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### Restoring The Oldest Water Right In Texas: Land Grant Suertes, Water Dulas, and Archimedes Screw Pumps

Jose A. Rivera

*University of New Mexico - Main Campus, [jrivera@unm.edu](mailto:jrivera@unm.edu)*

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UNIVERSITY OF NEW MEXICO, ALBUQUERQUE, NEW MEXICO 87131

**Research Monograph #009      Summer 2000**

**RESTORING THE OLDEST WATER RIGHT  
IN TEXAS: LAND GRANT SUERTES,  
WATER DULAS, AND  
ARCHIMEDES SCREW PUMPS**

**By  
José A. Rivera  
The University of New Mexico**



**Southwest  
Hispanic  
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Southwest Hispanic Research Institute  
The University of New Mexico  
1829 Sigma Chi Rd., NE  
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(505)277-2965  
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## PREFACE

Sometime in the early twenty-first century, the farmlands of the old Mission San Juan Capistrano will once again produce crops associated with the Spanish colonial period of San Antonio and south Texas. Established in the 1730s by Franciscan friars, the mission community at San Juan Capistrano relied on irrigation of the *labores* (farmlands) for daily sustenance and long-term survival. The hopes for a permanent Indian pueblo at Mission San Juan and the other four mission settlements in the San Antonio valley did not materialize as envisioned by the friars, but the system of *acequia* (ditch) irrigation developed at these sites continued to function for more than a century and a half. These gravity-flow *acequias* were constructed at key locations on alternate banks of the San Antonio River to support the chain of missions over an eight mile stretch of the river.

By the turn of the twentieth century, two mission *acequias* still survived: Acequia Espada at Mission San Francisco de la Espada and Acequia San Juan at Mission San Juan Capistrano. Except for relatively brief interruptions, Acequia Espada has continuously irrigated the *labores* formerly owned by Mission Espada. The same was true for the farmlands of Mission San Juan Capistrano until the early spring of 1958 when a flood control and channel improvement project relocated the bed of the old Río de San Antonio two hundred feet from the headgate of Acequia San Juan. In the process of straightening, widening, and deepening the river, the site of the original *saca de agua* (historic San Juan Dam) was buried with excavated dirt. The new channel, two hundred feet to the west, was too far and deep to supply water to the acequia headgate in the traditional manner. The system of gravity-flow irrigation dating to the Spanish colonial period would no longer function for Acequia San Juan, one of only two surviving canals in the San Antonio area.

The present study attempts to document the history of Acequia San Juan, especially with regard to the impact of the flood control and channel improvement project and efforts to mitigate these effects after 1958. The landowners and irrigators of the old *labores* led the

charge to restore water from the San Antonio River to their ancient irrigation canal, and by the end of the century, with the assistance of governmental agencies, they were about ready to open the main headgate once more, albeit with the help of modified technology. In the early years of the struggle, litigation was the principal strategy employed by the group of irrigators. The antagonist was the agency that had sponsored the flood control and channel improvement project, the San Antonio River Authority. Ultimately the irrigators prevailed, but only after winding their way through the judicial system of Texas, winning twice in the Supreme Court of Texas.

There were some setbacks along the way and a series of narrow votes: the 131<sup>st</sup> District Court Presiding Judge rendered an adverse summary judgment in 1959, but this was reversed in favor of the irrigators by the Fourth Court of Civil Appeal on a two to one vote in 1960, with the Chief Justice voting against. Next up were two hearings in the Supreme Court of Texas. In its first decision, the Chief Justice and the high court voted six to three to overturn the appellate court and ruled for the San Antonio River Authority in 1962. In a rehearing later that same year, however, the Supreme Court set aside its first judgment and ruled five to four in favor of the irrigators. This time, the Chief Justice voted on the side of the acequia irrigators and wrote the final decision. There were four more judicial proceedings where individual irrigators were allowed to litigate for claimed damages. Two were jury trials in the District Court, one was heard in the Thirteenth Court of Civil Appeals, and a final hearing was conducted by the Supreme Court of Texas. The legal wrangling ended in 1966; and, finally, an agreement between the San Antonio River Authority and the irrigators was consummated in early 1967. Efforts to restore river water to Acequia San Juan and the old mission *labores* could now resume through more ordinary channels.

Study and documentation of the Acequia San Juan case would not have been possible without the guidance, advice and feedback provided by individuals deeply knowledgeable about San Antonio history, the missions, the acequias, and the more contemporary efforts to restore water to the irrigation system and the *labores*. These same individuals also read drafts of my paper and helped to clear up many details and important nuances. We all owe a

debt to: Féliz D. Almaráz, Jr., Dean Bayer, Wayne Cox, Thomas F. Glick, Fred Pfeiffer, James B. Oliver, and Rosalind Z. Rock. Also helpful were the staff of the libraries that I visited to examine and copy documents, reports, maps, newspaper articles, court records, legal cases and other materials: the Daughters of the Republic of Texas Library, the Central Library of the San Antonio Public Library, the Institute for Texas Cultures Library, the San Antonio Conservation Society Library and Archives, the law libraries at St. Mary's University and the District Court House of Bexar County, and the National Park Service libraries at the San Antonio Missions National Historical Park and the Southwest Regional Office in Santa Fe, New Mexico.

José A. Rivera  
Professor of Public Administration  
University of New Mexico

## **RESTORING THE OLDEST WATER RIGHT IN TEXAS: LAND GRANT *SUERTE*S, WATER *DULAS*, AND ARCHIMEDES SCREW PUMPS**

### **Introduction**

On November 28, 1962, the Supreme Court of Texas rendered a final decision validating the oldest water right in the State of Texas, irrigation rights on the Old San Juan Mission Acequia south of San Antonio in Bexar County. Central to the arguments before the high court was the question of vested property rights that irrigators on the San Juan Acequia believed were protected by grants of land and water issued in chain of title to them by the Mexican government in 1824 and previous to that by the Spanish monarch. By a narrow vote of five to four, the Supreme Court overturned its own adverse ruling issued earlier in the year on the same question.

At the conclusion of its first hearing on February 14, 1962, the Texas Supreme Court affirmed the June 1959 decision by the Bexar County 131<sup>st</sup> District Court. The Bexar Court had ruled that the irrigators on the San Juan Acequia were not damaged by actions of the San Antonio River Authority (SARA) in 1958 when this water conservation and development agency relocated, widened and deepened the bed of the San Antonio River as part of a metropolitan flood control project. For more than two centuries, the original channel of the San Antonio River had been the source of gravity flow water for the headgate of the San Juan Acequia, dating to the establishment of Mission San Juan Capistrano by Franciscan friars in the early 1730s and subsequent construction of the diversion dam for the San Juan Acequia. As successors-in-interest to these antique waterworks, the acequia irrigators vehemently protested SARA's unilateral action in the late 1950s when the river authority allowed the United States Army Corps of Engineers to cut off water supply to the old river channel and the historic dam.

The acequia users claimed that their canal headgate no longer would have access to gravity flow of water directly from the river channel, the bed of which SARA and Army Corps engineers had relocated about 200 feet to the west. SARA's own proposed solution



was to pump water uphill from the relocated channel to the headgate of the old acequia, an alternative that the irrigators did not deem equivalent to the gravity flow methods of the past two hundred years. Under SARA's design, pumping would be necessary since project engineers had lowered the river bed by some ten feet, in addition to relocating and widening it; at this lowered height, the water level in the new channel simply would not reach the headgate in the traditional manner.

The San Antonio River Authority, in concert with the Army Corps of Engineers, had rechanneled the river in order to provide the metropolitan area with adequate drainage for protection against severe flooding that in past years had taken sixty lives and cost local citizens millions of dollars in property damage. To prevent similar disasters in the future, the San Antonio and Bexar County voters approved the San Antonio Channel Improvement Project at a funding level of \$10 million. When property owners along the banks of the San Juan Acequia organized against the project, SARA brought a declaratory judgment suit against them in Bexar County 131<sup>st</sup> District Court. In turn, the irrigators filed a cross-action suit opposing the river authority's motion; also, they sought their own judgment where SARA would be obliged to compensate them for the taking of vested property rights. In its summary judgment issued in 1959, a year after the start of the Channel Improvement Project, the 131<sup>st</sup> District Court agreed that the irrigation rights on the San Juan Acequia were vested property rights but that such rights were nonetheless subject to the police powers of the San Antonio River Authority to protect the public health, safety and welfare of the larger community. In granting SARA's motion for summary judgment, the court concluded that "the loss of gravity flow of water from the San Antonio River into the San Juan Irrigation Ditch is *damnum absque injuria*," meaning that the irrigators would not be eligible to claim nor receive compensatory damages from SARA.

The proprietors and SARA pleaded their cases before the Supreme Court of Texas a few years later due to a reversal of the District Court's decision by the Court of Civil Appeals in the Fourth Supreme Judicial District. The appellate court had overturned the summary judgment and remanded the case to Bexar County District Court allowing the irrigators to

pursue claims for damages. On appeal from Bexar County by SARA, however, the Supreme Court initially affirmed the trial court's ruling only to reverse itself in a second decision reached in November of 1962 following an appeal for rehearing by the class of San Juan irrigators. In setting aside its first judgment, the Supreme Court filed a new and final opinion with far reaching consequences not only to the individual interests of irrigators with claimed damages but to the future of the Old San Juan Mission Acequia in perpetuity: by changing the channel of the San Antonio River, SARA took vested property rights of the irrigators to have water of the river continue to flow in the accustomed channel. Therefore, according to the Supreme Court's ruling, SARA could not be insulated against liability or claims for damages.

The San Antonio River Authority filed a motion for rehearing of the November 1962 decision, but the Supreme Court denied this last chance effort on January 23, 1963. The oldest water right in Texas had prevailed, remanding the suits for damages to the lower court for retrial. The individual suits for claimed damages against SARA, however, would take more than three years before one of these plaintiffs would be heard in the Supreme Court of Texas. All told, the various suits, cross-actions, court opinions, appeals, hearings, and retrials took more than eight years to wind their way through the legal maze before resulting in a final judgment in favor of the irrigators that would stand. In the end, on February 14, 1967, SARA and the irrigators entered into a Memorandum of Agreement whereby the agency paid a total of \$175,000 against the claimed damages. More importantly, SARA agreed to provide a flow of water from a new San Juan Dam that their engineers had constructed in the realigned channel.

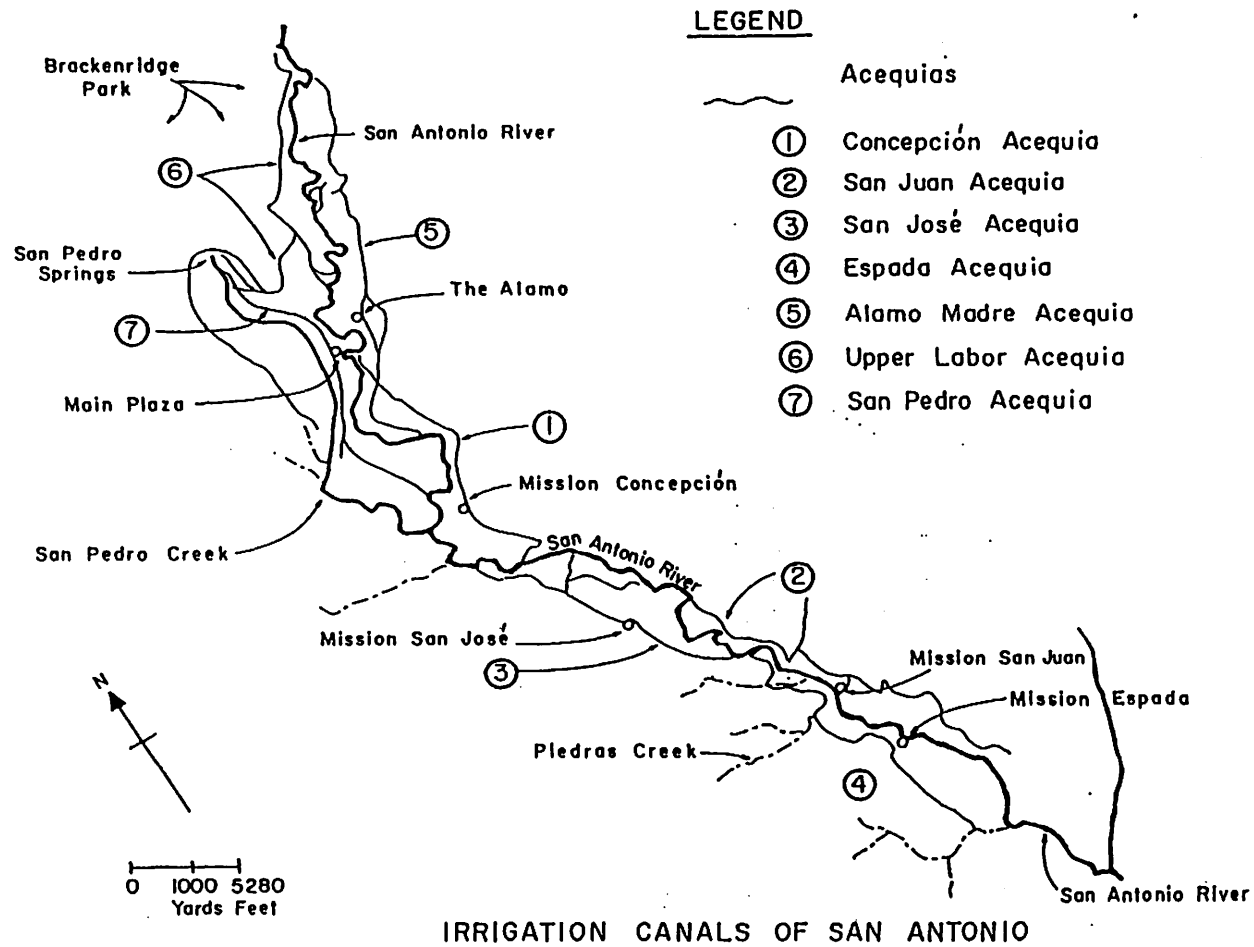
Many obstacles, delays and additional misfortunes lay ahead, including a period of more than twenty years of a completely dry canal. The signing of the agreement, however, cleared the way for the restoration of one of only two surviving acequias of historic San Antonio de Bexar and its chain of missions to the south. The path to eventual restoration of water flow in the acequia would be long, torturous, and significantly more expensive than any of the parties to the agreement would have imagined, but eventually, the Old San Juan

Acequia would survive into the next millennium. The oldest water right in Texas would be restored.

### **The Mission Acequias of San Antonio**

Of the seven acequia irrigation systems constructed during the height of San Antonio's Spanish colonial period, two were built for civilian use in the municipality of San Antonio de Béxar and five for the benefit of the Franciscan missions: San Antonio de Valero, Nuestra Señora de la Purísima Concepción de Acuña, San José y San Miguel de Aguayo, San Juan Capistrano, and San Francisco de la Espada. [See map, following page.] At the time that the Channel Improvement Project was undertaken by the San Antonio River Authority in the late 1950s, only the mission acequias of San Juan and Espada were still functioning as irrigation systems; the other five Spanish-period canals had been covered, abandoned, or in some cases destroyed, earlier in the century or before.

Establishment of five mission communities in close proximity (all within approximately eight miles) had been possible because of the abundant water supply that Spanish officials and Franciscan friars had discovered at the headwaters of the Río de San Antonio within the water planning region now known as the Southern Edwards Aquifer. Numerous deep springs that arose through narrow shafts of subsurface limestone formed the Río de San Antonio and its important tributary to the west, San Pedro Creek. When expeditions were sent into the arid frontiers of northern New Spain, much time was spent examining not just lands for new settlements but, even more importantly, the availability of reliable water supplies for domestic as well as agricultural irrigation purposes. Repeatedly, water sources for the *sacas de agua* (water extractions) were the determining element in the selection of sites for missions and other settlements. Early exploration maps and texts of the region designated the locations of and named not only the perennial rivers, creeks and lakes, but also other minute water features such as "tiny ponds, dry arroyos, muddy watering holes, and minuscule springs." (1)



Source: Thomas F. Glick, The Old World Background of the Irrigation System of San Antonio, Texas (Texas Western Press, 1972)

By requirement in the Spanish Laws of the Indies, permanent settlements and missions were located in proximity to sources of water and other natural resources needed for human and livestock sustenance such as timber, pastures and good lands to cultivate. Often, indigenous people were consulted in the search for sources of water, especially locations with perennial flows where water could be extracted easily. (2) Prior to withdrawing water from a selected stream, another step in the evaluation process was to examine the nature of the soil in the area contemplated for the *huertas* (gardens) and *labores* checking to make sure it was not too sandy or porous for ditch construction and water conveyance. The last step in the assessment was to identify a suitable place for the *saca de agua*, a point along the banks of a river or stream where water could feasibly be diverted by constructing a *presa* (dam) made of local materials such as rocks, brush and timber. (3) For the most part, these early engineering works were low-level diversionary structures designed simply to raise the level of water in a river bed sufficient to enter the canal headgate on one or both banks, a Muslim technique derived from Islamic Spain and known there in the singular form as an *azud*. Additionally, in the arid and semi-arid northern frontiers of *Nueva España* (New Spain), the river systems were not formidable enough to warrant the construction of higher or more substantial reservoir dams. (4)

When Franciscan friar Antonio de San Buenaventura Olivares and his expedition searched for an adequate site in 1718 to build the first mission in the San Antonio valley, San Antonio de Valero (now the Alamo Mission), he calculated that the abundant springs feeding the Río de San Antonio and San Pedro Creek could be tapped easily by opening an irrigation ditch. (5) This assessment was confirmed a short time later by Fray Pedro Pérez de Mezquía in his 1719 journal when he reported that the *Paso de Tejas* location at a ford on the Río de San Antonio was ideal to draw water for an acequia: “The water rises to the top of the ground and the entire work is a matter of using a plow.” (6) Today, San Antonians describe this site as the “Blue Hole” at the campus of Incarnate Word University, owing to the bluish cast of the spring water as it rises through a shaft of gray-green limestone. Earlier, there were more than twenty such springs in the area that together formed the headwaters of the San

Antonio River and San Pedro Creek. Now only about half of them are active or flow only when the water table is high as is the case with the Blue Hole. (7)

To the Franciscans, a plentiful supply of water would be essential not only to establish the mission compound but to sustain the community of Indian neophytes into future times when each mission would transition into a civilian pueblo of "*Gente de Razón*." Meanwhile, the distances to Saltillo and other parts of *Nueva España* to the south were too great to depend on for the regular flow of supplies of any kind, including agricultural goods and products. Self-sufficiency of the mission community was paramount in the minds of the friars when they recruited Indians from the surrounding area into the fledgling mission villages and instructed them in the construction of the irrigation systems, from the diversion structure upstream to the acequia's main canal and its laterals. In the case of San Antonio, the five mission acequias were located on alternate banks of the Río de San Antonio dividing and sharing the water as it flowed downstream from one mission to the next in a southerly direction. The end goal of mission policy was to Christianize the neophytes, develop self-sufficient communities, and, finally, distribute the irrigated *labores* and other properties to the Indian pueblos under their own system of governance and management. (8)

### **The First Texas Cowboys Were Indians**

Very little documentation exists as to the actual construction of the irrigation systems or how they were operated and maintained during early mission times. Mostly, historians indicate that the responsibility for the administration of both spiritual and temporal affairs rested with the mission padre or *ministro* who had to supervise all major projects up until the time of secularization. The *ministro*, however, did have helpers who were appointed or elected to fill new roles commensurate with the evolution and growth of each mission and its properties. According to a guidelines book of instructions written in 1787 by the missionary of Mission Concepción for his successor, these other officials included a wide range of assistants: a *fiscal* who was appointed to help take care of some of the temporal matters, an elected *governador* (Indian governor) and *alcalde* (mayor/justice of the peace), a *mayordomo*

(superintendent), a *caporal* (ranch foreman), *vaqueros* (Indian cowhands on the ranch property), *pastos* (shepherds), a *caballerizo* (head groom for the ranch horses), and two or three *huerteros* (guards for the mission gardens). (9)

Other than the special roles set aside for the political leaders, most of the other positions were created to support the daily operations of mission agriculture not only in the vicinity of each mission but at the more distant *ranchos* as well. In addition to the *huertas* and large irrigated *labores* adjacent to the mission compound, each mission also had its own livestock commons ranch at a more distant location. Mission Espada, for example, had a ranch thirty miles to the south and west near present-day Floresville called Rancho de las Cabras. As early as 1762, there were already 1,262 head of cattle, 4,000 sheep, 145 saddle horses, 11 droves of mares and 9 donkeys at this sprawling *rancho*. Ten years later there were 174 Indians residing at Mission Espada. Several Espada families worked at Rancho de las Cabras as *vaqueros* (cowboys), providing beef and other products for consumption at the mission and for a lucrative export trade of surplus animals and by-products. Products included hides for leather goods, tallow for lighting, soap and lubrication, as well as sheep wool, goat milk, and many other items processed at the missions after the livestock were driven there from the *rancho*. (10)

