



# UNSETTLED WATERS

RIGHTS, LAW, AND

IDENTITY IN THE

AMERICAN WEST

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## “UNSETTLED WATERS IN AN UNSETTLING CLIMATE: LEARNING FROM NEW MEXICO”

### 2021 NEW MEXICO WATER DIALOGUE

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# Why water adjudication?


- Water adjudications are profoundly spatial, historical, legal, and political
- Apart from legal scholars, water adjudications are neglected by most academics.
- Adjudications are a legal mechanism to convert water into a “resource” and a property right (state and private)
- Adjudications often fail and end up in out of court water settlements (agreements)



Detail from the Taos hydrographic survey Maps, ca 1968 (Talpa area)




## Part One: How water adjudication works, what it does, and what happens when it fails

- “If we didn’t have to adjudicate, we wouldn’t.” –former OSE adjudicator
  - “Listen...no we haven’t been touched by that process [adjudication] yet...Once it starts, it touches everything...It exposes everything and everyone. –rural irrigator
  - “Litigation illuminates.” – Former state court judge
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# Why New Mexico? Why not Colorado?

- New Mexico exists with at least three legal traditions operating simultaneously (recognized or not).
  - New Mexico shares similarities with other western states (prior appropriation, aridity, balancing water uses) but distinct features (Native sovereigns, local irrigation sovereigns)
  - Adjudication in NM as a process is a 1:1 time-space-water machine for the history of “the state.”
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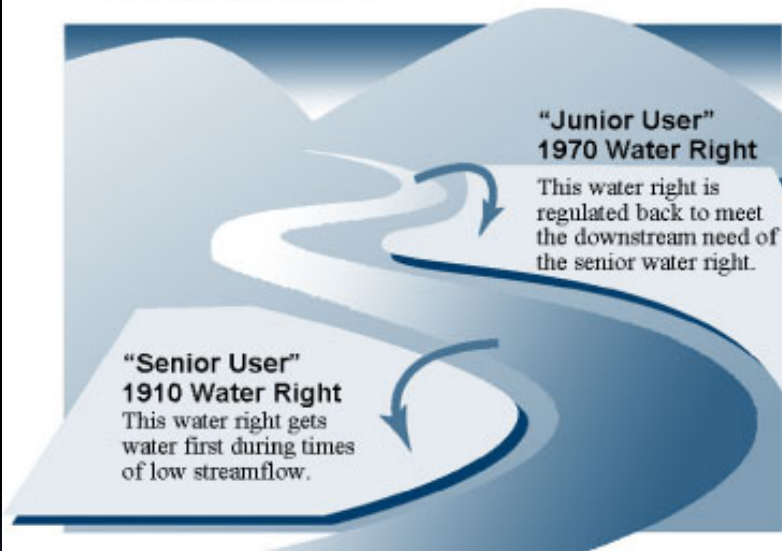
What law governs water in the western states?

NM: 1907 water code based strongly on Colorado Doctrine (prior appropriation)



