agreement, Gabriel obtained Luis Quintana's 80 acres in return for the west half of the Canuto Valdez homestead, which comprised 77.5 acres. Gabriel's deed indicated clearly that he received water rights to irrigate lands on both sides of the Rito del Tanque: on the west, through the Pinavetal, on the east, from a ditch known as the Rito del Medio. In similar fashion, his conveyance to the Quintana's gave them a water right from the Rito del Medio acequia, the ditch established by his father.¹⁷ On January 25, 1960, Luis Quintana and his wife gave the 77.5 acre tract to their son Delfin. As before, all rights to water from the Rito del Medio were included.¹⁸ As the claims to water rights suggest, Quintana and Valdez had been irrigating a strip of lands east of the Rito del Tanque, in the southeast corner of the original Gabriel Valdez homestead. None of these deeds mention water rights from the Old Valdez ditch.

17. From the diversion on the Medio, the water ran through Canuto Valdez's ditch to the west end of his claim. From there, it flowed into the Alfalfita ditch, which continued downstream to the north end of the Montoya claim, terminating in the small alfalfa field.

18. In 1954, Quintana and Valdez had used a bulldozer to build a new diversion at the headgate of the Canuto ditch that preempted almost all of the Rito del Medio's flow. In September 1962, Jose G. Cordova, owner of a large acreage downstream, filed a lawsuit in New Mexico district court over the diversion. To right the wrongs he had suffered from lack of water, he demanded recognition of his own water rights and payment of \$10,000 in damages.¹⁹

19. In his bill of complaint, Jose G. Cordova reviewed the history of water use from the Rito del Medio. He conceded that Canuto Valdez had a historic right to irrigate about three acres from the Rito del Medio. Trouble began after 1923, when a sawmill operator obtained authorization to divert water through Canuto Valdez's ditch to provide steam for the mill. Later, after the mill ceased operations, landowners continued to use the water to irrigate additional farmlands. According to Jose G. Cordova, Canuto's successors had failed to get more water rights "either by purchase or gift." Instead, they had attempted to acquire rights from the Rito del Medio through adverse possession for irrigation on 100 acres of new lands.²⁰ Although Cordova did not describe the means of delivery, the water must have crossed Canuto's homestead through his acequia, flowed into the Alfalfita ditch, and continued on as far as the mill site.

20. During the trial in 1963, Pedro Trujillo y Chacon, a friendly witness, confirmed much of Cordova's opening statement. A lifelong resident of the Cebolla area, Trujillo agreed that a sawmill had been relocated from another place to a site between the Rito del Medio and

the Rito del Tanque in 1923. Permission to take the water came from Donaciano Martinez, a previous owner of Cordova's lands. After the mill closed, Trujillo said, Canuto started to irrigate more lands.²¹ While on the witness stand, Trujillo did not place the mill site exactly. Recently, however, Charlie Chacon has stated that the location lay within part of the Montoya homestead purchased by his father, evidence that the Alfalfita ditch reached to that point.²²

21. After the 1963 hearing, the court ordered the parties to negotiate a compromise, causing the case to drag on for a few more years. When that effort failed, the presiding judge appointed Frank E. Irby as special master to review the facts and find the basis for a settlement. On August 3, 1967, Irby presented his report, which was subsequently accepted by Judge Paul Tackett of the New Mexico Supreme Court. In addition to a consideration of other issues, Irby's findings included the following: 1) That defendants Valdez and Quintana had vested and valid water rights in the waters of the Rito del Medio on "about three acres of land" in the S 1/2 SE 1/4 of Sec. 24, T27N, R4E with a priority of 1905. 2) That Jose G. Cordova had vested and valid water rights from the Rito del Medio for 104 acres of land with a priority of 1887.²³ Thus, the court's decision fully validated the plaintiff's rights and represented a crushing defeat for Valdez and Quintana. Although not expressed directly, the court's decision determined that those lands along the Alfalfita ditch from the Canuto Valdez homestead to beyond the mill site had no rights whatever to water from the Rito del Medio.