The first ranch for Mission San Juan Capistrano was Rancho de Pataguilla near the Medina River. Later, Rancho Monte Galván to the northeast of the Río de San Antonio was shared by Mission Valero with Missions Concepción and San Juan. By 1756, and again in 1762, livestock numbered in the thousands at Rancho Monte Galván as recorded during the official visitations by Father Ortiz. (11) A portion of Espada's Rancho de las Cabras still exists and was deeded to the United States National Park Service (NPS) in 1995. The tract contains the ruins of the *rancho's* old compound. NPS operates the *rancho* as a Spanish Colonial Heritage site, memorializing the contributions of the mission ranches and the Indian cowboys to the Texas cattle and livestock industry:

[M]uch of the Texas cattle industry was built on the legacy of these mission ranches. The regulations which governed the industry, the techniques for handling herds from

horseback, even the cattle themselves, had their origins in the Spanish Colonial period. Therefore, modern ranching inherited the equipment, vocabulary, and folklore of the Indian *vaqueros*. (12 )

Under the supervision of the *ministro*, many implementation tasks at the *ranchos* and mission *labores* were undertaken by the appointed and elected officials, in particular the *mayordomo* (superintendent) and his assistant, the *ayudante del mayordomo*. As explained in the guidelines of 1787, the duties of the *ayudante* included substituting for the superintendent when he was ill or absent. The *ayudante del mayordomo* also carried out the orders delegated by the *ministro* to direct the cowhands and shepherds, oversee the planting of crops, “*y todo lo demas*” (and all of the rest). Taken together, it appears that the *mayordomo* and his *ayudante* were probably responsible for overseeing not only the ranch operations and the planting of crops in the *labores*, but also the seasonal work of plowing the fields, cleaning the ditches, irrigating, hoeing, weeding and other maintenance chores. These activities, as well as the repair of fences, dams and bridges, are explicitly described in the list of instructions in the guidelines. In all, the book includes more than seventy pointers for “a missionary who has never been in charge of a mission, is all alone, and does not know whom to consult for advice in order to avoid making mistakes, as he gains wisdom through experience.” (13)

According to Marion A. Habig’s extensive study of mission records, the *ministro* supervised the work in the fields himself during the early days in order to instruct the Indians; he was also assisted by two or three soldiers stationed at each of the missions. (14) A major part of the missionary’s obligations included preparing the neophytes in the rules and procedures of self-government, anticipating the secularization of the mission and all its properties, and modeled after other Spanish towns in the New World. As to the cultivated *labores* and the irrigation works, these too would eventually be transferred to the Indian pueblo and its officers then in training. As described by Habig:

When a mission pueblo was established, its civil as well as its military officers were selected from the ranks of the Indians. Though the first officials were appointed, their successors were elected by the Indians for a one-year term. They were a *gobernador* [governor or mayor], the *alcaldes* [mayor/justice of the peace], and an *alguacil* [policeman]. The military head was the *teniente* [lieutenant], and he had his



subalterns. Minor penalties for infringements of the mission rules were meted out by the officials under the watchful, fatherly eye of the missionary. Eventually there were also **Indian overseers** in the workshops, on the farm, and at the ranch. [Emphasis added.] (15)

### **Formation of Pueblo Communities**

As a pioneer agency serving the interests of both the Church and the Crown, the ultimate goal of the missions was to convert the Indian neophytes simultaneously into responsible Christians and citizens of Spanish pueblos, a way of colonizing and holding the borderlands of *Nueva España* in the north. (16) From numerous accounts, the training in matters of self-governance was taken seriously by the missionaries and their superiors. In 1745, for example, Fr. Francisco Ortiz inspected four of the San Antonio missions and inquired:

Have [the missionaries] been diligent in the organization of civil government in the Indian pueblos of the missions as a means of training the new converts in the conduct of their own affairs? .... Have the neophytes reached a stage of development sufficient to justify turning over to them all the property of the missions and their administration to a secular priest? (17)

When these and other questions were answered by third parties (Captain José Urrutia of the presidio, other presidio officers, councilmen from the villa of San Fernando, and other citizens), the Franciscan friars received high marks in all respects, including matters having to do with irrigation and agricultural production:

[T]he reverend missionary fathers have busied themselves with untiring zeal, doing everything possible in order that the barbarous and unconverted Indians come into a knowledge of our holy faith and agree to be reduced to pueblos.... They have always done everything in their power to promote the welfare of the new converts. Every year they appoint *fiscales*, governors, and ministers of justice for the mission pueblos.... [T]hey have taken care that the pueblos harvest their crops, look after their cattle and stock, and keep up all the other temporal goods.... **[They] see that the Indians cultivate their fields, build their irrigation ditches, look after the livestock, make their houses, and build their pueblos....** [Emphasis added.] (18)

Despite the good intentions on the part of the friars, the policy of secularization in the long run did not accomplish the goal of self-government and Indian control of the mission *huertas, labores* and *ranchos*. Secularization was delayed for several decades, as the padres struggled between their temporal and their spiritual duties. Officially, the first stage in the transfer process involved the issuance of articles of secularization by the Spanish governor along with an inventory of mission goods and properties and a census of the Indian population. When Governor Manuel Muñoz authorized the secularization of Mission San Juan Capistrano in 1794, the Indian residents were provided with the resources to continue cultivating their fields and caring for their livestock. While each family was granted a *suerte* (parcel of land) for private use, eight other *suertes* were reserved as communal property to be managed according to previous rules of the mission. The document specifically named each grantee to benefit from the private lands as well as the fields held in common. (19) This action, in theory, constituted the last step toward full secularization when a civil community of resident landowners and parishioners was to emerge; hereafter, the mission would achieve status as a *parroquia* and a Spanish pueblo, and the Indians would receive the social distinction of *vecinos* (landowner citizens). (20)

By decree of the Mexican government, successor to Spain after independence, all Texas missions were to be fully secularized by 1824 as part of Mexico's desire to rid the fledgling nation of colonial vestiges. Although the missions of San Antonio had been partially secularized by this date, the final deadline by the Mexican government set the stage for what Almaráz describes as the twilight of the mission lands: "Public awareness of the deadline for final secularization in San Antonio created a minor land rush to acquire the extant properties of the old Franciscan missions. In the transition from Spanish to Mexican control, a flurry of land transactions devolved on the missions." (21)

With regard to Mission San Juan Capistrano, Almaráz notes that competition for grants of land at this downstream mission was more intense due to the extent of the fertile *labores* on the east slope of the Río de San Antonio and the adequately maintained acequia at San Juan. Partially secularized in 1794, the mission was completely secularized in 1824,

including nearly 500 acres of land irrigated by the San Juan Acequia. Among the San Juan grantees were military officers, a former military chaplain and four women, each coveting the quality of agricultural lands available at this mission site. (See list of names in Appendix C.) In the years following 1824, changes in land ownership continued as some of the original grantees sold their titles to others who wished to augment their holdings, as well as to outside speculators. (22) Indian ownership of these land grants diminished considerably, ending the dream of an Indian Pueblo at San Juan or elsewhere on the Río de San Antonio.

As to the acequias, the secularization process transferred their control and maintenance responsibilities to the civil authorities at the growing municipality of San Antonio de Béxar. The Franciscan friars, on the other hand, were to operate the mission churches as local parishes. Financed by the payment of assessments based on the number of *dulas* (water rights calculated at one day's worth per *dula*) held by each grantee, the San Juan Acequia continued to irrigate the former mission lands now under private ownership, including by Canary Islanders, presidio soldiers, Spanish *rancheros*, other townspeople and some immigrant newcomers. Following secularization, and up until the 1880s when the Bexar County Commissioners' Court took charge of collecting the ditch taxes, the irrigators of the San Juan Acequia managed the affairs of the system communally with minimal outside control. (23) Periodically, the irrigators petitioned the Commissioners' Court to appoint "ditch commissioners," similar to those appointed by the city council for the acequias operating within the municipal boundaries of San Antonio. (24) The founding of the more formalized San Juan Ditch Company would not occur until the turn of the century.

### **The Municipal Acequias**

In addition to the five mission acequias, two other major diversions from the Río de San Antonio and San Pedro Creek were permitted by Spanish authorities during the colonial period: the San Pedro Acequia and the Upper Labor Acequia. Both of these irrigation systems were constructed to support the civilian populations recruited to settle the remaining lands around the San Antonio valley following the establishment of the military presidio and

the start of the missions. As Jesús de la Teja has noted, the fields surrounding the town of San Fernando de Béxar were divided into *suertes* or sections of land assigned to civilian settlers by the drawing of lots. In turn, this compact arrangement of blocks and individual parcels within the *labores* made possible and practicably required a communal system of irrigation. To receive these grants, settlers would have to help clear the land, contribute labor, and share expenses toward the opening of the town's acequias. (25) As elsewhere in the frontier of New Spain, de la Teja continues, communal obligations did not end with the construction of the acequias:

Land tenure in San Antonio was based on a series of well-established practices. Despite individual ownership of parcels, a farm's maintenance was a shared responsibility. All owners were expected to participate in or help defray upkeep of the acequias and fences along the farm's perimeters.... The concentration of agricultural land on the town's immediate vicinity and the parcels' arrangements to take advantage of a common acequia made the most of the scarce water and labor resources. (26)

The San Pedro Acequia came first. It was constructed in the 1730s by immigrants from the Canary Islands who had been recruited by the Spanish government to establish San Fernando de Béxar. Their arrival in the vicinity of the missions led to what historians have described as the first water dispute in Texas. Although the Canary Islanders had specific authority to extract their own sources of water from San Pedro Creek, the mission priests raised objections based on the legal argument that their own existing grants of water to establish the missions gave them prior rights. The crux of the argument was that the Canary Islanders also claimed rights to water from the Río de San Antonio, the source of irrigation for the missions. As an enticement to the Islanders, the Spanish governor had granted each of the fifteen families two *suertes*, with twenty-four hours of water rights, and instructed them to cultivate their parcels:

To each of these fifteen families [the Governor] shall give possession of the tract of land assigned it, and title to the enjoyment of the possession of the same in the name of his Majesty, and by virtue of this order, and law IV, Title XII, Book V, of the *Recopilación de Indias* [Spanish Laws of the Indies] charging each family to plant trees on the boundaries of its tract of land, and to make use of the waters of the above mentioned Arroyo [San Pedro Creek], and of the San Antonio River. (27)

It took the intervention of no less than the Viceroy of New Spain seated in distant Mexico City to settle the controversy. In 1731 the Viceroy, Marqués de Casafuerte, ordered that the available supply of waters be divided among the missions and the *Isleños* (Islanders). The missions were to utilize waters from the Río de San Antonio and the Canary Islanders waters from San Pedro Creek. His settlement of the dispute allowed the completion of the San Pedro Acequia in 1738. (28)

The construction of the Upper Labor ditch on the west side of Río de San Antonio near San Pedro creek came later, with a similar review of existing rights and a determination in the end that all *vecinos* must share water resources. Here, the parties consulted were the *Isleños*, along with the missionaries, both of them concerned with protecting their prior rights. Eventually, these two stakeholders acquiesced and did not oppose the Spanish Governor, Barón de Ripperdá, when he authorized the possession of water rights by a new group of settlers in January of 1776. At this point, civilians in the growing municipality finally were authorized to access water from the Río de San Antonio for the purpose of irrigation. After some thirty years of resistance, the missionaries would have to share the river.

Mindful of the potential for conflict in the future, however, Ripperdá approved the construction of the Upper Labor ditch by the group of settlers so long as their access to water did not cause injury to the Indians and other *vecinos*; furthermore, the waters were to flow freely for the benefit of all parties by the taking of turns in accordance with the Laws of the Indies. To commence the project, he issued an ordinance asking that the settlers organize themselves as shareholders, elect an *acequero* (construction foreman), and start building an acequia communally. When completed, each of the shareholders would receive a *suerte* of land with water rights based on his contributions of tools and labor; the parcels would then be distributed to all shareholders in a drawing of random lottery chances. To receive an irrigable parcel, each shareholder would have to agree to share in the operations, maintenance and expenses of the ditch once it was completed commensurate with his benefits and rights to

irrigate. The *acequero* himself would supply two workers and receive two irrigable *suertes* as compensation for his services. (29)

As to the rights of other parties, Governor Riperrdá had provided the Canary Islanders and the mission padres with an opportunity to produce any documents showing prior water rights. In the end, he concluded that the profusion of water remaining in the river could be shared by all parties without detriment to any prior rights. Thus, he authorized the construction of the new acequia under the communal organization he had outlined; before proceeding, the governor specified the width and depth of the canal and issued a requirement that the headgates should be constructed on stone and mortar foundations. The first lottery for *suerte* lands was held in the spring of 1777, followed by a second drawing a year later. Construction of the Upper Labor Acequia continued into 1778; workers completed the last section in 1781. (30)

After secularization of the missions, all seven acequias fell within the jurisdiction of civil authorities who served on the *cabildo* (town council). Meanwhile, the former San Fernando de Béxar had become identified as San Antonio de Béxar. Municipal ordinances affecting the acequias were issued by the *alcalde* of the town, but it was the *mayordomo* who carried out the daily vigilance of water management and distribution. (31) All land parcels irrigated by these systems were now in privately held grants. But, as had been the case with the old mission acequias, operations and maintenance of the ditches remained a communal enterprise. Shared responsibilities included the participation in ditch cleaning each February, fencing of perimeter boundaries, and keeping livestock out to avoid damage to the cultivated croplands or the acequia watercourses. Failure to participate in repairs and upkeep or other infractions of these rules resulted in the payment of fines and other penalties. Befouling water in the ditches was expressly prohibited in municipal regulations issued during the eighteenth and nineteenth centuries. Water use could be forfeited for a year if an irrigator failed to perform his share of labor for canal maintenance. Other rules established the local system of water rotations and specified procedures for diverting water, for placing check dams in the main acequia, and for electing a ditch commissioner. (32)

One event in the development of San Antonio that was destined to have substantial impact on the agrarian roots of the community was the incorporation of the city in 1837 by the Texas Congress. Although the land surrounding the city's boundaries would remain under agricultural production for decades to come, urban land uses would encroach more and more on the watercourses: the San Antonio River, San Pedro Creek, the numerous springs that supplied water to each, and the acequia infrastructure in the middle of the city and southward to the old mission *labores*. At first, the City Charter and the early set of ordinances simply validated the status and functioning of the acequias extent in the city proper and its environs. Article XXVIII of the 1857 charter, for example, empowered the mayor and city council with the ability to "re-open the old irrigation ditches, within or beyond the present limits of the city, and to regulate all matters connected with the dams, water-gates, and distribution of water for irrigation." (33) On matters pertaining to acequia governance, the charter went further in its recognition of previous customs and traditions:

They [city council and mayor] may revive any part of the rules and regulations formerly established by the Spanish government as conditions of the grants of irrigated lands; and for this purpose may appoint overseers, enforce labor upon the same, and shall also have the same powers which are now, by law, conferred upon the county courts. (34)

In the ordinances that followed the charter, the city council created offices for two ditch commissioners who would be responsible for keeping the acequias in good condition and repair, one for the San Pedro Ditch and other for the main Alamo Ditch. Other ordinances crystallized into municipal law many of the standards and customary practices of acequia administration from earlier times, before the establishment of formal, written policies:

- (a) prohibition against defiling ditch waters, obstructing of water in the ditch or wasting of water caused by overflows into the streets;
- (b) imposition of fines against any violators of these ordinances;
- (c) proportionality in labor contributions and irrigation benefits;

- (d) withholding of water rights when an irrigator fails to pay his or her quota of repair costs pertaining to dams and water-gates in which there is a common interest;
- (e) establishment of water rotation lists in a book registering the names of all persons entitled to water, the number of hours, and what hours through the year each party may be entitled to water; and
- (f) a requirement in the duties of the ditch commissioners that they call all persons entitled to water to clean out the ditch at the start of the year. (35)

### **The City Outgrows the River**

For a time, the acequias within the City of San Antonio continued to function much as they had in Spanish colonial years. Quaint diversion dams constructed of brush and rock, water-powered *molinos* or mills at the mouth of the acequias, water wheels that lifted water to higher ground, and wooden headgates along the sides of the main canals were part of the San Antonio landscape through the rest of the nineteenth century. (36) But population growth and the need for housing, industry and a more modern infrastructure of roads, domestic water supply and storm and sewerage systems eventually began to collide with the older system of ditches meandering through busy city streets and by-ways.

As San Antonio increased in population density, it also grew outward, following the path of the watercourses. Housing, commercial buildings, hotels and other structures were sited alongside the banks of the San Antonio River, San Pedro Creek, and the irrigation canals. The system of streets in many locations of the growing urban area did not follow a traditional grid pattern and instead paralleled the watercourses, features of the city landscape that continue to the present. Many property lines in downtown San Antonio are bounded by the river or old acequia paths, resulting in odd shaped lots that take off in diagonal lines rather than following the more conventional grid pattern of square or rectangular shapes. As described by Wayne Cox, the contours of the acequias and the sizes of the irrigated fields necessarily were dictated by the contours of the land; these wandering paths of the acequias



later caused development to occur on irregular lots on winding streets running through the heart of the municipality. (37)

Near the turn of the twentieth century, a number of trends and developments were converging to the detriment of the very life sources that had given birth to San Antonio. In his study of the historical relationship of the San Antonio River to the city, Lewis F. Fisher concluded that San Antonio had outgrown its river by 1900 and, moreover, had actually worn it out: “The flow [of the river] was no longer swift enough or deep enough for drinking, bathing, boating or carrying off garbage. Its springs drained by artesian wells, cluttered with refuse and shunned as an eyesore and cause of disease, the river faced an uncertain fate.” (38)

As to the acequias located within the city limits, support for their continuation had begun to wane since at least the last quarter of the nineteenth century. Widespread concern became evident when the impact of municipal growth began to diminish water quality in the ditches. Trash and garbage thrown into backyards often tumbled or fell into the ditch watercourses. Combined with the conditions of stagnant water, the debris and pollution in the ditch water forced city officials to be concerned about emerging public health risks. Prior to the establishment of the first municipal water supply system, drinking water was obtained from shallow wells and also from the irrigation ditches; as this water became contaminated from outhouses, incidents of typhoid fever, malaria and cholera raised the level of public awareness. (39)

Finally, the city chartered the San Antonio Water Company in 1877. The process of drilling artesian wells into the lower rock strata began, depleting ground water in the nearby springs. Within a period of a few years, the acequias were no longer needed for the purpose of domestic water supply. Local citizens were slowly persuaded to purchase their drinking water from the water company and to discontinue using river and ditch water for household purposes. Meanwhile, the acequias within the city began to take on new roles as collectors of run-off water from watercourses that were allowed to empty directly into the ditches. But even this function was eliminated with the construction of a more modern storm drainage

system. It was a matter of time before residents petitioned the city council to eliminate the acequias within the municipality. (40)

Much of the agricultural production during the latter half of the nineteenth century involved the use of acequia irrigation for truck garden farms that abounded in the city and the outlying countryside. Around mid-summer of 1880, however, some city residents began to question whether public funds should be expended to pay the salaries of the ditch commissioners still employed by city government. The city budget was also providing for the expense of some of the costs of ditch cleaning where the acequias ran along city streets, a cost that did not go unnoticed in the public media when a local newspaper article complained that taxpayers were unfairly subsidizing the vegetable growers and the produce they sold back to city residents at a profit. (41) In 1899, the city council abolished the office of ditch commissioner and by 1902 had transferred the administration of the municipal ditches to the head of the sanitary and street cleaning department. (42)

A much more serious issue among San Antonio's public officials was the flooding of city streets during major storm events. The acequia of Mission Concepción had been drawn, at the time of its construction in the late 1720s, from a location on the Río de San Antonio that was now within the heart of the city. Up until the 1860s, the diversion dam for this acequia was still intact, but increasingly there were calls for its removal because of the role it played periodically in causing flooding in the downtown streets of San Antonio. By this time, homes and commercial structures were situated along the banks of the river, making the city streets prone to flooding by storm flows impeded by the Concepción Dam. In 1869 this colonial period structure became the first casualty of urbanization, a few years after the Texas Supreme Court had determined that the dam was a nuisance and ordered that it should be removed from the river. (43) Without its diversion, the Concepción Acequia became useless as an irrigation canal. For a set of other reasons, the San José Acequia also had ceased to operate, followed later by the Upper Labor Ditch. In the early 1900s, the Alamo Acequia Madre was closed. Of the acequias located within San Antonio, the San Pedro Acequia lasted the longest; finally it too ceased to function around 1906, leaving only the San Juan

and Espada as operating ditches, the two rural systems most distant from the city's boundaries.