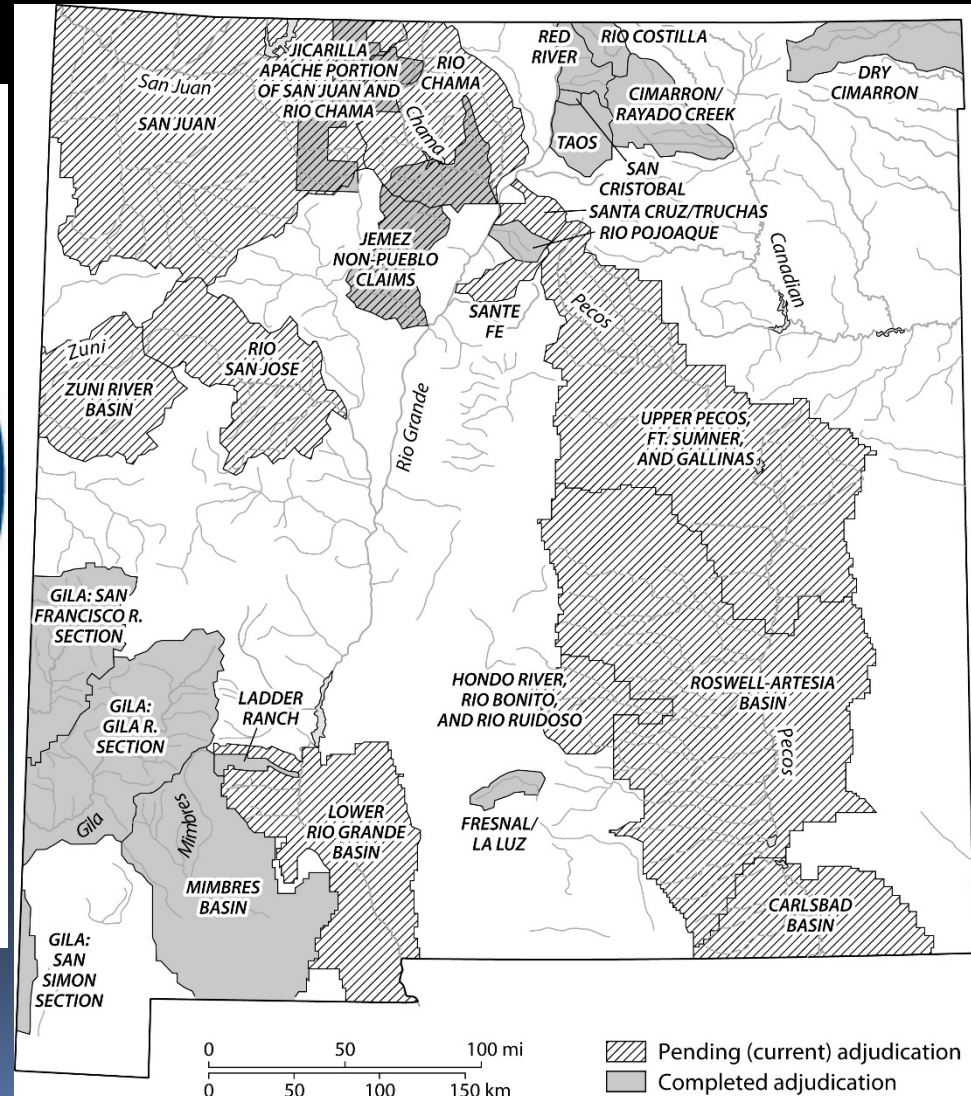
# Law as technology, adjudication as a resource conversion tool, with priority management being the goal...

## Prior Appropriation: an example "First in time, first in right"



### *An example of prior appropriation at work*

Prior appropriation ensures that the first water user to obtain water rights has first access to water in times of shortage. If a "downstream" landowner has the earlier priority date (they initiated their water right in 1910) the "upstream" landowner may have to let the water pass unused to meet the needs of the senior, downstream water right holder.