22. While aware of the court's ruling, some landowners are claiming rights to water in the Alfalfita from another source. In their view, the Old Valdez and the Alfalfita have always been part of the same ditch. Consequently, they believe that, despite considerable evidence to the contrary, the Alfalfita has valid rights from the Rito del Tanque. Significantly, the map prepared by the hydrographic survey in 2000 shows a gap of about 200 yards between

the end of the Old Valdez and the origin of the Alfalfita.²⁴ On the map, the termination point of the Old Valdez coincides closely with that shown on the 1949 Turley plat, on which the ditch runs into the Rito del Tanque at the end of Patricio Chacon's seven-acre field. There is no indication that the ditch continued further south at that time. As stated above, Chacon's neighbors downstream, Gabriel Valdez and Luis Quintana, claimed water rights from the Rito del Medio during their real estate transactions. However, the so-called rights lacked substance, since they had never filed a declaration or applied for a permit from the State Engineer to divert water from the Rito del Medio. While Donaciano Martinez may have granted the sawmill operator's request for part of the stream's flow in 1923, he had no legal authority to do so.

23. Below the Valdez-Quintana lands, the Alfalfita runs through the NE 1/4 NW 1/4 of Sec. 25, a 40-acre tract just east of the Montoya homestead. In 1946, federal officials received a request from Patricio Chacon to buy this piece of land, which joined his property on the east and south. After a delay of five years, his offer was accepted and he received a patent from the General Land Office. Recently, members of the Chacon family have asserted that several acres within this tract have a history of irrigation preceding Patricio Chacon's purchase by many years. In his original application, however, Chacon declared that he intended to use the land for grazing purposes. Before the sale, a field examiner from the Bureau of Land Management made a careful inspection of the tract. In his report, he said that the 40 acres could best be used for livestock grazing, and although the tract was bordered on the north by a small brook, there was no water of any kind on the tract. The examiner agreed that Chacon's offer of \$3.00 per acre was a fair price, a valuation far below the going rate for irrigated land.²⁵ These statements clearly demonstrate that no irrigation took place on this tract before Patricio

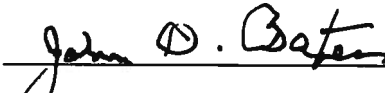
Chacon's ownership. Furthermore, the price paid for Patricio Chacon's 40 acres was very much in line with sales of two other parcels made at the same time in Sec. 26, a short distance to the west. Eight acres identified by the same inspector as grazing land brought \$2.50 per acre. Another lot of four acres declared unsuitable for agriculture to be used as a building site in the village of Cebolla sold for \$10.00 an acre.²⁶

24. After crossing Patricio Chacon's 40-acre addition, the Alfalfita flows into the north end of the Montoya homestead, lands Chacon had bought in 1919. Continuing south, the ditch irrigates several acres along the east side of the claim before ending in the alfalfa field at the far end.

25. The Chacon family has identified these tracts with others for which they claim an old water right for the Old Valdez ditch from the Rito del Tanque. They have not explained, however, why Patricio Chacon failed to include these lands in his 1949 declaration of water rights from the Old Valdez. Questions also arise from a transaction initiated much later by Charlie Chacon. In 1969, he reached an agreement with Gabriel Valdez to buy water rights from 30 acres west of the Rito del Tanque. Served by the Pinavetal, these were the same lands claimed in the 1949 declaration by Luis Quintana, which he later traded to Valdez. Chacon transferred the rights to the same amount of land on the other side of the Rito del Tanque in the Montoya homestead and established a diversion for a new acequia known as the Chacon ditch.²⁷ If this part of the Montoya claim was already irrigated from the Old Valdez/Alfalfita ditch, as Mr. Chacon has stated, there would have been no need for such a large transfer. Clearly, the decision to acquire additional water rights for this area resulted from the ruling handed down in district court two years earlier that prohibited further use of water from the Rito del Medio.