For the next half century, the process of even more rapid urbanization took its toll. Major sections of the municipal and mission acequias, excepting San Juan and Espada, were abandoned, covered, removed and in some cases completely obliterated as San Antonio expanded southward in the direction of the downstream missions. Railroad lines, power and light facilities, streets and highways, homes, schools, bridges and overpasses, and other infrastructure consumed all objects along the way. The earthen ditches within the central city were among the first obstacles that were leveled or removed as far south as the old San José Mission. (44) From all appearances, most of the acequias had outlived their usefulness and their importance in the founding of the missions and city simply forgotten.

Meanwhile, the San Juan and Espada ditches continued to operate as irrigation companies in accordance with new state statutes enacted by the Texas legislature in 1889. By 1900, the old San Juan Acequia had incorporated as the San Juan Ditch Company when the proprietors conveyed their water rights to the ditch company entitling them to use irrigation water in proportion to their ownership of shares. Certificates of shares were issued to the members according to their acreages of irrigated land. Hereinafter, until mid-century, the ditch company would maintain and administer the system under its own authority by way of an appointed commissioner. (45)

Once in a while, San Antonio newspapers published feature stories lamenting the loss of the other ditches: the Alamo Acequia Madre, Concepción, San Pedro, Upper Labor and the San José. Mostly, these reports admired the engineering talents of the Franciscan friars at excavating and constructing the acequias at a time when modern surveying and other instruments were unavailable. Photographs of the famous Espada Aqueduct would often accompany these news stories to exemplify the marvelous engineering skills of the Franciscan friars. As early as 1902, and increasingly into the mid-1960s, there was a sense of

loss and nostalgia surrounding San Antonio's unique past and the imprint on the city's landscape left by these "ancient ditches." (46)

The acequia way of life in the civilian and mission communities was gone forever; at best, their few remaining vestiges could continue to serve as windows to the past:

San Antonio Express, October 20, 1935: Passing of Irrigation Ditches: With the installation of the present waterworks system, the irrigation ditches passed out of existence, and with the passing of the irrigation ditches, the truck gardens and fruit orchards, which abounded all over the city, became only a memory to serve as a site for modern homes, business houses, filling stations and parking lots. The irrigation ditches were filled in with dirt to the level of the streets or private property through which they flowed, although in some places there still are depressions which had formed the bed of these ditches. They have left their mark, however, in the form of trees or vegetation which still exist as a result of the fertility of the soil where these ditches once flowed. (47)

The modern-day residents of San Antonio, however, were occasionally reminded in local news accounts that two of the seven acequias still survived. By the 1940s and 1950s, conservationist perceived the San Juan and Espada Acequias as "ancient" and so described them in the newspapers of the times, but still these historic resources conveyed water to the old mission *labores* south of the city. There was a sense of pride that these "old irrigation ditches" continued to supply water to irrigated fields of families descended from the original grantees who had received *mercedes* (grants) of land and water issued by the King of Spain, even though the majority of landowners were by now newcomers who had acquired riparian rights through the process of land sales. News articles provided brief histories of each of the original seven acequias and described their paths along San Antonio's major streets that were constructed to parallel them. (48)

Later, into the 1960s and for the next thirty years, the number of newspaper stories increased as fragments of the ditches within San Antonio were uncovered during urban excavation projects. Starting with the unexpected "discovery" of a section of the Alamo Acequia Madre in the winter of 1965 when bulldozers leveled land in preparation for construction projects at the HemisFair site, dozens of other similar accounts subsequently

have appeared in San Antonio newspapers. (49) In some cases, these discoveries have led to the preservation of acequia fragments as part of the landscaping in the areas surrounding the construction projects. The more well known ones include the 125 foot section of the Alamo Acequia at the HemisFair Park site and a shorter one behind the Alamo itself; a fragment of the Upper Labor Acequia as it diverts from the San Antonio River at Brackenridge Park; another Upper Labor fragment in the Botanical Gardens on Funston near Brackenridge Park; and different sections of the San Pedro Acequia visible at the Bexar County Justice Center and at the San Antonio Housing Authority. A more recent site is on private property, just behind the Downtown Hampton Inn where a short section of the eastern branch of the Alamo Acequia Madre can be viewed. Lastly, the ingress section of the Alamo Acequia Madre can be seen at the Alligator Gardens next to the Witte Museum. (50)

Some of the sites are marked by plaques or monuments that provide brief texts calling attention to the important role played by the acequias in the formation and early development of San Antonio. At the Bexar County Justice Center, on the corner of Main Street and Dolorosa, there is a plaque next to a fragment of the San Pedro Acequia that reads:

An open earthen ditch—until the city lined it with limestone in 1852—the San Pedro Acequia was three feet four inches wide and two feet deep. It had its own source at the pool of the San Pedro Springs and flowed along the present day streets of North Flores and Acequia [now Main Street] before winding through this site on its way southward.... Because of their importance, not just for irrigation, but for drinking, the regulation of all the acequias—the Alamo Madre, the San José, the Concepción, the San Juan, the Espada and the Upper Labor Ditch—was one of the most important responsibilities of the municipal government in San Antonio. For the better part of two centuries, until modern methods replaced it, the acequia system was a sophisticated method of water distribution. (51)

In addition to the recognition bestowed by the City of San Antonio, the acequias, their dams and the one remaining aqueduct at Espada have been commemorated by federal agencies, the State of Texas, professional associations and historical preservation groups. One of the more widely publicized ceremonies occurred in 1968 when the Committee on History and Heritage of the American Society of Civil Engineers designated San Antonio's acequia systems as a national historic civil engineering landmark, only the seventh one in the

country to receive such distinction. This placed the hand-dug, earthen acequias of San Antonio in the company of more gargantuan engineering works such as the Erie Canal, the Central Pacific Railway, and the western transcontinental railway system. (52) A decade later, in mid-summer 1978, the American Water Works Association also honored the acequias when AWWA officials presented the San Antonio City Water Board with a bronze plaque affirming its decision to recognize the acequias as “An American Water Landmark, Significant in the History of Public Water Supply.” (53)

### **The Old San Juan Dam, “High and Dry”**

By the late 1950s, ongoing work of the San Antonio Channel Improvement Project had reached the vicinity of the San Juan Dam where the San Juan Acequia drew its irrigation water directly from the San Antonio River. The *saca de agua* for this ancient ditch had been located in the 1730s by the Franciscan friars at one of many horseshoe bends of the Río de San Antonio to facilitate diversion of water from the main river channel. With most of the other colonial period acequias no longer functioning, the Mexican grants of 1824 provided the modern-day irrigators of the San Juan Acequia with the oldest water right in Texas. The historic San Juan Dam had been designed not to retain water, but to divert it gently toward the main headgate of the San Juan Acequia a short distance down from the channel. Unlike other Spanish colonial *presas* that often straddled the width of a stream, this particular diversion structure operated more like a weir, partitioning some of the flow in the river away from its normal channel, and once in the earthen *acequia madre*, pushing the water by gravity flow approximately two and a half miles before dividing into two smaller laterals, the *Acequia de Afuera* (“Outside Ditch”) and the *Acequia en Medio* (“Middle Ditch”). (54)

To partition the water effectively, the San Juan Dam was unusually long and had been constructed alongside (rather than straight across as was the case with the Espada Dam further downstream) the west bank of the river “jutting out into the stream to direct the flow toward the ditch.” (55) During periods of higher flows, this structure allowed water to spill over the dam and return to the bend in the original channel. The dam was approximately

three feet thick, three feet high and extended for about 300 feet on a north-south orientation. (See location map of original San Juan Dam, the old river channel and the channelized river bed, following page.) The early materials used in the construction of the dam included river gravel and a *caliche* and lime mortar forming a type of concrete; later, the top of the dam on the upstream face was reinforced and capped with more modern cement. (56)

Except for occasional repairs by successive generations of irrigators, the San Juan Dam served its purpose for more than two hundred years as an important feature of the gravity flow system of irrigation. In March of 1958, however, the San Antonio River Authority and the United States Army Corps of Engineers relocated the bed of the river approximately 200 feet to the west in an attempt to straighten the bend of the old river channel precisely where the dam for the San Juan Acequia partitioned the water in order to reach the headgate due south. At the same time, project engineers had also widened and lowered the river ten feet below the original channel, cutting off the normal water supply to the old dam and leaving the “ancient dam ...high and dry.” (57) This new river channel rendered the old dam useless and unable to provide gravity flow water to the acequia headgate. Moreover, Army Corps of Engineers bulldozer operators had placed some of the excavated dirt from the deeper and wider channel alongside and on top of the Old San Juan Dam, burying most of its 300 foot length. (See photo and news article from the February 15, 1959 issue of the San Antonio Light, page after next.)

The actions by SARA officials and the Army Corps had been undertaken without consulting the irrigators, who were still using the San Juan Acequia, or the public agencies responsible for the preservation of historic structures. Although their corporate status as a ditch company had expired in 1950, the former shareholders of the San Juan Ditch Company had retained their rights as owners of the ditch in undivided interest. (58) When they became aware of the negative effects of the rechannelization project, they banded together and protested what they perceived as unilateral and unlawful actions on the part of the San Antonio River Authority, the local sponsor of the metropolitan flood control project. Among the protesters were more than two dozen property owners, including Archbishop Robert C.

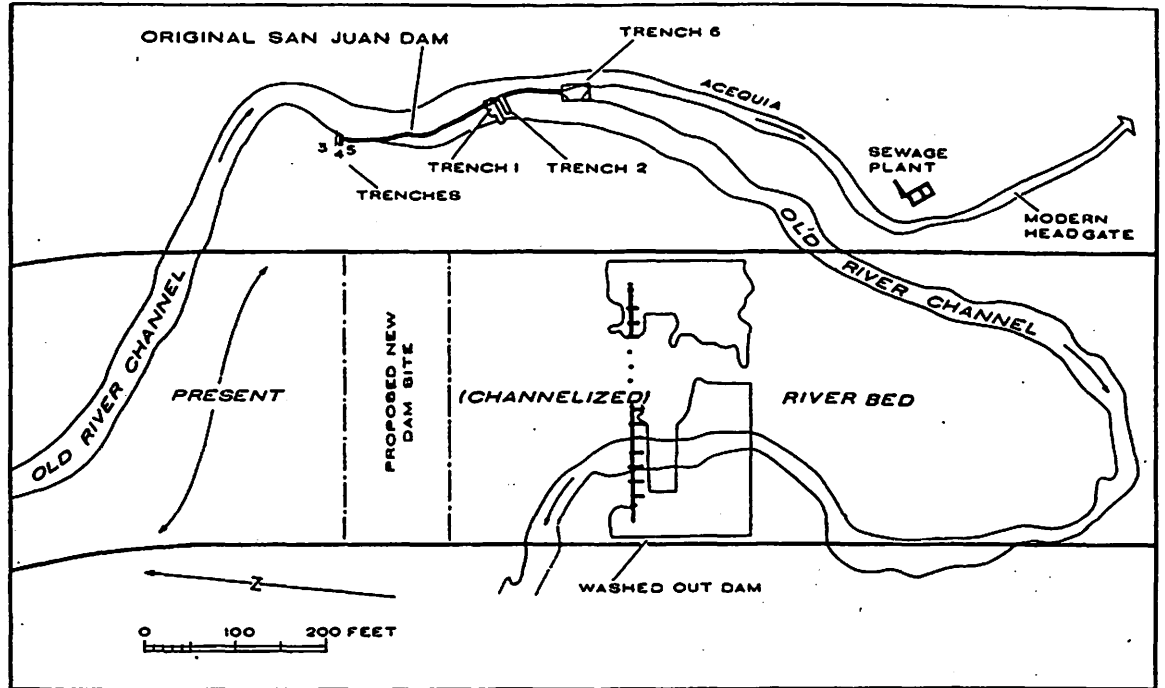


Figure 1. Location of the San Juan Dam and Trenches 1-6.

Source: David B. Hafernik, I. Wayne Cox, and Anne A. Fox, Archeological Investigation of the San Juan Dam, 41 BX 266, Bexar County, Texas, Center for Archeological Research, University of Texas at San Antonio, Survey Report No. 179, 1989.





**FLOOD CONTROL PROGRAM LEFT THIS OLD SPANISH DAM HIGH AND DRY**  
Dam supplied water to the irrigating system area near Mission San Juan de Capistrano.

## FLOOD CONTROL vs. IRRIGATION

# Old Dam Lacks Water

By **DICK BALMOS**

Some 225 years ago the Franciscan Friars, who established the early missions, built one of the most remarkable systems of irrigation canals in the new world.

Today one of these "ace-

quias," one of the few still intact, is subject of a legal hassle that will involve the San Antonio River authority, San Antonio Conservation society, Archbishop Robert E. Lucey, and some 39 owners of small tracts of land along its banks.

Nearly a year ago the authority, prodded by conservationists preserved the old dam and canal that furnished water west of the river for irrigation to Mission San Francisco de la Espada and its lower labors.

To do this, the authority had the army corps of engineers build a \$60,000, 7½-foot dam across the floodway and below the Spanish dam.

### Water Flow

This guaranteed continuous flow of water by gravity all along the canal.

But when the flood control program, moving up-river, reached an ancient dam that supplied water to the irrigating system east of the river, and to Mission San Juan de Capistrano, it left it high and dry.

A cry of protest was raised by property owners who used the ditch for irrigation and from the conservationists.

They claim it is the authority's responsibility to provide facilities to divert water by gravity flow from the river into the ditch.

Flood control engineers say this cannot be done because the bed of the river had to be lowered to a point making such a plan impractical.

To recreate normal flow in the canal, the engineers say, would require construction of a 15-foot-high dam which would cost some \$240,000.

Besides being expensive this would defeat the purpose of the flood control program by causing water to be impounded too near the heart of the city, they claim.

Officials of the authority agreed to install a pump to pull water into the system while work was going on at that point of the river. But they asserted cost of operating the pump would have to be borne by the property owners along the ditch after that phase of the project was completed.

### Rights Claimed

This apparently wasn't acceptable to the defendants who claimed water rights stemming from old Spanish land grants or to the conservation society, which wants the ace-

quia put back in original operating condition.

To settle the issue once and for all the authority is requesting a declaratory judgment which would decide whether it is responsible for supplying water for irrigation purposes or whether it has the power to cut the defendant's water off.

The authority is basing its case on the contention control and ownership of the river passed from the Spanish crown to the Mexican government, to the Republic of Texas, the state and, now, into the hands of the authority.

Lucey, representing the Archdiocese of San Antonio, and the San Antonio Conservation Society (SACS). From the start, the main objection expressed by the irrigators was the fact that SARA had cut off their access to gravity-flow water from the original channel. SARA's counter proposal was to pump water from the relocated river channel to the headgate of the acequia. To accomplish this purpose, SARA engineers had designed and planned to install a low-fixed dam in the new channel in order to pump river water 200 feet to the east.

Both the Archdiocese of San Antonio and the San Antonio Conservation Society owned water rights on the San Juan Acequia. The Archdiocese still owned some of the old mission lands adjacent to the church parishes such as those at Mission San Juan Capistrano. SACS, on the other hand, was a more recent neighbor, having purchased twenty-five acres of frontage on the San Juan Acequia for the purpose of preserving what its members valued as an "ancient water system." In a letter to the Army Corps of Engineers on July 15, 1958, the SACS President informed the Corps that its Board of Directors had adopted a resolution calling for the restoration of gravity flow to the acequia serving its property. After reminding the Army Corps of the local as well as national importance of the unique San Juan Acequia, the Board resolved:

... that the San Antonio Conservation Society requests the San Antonio River Authority to restore the San Juan Acequia with its natural gravity flow either by a dam as it was originally built or if that is impossible through gates built in the river channel, thus guaranteeing its natural life and preserving (sic) the San Juan acequia for posterity. (59)

In reply, the District Engineer from the Army Corps of Engineers office in Fort Worth accepted responsibility for having designed and constructed the new river channel in coordination with SARA's decision to relocate the San Juan Dam. In the view of the Army Corps, pumping water from the low-fixed dam as proposed by SARA was entirely feasible and more cost effective when compared to other alternatives. Providing gravity flow into the San Juan Ditch, on the other hand, would require "very expensive modification to allow the [SARA] project to fulfill its flood-control mission." (60)

Meanwhile, the San Antonio River Authority provided its own reply to the SACS resolution. SARA defended its decision not to built a dam structure that would have allowed gravity flow into the San Juan headgate to continue; this objective would have required a dam of such a height that it would have “completely upset the hydraulics of the flood prevention project,” causing flooding in San Antonio city streets during future storm events. In a closing statement, the management of SARA indicated:

We are still exploring every possible method by which we can maintain the flow in the San Juan Ditch in such a way as not to destroy its historical value and beauty, and I feel that I can assure you that the Board of Directors of the San Antonio River Authority will make a sincere attempt to solve this problem with the least destruction of the primitive appearance of the acequia. (61)

Off and on, efforts to find an alternative solution would be attempted in the years to come, but neither side was willing to veer from its initial position. The San Antonio Conservation Society, the Archdiocese, and the individual property owners on the San Juan Acequia contended that their vested water rights dating back to the 1824 Mexican grants required the continued delivery of gravity flow water into their ancient headgate. The San Antonio River Authority, on the other hand, remained steadfast in its claim that the exercise of police powers to protect the metropolitan area against flooding insulated the agency from any claimed damages. Further, SARA asserted that its proposal to pump river water from the new channel to the acequia headgate did not constitute a taking of any property rights since the acequia would continue to receive its share of river water by way of a modern pumping system. Neither side was willing to compromise. It would take more than eight years of legal wrangling in as many court proceedings before a final agreement would be accepted and signed by the affected parties in February of 1967.

### **SARA v. Dillon, 1958-1959**

After the San Antonio River Authority cut off direct access to the river by the San Juan Acequia, on March 25, 1958, its first remedy was to install a temporary pump from the relocated channel to the headgate 200 feet distant. In the ensuing months, SARA tried to

allay the concerns of the irrigators by stating that the agency's solution called for a low-fixed dam structure that would impound enough water in a pond to allow the pumping operation to continue on a permanent basis. When an exchange of letters during the summer months failed to satisfy the irrigators, SARA filed a class suit on August 20 in the 131<sup>st</sup> District Court of Bexar County for a declaratory judgment, styled as SARA v. Dillon, for the purpose of establishing whether any liability for damages existed.

For its part, the river authority sought a judgment claiming the agency was not liable for any damages resulting from the rechannelization project in the vicinity of the Old San Juan Dam and the headgate to the San Juan Acequia. Throughout the court proceedings that followed, SARA time and again asserted that its authority of eminent domain allowed it to exercise the police power of the State and that any damages suffered by the irrigators in this instance were consequential and not recoverable. In SARA v. Dillon, the irrigators along the San Juan Acequia were sued individually, as owners of tracts of lands, and as a class. In turn, attorneys for the irrigators filed a cross-action suit and claimed that the taking of their vested property rights by the relocation of the river channel entitled them to compensation under the Texas Constitution. The landowners sought a judgment for individual damages of their respective properties totaling one half million dollars. (62)

SARA tried one more time to reach a compromise by drafting an agreement in November of 1958 admitting that it had temporarily "disrupted the diversion and gravity flow of water" from the San Antonio River into the San Juan Acequia. But SARA also contended that no actual damage would result if the irrigators supported SARA's intention to design and build a modern dam near the point of the Old San Juan Dam as a replacement. SARA pledged that agency engineers would build a pumping station that would draw water from a pool to be created by the new dam, thus fulfilling the irrigation rights of the 1824 grants issued by the Mexican government to the original landowners and their contemporary successors. If the irrigators would accept the compromise by releasing SARA for any damages, without admission of liability, the agency, in turn, would dismiss the suit for summary judgment pending in the 131<sup>st</sup> District Court. (63) The defendant irrigators rejected

this final offer, and the preparations for trial continued. A number of pleadings, including motions, briefs, memoranda, affidavits of expert witnesses, detailed maps, plans, charts, land grant documents and other exhibits would be presented to the court by both sides before a decision would be issued almost a year later.

The listed defendants in SARA v. Dillon included all San Juan Acequia water rights' holders: Emma M. Dillon, G. Garrett and Winifred Lewis, Curtis R. Hunt, the Most Reverend Robert C. Lucey, Archbishop of San Antonio, the San Antonio Conservation Society, and more than twenty other property owners. The plaintiff was the San Antonio River Authority.