# Water as vital/sacred (pre-1598-present)



# Water as shared/institution (1598-present)

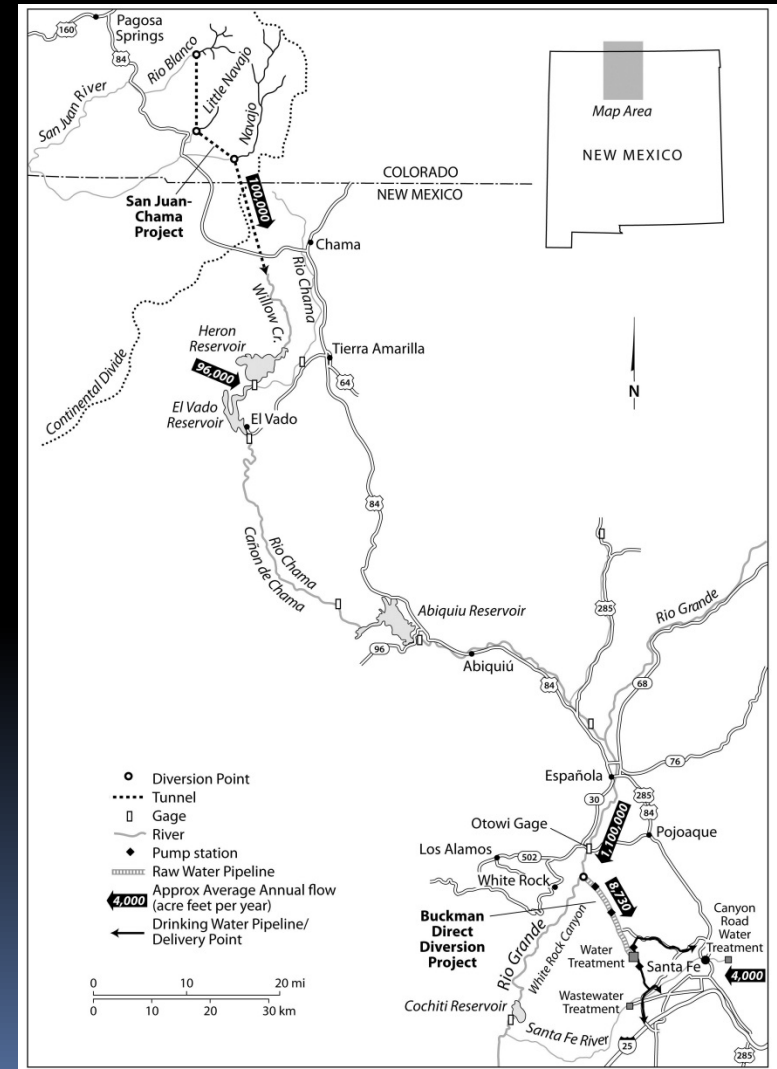
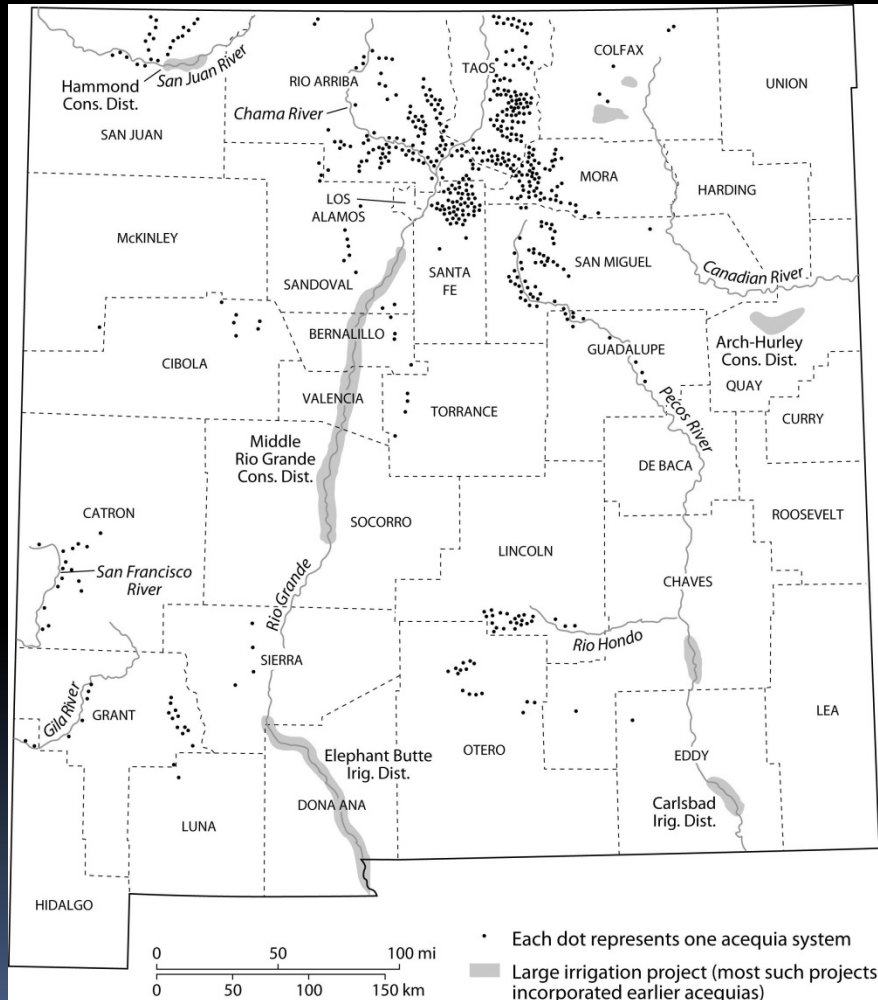