26. Thus, a review of documentary sources supports a conclusion that the Old Valdez and Alfalfita are two distinctly separate ditches. As the name indicates, the Old Valdez originated to irrigate lands within that part of the Juan Desiderio Valdez homestead known as the Rancho de Tia Josefa. The Alfalfita was established much later to water other lands.

FURTHER AFFIANT SAYETH NAUGHT.



John O. Baxter

Subscribed and sworn to before me this 15 day of July, 2015.





Notary Public

My commission expires:

9/28/16

Notes

1. Homestead Certificate (HC) no. 1190, Juan Desiderio Valdez, February 25, 1885, Records of the General Land Office, Records of the Bureau of Land Management, Record Group 49, National Archives and Records Administration, Washington, D.C.
2. HC no. 1658, Gabriel Valdez, June 23, 1891, RG 49.
3. HC no. 1757, Jose Leandro Montoya, March 1, 1892, RG 49.
4. HC no. 2935, Canuto Valdez, September 6, 1902, RG 49.
5. Gabriel Valdez heirs to Josefa V. Garcia, June 3, 1926, Book 39: 92, Valdez heirs to Canuto Valdez, June 3, 1926, Book 23: 512, Rio Arriba County Deed Records (RACD), Office of the County Clerk, Rio Arriba County Courthouse, Tierra Amarilla, N.M.
6. Valdez heirs to Patricio Chacon, June 3, 1926, Book 23: 497, RACD.
7. Ramon V. Lopez to Patricio Chacon, January 2, 1919, Documentos Garantizados 18: 298, RACD (Available at Rio Arriba County Deed Records, not available for copying).
8. Josefa V. Garcia to Patricio Chacon, May 8, 1937, Book 20:91, RACD.
9. Canuto Valdez to Luis and Dulcinea Quintana, October 19, 1944, Book 22: 458, RACD.
10. Josefa V. Garcia to Luis Quintana, June 27, 1949, Book 39: 92, RACD.
11. Canuto Valdez to Gabriel Valdez, November 20, 1944, Book 21: 554, RACD.
12. Canuto Valdez to Gabriel Valdez, February 19, 1949, Book 41: 131, RACD.
13. Water Rights Files, Canuto Valdez, no. 0492, March 9, 1926, State Engineer Office (SEO), Santa Fe, N.M.
14. Water Rights Files, Juan Maes et al, no. 0636, June 27, 1932, SEO.
15. Water Rights Files, Medardo Sanchez, no. 0636-Amended, March 1, 1949, SEO.
16. Water Rights Files, Patricio Chacon, no. 0636-Amended-B, June 10, 1949, SEO.
17. Mrs. Luis Quintana to Gabriel Valdez, June 22, 1956, Book 54: 53; Gabriel Valdez to Luis Quintana, June 22, 1956, Book 54: 54, RACO.
18. Luis Quintana to Delfin Quintana, January 25, 1960, Book 83: 406, RACO.
19. Jose G. Cordova v Luis Quintana, Gabriel Valdez, and Delfin Quintana, September 6, 1962, Rio Arriba County Civil Case no. 8650, New Mexico District Court Records.
20. Affidavit, Jose G. Cordova, September 10, 1965, RA Civil Case no, 8650.
21. Testimony, Pedro Trujillo y Chacon, July 15, 1963, RA Civil Case no. 8650.
22. Deposition, Charlie Chacon, December 17, 2009, pp. 52-55.
23. Judgment, Paul Tackett, Justice, New Mexico Supreme Court, June 9, 1969, RA Civil Case no. 8650.
24. Rio Chama Hydrographic Survey, August 11, 2000, CHCB-2.
25. Serial Patent (SP) no. 1,131,569, Patricio Chacon, February 12, 1951, RG 49.
26. SP no. 1,131,574, Max Ortiz, April 5, 1951; SP no. 1,131,575, Gregorio C. Martinez, April 5, 1951, RG 49.
27. Water Rights Files, no. 0636, 2738, Change of Ownership of Water Rights, March 3, 1969.