At the time of the motion for summary judgment, the SARA Manager was J. L. Dickson, a graduate civil engineer with forty-six years of experience; notably, he had previously served as the Director of Public Works for the City of San Antonio. In a pre-trial deposition, Dickson recited the many occurrences from 1899 to 1958 when floods in the San Antonio area had caused serious loss of life and property, a threat of sufficient magnitude that in his mind should "discount any consideration of obstructing in any way the channel of the river at this point so as to provide gravity flow of water into the San Juan Ditch." He reasoned that the lowering of the river bed had been necessary along with the relocation of the channel about 200 feet to the west. To construct a dam in the new channel of a height sufficient to again provide gravity flow river water to the San Juan Ditch "would quite effectively destroy the flood control feature of the San Antonio Channel Improvement Project" and once more cause ravaging floods in the central portion of the City of San Antonio. Dickson's proposed alternative was to install a pumping system as the most cost-effective way of supplying water to the ditch. (64)

In a trial brief summary for plaintiffs, SARA attorneys concurred with Dickson: the threat of continued flooding warranted the exercise of police powers to protect the metropolitan population of 570,000 against "this flood menace to the public health, safety, and property, public and private." They also recognized that the flood control project

necessitated the widening, straightening and lowering of the river bed in the southern reaches of the city. As to impacts on the San Juan Acequia irrigators, the attorneys acknowledged that some temporary impacts had occurred when the rechannelization project “destroyed the San Juan Dam and cut off completely the gravity flow of water into the ditch.” They did not concede, however, that any land or the actual ditch had been taken or damaged, “but only water cut off.” (65)

A controversial point advanced at this stage of the proceedings was SARA’s contention that the old dam did not belong to the irrigators; nor were they entitled to vested rights to the flow of river waters provided by way of this particular structure. SARA’s attorneys reasoned that the dam laid in the bed of the river, property belonging to the State and conferred by the State to the river authority. Relocating the dam, then, was a reasonable exercise of SARA’s police powers, especially when no injury resulted to the defendant irrigators. The new dam planned for the project, coupled with the feasibility of pumping river water from the dam to the headgate of the San Juan Acequia, demonstrated that no genuine dispute existed, a conclusion that the SARA attorneys hoped would lead the court to grant a summary judgment in support of SARA’s actions in the cause. (66)

On June 26, 1959, the 131st District Court of Bexar County heard SARA’s motion for summary declaratory judgment. Prior to the hearing, attorneys for the irrigators had provided the court with their own pleadings against the motion. Among other points, the attorneys argued that the defendants in this case possessed “vested property rights” to the flow of the water in the San Antonio River for use in irrigation. They cited authorities from case law in the Court of Civil Appeals and the Texas Supreme Court in support of their position: individuals who receive grants of land from the State of Texas adjacent to a stream, or through which a stream flows, are entitled to riparian water rights. Defendants’ attorneys also reminded the court that the Mexican grants of land dating to 1824 had at that time provided the original grantees with *dulas* (water rights calculated at one day’s worth per *dula*) of irrigation water with accompanying land for cultivation; water for this purpose was to be taken from the San Juan Mission Acequia and the Río de San Antonio.

To illustrate how land and the water right *dulas* were interconnected, the attorneys for the irrigators cited language in a Mexican grant made to a particular individual on February 5, 1824, Francisco Maynes, by the provincial officer, *Gefe Político* José Antonio Saucedo: “... I have decided to grant him and I do hereby grant him in the name of the Mexican Nation, two *dulas* of irrigation water with the accompanying land for cultivation; the water to be taken from the irrigation conduit of the Mission San Juan Capistrano....” (67) By this expression, said defendants’ attorneys, the Mexican government had conferred on the grantees “a vested right in the flow of water into the ditch itself.” (68) This argument underscored the conventional practice of granting land and the water to irrigate it, making water an appurtenance to land.

As to the rights of the grantees’ successors, the defendants in SARA v. Dillon filed an affidavit by the President of the San Juan Ditch Company, G. Garrett Lewis, who noted that he had owned some 12.5 acres on and adjacent to the ditch since 1926. In a part of his statement, Lewis described how the mouth of the San Juan Acequia had traditionally obtained water from the channel within the banks of the San Antonio River:

... the bed and banks of the San Antonio River were so located and situated that in the course of the normal and natural flow of the San Antonio River, the waters thereof were caused to come into contact with the San Juan Dam which protruded into the waters and the bed of the San Antonio River in such a manner as to cause certain waters of the San Antonio River to naturally and normally flow into the mouth of the San Juan Ditch, and as a result thereof, a part of the waters of the San Antonio River flowed through San Juan Ditch from its mouth adjacent to San Juan Dam, and thence to pursue a course flowing through and past the lands of the various parties Defendant in this litigation and finally to empty back into the natural bed and banks of the San Antonio River. (69)

From the viewpoint of Lewis and his fellow defendants, construction activities by SARA during the rechannelization project had diverted the flow of waters in the San Antonio River by cutting off its natural bed at the site of the Old San Juan Dam. When the river bed was moved to an “artificial channel” to the west, purportedly, the results were devastating to the defendants: the original dam was partially damaged; and portions of the natural river bed and banks were “completely obliterated and destroyed.” Thus, the dam was left “dry and

devoid of water,” as was the natural river channel, the original source of water for the mouth of the San Juan Ditch:

[A]s a result of the work and activities of the San Antonio River Authority, water does not flow into the mouth of San Juan Ditch nor has it flowed into or even close to the mouth of the San Juan Ditch since the waters of the San Antonio River were diverted into the new and artificial channel lying more than 200 feet to the West of and more than 10 feet below the level of the mouth of the San Juan Ditch.... The mouth of the San Juan Ditch no longer extends into the bed and banks of the San Antonio River... nor does the San Juan Dam in any wise or manner come in contact with the flow of the waters of the San Antonio River.... (70)

In the end, the defendants did not prevail. When the presiding judge in the case, John F. Onion Jr., issued the District Court’s decision in September of 1959, he acknowledged that the irrigators possessed vested water rights as claimed, but he ruled that said property had been granted subject to the inherent power of the State “...to protect the public health, safety, and welfare without making compensation for damage.” Agreeing with the plaintiff, Judge Onion noted that SARA could continue to comply with the rights of the defendants by feasibly pumping water from the San Antonio River over the intervening lands it controlled between the relocated channel and the mouth of the San Juan Ditch. (71)

Significantly, Justice Onion concluded that the bed of the San Antonio River and the Old San Juan Dam which had laid in the original channel belonged not to the irrigators but to the sovereign. Acting as an agency of the sovereign (Mexico, and now the State of Texas), SARA was reasonably exercising its police powers when it relocated the river channel and destroyed the usefulness of the dam. The irrigators could take their share of water from the river or any dammed pool so long as they did not interfere with the flood control project. As to the claimed damages by the irrigator defendants, Justice Onion also agreed with SARA that no disputed issues of fact existed in the case, allowing the court to grant the plaintiff’s motion for summary judgment: “... so it is accordingly ordered, adjudged and declared that the loss of gravity flow of water from the San Antonio River into the San Juan Irrigation Ditch is *damnum absque injuria*, and that Plaintiff is not required to respond to Defendants, or any of them, in damages for such loss.” (72)



### **Appeal and Reversal, 1960-1961**

The San Juan irrigators appealed the District Court's judgment in the Court of Civil Appeals of the Fourth Supreme Judicial District located in San Antonio: G. Garrett Lewis et al., Appellants, v. San Antonio River Authority, Appellee. On a split vote of two to one, November 23, 1960, this higher court reversed the District Court and remanded the class suit for retrial. Although Chief Justice W. O. Murray dissented, the majority of the Court of Civil Appeals agreed with the San Juan Acequia irrigators on several key points. Writing the decision for the court, Associate Justice H. D. Barrow noted that an example Mexican grant of 1824 provided "not merely two *dulas* of water in the ditch, but included the right to the dam and head gate as well as the irrigation ditch." (73) As with the District Court, the appellate court concluded that the San Antonio River Authority had damaged vested rights held by the irrigators when it changed the channel of the river, but in a contrary opinion, this latter court held that the exercise of police powers did not insulate the river authority against liability. In a summation at the end of his opinion, Justice Barrow issued the court's central finding: "We conclude that appellants have vested property rights in the San Juan Dam, head gate and ditch, of which they cannot be deprived without adequate compensation, and that the trial court erred in holding that appellants' damages are *damnum absque injuria*." (74) Hence, the appellate court remanded the case to the District Court for retrial of the claims for damages.

In its discussion of points and counter-points, the Fourth Court of Civil Appeals noted that the City of San Antonio was no longer a small village located several miles north of the San Juan Dam. By now, San Antonio covered several hundred square miles of buildings, pavement and other improvements constructed alongside the shallow San Antonio River and its tributaries that meandered and winded through the city. With very little exposed earth to absorb moisture, flooding during occasions of heavy rains was inevitable prior to the installation of flood control measures. Under these conditions, the court recognized that the river authority was justified in exercising its police powers in order to protect the health, safety and welfare of the city and its inhabitants. In the view of the court, "the real cause of the difficulty is that the City has outgrown the river." (75)

As to the rights of the irrigators, the Court of Civil Appeals recited the history of the area dating to the 1730s when Texas was a province of the kingdom of Spain. The San Juan Dam was constructed for the purpose of irrigating lands in the vicinity of Mission San Juan. The next important event was 1824, after Mexico had gained its independence from Spain; the court recounted how the Mexican Republic issued numerous small grants of land together with the water rights or *dulas* to irrigate the individual parcels. In this regard the court noted the undisputed fact that the 1824 grantees were “predecessors in title” to the appellant irrigators; further, the court agreed with the irrigators that they were entitled to the flow of water from the Old San Juan Dam into the ditch. To illustrate this point, the court footnoted the February 5, 1824, grant from *Gefe Político* José Antonio Saucedo of the Mexican municipal government made to Francisco Maynes for two *dulas* of water along with accompanying land for cultivation. (See Appendix B for the text of the grant to Francisco Maynes.) In reviewing the significance of the language in this 1824 example grant, the appeals court concluded:

We think it is clear that the dam, head gate and ditch were then and remained a part and parcel of “the irrigation conduit of the Mission of San Juan Capistrano.” The grant was not merely two *dulas* of water in the ditch, but included the right to the dam and head gate as well as the irrigation ditch. (76)

To the Court of Appeals, the rights in question must be governed by the Mexican (Spanish) law in effect at the time of the grants. Citing provisions in the *Siete Partidas* (compendium of laws of Castile after 1348), the opinion recognized that the Mexican grants of *dulas* and lands in 1824 did not merely grant the right to take water from the river:

We are also of the opinion that the grants, when construed in the light of facts existing at that time and long prior thereto, the dam and head gate being integral parts of the irrigation system, together with the ditch, recognized the legal existence of the dam and head gate and their continued existence and use by the owners of the land as appurtenant to the grants. Moreover, undoubtedly, these water rights are hereditaments which pass with the title to the land. (77)

In brief, the court found that both the appellee, SARA, and the appellants, the San Juan irrigators, had rights worthy of recognition. The river authority had the power of eminent domain and the right to exercise reasonably the police power of the State; thus, SARA's flood control measures in relocating, widening and deepening the San Antonio River channel were proper. On the other hand, SARA was in error by contending that its actions had not taken, damaged or even touched any property rights in the San Juan Dam or gravity flow of the river. On this crucial point, the Court of Appeals agreed with the irrigators:

[W]e think appellants have a property right in the dam which raises the water to the level of the head gate, **whence it flows by gravity into and through the ditch**. This was granted to them by the sovereign power at that time and must be governed by the laws of the Sovereign that this facility for irrigation was a part of land at that time.... There can be no doubt that appellee has the authority, through the exercise of the power of eminent domain to take the property, but we cannot agree that it may take such property without compensation, through the exercise of the police power of the State. [Emphasis added] (78)

Not unexpectedly, the San Antonio River Authority filed a motion for rehearing following the November 23, 1960, decision of the Fourth Court of Civil Appeals. Among other points, the attorneys for SARA contended that the original opinion of the court had not made clear what specific property had been taken, damaged or destroyed, and in particular, whether the court held that appellants (the irrigators) had title or right to the **gravity flow** of the water from the river into the ditch. The court overruled this motion on January 4, 1961. Justice Barrow reiterated the appellate court's initial ruling that the Mexican grants of *dulas* and land had provided the appellants with rights to the dam and headgate, including the right of gravity flow of water into and through the conduit to their lands. Associate Justice Barrow further pointed out that the conduit depended on the ability of the dam in the river bed to raise the level of water sufficient to turn the water into the ditch:

We think our opinion made it clear that the changing and lowering of the channel, as well as the destruction of the dam, left the headgate and ditch high and dry, above the present water level, and as a consequence thereof appellants are left without water in what is left of the conduit.... This right to the water flowing in the ditch was granted

by the Sovereign Government... a perpetual right to the grantee, his successors, heirs and assigns. (79)

So ruled the Fourth Court of Civil Appeals; but the issue of the right (or not) to gravity flow waters into the San Juan Acequia would be debated again in subsequent litigation for years to come. Additional rounds of points and counterpoints lay ahead.

### **The Supreme Court of Texas, 1962-1963**

The San Antonio River Authority did not accept the ruling of the Fourth Court of Civil Appeals and instead petitioned the Texas Supreme Court almost immediately after the rehearing was denied: San Antonio River Authority, Petitioner, v. G. Garrett Lewis et al., Respondents, No. A-8304. In its initial ruling of February 14, 1962, the Supreme Court reversed the judgment of the appellate court and affirmed the declaratory summary judgment of the District Court back in 1959. On a split vote, with three dissenting justices, six of the Supreme Court justices found for the San Antonio River Authority.

Writing for the majority, Chief Justice Robert W. Calvert noted that the grantees in the Mexican grants of 1824 had neither acquired vested rights in the continued existence of the dam nor the right to have the waters of the San Antonio River continue to flow in their accustomed channel with the dam used as an irrigation facility. In his view, ownership of the Old San Juan Dam was immaterial. Even if vested rights had existed, the court determined that they “could be taken by the State of Texas, without payment of compensation, under the police powers of the State.” (80) Thus, SARA’s claim of non-liability prevailed in this first round.

Attorneys for the respondents, the class of San Juan Acequia irrigators, filed a motion for a rehearing. Once again, the Supreme Court justices reviewed the files, historical records, legal scholarship from similar cases, pertinent case law in Texas courts, and especially some crucial points of Spanish water laws dating to the *Siete Partidas* and other sources. Nine months later, Chief Justice Calvert again wrote the court’s opinion, this time reversing and

finding for the San Juan Acequia irrigators. Although there were four dissenting votes, the majority vote of five affirmed the earlier judgment of the Court of Civil Appeals and set aside the high court's own judgment of February 14, 1962. This second and final decision of the Supreme Court, November 28, 1962, made clear the legal history and provisions of Spanish and Mexican water law that would help to pave the way for the protection of the San Juan Acequia in future years. The Mexican grants were ruled as still valid, including their granting of irrigation water rights to the grantees and successors from the San Antonio River. In the judgment of the Texas Supreme Court, the current group of irrigators had been correct all along: the source of the waters granted by the sovereign was the San Antonio River and not just the San Juan Acequia. (81)

With the first decision withdrawn, Chief Justice Calvert meticulously laid out the reasoning of the majority. Judge Calvert recounted the claims made by both parties during the earlier trials and appeals and the rationale for the decisions reached in each proceeding. The undisputed facts with respect to the rights of each party were also reviewed, and once again, the Francisco Maynes example grant was recited. As a point of departure, the high court chose to frame its charge in this second hearing as follows:

The question to be decided, then, as the issue has been narrowed, is whether under the Mexican grants respondents acquired, as against the sovereign, vested property rights to have the waters of the San Antonio River continue to flow in their accustomed channel. The question must be answered under Mexican law applicable when the grants were made. (82)

Early in his presentation of the legal background, Justice Calvert's opinion noted that the civil law of Spain, as one of the prior sovereigns, was the same as the law of Mexico due in part to the unsettled state of affairs that existed from the date of Mexican independence to the promulgation of the Mexican Federal Constitution in 1824. (83) From here, he recited case law from Texas courts, as well as the Spanish *Recopilación de las Leyes de las Indias* and the *Siete Partidas*. A number of provisions in the *Siete Partidas* were especially useful to the Texas Supreme Court in this case. Justice Calvert, for example, cited four express

provisions where these laws protected the rights of existing irrigators against diversion of stream waters from their accustomed channel by other parties:

1. One who “obstructs the current, or **diverts the stream** so that others who are accustomed to make use of it, cannot irrigate their lands by it” shall demolish these offending structures at his own cost and pay all damages and any losses thereof;
2. If a stream becomes obstructed from natural causes “so that the channel is cut off, **and the water removed from the place where it formerly flowed,**” the person who owns said land can be compelled to reopen the channel “through which the water formerly ran and cause it to resume its accustomed course;”
3. Protection is afforded a purchaser of land against one who has built a structure on his premises “by means of which **water is cut off or obstructed where it was formerly accustomed to flow;**”
4. One may construct a mill or a machine propelled by water power on his own land near another mill or machine, but such work shall “be performed in such a way that the course of the water will not interfere with the other mill, but that the party may freely have it **as it was formerly accustomed to run.**” (84)

Thus, the central question raised by the Supreme Court of Texas was: “Did respondents acquire, as against the sovereign, vested property rights to have the waters of the river continue to flow in their accustomed channel?” (85) A related question throughout the trials, appeals, and again before the Supreme Court was the issue of taking without compensation by the San Antonio River Authority. On the first question, Chief Justice Calvert and the majority of the court ruled that provisions in Spanish law, such as those cited from the *Siete Partidas*, manifested a clear purpose to protect the use of water of a stream from the accustomed channel against diversion by others: “It hardly seems reasonable to say that the sovereign reserved the right to do the very thing which the law so carefully prohibited others from doing.” (86)

Having answered the first question, the opinion turned to the issue of taking of those rights by the sovereign or successors at a later time. Prior to responding, the court made note of the fact that the original grantees of the 1824 Mexican grants, such as Francisco Maynes, had paid for their rights to obtain and use the water, at which point they were at liberty to sell or to mortgage these early rights. The court reasoned that if these rights were to hold their value, the waters of the river must be allowed to flow in their accustomed channel: “To hold that the right to change the river channel was reserved to the sovereign would be to permit the sovereign to take or to destroy, without compensation, rights which it had sold for compensation.” (87) Citing applicable sections of the Spanish Constitution of 1812, the 1824 Constitution of Mexico, the Constitutions of Coahuila and Texas of 1827, the Constitution of the Republic of Texas, and subsequent State of Texas Constitutions, the Supreme Court found that the San Antonio River Authority could not take the vested property rights of the irrigators, successors in title to the Mexican grants, without payment of compensation to them. (88)

In affirming the judgment of the Fourth Court of Civil Appeals, the practical effect of the Texas Supreme Court was to remand the claims for damages to the 131<sup>st</sup> District Court of Bexar County for trial. The San Antonio River Authority filed a motion for a rehearing with the Supreme Court, but the motion was denied on January 23, 1963. The next arena for both parties to plead their arguments once again was the 131<sup>st</sup> District Court in San Antonio, where the case had originated four and a half years earlier. Although the San Juan Acequia irrigators had won their case in the highest court in the State of Texas, attempts to establish damages and collect compensation would continue to meet resistance by the river authority; the parties would meet again three years later in the Texas Supreme Court. As before, SARA’s attorneys appealed court judgments against the river authority at every turn.