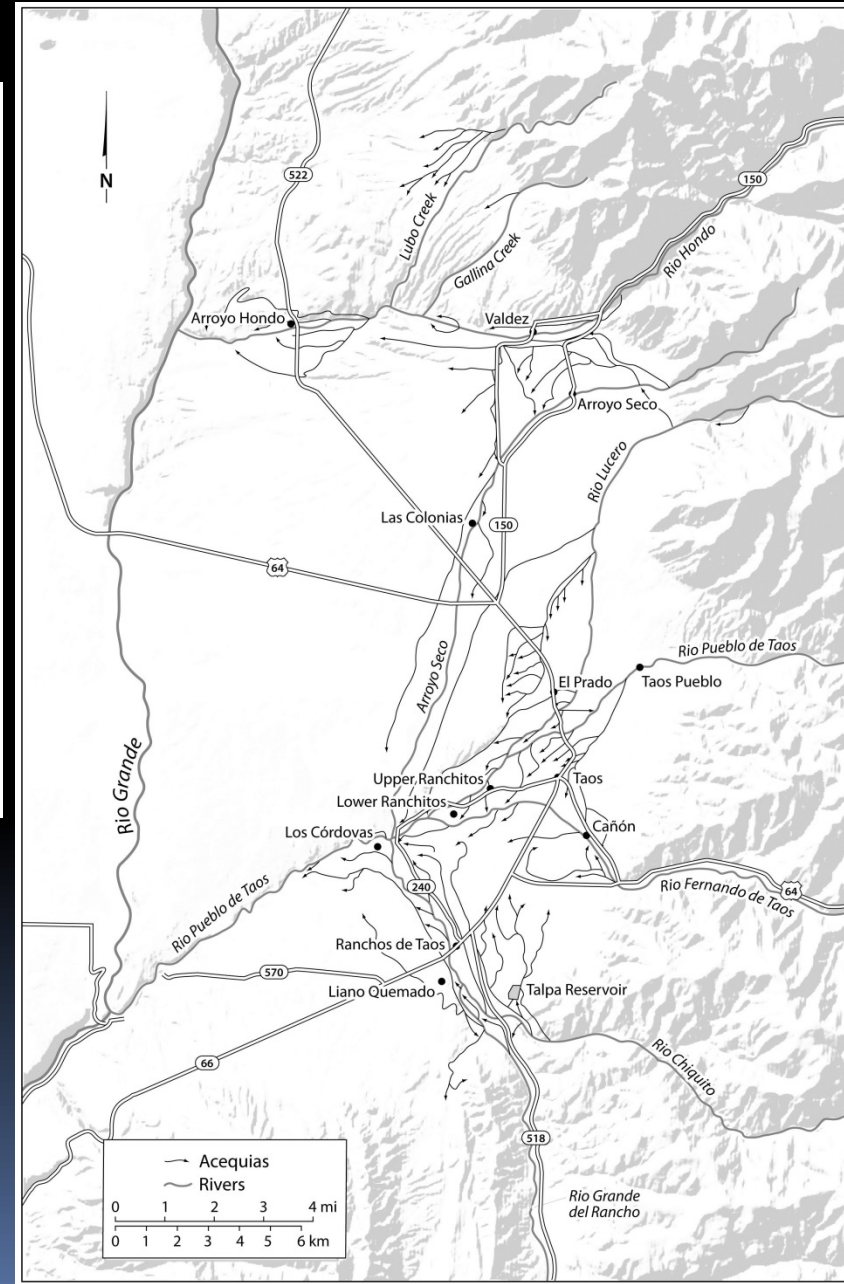
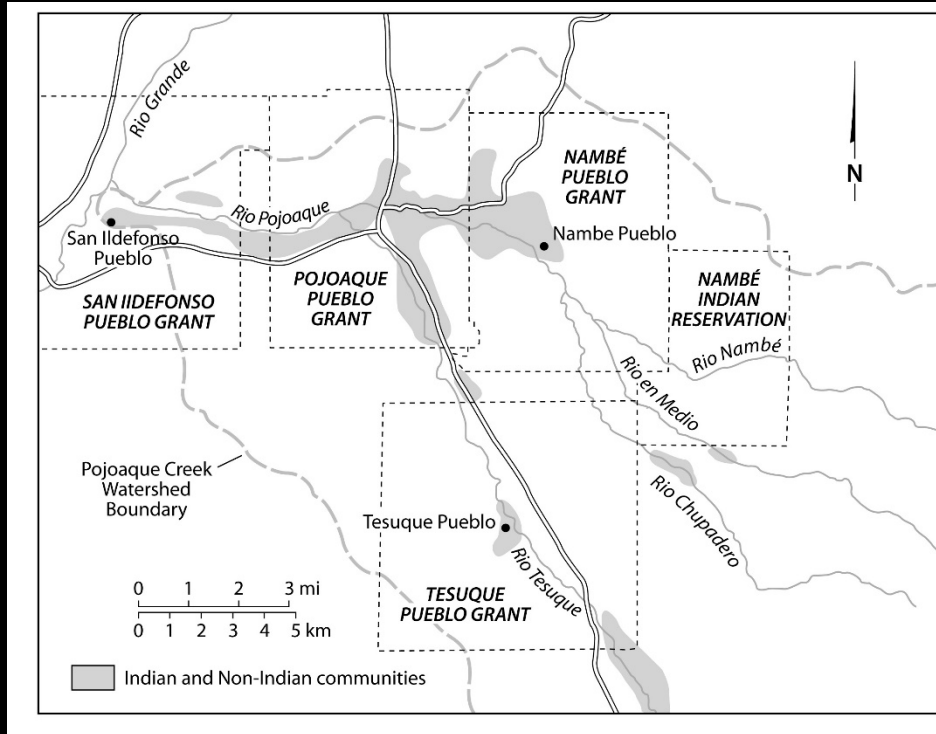
# Water as “property right” (1907-present)



# Large water infrastructure projects, small-time water rights

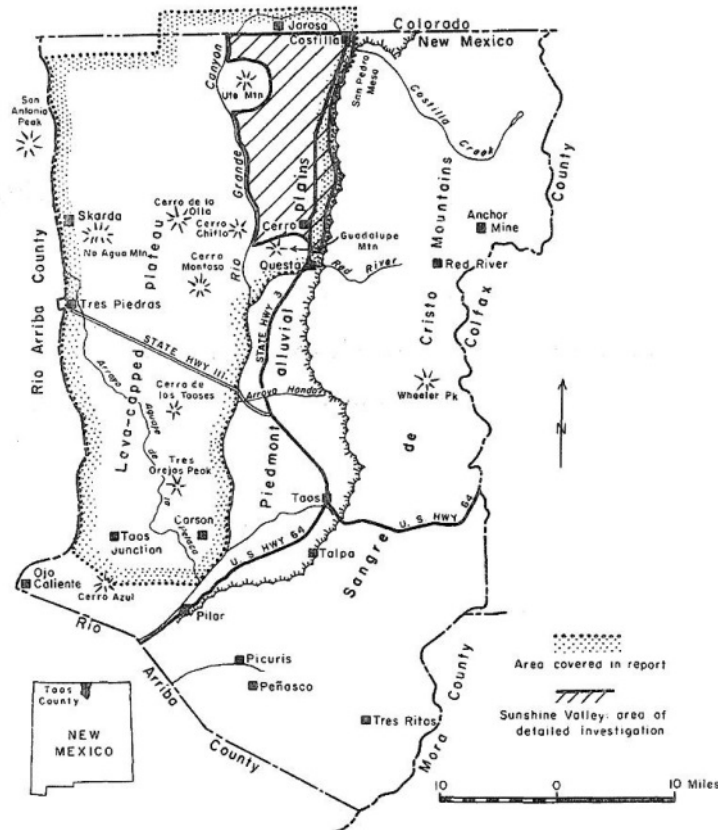


# Aamodt (Pojoaque) & Abeyta (Taos) adjudications (now settlements)





# Shell games: groundwater and surface water transfers



Index map of Taos County, showing area covered by report, and major physiographic features.