### **Claims by Acequia Plaintiffs, 1964-1966**

In 1964 the cases from SARA v. Dillon were severed from the class suit by an agreed order, a procedure that required each irrigator to prove damages in specific amounts as to his

or her own tract. At the advice of legal counsel, the irrigators moved forward with only two of the claims, holding back the other cases on the docket of the trial court in order to conserve time and financial resources. The first lawsuit selected for jury trial in District Court was that of Curtis R. Hunt in September of 1964, followed in January of 1965 by a second claim against SARA filed earlier by G. Garrett Lewis. (89)

Previous court decisions in the class suit had established the point that the San Antonio River Authority had reasonably exercised its police power when it relocated the river channel 200 feet from the Old San Juan Dam. At issue in these District Court trials was the question of claimed damages and possible compensation by SARA. In the first case, Curtis R. Hunt petitioned the court for a judgment in the sum of \$19,000 together with interest per annum from April of 1958 to the date of judgment. The claim by Hunt was based on his contention that actions of the river authority in the spring of 1958, when it relocated the San Antonio River channel and covered up the old dam, had diminished the value of his tract of land. He argued that SARA's actions constituted a taking or appropriation of his property rights. Hunt owned 12½ acres adjacent and riparian to the San Antonio River and the San Juan Acequia. Acts of trespass by the river authority, Hunt claimed, had resulted in expenses and losses that he believed were recoverable. (90)

In his petition, Hunt referenced the Kingdom of Spain and its jurisdiction over the San Antonio River in the 1730s when the original dam was constructed in the bed of the river so as to cause a portion of the natural flow to be diverted into the San Juan Acequia. In turn, the design of this ditch was such that it conveyed water for irrigation purposes through land now owned by Curtis R. Hunt. As a result of the rechannelization project in 1958, Hunt claimed that he had incurred substantial expenses in the drilling and equipping of a well and the pumping of ground water in order to irrigate his land properly. Trespasses by SARA, he contended, had damaged him in a number of ways: loss of farm income from trees and crops, expenses of the new well system, costs of the lawsuits, and "diminution in value of or damage to his land." Together, these damages and costs amounted to the \$19,000 that Hunt was now seeking from the defendant. (91)



Attorneys for SARA answered Hunt's claims by denying that it had constructed a new bed for the San Antonio River at the place in question, and instead the river authority had "merely altered and enlarged the natural bed of the river westward at such place without disturbing the east bank thereof in the vicinity of the headgate of the acequia and without touching said headgate." (92) SARA acknowledged removing the Old San Juan Dam, but justified this action on the basis that the dam was "the sole property of Defendant." Moreover, SARA noted that it had replaced the original dam with a new and better dam from which the plaintiff and others could pump water to the ditch: "The old dam was a crumbling makeshift of sandbags, earth and rock, often washed out, and the new one is modern and [of] permanent concrete construction." SARA admitted to eliminating the aspect of gravity flow of river water to the ditch, but here too, the river authority felt it had provided a more effective alternative: "The [new] pumping pool will have available water during drouth [sic] periods of a character which would have rendered the old pool useless as far as gravity flow in the ditch was concerned." SARA reasoned, therefore, that plaintiff Hunt had not suffered any loss of water (only gravity flow) nor any other damages or property losses inflicted by the river authority. (93)

In the second trial, G. Garrett Lewis and spouse, Winifred Lewis, petitioned the court for a judgment against defendant SARA in the sum of \$32,500, together with interest per annum from March 25, 1958. As with Curtis R. Hunt, the Lewis' claimed they owned land adjacent to the San Antonio River and the San Juan Acequia that was damaged when SARA excavated a new river channel without the consent or approval of any of the plaintiffs:

Such channel caused the flow of the San Antonio River to be diverted from its usual and customary course so that the same proceeds at its closest point to the location of the San Juan Dam more than 200 feet distance therefrom. The level of the channel was further lowered by Defendant by such excavation or construction to a point at least 10 feet below the level of the San Juan Dam. Thus, the flow of the river was diverted around and below the San Juan Dam so that the San Juan Dam can no longer divert said water into the San Juan Ditch. (94)

To substantiate their entitlement to gravity flow waters from the river, the Lewis' recounted that the headgate for the San Juan Acequia had been installed and operated without

interruption from and after the 1730s by the plaintiffs and their predecessors in title to the old San Juan Mission lands. Mr. and Mrs. Lewis provided the court with a history of chain of title involving their land as awarded to predecessors by the Republic of Mexico in 1824. From a list of original grantees identified in the petition, the 12½ acres of land now owned by the Lewis' was derived from *suertes* assigned by the Mexican government to María Luisa de Luna, Mariano Rodríguez, Santiago Díaz and others. Each parcel was situated on land adjacent to the San Juan Acequia and was accompanied, per the Mexican grants, with *dulas* for irrigation purposes at the rate of one day every twenty-five days per *dula*. All told, the 12 and ½ acres now owned by the Lewis family were entitled to 3½ *dulas* of water. Lastly, they informed the court that they, in fact, had continuously used the amounts of water to which they were entitled since acquiring their property in 1926. (95)

The responses to the Lewis' claims were by now well familiar to the parties involved in the series of lawsuits. Attorneys for SARA noted that all acequia plaintiffs were still free to access, by way of pumping, the relocated stream within the "enlarged" channel of the San Antonio River to the west of the headgate; if damages resulted from the loss of water, the cessation of flow should be attributable to the San Juan Ditch Company for not having taken steps to put water into the ditch. As to the claim of diminished land values, SARA contended that the "old gravity dam-ditch system was and is in such antiquated and dilapidated condition as to have rendered the same practically valueless" for the highest and best market uses now possible for urban, industrial and residential purposes. Thus, according to SARA's attorneys, no diminution in the market value of plaintiffs' tract of land were or could have been caused by actions of the river authority. (96)

With regard to the Old San Juan Dam, SARA repeated its claim that removal or covering of this structure was necessary to the straightening, widening, and deepening of the San Antonio River channel for the purpose of flood protection in the City of San Antonio and Bexar County. Actions by SARA, thus, were not only reasonable but essential to protect against future ravages of the "common enemy," devastating floods in the drainage area. Moreover, SARA maintained that it had not taken or invaded the San Juan Ditch nor any

property of plaintiffs. As to the original dam, SARA continued to claim sole ownership of this structure:

That said river channel, the bed and banks thereof, and including said dam, was and has always been the property of the sovereign, to wit: the State of Texas, and before it of the Republic of Texas, the Republic of Mexico, and the Kingdom of Spain, until the State of Texas... transferred the ownership thereof to Defendants herein, in trust, for the purpose of carrying out the public, governmental and sovereign police power of the state.... (97)

Both the Hunt and the Lewis' lawsuits were tried before juries and took more than a week of testimony along with a number of fact questions presented to the respective jury; in each case the jury answered all of the issues in favor of the plaintiff landowner. (98) In the Hunt case, the jury agreed that rechanneling of the San Antonio River, and the subsequent loss of water by gravity flow, had decreased the value of Hunt's land. For this loss, the jury awarded him \$8,500, plus the claimed interest on this amount dating to March 25, 1958. (99) Knowing the importance of this ruling as a test case, and with a total of about \$500,000 in claimed damages from the other lawsuits in the court's docket, the San Antonio River Authority appealed the judgments in the Hunt and Lewis cases. Since the Hunt case had been tried first, it promptly went to the Court of Civil Appeals in another judicial district. (100)

The Court of Civil Appeals in Corpus Christi, Thirteenth Supreme Judicial District, heard the Hunt case in early June of 1965, and after reviewing briefs and arguments submitted by all sides, this appellate body took the case for decision. In 1966 the Thirteenth Court of Civil Appeals affirmed the earlier judgment of the 131<sup>st</sup> District Court sustaining the Hunt case on every point. (101) For a brief period of time following the decision, it appeared that a settlement would be agreed to by SARA and the landowner irrigators with the pending lawsuits. These hopes were dashed, however, when SARA decided to await the outcome of an application for writ of error it had submitted to the Supreme Court of Texas in the Hunt case. (102) A few months later, early November of 1966, the Supreme Court provided a final answer: no reversible error could be found. The decision of the District Court was upheld. Curtis R. Hunt could finally now collect \$8,500 in compensatory damages from the San

Antonio River Authority, more than eight years after the river authority had relocated the river channel away from the mouth of the San Juan Acequia. (103)

To all parties involved in the initial class suit, Hunt v. SARA was the quintessential test case; the outcome of the case was closely watched by the San Juan irrigators as well as by SARA authorities as it wound its way through the judicial system of Texas. (104) After three rounds of consecutive defeats in this one case alone, SARA was finally ready to compromise. On February 14, 1967, the river authority manager signed and executed a Memorandum of Agreement accepted by the attorneys on behalf of the irrigators. In this final settlement, SARA agreed to:

1. Pay the irrigators the sum of \$175,000 in cash;
2. Maintain the new San Juan Dam permanently at no cost to the irrigators;
3. Provide, at no cost to the irrigators, a flow of water into the mouth of the San Juan Acequia commensurate or pro-rated with the amount of water flowing in the river above the dam relative to the vested water rights of the users. (105)

The San Juan Acequia irrigators, on the other hand, agreed to certain responsibilities and actions of their own:

1. Operate and maintain the acequia permanently from the headgate [to its terminal point];
2. Dismiss their original cross-action with prejudice to the refilling of same, with SARA paying for any unpaid court costs;
3. If fewer than all irrigators agree to settle, the law firm shall withdraw representation as to these and not lend any assistance. (106)

In the end, the irrigators accepted the stipulations in the proposed agreement. After more than eight years of legal wrangling and a roller coaster of trials, appeals and final judgments, including three bouts in the Supreme Court of Texas, the feud ended. A way would be found to restore permanently the oldest water right in Texas. This time the solution would be amicably developed between the river authority and the acequia irrigators. Oddly,

the final agreement closing the case, and signed by all parties, was reduced to a simple document typed on plain paper and containing little more than two pages of text.

### **Restoration Attempts: Failures and Final Solution**

Prior to SARA's written agreement with the irrigators in February of 1967, the river authority actually had made several attempts to restore the flow of water to the San Juan Acequia. From about April of 1958, just after SARA had cut the water supply from the San Antonio River, until April of 1962, the river authority occasionally pumped water from the relocated channel to the headgate of the acequia. (107) While the court trials were in progress, the source of the water was a small reservoir created by a new dam, eight feet high, built by SARA in the relocated channel. A 100 horsepower pump, operated by SARA, siphoned water from this pond to the headgate of the San Juan Acequia. (108)

After the Supreme Court of Texas ruled in favor of the irrigators in the November 1962 hearing, SARA explored alternatives on how to restore gravity flow water from the relocated river channel to the San Juan Acequia. SARA's first design to accomplish this objective was to double the height of the new dam by adding steel floodgate structures on top. The additional height, now at sixteen feet total, allowed the dam to divert water to the headgate of the acequia by means of gravity flow. In turn, the gates were designed to open in the event of flood waters in the San Antonio River. These design modifications were installed around 1968, and a few years later, the San Juan Ditch was reported to be in "vigorous use," and for a time the truck farming industry in the area was reactivated. (109)

A flood in 1977, however, destroyed the floodgates as well as a significant portion of the new dam. Pumps were installed in the bed of the channel once again, but by this time the ditch was overgrown with weeds and its banks had deteriorated severely, making water delivery through the length of the ditch nearly impossible. In particular, runoff from creeks in the area was causing bank erosion in critical locations, washing out sections of the acequia. (110) For more than twenty years following the collapse of the floodgate structures, the San

Juan Acequia would remain dry. A permanent solution would not come quickly nor inexpensively.

Meanwhile, the long period of inactivity, as well as the protracted court battles of the late 1950s and the 1960s, had weakened the solidarity of the irrigators. The acequia ceased to function as a legal entity in 1950, when its incorporation as the “San Juan Ditch Company” expired. The ditch company had been formed in 1900 for a period of fifty years. In structuring the organization, each irrigator had conveyed his/her water rights to the company; by this transaction, each irrigator was thenceforth entitled to use irrigation water from the ditch in proportion to his/her shares. But in 1950 the shareholders did not take the trouble to file a certificate of charter extension as required by state law in Texas. From 1950 and up until the time of the court trials, the irrigators simply continued the functions of a ditch company on an informal basis, retaining their rights as owners in undivided interest. Moreover, they continued to maintain and administer the acequia and to divide the water in much the same manner as before. (111)

After settling their lawsuits against the San Antonio River Authority in early 1967, the irrigators reorganized as a non-profit, water supply corporation rather than a business corporation or ditch company. According to advice from their attorney, this new status would enable them to avoid franchise taxes and other costs. The irrigators agreed, and they filed a certificate of incorporation with the Office of Secretary of State in March of 1967 under the charter name of “San Juan Ditch Water Supply Corporation.” (112) With guidance from their attorney, the irrigators adopted several by-laws that retained the past customs and practices of the former ditch company, and from earlier times. They also transferred their individual interests in the ditch to the new corporation in exchange for shares equal to their proportionate ownership in the former San Juan Ditch Company. Henceforth, the San Juan Ditch Water Supply Corporation would be responsible for administering the distribution of irrigation water to all shareholders. As before, and in accordance to custom and tradition, the irrigators holding the shares would elect a Ditch Commissioner and other officers; and they

would participate in the affairs of the ditch such as in the repair, cleaning and maintenance obligations to be paid for on a pro-rated basis. (113)

The shareholders of the water supply corporation continued to meet, elect officers and conduct other business into the late 1970s. By this time, however, their actions were perfunctory, mostly to maintain their legal standing and comply with their by-laws. Participation in the business of the ditch had been declining over the years due in part to the inconsistent supply of water to the San Juan Acequia. Attempts to continue pumping water were sporadic and often were not successful due to worsening deterioration of the ditch infrastructure. The old ditch could no longer convey water along its customary route to the parcels of land owned by the shareholders. Shade trees and shrubs alongside the acequia as well as old pecan tree varieties in the orchards had dried up. (114)

After the new dam and floodgates collapsed in 1977, the acequia was virtually abandoned. River water could not physically enter the headgate and move through the system successfully until a solution could be found to repair the blowouts and devise a more effective way of delivering water to the headgate. Meanwhile, some of the old time landowners stopped farming altogether, moved on, or in some cases passed away. Minutes of meetings from 1977 and 1978 indicate that the irrigators during this period did little more than elect officers and the board of directors. (115)

Waning participation and inability of the irrigators to farm on a profitable basis left the San Antonio River Authority virtually alone in developing a viable course of action. The landowners were told that studies and plans would be devised soon and that remedial work would begin later in 1978. Meanwhile, SARA's management made available diesel powered pumps to the irrigators should they desire to use them. (116) Years elapsed, however, before the semblance of a final solution would be implemented. When the studies were completed, SARA concluded that much more than repairs and short-term remediation would be required. On the technical front, designing another dam was an important but not the only task. There remained the intractable problem of moving water uphill to the old acequia headgate

approximately 200 feet east of the river channel in a manner satisfactory to the irrigators who continued to press for gravity flow delivery of water. Also apparent was the fact that the acequia watercourse itself was badly in need of extensive restoration, especially at the site of major blowouts caused by runoff from two creeks that crossed the acequia, Asylum Creek and *Sin Nombre* (No Name) Creek. (117)

Finally, in 1990 the Bexar County Commissioners' Court contracted with SARA to utilize flood control revenues to repair the two creeks that had been the source of the major washouts on the ditch and to restore the flow of San Antonio River water to the San Juan Acequia. Both projects would take several years to complete. SARA proceeded to investigate alternatives that somehow would deliver river water to the San Juan Acequia headgate efficiently while retaining the integrity of flood control measures of the relocated channel.

In the end, a unique design emerged that all parties could accept. A smaller dam would be constructed upstream of the one that had collapsed in 1977. This time, the dam would include a pumping station of sufficient capacity to siphon water from the bed of the river channel, at an elevation of 540 feet, to underneath the eastern bank of the San Antonio River where giant screw pumps would then "lift" the water to 560 feet inside a pumphouse. From there, a thirty inch pipe would deliver "gravity flow" water to the old river channel near the site of the former historic San Juan Dam, allowing river water to "flow naturally" to the headgate of the San Juan Acequia. At the same time, a second distribution pipe would cross to the western bank of the river to restore water to another bend in the old channel known as Symphony Lane Loop, where property owners with homes in the area also had riparian water rights from the San Antonio River. (118)

This second SARA dam was completed in 1993 along with the pumphouse facilities. The structure itself was an "Ogee Weir Dam" that required only a five foot height to impound enough water to be siphoned into the pumphouse constructed on the eastern bank of the



river. (119) Inside the pumphouse were three Archimedes screwpumps similar in function to the wooden, helicoidal cylinders used in Egypt to lift water for use in irrigation during ancient times. SARA purchased these modern day screwpumps from a private company that in turn had borrowed the 2,000 year old technique from Greek mathematician Archimedes who had observed and adapted the technology, c. 250 B.C. Instead of being turned or cranked by hand as in olden times, these modified Archimedean screws at SARA's facility were designed to pump seventeen million gallons of water per day utilizing computerized systems to regulate the direction and quantity of water. (120) Not all of the water would be directed to the San Juan Acequia gate. Some of it would be distributed from the pumphouse to Symphony Lane Loop on the other side of the new flood control channel. With the dam, pumphouse, and the Archimedes screwpumps in place, SARA then concentrated on repairing the San Juan Acequia at the location of the creek crossings further downstream.

### **Spanish Colonial Demonstration Farm**

The San Antonio River Authority was not alone during the 1990s in its efforts to restore water to the historic San Juan Acequia. Years earlier, the National Park Service (NPS) of the United States Department of Interior had become an active and enthusiastic partner. In 1975, the Southwest Regional Office of NPS in Santa Fe, New Mexico, had conducted a feasibility study of all the remaining Texas missions south of downtown San Antonio for purposes of incorporating them into the system of national parks under a proposed "San Antonio Missions National Historical Park." (121) The scope of this first study included an examination of the irrigation systems that had been an essential part of mission survival during the Spanish colonial period of south Texas. Importantly, the study noted that only the acequias formerly associated with the Espada and San Juan missions were still present in much of their original form. In the words of the NPS report, "Most of the [other] acequias and dams have been buried by modern development." (122)

A few years later, 1978, President Jimmy Carter signed into law a bill enacted by the Congress that included the establishment of the San Antonio Missions National Historical

Park. Henceforth, four of the missions, including San Juan Capistrano, would be administered, interpreted, and operated as significant historical sites by the National Park Service. (123) The other three were Missions Concepción, San José and Espada. The former San Antonio de Valero Mission had already been converted to “The Alamo” after its secularization in 1794, and later in its history became administered by the Daughters of the Republic of Texas and continues to be operated by them at no cost to the State of Texas.

With support from the Congress, the National Park Service then conducted an environmental assessment of the four mission properties in 1981. Two years later, all four sites were placed on the National Register of Historic Places. In addition, a five-mile stretch of the Espada acequia system, its historic dam and aqueduct from the Spanish colonial period, were designated as national historic landmarks. As to the condition of the San Juan Acequia, the NPS environmental assessment of 1981 reported that this particular ditch was in “a state of disrepair, littered with vegetation, garbage, and earth fill from nearby construction activity.” (124)

When the NPS environmental assessment report was released in 1981, only the Espada *labores* on the southernmost fringe of the Missions Historical Park were being irrigated by water from the San Antonio River. The San Juan Acequia had remained dry since 1977 after SARA’s first dam had collapsed. In the interim, some San Juan property owners had drilled wells to compensate for the lack of irrigation water in their ditch. The NPS report noted that traditional farming practices at both San Juan and the Espada *labores* continued but only on a limited basis. Small cash crops still cultivated in the late 1970s and early 1980s included: garden vegetables, corn, sorghum, hay and some pecan orchard trees. Some sections of the *labores* of Espada had been divided into long and narrow fields, making it difficult to farm them economically. The larger parcels were more productive, but even here farming had been reduced to a part-time, secondary occupation. According to the NPS assessment, the agricultural land uses were fading in the vicinity of both missions, resulting in an increased number of abandoned and uncultivated fields. (125)

Eager to help with the restoration of the mission *labores* and aiming to revive the traditional land uses, the National Park Service office in San Antonio launched a campaign to assist the San Juan Acequia landowners and the San Antonio River Authority reopen the acequia. To this end, José A. Cisneros, Superintendent of the Missions National Historical Park in San Antonio, entered into an agreement in June of 1982 with the San Juan Ditch Water Supply Corporation that granted NPS easement access to the full length of the acequia in order to develop interpretative programs for the public. In addition, NPS agreed to be responsible for cleanup and continued maintenance to ensure the acequia's capacity to carry water. On their side of the obligations, the shareholders of the water supply corporation covenanted that they would continue to preserve the integrity of the ditch and refrain from construction of new structures or other development that would "alter or destroy the quality of the historic and natural environment of the Acequia, or which detract from its primitive and pastoral setting." (126)

With the easement agreement in hand, various NPS personnel in the San Antonio office began to gather information for the development of more concrete plans on how best to interpret the San Juan Mission, the *labores* and the acequia irrigation system. The vision from the outset was that each of the four mission sites would contribute an interpretive theme stemming from its own unique place in the history of the missions. A master plan was prepared in July of 1982 and submitted to the Congress entitled: General Management Plan and Development Concept Plan. This document established the interpretive experiences to be pursued by NPS at each of the four missions. The theme selected for San Juan Capistrano Mission was that of the Spanish mission institution as "an Economic Center." (127)