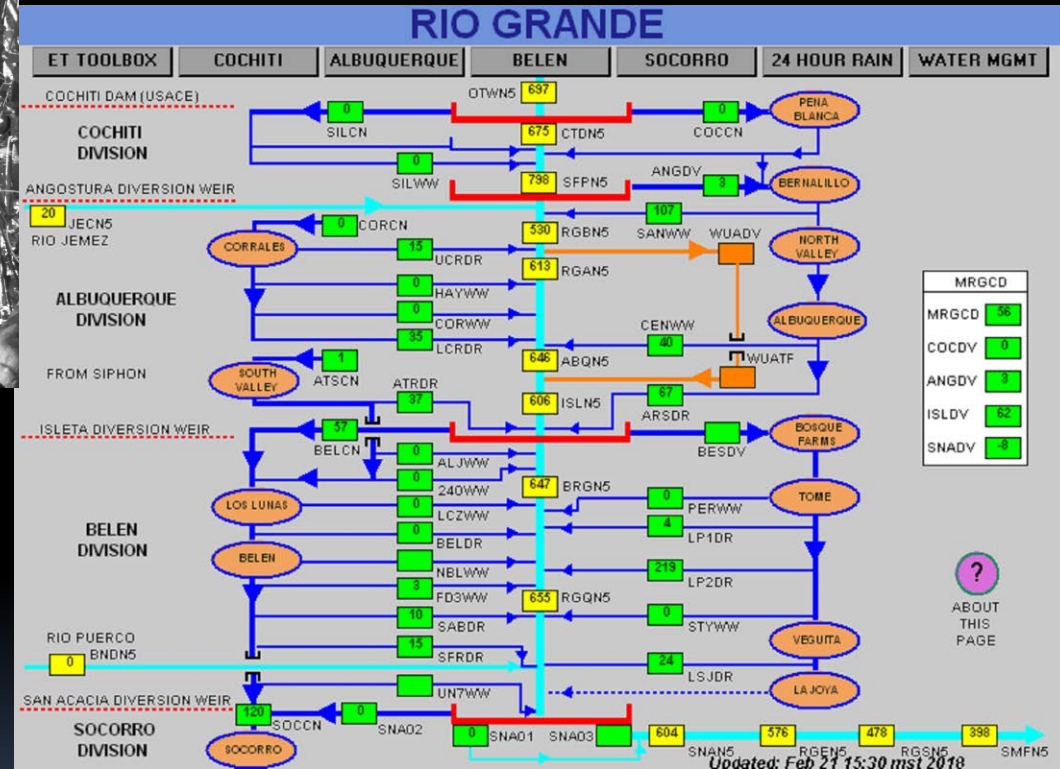


## Part Two: The production of water expertise: The adjudication-industrial complex and its consequences

- “That judge, he was so stubborn in the Aamodt adjudication, he just treated the entire area, all these rivers, like he had a cookie-cutter in his hand, and he demanded numbers from every cookie. It couldn’t be counted. He was like trying to count water from a net...but that water escapes, it moves, it hides.” – irrigator from Pojoaque
- “No way did we want the [state] engineer coming to tell us what to do. I don’t know what drove that whole obsessions [sic] with metering....we started to feel like guinea pigs.” – water user along the Rio Mimbres.
- “They made a map and put us on it, whether we wanted to be on it or not.” – L. Ortiz



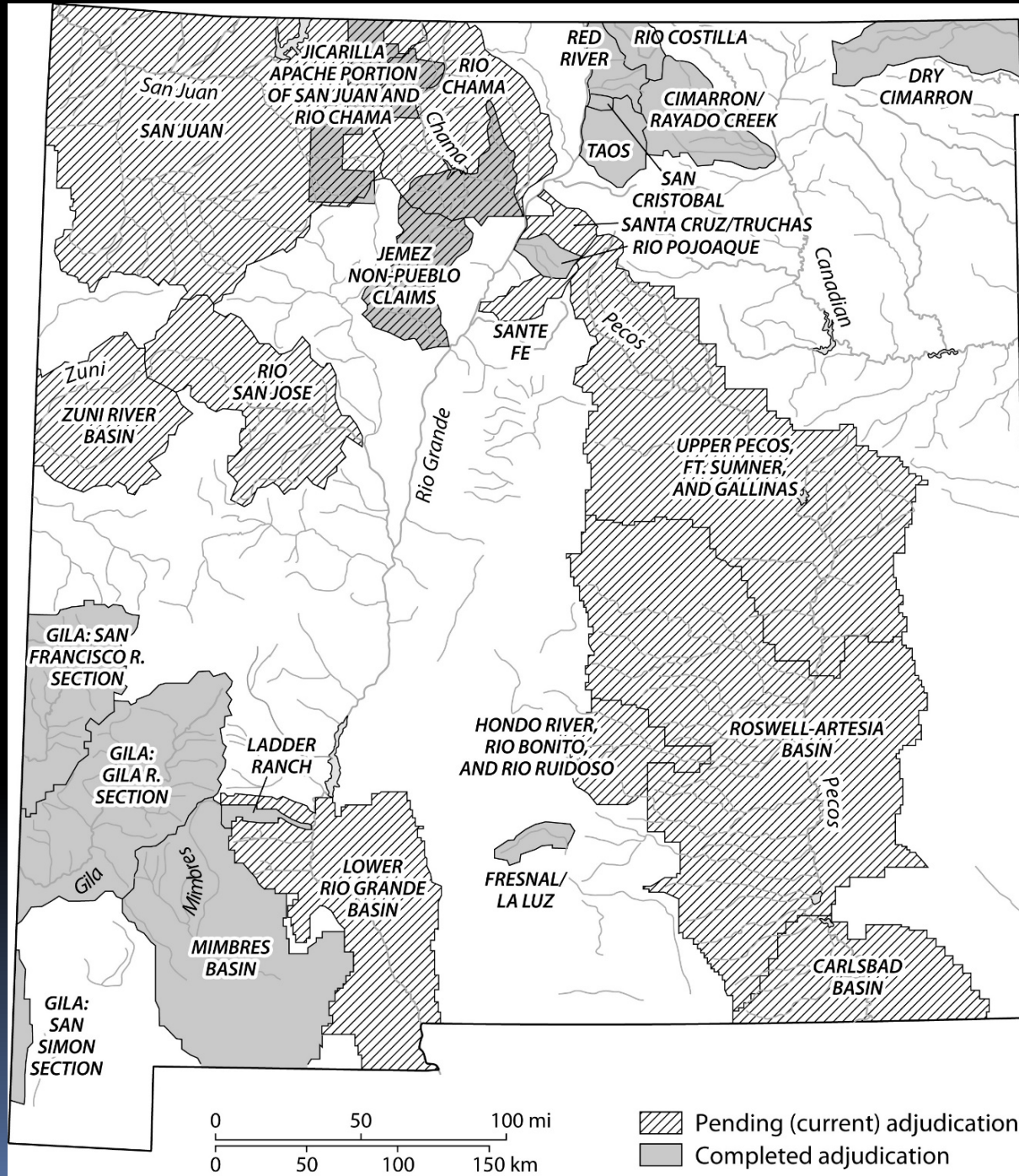
# Metrics and the abstraction of water – measures, metrics, and complicating water




When adjudications fail, and water settlements are forged by New Mexicans.








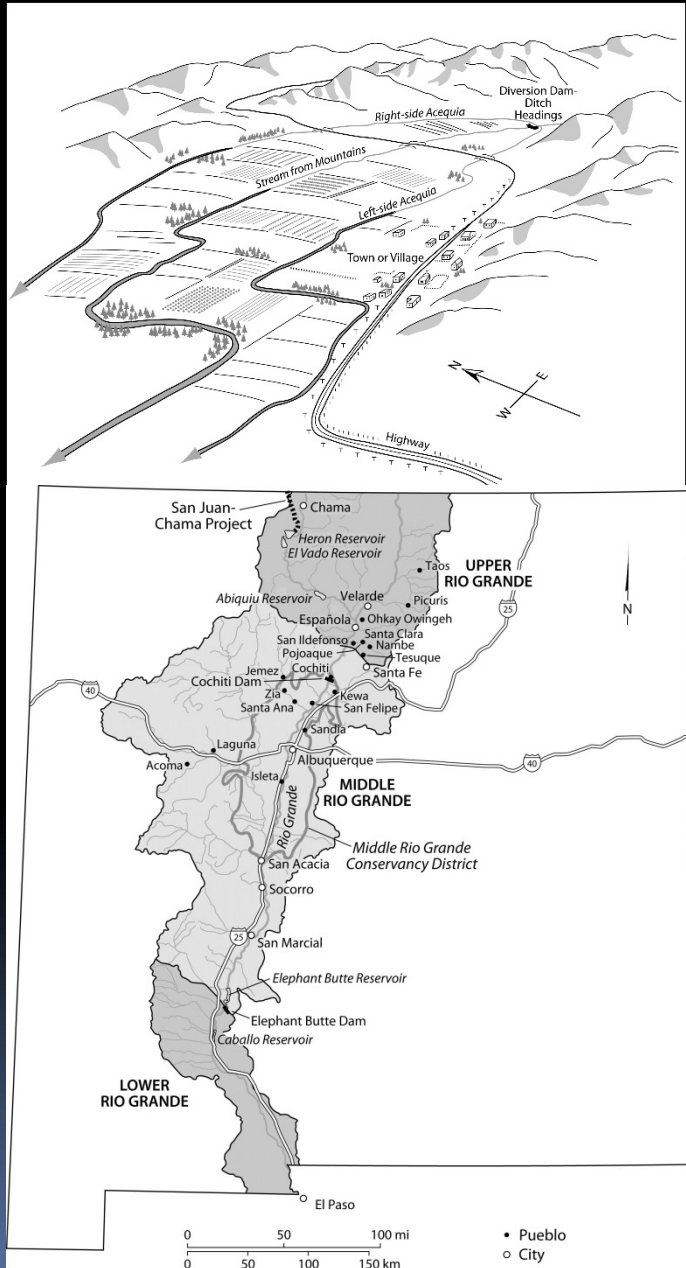
In sum: Water expertise was co-produced during the water adjudications in New Mexico