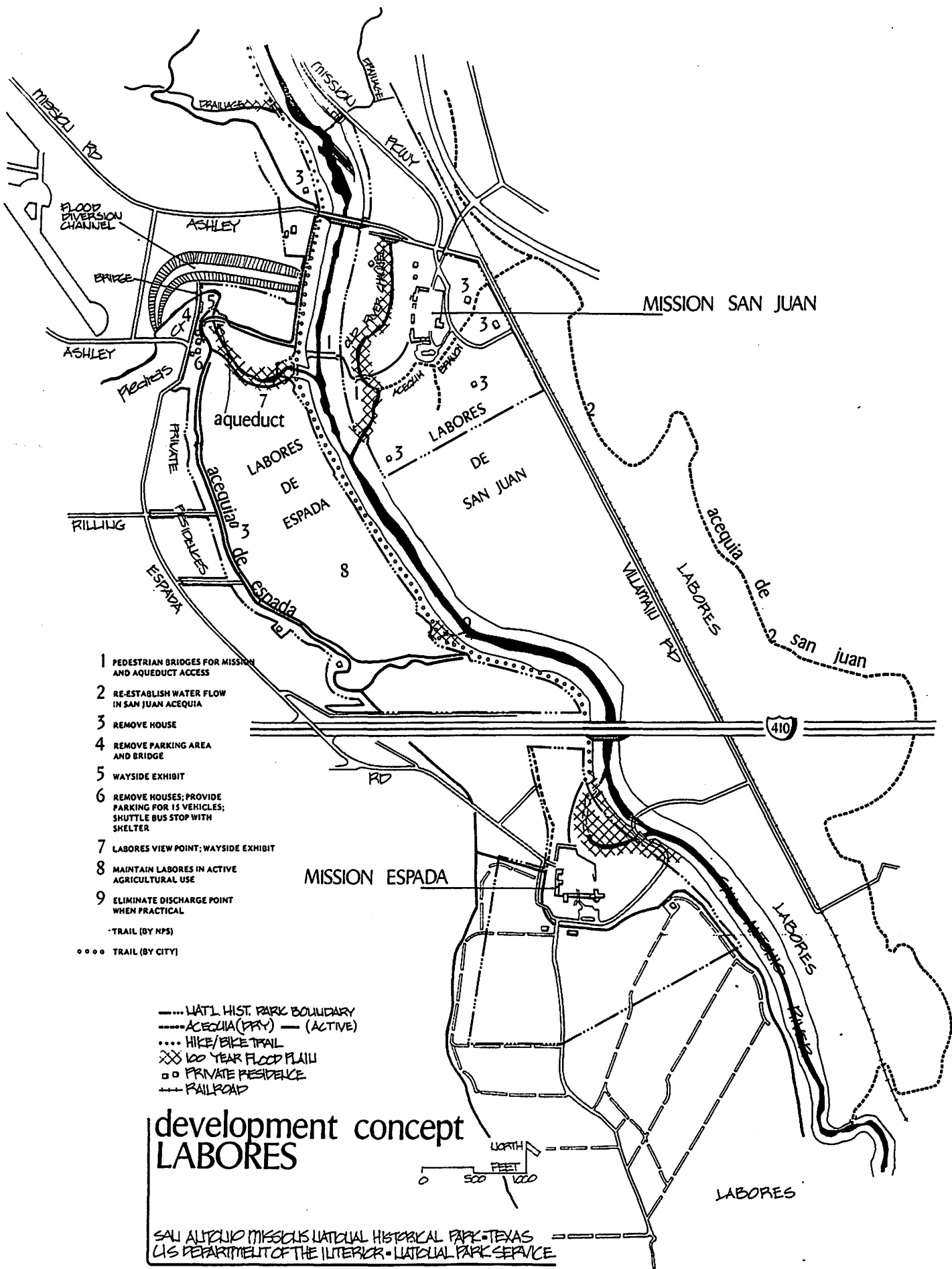
The National Park Service General Management Plan noted that agricultural and ranching activities at the missions had provided not only a subsistence economy, but enough was produced for exporting surplus goods to East Texas and Louisiana. To survive in the frontier environment of Texas, the missions had to sustain themselves months and years at a time without much assistance from the commercial centers at great distances such as Saltillo

and other parts of *Nueva España* to the south. From among the missions, San Juan would be interpreted to depict the importance of irrigated agriculture:

The mission croplands or *labores*, their accompanying acequia systems, and other water control features will be generally interpreted at San Juan, and visitors will learn that the teaching of agricultural methods was one of the ways in which the [Indian] neophytes were trained to survive the context of the Spanish colonial economy. (128)

In addition to interpretive displays, the NPS General Management Plan also projected that a section of the old San Juan *labores* would be replicated as a mission farm illustrative of the Spanish colonial period in south Texas. (See development concept map, following page.) Planning for this project continued into and through the 1990s. In 1993 Park Historian, Rosalind Z. Rock, completed a preliminary study elaborating on the themes suitable for the demonstration farm proposed for San Juan Mission. In the historical section, this study emphasized the community aspects of mission life where Coahuiltecan neophytes cleared land for cultivation, constructed and maintained irrigation systems, tilled the soil, tended the orchards and fields, mended fences, and harvested the crops. To convey the significance of this experience, Rock indicated that the “Spanish Colonial Demonstration Farm” at San Juan Mission, once established, will illustrate, on a small scale, the communal agricultural activities of the neophytes that took place on the *labores* under the guidance of the Franciscan friars. (129)

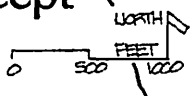
A major objective of the Spanish Colonial Demonstration Farm involves the restoration of water to the San Juan Acequia in order to irrigate colonial period crops that will be planted in portions of the demonstration farm. After water from the San Antonio River is directed toward the mouth of the acequia, these *labores* will exhibit how the Franciscan Friars and the community of Indian neophytes planted, cultivated and harvested crops essential to survival during the heyday of the colonial era. NPS intends to follow the annual farm calendar to allow for seasonal plantings of native crop varieties of potatoes, corn, cotton, beans, squash, melons, chili, sugar cane, wheat, grain and some fruit trees. (130) In addition to the planting of crops representative of mission agriculture, other interpretive



- 1 PEDESTRIAN BRIDGES FOR MISSION AND AQUEDUCT ACCESS
  - 2 RE-ESTABLISH WATER FLOW IN SAN JUAN ACEQUIA
  - 3 REMOVE HOUSE
  - 4 REMOVE PARKING AREA AND BRIDGE
  - 5 WAYSIDE EXHIBIT
  - 6 REMOVE HOUSES; PROVIDE PARKING FOR 15 VEHICLES; SHUTTLE BUS STOP WITH SHELTER
  - 7 LABORES VIEW POINT; WAYSIDE EXHIBIT
  - 8 MAINTAIN LABORES IN ACTIVE AGRICULTURAL USE
  - 9 ELIMINATE DISCHARGE POINT WHEN PRACTICAL
- TRAIL (BY NPS)  
 ○ ○ ○ ○ TRAIL (BY CITY)

- - - - - NAT'L HIST. PARK BOUNDARY  
 - - - - - ACEQUIA (PRY) — (ACTIVE)  
 . . . . . HIKE/BIKE TRAIL  
 X X X X 100 YEAR FLOOD PLAIN  
 □ PRIVATE RESIDENCE  
 + + + RAILROAD

## development concept LABORES



SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK - TEXAS  
 U.S. DEPARTMENT OF THE INTERIOR - NATIONAL PARK SERVICE

472/Ba055  
 PAR. 82/5012

Source: National Park Service (Santa Fe: Southwest Regional Office), General Management Plan and Development Concept Plan, San Antonio Missions National Historical Park, July 1982.

activities will possibly include the use of old farm implements, oxen for plowing, and farmers in period costumes, although final interpretative plans have yet to be developed. (131)

On Columbus Day 1992, the National Park Service sponsored a widely publicized event to call attention to the emerging project at Mission San Juan Capistrano and especially the planned restoration of the colonial-era irrigation system. October 12, 1992, coincided with the quincentenary of Columbus' arrival in the New World. As a tribute to Hispanic Heritage activities, NPS temporarily "revived" the San Juan Acequia by having then-Secretary of Interior, Manuel Luján, open one of the headgates near the mission compound and its adjacent *labores*. At the time, further upstream, construction activities were still underway at the new dam, pump station and the ditch itself. Thus, the event on this particular day was mostly symbolic. When Interior Secretary Lujan opened the headgate, the acequia section at the location of the ceremony had some water flow, but this had been made possible by the use of a fire hydrant in the vicinity and not the San Antonio River. Yet, even this artificial and brief arrangement was enough to proclaim, in local news stories, that the San Juan Acequia had been "filled with water to celebrate the quincentenary.... Mission San Juan canal is revived." (132)

### **The Future**

By the time of the Columbus Day ceremony, support for the restoration of the old San Juan Acequia system was evident from a cross-section of organizations in Bexar County and the City of San Antonio. The divisions, lawsuits and conflicts of the past were largely forgotten. Throughout the decade of the 1990s, the prime movers in the project were the San Antonio River Authority and the National Park Service. Additional endorsements came from virtually all the other interest groups that had been tracking the fate of the San Juan Acequia, such as the San Antonio Conservation Society, the Bexar County Commissioners' Court, *Los Compadres de San Antonio Missions*, Mission San José Neighborhood Association, Bexar County Historical Commission, among others. (133)

The Bexar County Commissioners' Court, through its contract with SARA to repair the acequia crossings and install the weir dam and pumphouse facilities, expended approximately \$2.5 million of taxpayer funds for the purpose of restoring water to the San Juan Acequia. Costs were also incurred by the National Park Service to clean out the ditch and perform other repairs along the 6.78 miles of its route. NPS expenditures included the acquisition of tracts of irrigable land adjacent to the San Juan Mission compound. Near the end of 1999, NPS had already acquired eighteen acres of old *labores* with options to purchase other properties for use in the Spanish Colonial Demonstration Farm. (134)

The National Park Service was also in process of identifying the shareholders in the San Juan Ditch Water Supply Corporation. The irrigators' organization had been dormant for many years; meanwhile, ownership of the irrigable tracts on the ditch had changed hands in some cases, making it difficult to locate all of the current shareholders. NPS staff hoped to assemble the remaining set of irrigators and to work out the operations and maintenance activities on an equitable basis. Although NPS would maintain the *Acequia Madre* up to the point of the planned demonstration farm, property owners on the San Juan Acequia would have to maintain the rest of the system plus their own laterals. There was some hope that once water was flowing in the main ditch, these shareholders would have sufficient motivation to cultivate their fields, replant their orchards of pecan and other trees, and once again function as a community of irrigators. (135)

At the start of the year 2000, efforts to restore San Antonio River water to the San Juan Acequia and to implement the demonstration farm on the Old San Juan Mission *labores* continued at a slow but steady pace. Numerous delays occurred when attempts to fill and run water through the ditch failed due to continued blow-outs at weak sections of the system. By late spring, the National Park Service had expended about \$300,000 of federal funds on land acquisition costs, acequia cleaning, repairs on the acequia and the creek crossings, and other improvements needed prior to re-opening of the system. The National Park Service plans to request additional funds from the United States Congress to build interpretive facilities at San Juan Mission, undertake a variety of on-site projects, and operate the Spanish Colonial

Demonstration Farm annually. Restoration of the San Juan Acequia and a portion of the old mission *labores* will probably wind up costing approximately \$5 million in total funds expended by the San Antonio River Authority and the National Park Service.

By all accounts, restoring the oldest water right in Texas will be worth the price. Without the litigation strategy employed by the irrigators, the San Antonio Conservation Society and the Archdiocese of San Antonio, the *labores* at Mission San Juan Capistrano likely would have remained dry indefinitely. Now the National Park Service of the federal government serves as a major shareholder in the San Juan Ditch Water Supply Corporation, and has already taken major steps to restore the flow of acequia water to the old San Juan *labores* and to operate the Spanish Colonial Demonstration Farm as part of the many attractions associated with the San Antonio Missions National Historical Park.

More than 260 years ago, the presence of the Río de San Antonio made possible the establishment of San Juan Capistrano and other mission communities and later the City of San Antonio. Although San Antonio outgrew the old acequias since at least a century ago, restoring river water to the San Juan Acequia will again forge a new relationship between the old mission *labores* and the local economy. The fate of the river and the economic security of San Antonio, it appears, will remain intertwined for some time to come.



## NOTES

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3. Ibid, pp. 102-103
4. Arthur R. Gómez, Espada Dam: A Preliminary Historical Report (National Park Service: San Antonio Missions National Historical Park, March 6, 1990), pp. 17-19. Also see Thomas F. Glick, Regadío y Sociedad en la Valencia Medieval (Valencia: Artes Gráficas Soler, 1988), p. 254.
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8. Rosalind Z. Rock, "Mission San Juan Capistrano, San Antonio Missions National Historical Park, A Case Study," presentation at The Culture of Water: History and Historic Preservation, seminar at Boston University, Institute for Medieval History, April 8-9, 2000.
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10. National Park Service, "San Antonio Missions: Rancho de las Cabras," National Historical Park pamphlet, U.S. Department of Interior, n.d., citing 1762 report of Fr. Mariano Francisco de los Dolores y Viana. Also see Marion A. Habig, O.F.M., The Alamo Chain of Missions (Chicago: Franciscan Herald Press, 1968, Reprinted by Pioneer Enterprises, 1997), pp. 212-215.
11. Fr. Ortiz Report cited in Del Weniger, "Wilderness, Farm, and Ranch," in San Antonio in the 18<sup>th</sup> Century (San Antonio Bicentennial Heritage Committee: Clarke Printing, 1976),

- p. 111. Also see Habig, 1968/1997, pp. 166-168. For location map of all the mission *ranchos* and their names, see Félix D. Almaráz, Jr., The San Antonio Missions and Their System of Land Tenure (Austin: University of Texas, 1989), p. 33.
12. National Park Service, "San Antonio Missions: Rancho de las Cabras," pamphlet, n.d.; also see Rosalind Z. Rock, "Rancho de las Cabras: A Spanish Colonial Mission Ranch Offers Partnership Opportunities," in Cultural Resource Management, National Park Service, Vol. 20, No. 11, 1997, pp. 32-34.
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  18. "Testimony of A Representative Group of Soldiers and Settlers, 1745, Concerning Missions San Antonio, Concepción, Capistrano, Espada," in Habig, 1969, pp. 22-29, citing files in the archives at the University of Texas Library, with translations by Carlos E. Castañeda.
  19. Notes from secularization document as cited in exhibit at Mission San Juan Capistrano, San Antonio Missions National Historical Park. Also see "Report to Comandante don Manuel Galindo-Navarro, 4 July 1794," *Archivo Franciscano*, Our Lady of the Lake University, Roll 14, frames 3274-3275.
  20. Almaráz, pp. 2 and 56.
  21. *Ibid.*, p. 56.
  22. *Ibid.*, p. 44-46.
  23. Rosalind Z. Rock, personal communication, e-mail, March 29, 2000.
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  25. Jesús de la Teja, San Antonio de Bexár: A Community on New Spain's Northern Frontier (Albuquerque: University of New Mexico, 1995), pp. 75-76, 81.
  26. *Ibid.*, pp. 87, 96.
  27. Instructions from the King to the Texas Governor, cited and translated in Mattie Alice Austin, "The Municipal Government of San Fernando de Bexar, 1730-1800," The Quarterly of the Texas State Historical Association, Vol. 8, No. 4 (April 1905), pp. 338-43. For details about the role of the Canary Islanders in the formation of San Antonio, see also, Thomas F. Glick, The Old World Background of the Irrigation System of San Antonio, Texas (El Paso: Texas Western Press, 1972); and Jesús de la Teja.
  28. "Memorandum on the Spanish and Mexican Irrigation System of San Antonio," Prepared by The Water Division of the Office of the Attorney General of Texas, Houghton Brownlee Jr., et al., March 1959, pp. 6-7. (Hereafter Attorney General Memorandum.) Unpublished paper on file at Law School Library, St. Mary's University.
  29. William Corner, San Antonio de Bexar: A Guide and History (San Antonio: Bainbridge & Corner, 1890; Facilmile Reproduction Graphic Arts, 1977), pp. 46-48. Also, see

- Dobkins, pp. 117-118; de la Teja, pp. 81-83; and Attorney General Memorandum, pp. 5-9.
30. Ibid. For brief histories of the San Antonio Acequias and how they were constructed see Edwin P. Arneson, "Early Irrigation in Texas." Southwestern Historical Quarterly, Vol. 25 (October 1921), pp. 121-30. For more detailed treatment of acequia irrigation in the Southwest, see Wells A. Hutchins, "The Community Acequia: Its Origin and Development." Southwestern Historical Quarterly, Vol. 31 (January 1928), pp. 261-84; and José A. Rivera, Acequia Culture: Water, Land, and Community in the Southwest (Albuquerque: University of New Mexico, 1998).
  31. Glick, 1972, pp. 44-45.
  32. Glick, 1972, p. 45; de la Teja, pp. 87-89.
  33. Charter and Digest of Ordinances of the City of San Antonio, Approved July 18, 1857. City Charter Article XXVIII, Section 1. On file at Texana Department, San Antonio Central Library.
  34. Ibid.
  35. Ibid., Ordinances 75, 91-92, 96-98, 102-104, 106-108, 113.
  36. Fisher, pp. 3-4.
  37. Cox, p. 79-81; also, see Fisher, p. 4.
  38. Fisher, p. 7.
  39. Augustine J. Frkuska, Jr., "Archaeological Investigations of the San Pedro Acequia, San Antonio, Texas" (San Antonio: Center for Archaeological Research, University of Texas at San Antonio, Survey Report No. 103, 1981), pp. 5-7.
  40. Ibid.; also, see William Henry Holmes, The Acequias of San Antonio (Masters' Thesis, St. Mary's University, May 1962), pp. 112-117.
  41. "The Ditches As An Investment," article in Surprise, Vol. 2, No. 21, July 28, 1880. On file at the Texana Department, San Antonio Central Library, San Antonio Acequias Folder.
  42. Charles M. Barnes, "Old Irrigation Ditches of San Antonio," San Antonio Express, July 6, 1902. On file at the Texana Department, San Antonio Central Library, San Antonio Acequias folder.
  43. Holmes, pp. 104-105. For the actual case, see Rhodes v. Whitehead, 27 Texas 304 (1863), or Reports of Cases Argued and Decided in the Supreme Court of the State of Texas, Vol. XXVII (Austin: Joseph Walker, 1867). The petitioner in this case claimed that overflow water from the San Antonio River, after defendants rebuilt and erected a dam for the Concepción Acequia, had not only destroyed his trees and garden vegetable crops but had also caused stagnant pools of water on his property such that members of his family had become sick; for this, and for the flooding of streets and alleys used in common by all city inhabitants, the petitioner alleged to the court that the dam was a public and private nuisance, justifying its removal.
  44. Almaráz, p. 58.
  45. David B. Hafernik, I. Wayne Cox, and Anne A. Fox, Archeological Investigation of the San Juan Dam, 41 BX 266, Bexar County, Texas, Center for Archeological Research, University of Texas at San Antonio, Survey Report No. 179, 1989, pp. 2-3. Also, Rosalind Z. Rock, "Mission San Juan Capistrano, San Antonio Missions National Historical Park: A Case Study," presented at The Culture of Water: History and Historic

- Preservation, seminar at Boston University, Institute for Medieval History, April 8-9, 2000. Rock also notes that for a period of time, starting in the 1880s, Celestine Villemain, landowner of the *labores* at Mission San Juan, managed the acequia until the founding of the San Juan Ditch Company.
46. See various newspaper articles on file at San Antonio libraries and archives, for example, the San Antonio Express of July 6, 1902, June 21, 1927, January 6, 1935, and October 20, 1935; also see the San Antonio Light of February 21, 1937.
  47. "San Antonio's Development Is Based on Its Water Supply," San Antonio Express, October 20, 1935. On file, Daughters of the Republic of Texas Library, Ditches File, E. Schuchard Collection, No. 926.
  48. "Old Irrigation Ditches Still Used Here," San Antonio Light, April 3, 1940; "Las Acequias de Bexar," San Antonio Express Magazine, December 28, 1947.
  49. "Ancient Acequia Within Fair Site," San Antonio Express, February 6, 1966; "UTSA Finds the Acequia," The River City Press, June 29, 1979; "Acequia Madre Wall Found," San Antonio Light, January 5, 1989; "18<sup>th</sup> Century Water System Damaged by Construction," Express-News, March 27, 1990; "City Work Destroys Section of Acequia," San Antonio Light, March 27, 1990; "Ancient Acequia Found Downtown," Express-News, April 5, 1990.
  50. Cox, p. 88.
  51. Text of historic marker plaque in front of the Bexar County Justice Center where an exposed fragment of the San Pedro Acequia remains for passersby to observe and contemplate. Across the street from this site is the San Fernando Cathedral, and on the side corner is the old Bexar County Courthouse.
  52. "Acequias of S. A. Designated 'Landmark,'" San Antonio Light, June 23, 1968.
  53. "Historic Landmark Named," San Antonio Light, July 23, 1978; "Acequias Provided City's Water Supply," Paseo del Rio Showboat, October 1978.
  54. James B. Oliver, San Juan Acequia Study, draft report on file at the San Antonio Missions National Historical Park, January-September 1992, p. 2.
  55. Hafernik, et al, p. 2.
  56. Ibid., p. 3.
  57. "Flood Control vs. Irrigation. Old Dam Lacks Water," San Antonio Light, February 15, 1959. This story was written almost a year later recapping the effects of the relocation and the controversy that ensued. A photo of the remains of the old dam is included with the caption: "Flood Control Program Left This Old Spanish Dam High and Dry."
  58. Pat H. Gardner, letter to Mr. and Mrs. G. Garrett Lewis, et. al., March 8, 1967. On file at San Antonio Conservation Society library and archives, San Juan Acequia Folder.
  59. W. Grant Bechtel, President of the San Antonio Conservation Society, letter to R. B. Crockett, Army Corps Resident Engineer, July 15, 1958. On file at the San Antonio Conservation Society library and archives, San Juan Acequia Folder.
  60. J. H. Hottenroth, Army Corps Acting District Engineer, letter to W. Grant Bechtel, President of the San Antonio Conservation Authority, August 8, 1958. On file at the San Antonio Conservation Society library and archives, San Juan Acequia Folder.
  61. Frank T. Drought, Chairman, Board of Directors, San Antonio River Authority, letter to W. Grant Bechtel, President of the San Antonio Conservation Society, July 28, 1958. On