## Part Three: Adjudicating the Unknown Future of New Mexico's Water

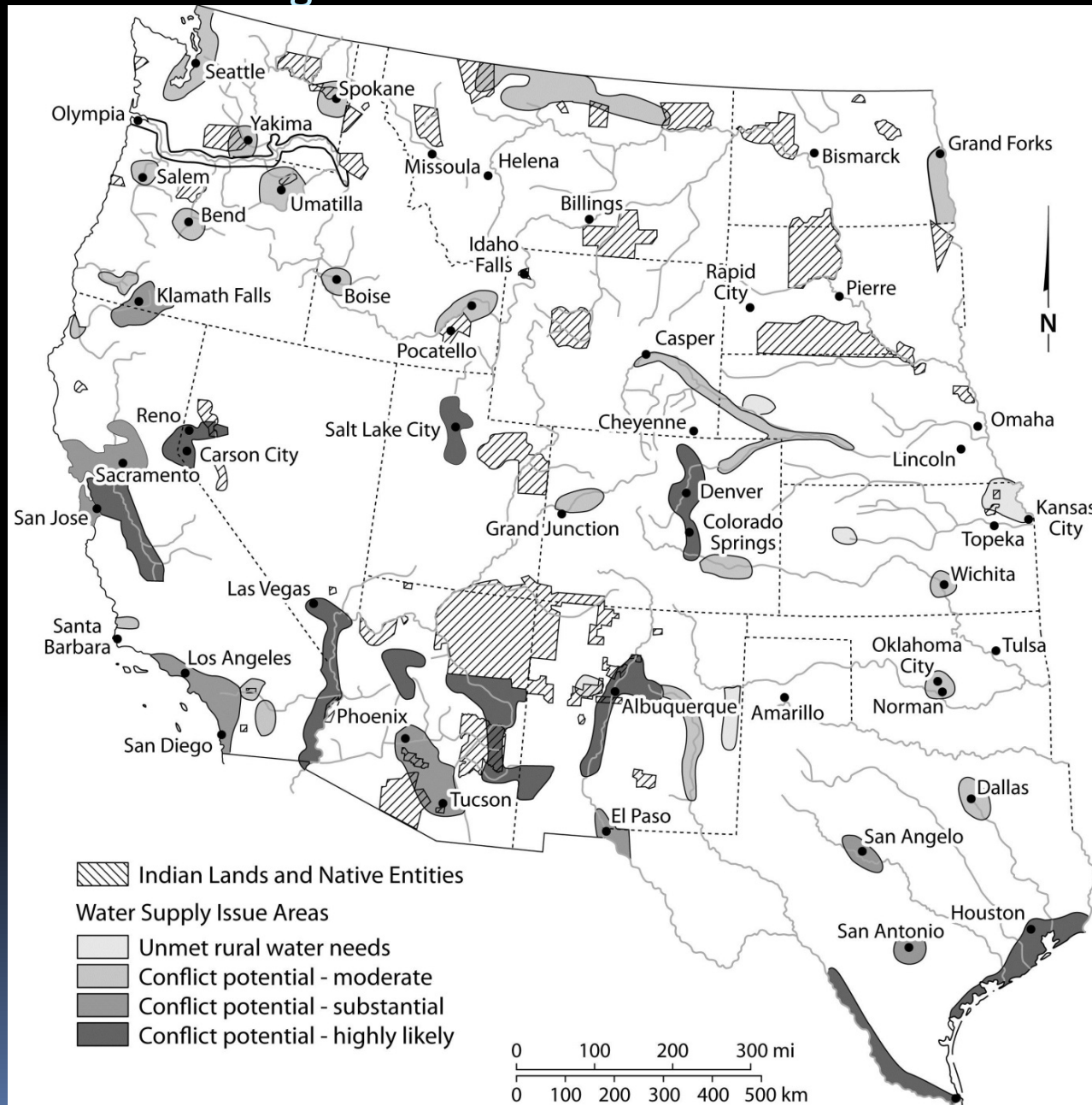
- “Texans think Texas begins at the foot of Elephant Butte Dam.” – Pecan farmer, southern New Mexico
  - “In the end, the guy [state engineer] is going to realize that sharing water is the only solution we have...the system has to give at some point...and it will just keep getting drier and drier, right? So what then? – water user from the Rio Gallinas outside Las Vegas
  - “If Santa Feans really want water in the [Santa Fe] river, it simple: we can just drain the reservoirs upstream. Then what?...Tourism is too big an industry to dry out the hotel room taps.” – water manager, City of Santa Fe Water Division
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# Shared scales of western water...





# Reconciling actual water with climate, species, compacts, and water sovereigns



What is the future of water in New Mexico under prior appropriation, or proportional sharing, or both?



2013 SW272 class visit, CC students walk an Embudo ditch with Juan Estevan Arellano





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