- file at the San Antonio Conservation Society library and archives, San Juan Acequia Folder.
62. San Antonio River Authority v. Emma Dillon, et. al, In the District Court 131<sup>st</sup> Judicial District, Bexar County, Texas, No. F-115, 976.
  63. Compromise Settlement Agreement, November 4, 1958, San Antonio River Authority and Irrigators, unsigned document, on file at the San Antonio Conservation Society library and archives, San Juan Acequia Folder.
  64. Deposition of J. L. Dickson, Manager, San Antonio River Authority, Exhibit Two, in Motion to Strike Certain Documents Attached to Motion of Plaintiff for Summary Judgment, March 17, 1959, SARA v. Dillon, et al, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, Texas, No. F-115, 976.
  65. Plaintiff's Trial Brief Summary, SARA v. Dillon, et al, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, Texas, No. F-115, 976.
  66. Ibid.
  67. Grant to Francisco Maynes by Mexican government in 1824 cited in Memorandum of Authorities in Support or Reply of Defendants to Motion of Plaintiff for Summary Judgment, SARA v. Dillon et al, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, Texas, No. F-115,976.
  68. Memorandum of Authorities in Support of Reply of Defendants to Motion of Plaintiff for Summary Judgment, SARA v. Dillon, et al, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, No. F-115, 976.
  69. Affidavit of G. Garrett Lewis, Exhibit A To Reply of Defendants, G. Garrett Lewis, et al., To Motion of Plaintiff for Summary Judgment, SARA v. Dillon, et. al, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, No. F-115,976.
  70. Ibid.
  71. Summary Declaratory Judgment, John F. Onion Jr., Presiding Judge, SARA v. Dillon, September 25<sup>th</sup>, 1959, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, No. F-115,976.
  72. Ibid.
  73. G. Garrett Lewis, et al., Appellants, v. San Antonio River Authority, Appellee. In the Fourth Supreme Judicial District, Court of Civil Appeals of Texas, San Antonio, No. 13589, November 23, 1960. See 343 South Western Reporter, 2d Series, pp. 475-485, West Publishing Company, St. Paul, Minn.
  74. Ibid, Opinion of Associate Justice H. D. Barrow.
  75. Ibid.
  76. Ibid.
  77. Ibid.
  78. Ibid.
  79. Ibid., Opinion of Associate Justice H. D. Barrow, On Motion for Rehearing.
  80. Opinion of Chief Justice Robert W. Calvert, San Antonio River Authority, Petitioner, v. G. Garrett Lewis, et. al, Respondents, In the Supreme Court of Texas, No. A-8304, February 14, 1962.
  81. Opinion of Chief Justice Robert W. Calvert, SARA v. Lewis et. al, In the Supreme Court of Texas, No. A-8304, November 28, 1962. See 363 South Western Reporter, 2d Series, pp. 444-457, West Publishing Company, St. Paul, Minn.

82. Ibid.
83. Ibid. Although Justice Calvert recounted the many laws of Spain and Mexico applicable to this case, he also referred the Supreme Court to the more “scholarly and comprehensive analysis” of these sources written in an opinion by Associate Justice Pope of the Fourth Court of Civil Appeals of San Antonio determining a March 29, 1961 case: The State of Texas v. Valmont Plantations et. al., 346 South Western Reporter, 2d Series, pp. 853-886.
84. Ibid., Opinion of Chief Justice Robert W. Calvert, citing the *Siete Partidas*.
85. Ibid.
86. Ibid.
87. Ibid.
88. Ibid.
89. Curtis R. Hunt v. San Antonio River Authority, No. F-115, 976A, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, Texas; and G. Garrett Lewis v. San Antonio River Authority, No. F-115-976B, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, Texas. Also, see letter from attorney for irrigators, Ralph G. Langley, “To All Plaintiffs with Lawsuits Pending Against SARA Involving San Juan Ditch,” November 4, 1965, on file at the San Antonio Conservation Society library and archives, San Juan Acequia Folder.
90. Plaintiff’s Original Petition, Hunt v. SARA, No. F-115, 976A, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, Texas, February 25, 1964.
91. Ibid.
92. Defendant’s Original Answer, Hunt v. SARA, 1964.
93. Ibid.
94. Plaintiffs’ First Amended Original Petition After Severance, Lewis v. SARA, No. F-115,976B, In the District Court, 131<sup>st</sup> Judicial District, Bexar County, Texas, December 29, 1964.
95. Ibid.
96. Defendant’s First Amended Original Answer, Lewis v. SARA, No. F-115,976B, 1965.
97. Ibid.
98. Letter from Ralph G. Langley to “All Plaintiffs with Lawsuits Pending Against SARA Involving San Juan Ditch,” November 4, 1965, on file at the San Antonio Conservation Society, San Juan Acequia Folder.
99. “Land Grant is Upheld,” San Antonio Express, September 19, 1964, on file at San Antonio Conservation Society library and archive, San Juan Acequia Folder.
100. Ibid. Also, Letter from Ralph G. Langley to “All Plaintiffs,” November 4, 1965, on file at the San Antonio Conservation Society library and archive, San Juan Acequia Folder.
101. See Opinion, San Antonio River Authority, Appellant, v. Curtis R. Hunt, Appellee, No. 167, In the Court of Civil Appeals for the 13<sup>th</sup> Supreme Judicial District of Texas, Corpus Christi, Texas. Also, Letter from Ralph G. Langley to “All Plaintiffs,” November 4, 1965, and letter from Ralph G. Langley to “Shareholders of San Juan Ditch Company,” July 27, 1966, on file at the San Antonio Conservation Society library and archive, San Juan Acequia Folder. According to this latter source, the Thirteenth Court

- of Civil Appeals in Corpus Christi took an “inordinately long time” to decide the case (about one year) due in part to the illness of one of the judges.
102. Letter from Ralph G. Langley “To Shareholders of the San Juan Ditch Company,” July 27, 1966 and Ralph G. Langley letter “To Shareholders of San Juan Ditch Company,” September 9, 1966, on file at San Antonio Conservation Society library and archives, San Juan Acequia Folder
  103. “Landowner Wins Appeal in SARA Case,” San Antonio Light, November 3, 1966, on file at San Antonio Conservation Society library and archives, San Juan Acequia Folder.
  104. Ibid.
  105. Memorandum of Agreement, San Antonio River Authority and Irrigators, February 14, 1967, on file at San Antonio River Authority and the San Antonio Missions National Historical Park, National Park Service, San Antonio, Texas.
  106. Ibid.
  107. Defendant’s Original Answer, Hunt v. SARA, 1964
  108. “Position Paper: San Juan Dam Project,” Mission San Jose Neighborhood Association, Letter from Roberto Anguiano and Mike Lance to Jane Foster, San Antonio Conservation Society, May 7, 1990, on file at San Antonio Conservation Society library and archives, San Juan Acequia Folder.
  109. T. Lindsay Baker, et al, “The Acequias of San Antonio: A Historical and Technical Survey.” (Texas Tech University: Water Resources Center, Department of Civil Engineering and Department of History, January 1974), n.p., on file at Daughters of the Republic of Texas Library. Also, see Joseph E. Minor and Malcolm L. Steinberg, “A Brief on the Acequias of San Antonio,” unpublished paper presented to the Committee on History and Heritage of American Civil Engineering, American Society of Civil Engineers, May 1968, p. 25, on file at Daughters of the Republic of Texas Library. Also see Jack Beretta, “The Acequias,” unpublished address to the Society of Colonial Wars, La Mansion Hotel, San Antonio, Texas, December 6, 1975, p. 13, on file at the Institute for Texas Cultures library and archives, San Antonio.
  110. Oliver, p. 7. Also, see J. Fred Buenz, “Facts Concerning a Seventy-Acre Tract of Land Located Between South Presa Street and the Villemain Road,” January 21, 1981, pp. 3-4. Paper on file at San Antonio Conservation Society library and archives.
  111. Letter from attorney Pat H. Gardner to Mr. and Mrs. G. Garrett Lewis, et al., March 8, 1967. Also, Plaintiff’s First Amended Original Petition After Severance, Lewis v. SARA, December 29, 1964.
  112. Letter from attorney Pat H. Gardner to Mr. and Mrs. G. Garrett Lewis, et al., March 8, 1967.
  113. Ibid. Also, for Articles of Incorporation and By-Laws, see Certificate of Incorporation of San Juan Ditch Water Supply Corporation, Charter No. 232464, Office of the Secretary of State, State of Texas, March 24, 1967.
  114. Buenz, pp. 3-4.
  115. Minutes, Board of Directors Meeting of the San Juan Ditch Water Supply Corporation, December 10, 1977, and November 26, 1978. On file at San Antonio Conservation Society library and archives, San Juan Acequia Folder.
  116. Buenz, p. 4.

117. Interview, Dean Bayer, P.E., San Antonio River Authority, April 29, 1999.
118. Ibid.
119. Ibid.
120. Lakeside Equipment Corporation, "Ancient Technology Provides Solution to 250-year-old Problem," Lakeside Times, October 1996, pp. 1 & 8. Interview with Dean Bayer, San Antonio River Authority, April 29, 1999. Also, see Karl W. Butzer, et. al "Irrigation Agrosystems in Eastern Spain: Roman or Islamic Origins?" Annals of the Association of American Geographers, Vol. 75, No. 4 (December 1985), p. 481.
121. National Park Service (Santa Fe: Southwest Regional Office), Proposed San Antonio Missions National Historical Park: Alternatives for Implementation, 1975.
122. Ibid., pp. 11-12.
123. An Act to Amend the Pennsylvania Avenue Development Corporation Act of 1972; to Provide for the Establishment of the San Antonio Missions National Historical Park; and for Other Purposes (92 Stat. 3635) (P.L. 95-629), Approved November 10, 1978.
124. National Park Service (Santa Fe: Southwest Regional Office), Environmental Assessment: General Management Plan/Development Concept Plan, San Antonio Missions National Historical Park, October 1981, pp. 13 and 36.
125. Ibid, p. 41.
126. Easement From San Juan Ditch Water Supply Corporation To United States of America (National Park Service, San Antonio Missions National Historical Park), June 17, 1982. On file at NPS, San Antonio.
127. National Park Service (Santa Fe: Southwest Regional Office), General Management Plan and Development Concept Plan, San Antonio Missions National Historical Park, July 1982, p. 52.
128. Ibid., p. 52.
129. Rosalind Z. Rock, "*Tiempo de la Siembra... Tiempo de la Fruta: Planting and Harvest Time—A Preliminary Study in Preparation for the Proposed Spanish Colonial Demonstration Farm*," February 1, 1993. Paper on file at the San Antonio Missions National Historical Park, National Park Service, San Antonio, Texas.
130. Ibid.
131. James B. Oliver, Landscape Architect, National Park Service, quoted in the San Antonio Light, "Mission San Juan Canal is Revived," October 13, 1992.
132. See series of news articles leading up to and during the event: "1700s to Stream from San Juan Canal to Fields," San Antonio Light, February 13, 1992; "San Juan Acequia Restoration Planned," San Antonio Express-News, February 16, 1992; "Mission San Juan Canal is Revived," San Antonio Light, October 13, 1992; "San Juan Acequia Filled with Water to Celebrate the Quincentenary," El Compañero, October 1992, pp 3-4.
133. "San Antonio Acequia Filled with Water to Celebrate the Quincentenary," El Compañero, October 1992, pp. 3-4. Also, support letters on file at the San Antonio Conservation Society library and archives, San Juan Acequia Folder.
134. Interview, Steve Whitesell, James B. Oliver, Ross Hunt, National Park Service officials and staff, October 13, 1999.
135. Ibid.



## APPENDICES

### Appendix A: Grants of *Dulas* and Land at San Juan Mission, 1824 Abstracts

In an interesting case from 1911, San Juan Ditch Company v. Cassin, et al, a number of land and water grants at San Juan Mission were introduced as evidence in support of a claim made by the San Juan Ditch Company that it held superior rights to water from the San Antonio River over those by irrigators from the Mission Espada Acequia across the river. Irrigators from both acequias had shared, equally and proportionately, the flows of water from the San Antonio River since the times of the original grantees dating to 1824. Drought conditions in 1910 and 1911, however, had lessened the flow of the river sufficient to fill both ditches. With its diversion dam located further upstream, the San Juan Ditch Company purportedly had diverted “practically all of the waters” of the river at the expense of their fellow irrigators from the Espada Acequia, resulting in this 1911 case.

The Court of Civil Appeals confirmed that the majority of the grants of water *dulas* by the Mexican government at San Juan Mission in 1824 were senior by one day to those granted at the Espada Mission, February 5 and 6 respectively. Nonetheless, the court ruled that irrigators from the Espada Acequia were entitled to a share of the river’s water:

“It is sufficient only to say the [Mexican] grants appear to distribute to each one of the parties owning rights on the ditch in common, in the particular field, but not giving a superior right to water in the San Antonio river that would deprive other riparian owners of their proportionate share of the flow of the river, whether similarly situated on another ditch taking water from the river, or having other rights to the waters flowing in San Antonio [R]iver.”

With this reasoning, the Court of Civil Appeals affirmed a decision reached earlier by the District Court in this same cause awarding 40 per cent of the flow of the water from the San Antonio River to the Espada irrigators and 60 per cent to the San Juan Ditch Company. The difference of one day in the grants from the Mexican government, thus, established the San Juan Acequia as holding the oldest water right in the entire State of Texas. The abstracts of land and water grants below were among others submitted and translated by the San Juan Ditch Company as Exhibit Four in the Appeals Court proceedings.

The first grant, to José Antonio Montes, illustrates three of the basic steps involved in obtaining a valid grant: (1) petition to the provincial officer, the *Gefe Político*; (2) the grant of a specific number of water *dulas* with accompanying *suertes* of land; and (3) title of possession issued at the particular site. The grants also set the amount of municipal pension each grantee would have to pay for a period of four or five years. Though Mr. Montes petitioned for one *dula* and the quantity of land that could be irrigated in one day with the *dula*, the *Gefe Político* awarded him only half of the requested amount. Other petitioners received up to two *dulas* and accompanying land, as described in the abstracts below. [Source: San Juan Ditch Company v. Cassin, et al, Court of Civil Appeals of Texas, San

Antonio, November 15, 1911, on appeal from District Court, Bexar County. For the Appeals Court decision, see 141 Southwestern Reporter, pp. 815-817.]

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PETITION

José Antonio Montes

to

José Antonio Saucedo, *Gefe Político*

Asks that he [*Gefe Político*] grant him one day of water with its corresponding land at the Mission of San Juan. Petitioner does not know how to sign.

Dated About Dec. 27, 1823

Recorded in Spanish, Vol. 3, p. 261

In Office of County Clerk of Bexar County, Texas

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GRANT

Mexican Government

By José Antonio Saucedo

*Gefe Político*

to

José Antonio Montes

In the name of the Mexican Nation grants him one half day of water with its corresponding *labor* land at the Mission of San Juan Capistrano. He [is] to pay an annual pension of \$2.50 for the term of 4 years.

Witnesses:

Ylario de la Garza

Victoriano Zepeda

José Antonio Saucedo

[*Gefe Político*]

Dated Feb. 5, 1824

Recorded [in] Spanish Vol. 3, p. 262

In Office of County Clerk of Bexar County, Texas

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TITLE OF POSSESSION

Mexican Government

By José Antonio Saucedo

*Gefe Político*

to

José Antonio Montes

Having gone to the land which by the preceding I granted to José Antonio Montes, and in the presence of witnesses, I measured 50 *v[aras]* front at its head. Bounded East by the Madre Ditch; North by lands granted to Luisa Ximenes; West by the San Antonio River and South by vacant lands, and with its corresponding water. In the name of the Mexican Nation, I gave him possession of said land and water, he to pay the municipal pension.

Witnesses:

Ylario de la Garza  
Victoriano Zepeda

José Antonio Saucedo  
[*Gefe Político*]

Dated Feb. 7, 1824

Recorded in Spanish Vol. 3, pp. 262-263

In Office of County Clerk of Bexar County, Texas

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GRANT

Mexican Government

By José Antonio Saucedo

to

Remigio Pérez

In the name of the Mexican Nation grants him one day of water with its corresponding *labor* land at the San Juan Capistrano Mission, he to cultivate same within time specified by law, and to pay pension of \$5.00 annually for 4 years for said day of water.

Witnesses:

Ylario de la Garza  
Victoriano Zepeda

José Antonio Saucedo  
*Gefe Político*

Dated Feb. 5, 1824

Recorded in Vol. F-1, p. 127

In Office of County Clerk of Bexar County, Texas

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GRANT

Mexican Government

to

José María Díaz

In the name of the Mexican Nation grants him 2 days water with its corresponding *labor* land at the Mission San Juan. The two *suertes* have 100 *v[aras]* on each head front. Bounded East by the Madre Ditch; North by lands granted to Remigio Pérez; West by River of Bexar and South by vacant lands.

Assistants:

Victoriano Zepeda  
María de la Garza

José Antonio Saucedo  
[*Gefe Político*]

Dated Feb. 5, 1824  
Recorded in Book E-1, p. 192  
In Office of County Clerk of Bear County, Texas

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GRANT  
Mexican Government  
to  
José Ygnacio de León

In the name of the Mexican Nation grants him 1½ day of water with its corresponding land in the *labor* of the Mission San Juan. The above 1½ *Suertes* of land has 150 *v[aras]* at each head. Bounded East by the Madre Ditch; North by lands granted to Francisco Cadena; West by the River of Bexar and South by vacant lands.

Assistants:	José Antonio Saucedo
Ylario de la Garza	[ <i>Gefe Político</i> ]
Victoriano Zepeda	

Dated Feb. 5, 1824  
Recorded in Vol G-1, p. 472  
In Office of County Clerk of Bexar County, Texas

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**Appendix B: Grant of *Dulas* and Land to Francisco Maynes, February 5, 1824**

Padre Francisco Maynes, a former military chaplain at the presidio, was among the military officers who petitioned for *suertes* of land at San Juan Mission. In the grant document below, the *Gefe Político* awards him “two *dulas* of irrigation water with the accompanying land for cultivation” at a cost of 10 pesos annually for a period of four years. According to Felix D. Almaráz, Maynes later would augment his holdings to three and then four *suertes* (see Almaráz, pp. 44-46.) This 1824 grant, along with the title of possession ceremony which followed, was cited in a footnote in the opinion of Associate Justice Barrow for the Fourth Court of Civil Appeals of Texas, G. Garrett Lewis, et al., v. San Antonio River Authority, November 23, 1960. [See 343 South Western Reporter, 2d Series, pp. 475-485.]

“In the City of San Fernando de Bexar, February 5, 1824.

I, José Antonio Saucedo, first in authority in the Very Excellent Provincial Deputation of this Province, vested with the authority of *Gefe Político* of the said Province, by virtue of the command of Their Exalted Highnesses, the Supreme Executive Power, to the effect that the Missions of this Province be delivered to the Bishop and their lands be distributed among

residents in need of them, in view of the return submitted by the Illustrious *Ayuntamiento* [town government] in its preceding report; knowing of the merits of the petitioner, Bachelor Francisco Maynes, his good behavior and his devotion to agricultural toil, I have decided to grant him and I do hereby grant him in the name of the Mexican nation, two *dulas* of irrigation water with the accompanying land for cultivation; the water to be taken from the irrigation conduit of the Mission of San Juan Capistrano, so that as his own property he may cultivate and enjoy the land within the term prescribed by law; he may possess it for his own use or the use of his successors at the rental of 10 pesos annually which he must pay for the said *dulas* granted him for the period of four years, in accordance with the provisions of the Very Excellent Provincial Deputation. After the four years have elapsed he may enjoy the two *dulas* of irrigation water, clear of all encumbrance and as such he may sell or mortgage them at his pleasure.

To this end Francisco Maynes will be placed in formal possession of the two *dulas* of water, and will be provided with any certified copy or copies he may request in protection of his title.

Thus by this decree I commanded and signed my decree before witnesses to my proceedings for lack of any notary within the meaning of the law; to which I bear witness....

I, José Antonio Saucedo, ... went to the land which by the preceding decree I had granted to the petitioner, Bachelor Francisco Maynes, and there I measured two *suertes* of land with 200 *varas* [Spanish yards] on each frontage. The land is bounded on the East by the *Acequia Madre* [Mother Ditch]; on the North by lands granted to José Ygnacio de Leon; on the West by the San Antonio River and on the South by lands to be granted.

I placed the petitioner, Bachelor Francisco Maynes, in real and corporal possession of the land with its accompanying irrigation water, and shouted in loud and intelligible tones, ‘In the name of the Mexican Nation and by virtue of the authority vested in me by Their Exalted Highnesses, the Supreme Executive Power, for distribution of the lands of these Missions, I place you in possession of this *labor* for you, your successors and heirs.’”

### **Appendix C: Records of Sales of Lands, Waters and Construction Material of the Mission of San Juan, 1824**

By February 10, 1824, a total of twenty-one individuals had received grants to lands formerly associated with Mission San Juan Capistrano ranging from one half of a *suerte* to as many as three. The number of *suertes* and water *dulas* were identical, for a total of twenty-five *dulas*. The annual taxes on each *dula* amounted to five *pesos* per *dula* and two *pesos* and four *reales* for half of a *dula*. Under this arrangement of land distribution, the irrigation system at San Juan would then operate on a twenty-five day cycle corresponding to the number of *dulas*. A grantee with half of a *dula*, thus, would be entitled to a half day of water in the *acequia* every twenty-five days; those with one *dula* would be entitled to the full flow

of the acequia one day out of the same cycle. The list below represents the original grantees, each one with lands riparian to the San Antonio River and the San Juan Acequia.

The record of names, taken from the Bexar County archives, was translated and compiled in Appendix III, "Memorandum on The Spanish and Mexican Irrigation System of San Antonio," Prepared by The Water Division of the Office of the Attorney General of Texas, Houghton Brownlee, Jr., et al., March 1959. Also see map on page 13a of this source depicting the location of each property and its configuration.

*"Razón de los individuos [que] han tomado tierra y aguas en la Misión de S. Juan y de la pensión anual que deben pagar [por] ellas según dispuso la Exma. Diputación Provincial, a saver:"* [Translation: "Accounts of the individuals who have been granted land and water rights at the Mission of San Juan; also the annual tax to be paid for these as set forth by the Most Excellent Provincial Delegation, to wit:"]

		<u>Pesos</u>	<u>Reales</u>
2	Manuel Granados, 2 <i>suertes</i> of land and 2 <i>dulas</i> of water at 5 <i>pesos</i> each	10	0
2	Captain Juan de Castañeda, 2 <i>suertes</i> of land and 2 <i>dulas</i> of water at 5 <i>pesos</i> each	10	0
1	José María Cárdenas, 1 <i>suerte</i> of land and 1 <i>dula</i> of water	5	0
1	Luisa Ximenes, 1 <i>suerte</i> of land and 1 <i>dula</i> of water	5	0
½	José Montes, ½ <i>suerte</i> of land and ½ <i>dula</i> of water at 20 <i>reales</i>	2	4
½	Juan Pablo Casanova, ½ <i>suerte</i> of land and ½ <i>dula</i> of water at 20 <i>reales</i>	2	4
1	Remigio Pérez, 1 <i>suerte</i> of land and 1 <i>dula</i> of water at 5 <i>pesos</i>	5	0
2	José María Díaz, 2 <i>suertes</i> of land and 2 <i>dulas</i> of water at 5 <i>pesos</i>	10	0
1	María Luisa de Luna, 1 <i>suerte</i> of land and 1 <i>dula</i> of water at 5 <i>pesos</i>	5	0
1	Mariano Rodríguez, 1 <i>suerte</i> of land and 1 <i>dula</i> of water at 5 <i>pesos</i>	5	0
1	Santiago Díaz, 1 <i>suerte</i> of land and 1 <i>dula</i> of water at 5 <i>pesos</i>	5	0
½	Francisco Calvillo, ½ <i>suerte</i> of and ½ <i>dula</i> of water at 20 <i>reales</i>	2	4
½	Salvador Flores, ½ <i>suerte</i> of land and ½ <i>dula</i> of water at 20 <i>reales</i>	2	4
1	Teresa Ximenes, 1 <i>suerte</i> of land and 1 <i>dula</i> of water at 5 <i>pesos</i>	5	0
½	Gerardo Hernández, ½ <i>suerte</i> of land and ½ <i>dula</i> of water at 20 <i>reales</i>	2	4
1½	Francisco Cadena, 1½ <i>suerte</i> of land and 1½ <i>dula</i> of water	7	4
1½	Ygnacio León, 1½ <i>suerte</i> of land and 1½ <i>dula</i> of water at 7½ <i>pesos</i>	7	4
3	The bachelor Francisco Maynes, 3 <i>suertes</i> of land and 3 <i>dulas</i> of water at 7½ <i>pesos</i>	15	0

1	Maria Calvillo, 1 <i>suerte</i> of land and 1 <i>dula</i> of water at 5 <i>pesos</i>	5	0
1½	José Antonio Saucedo, 1½ <i>suerte</i> of land and 1½ <i>dula</i> of water	7	4
1	Pablo Salinas, 1 <i>suerte</i> of land and 1 <i>dula</i> of water at 5 <i>pesos</i>	5	0
<hr/>		<hr/>	
25	Total	125	0

Bexar, February 10, 1824

José Antonio Saucedo  
[Rubric]

Province of Texas  
San Fernando de Bexar, year of 1824

Appraisalment (sic) of the houses and the outer wall of the Mission of San Juan  
THE NORTH SIDE

APPRAISALS  
*Pesos Reales*

- |   |    |    |
|---|----|----|
| 1. One rent house with deteriorated walls, consisting of 13 <i>varas</i> in length; said walls are composed of 40 cartloads of stone at 2 <i>reales</i> ; sold to Gerardo Hernández | 10 | 0" |
|---|----|----|

**Appendix D: *Repartición de la Labor de San José, Año de 1824*** [Distribution of Land and Water at Mission San José, 1824]

The *labores* of Mission San Jose were also distributed to petitioners in 1824 as part of the final secularization process ordered for all the missions. Below are selected examples of how the irrigated lands at Mission San Jose were divided into private tracts, each with its own peculiar boundaries. These descriptions, among others, appeared in Spanish with English translations in Appendix II, "Memorandum on The Spanish and Mexican Irrigation Systems of San Antonio," Prepared by The Water Division of Office of the Attorney General of Texas, Houghton Brownlee, Jr., et al., March 1959.

"[To] Juan José Soliz: half *suerte* of land one hundred *varas* on each boundary, with its corresponding irrigation water; said land is bounded on the north by the *monte* of the *Acequia*, leading to the center; on the west by the *Acequia Madre*; on the east by the said *Acequia* in between, and on the south by lands available for grants.

José Trudo: half *suerte* of land, 50 *varas* on each boundary, and half a *dula* of water. Bounded on the east by the river and the mound belonging to Huizar; on the north by [land] of the same Huizar and of Julian Reyes; on the west by the *Acequia Madre* and on the south by lands available for grants.

Francisco Herrera: one *suerte* of land, 100 *varas* on each boundary with one *dula* of water. Bounded on the east by the river; on the north by land of Trinidad Guerrero; on the west by the *Acequia Madre*; on the south by land yet ungranted.

Francisco Ruíz: two *suertes* of land, 100 *varas* on each boundary with two *dulas* of water. Bounded on the east by the river; on the north by lands of Ignacio Lara; on the west by the *Acequia Madre*; on the south by lands available for grants.

José María Ruíz: one *dula* of water and half a *suerte* of land, 100 *varas* on each boundary next to the Rincón del Burro. Bounded on the east by the river; on the north by lands of Francisco Ruíz; on the west divided by the water outlet and land of José Padilla, and on the south by lands available for grants. And another half *suerte* of land 250 *varas* frontage and 450 *varas* in depth. Bounded on the west by the *Acequia*; on the north by land of Tomás de León; on the east by the river, and on the south by lands available for grants.

José Manuel de la Garza: one and a half *dulas* of water and one and a half *suerte* of land in the Rincón de la Parra, 250 *varas* on each boundary from north to south, and 600 *varas* in depth. Bounded on the east by the river; on the south by the same river and the head of the water outlet; on the west by same water outlet and lands available for grants, and on the north by the land of Damasio de la Cruz.

José Angel Navarro: one and a half *suertes* of land, 450 *varas* of frontage and 523 in depth, with one and a half *dulas* of water from the Tabla del Manso. Bounded on the east by the water outlet; on the north by the *solar* of Cecilia Nuñez; on the west by sown land of Eusevio Anzures; and on the south by the *suerte* known as the one of Teresa Bustillos, which *suerte* is also granted to the same Angel Navarro, and where it reaches the Tabla del Manso it has a frontage of 170 *varas*, and a depth of 300 *varas* which reaches to the river. Bounded on the north by the land of the same Angel Navarro; on the east by the water outlet; on the south by the San Antonio river, and on the west by land of the above mentioned Eusevio Anzures.”

## **Appendix E: Acequia Ordinances of the City of San Antonio, 1857**

In 1857 the City Council of the City of San Antonio adopted a revised digest of ordinances concerning the regulation of ditches and other articles stipulated in the City Charter. Following secularization in 1824 all land parcels in the former missions were now in privately held grants. Early on, after the incorporation of the city in 1837, the administration, allocation and regulation of irrigation water supply became an important responsibility of the municipal government. The acequias continued to flow alongside city streets distributing water to the gardens and some fields in the vicinity.

Among the other standard municipal powers, Article XXVIII of the 1857 City Charter granted the mayor and city council the ability to “re-open the old irrigation ditches, within or beyond the present limits of the city, and to regulate all matters connected with the dams, water-gates, and distribution of water for irrigation” provided that such ordinances do “not conflict with private and former established rights.” Instead of creating a new set of policies



and procedures, the mayor and city council were permitted to “revive any part of the rules and regulations formerly established by the Spanish government as conditions of the grants of irrigated lands.”

Below are selected articles in the adopted ordinances of 1857 that pertained to the acequias operating under the jurisdiction of the City of San Antonio. With minor modifications, the ordinances crystallized into law many of the customary practices of acequia administration from earlier times. The complete set of articles can be found in Charter and Digest of Ordinances of the City of San Antonio, Approved July 18, 1857, San Antonio Central Library, Texana Department.

#### “DITCHES AND IRRIGATION

Article 102. There shall be appointed by The Council of The City of San Antonio, in the month of January of each and every year, one ditch commissioner for each of the main irrigating ditches in this city, to wit: One for the main San Pedro ditch, which runs through the Main Plaza, and one for the main Alamo ditch.

Article 103. Said commissioners shall make out a list, yearly, of all owners, or persons who may be entitled to water from their respective ditches, which list shall state the number of hours, and what hours through the year, said parties may be entitled to water. They shall also furnish to each and every person so entitled a copy of said list, and shall also deposit a copy thereof, duly certified to, in the mayor’s office as soon as practicable after such commissioners’ appointment.

Article 104. It shall be the further duty of the commissioners to call on all persons entitled to water from their respective ditches, in the month of January of each and every year, to clean, or cause to be cleaned, the ditch running through such persons property, and to open, by widening or deepening such ditch, or ditches, according to the plan and specifications of the commissioner.

Article 106. The persons entitled to water from either of said ditches shall be, and they are hereby, required to keep in repair in all dams and water-gates other than those on their respective lots, either by a voluntary contribution, or by the equal assessment of the cost and expense thereof on their property, which assessment shall be made by the commissioner according to the value of the property entitled to irrigation, as shown by the city assessment list or books. The dams and water-gates referred to in this section are those in which all have a common interest, such as the dams at the point where the ditch commences, and such dams and water-gates as are for the benefit of all parties.

Article 107. Should any person fail, neglect, or refuse, to clean, deepen, or widen, any ditch in which he is interested, after due notification by the commissioner, and after the lapse of five days thereafter, said person or persons shall be liable to a fine of not less than five dollars for the first offence, together with the expance of such cleaning, deepening, and widening,

and all accruing costs, and for each subsequent failure, neglect, or refusal, an additional five dollars.

Article 108. Each and every person who shall presume to take and use, or who shall stop, in any manner, the water in either of the ditches or the branches thereof as hereinbefore referred to when such person is not entitled to the same, shall be fined in a sum not less than ten dollars, nor more than seventy-five dollars, together with all costs, to be recovered before the mayor; and shall, in addition, be liable to the person or persons whose water has been thus taken, for all damages growing out of such illegal using or appropriating.

Article 113. There shall be kept a book, in which shall be registered the names of all persons entitled to the city's portion of said water, together with the number of hours, and what hours, such persons shall use the same; and any person using or obstructing the water in said ditch at any other time than that to which they are entitled by certificate, shall be, and they are hereby, liable to all the penalties for using or obstructing water in said ditch, as is provided by articles ninety-four, ninety-five, and ninety-six."

**Appendix F: Affidavit of G. Garrett Lewis, SARA v. Dillon, 1959**

In response to the 1958 class suit for summary judgment filed in Bexar County District Court by the San Antonio River Authority, the attorneys for the defendant irrigators in SARA v. Dillon, et al submitted an affidavit by G. Garrett Lewis, then President of the San Juan Ditch Company. In his statement, Mr. Lewis described in clear detail how the mouth of the San Juan Acequia traditionally had obtained water from the channel within the banks of the San Antonio River and how the actions of the river authority had left the Old San Juan Dam and the acequia headgate devoid of any water. Throughout the court trails that followed, the irrigators continued to claim entitlement to water directly from the natural channel of the San Antonio River as they had been accustomed, a point they lost in District Court but ultimately won three years later in the Supreme Court of Texas. Lewis' affidavit appeared as "Exhibit A, To Reply of Defendants, G. Garrett Lewis, et al., to Motion of Plaintiff for Summary Judgment," San Antonio River Authority v. Emma Dillon, et al, Cause No. F-115,976.

"THE STATE OF TEXAS  
COUNTY OF BEXAR

My name is G. GARRETT LEWIS. I am one of the Defendants in Cause No. F-115,976, styled SAN ANTONIO RIVER AUTHORITY vs. EMMA DILLON, ET AL, in the District Court of Bexar County, 131<sup>st</sup> Judicial District of Texas. I am the owner of a tract of approximately 12.5 acres of land in Bexar County in some places adjacent to what is known as the San Juan Ditch and also being the owner of certain lands through which such ditch passes. I have been the owner of such land and have actually lived thereon since 1926. At the present time and for a number of years past, I have been President of San Juan Ditch

Company, an unincorporated association, consisting of property owners in the area who have, by virtue of their ownership of such land, been entitled to and have received the use, benefit and enjoyment of the waters of the San Antonio River which has flowed through the San Juan Ditch.

During all of this period of time, I have been and still am familiar with the bed and banks of the San Antonio River, the location and condition of the San Juan Dam, the location and condition of the mouth of the San Juan Ditch, and with its condition and location as it has and still does traverse through the area which is involved in this litigation. I have, through the years, observed the flow of the waters of the San Antonio River, have witnessed conditions in the area affected by this litigation during times of flood, during times of normal flow of the river and also during periods of drought. I have also been and am familiar with the various properties of the different Defendants involved in this litigation, the improvements placed thereon, the use made of the land and the use and enjoyment by the respective property owners of some of the waters of the San Antonio River flowing through San Juan Ditch. In like manner, I have observed and am familiar with the changes effected and brought about by the San Antonio River Authority in the area above, below and adjacent to the San Juan Dam and the mouth of San Juan Ditch.

Prior to the commencement of the San Antonio River Authority Project in the area adjacent to the San Juan Dam and the mouth of the San Juan Ditch, the bed and banks of the San Antonio River were so located and situated that in the course of the normal and natural flow of the San Antonio River, the waters thereof were caused to come into contact with the San Juan Dam which protruded into the waters and the bed of the San Antonio River in such a manner as to cause certain waters of the San Antonio River to naturally and normally flow into the mouth of the San Juan Ditch, and as a result thereof, a part of the waters of the San Antonio River flowed through San Juan Ditch from its mouth adjacent to San Juan Dam, and thence to pursue a course flowing through and past the lands of the various parties Defendant in this litigation and finally to empty back into the natural bed and banks of the San Antonio River. Following the commencement of the San Antonio River Authority Project in the area, the work pursued by that organization in the area of San Juan Dam and the mouth of the San Juan Ditch was performed in such a manner through the acquisition of lands in the area as to change and completely divert the flow of the waters of the San Antonio River out of its natural bed and banks by a process of lowering, deepening, widening and removing the flow of the waters of the San Antonio River to a new and artificial channel lying at least 200 feet to the West of the San Juan Dam and the mouth of the San Juan Ditch and at least 10 feet below the level of the San Juan Dam and the mouth of the San Juan Ditch; that by the activities of San Antonio River Authority, the San Juan Dam was partially destroyed and portions of the natural river bed and banks were completely obliterated and destroyed, and the entire flow of the waters of the San Antonio River was so diverted and changed as to completely remove all water into a new and artificial channel, leaving what remained of the San Juan Dam completely dry and devoid of water; so as to completely leave the natural bed and banks of the river, and to render the river bed completely dry and devoid of water in the area of the San Juan Dam and the mouth of the San Juan Ditch; that as a result of the work and activities of San Antonio River Authority, water does not flow into the mouth of San

Juan Ditch nor has it flowed into or even close to the mouth of the San Juan Ditch since the waters of the San Antonio River were diverted into the new and artificial channel lying more than 200 feet to the West of San Juan Ditch.

The mouth of the San Juan Ditch no longer extends into the bed and banks of the San Antonio River as its new and artificial channel as now constituted; nor does the San Juan Dam in any wise or manner come in contact with the flow of the waters of the San Antonio River, but both the dam and mouth of the ditch are and have been, at all times since the diversion of the waters of the San Antonio River, in, upon or adjacent to anything other than a dry, abandoned and partially destroyed once existing river bed....

G. Garrett Lewis [President, San Juan Ditch Company]”

### **Appendix G: Book of Minutes, Espada Ditch Company, 1894-1970**

Except for a period from about 1880 to 1894, followed by a reconstruction project undertaken by the irrigators themselves, the acequia at Mission San Francisco de la Espada has continued in use without interruption since its construction during the Spanish colonial period of Texas. The dam for the Espada Acequia was built in the 1730s, and despite a few modern improvements, the structure retains the prototypical features of a brush rock diversion dam. Although modifications to the river bed were undertaken in the late 1950s, including the installation of a concrete dam in the realigned channel, the historic Espada Dam itself was not altered by the San Antonio Channel Improvement Project. As a consequence, Acequia Espada continues to function as a gravity-flow irrigation system in the traditional manner. The acequia flows for a distance of approximately four miles, including a unique section where a colonial period masonry structure, the Espada Aqueduct, carries the ditch water over the Piedras Creek crossing.

In 1889 the Texas legislature enacted state statutes permitting the formation of irrigation companies. As happened in the case of the San Juan Acequia, the private landowners of the old Mission Espada *labores* took up this opportunity to gain direct control of their irrigation works starting in the winter of 1894-1895. Excerpts from the book of minutes below provide glimpses of the early years of the Espada Ditch Company as the irrigators began to structure their affairs in accordance with the new law while retaining many of the basic principles of Spanish acequia administration: rotation of water use, proportionality of labor assessments and benefits, collective obligations for repairs and maintenance, election of officers and water managers, and other governance matters. Water turns were established based on fifteen day cycles twice monthly, a schedule that allowed the auctioning of surplus water on the 31<sup>st</sup> of certain months, and at other times, to meet the expenses of maintaining the acequia. According to Glick (1972), this practice was carried over from Gran Canaria in the Canary Islands, known there as *secuestro*.

Up until the 1950s and 1960s, there were still twenty-eight irrigators participating actively in the business of the acequia and taking their share of water per a monthly schedule around the clock. In the decades to come, however, the membership dwindled to about half of that amount, reducing the labor and financial support available to a smaller group of irrigators year after year. Many of the truck farmers passed away, and their heirs or other successors no longer depended on agriculture for an economic livelihood. Part-time farming and the planting of sudan, bermuda and other grasses for use by livestock replaced the more labor intensive vegetables and pecan trees associated with the traditional *huertas* and *labores*. By the end of the twentieth century, only eight active members remained, eliminating the need for a system of elaborate rules of water distribution. Water dues were still collected from the landowners informally to pay a backhoe operator for the annual cleaning of the acequia and other maintenance costs. Governance of the Espada Acequia lapsed into a loose set of arrangements with minimal need for a company or any other form of structured administration. No meetings have been organized, nor officers elected, since the 1970s. The fate of the now dormant Espada Ditch Company remained uncertain at the start of the year 2000.

[Sources: Thomas F. Glick, The Old World Background of the Irrigation System of San Antonio, Texas (El Paso: Texas Western Press, 1972), pp. 13, 43, 48-49; Arthur R. Gómez, Espada Dam: A Preliminary Historical Report (National Park Service: San Antonio Missions National Historical Park, March 6, 1990), pp. 14, 24-25; and Arthur Maspero, interview notes by José A. Rivera, April 28, 1999 and May 19, 2000. Glick notes that a microfilm copy of the Minute Book of the Espada Ditch Company may be consulted at the Texas History Center, University of Texas at Austin. As of May 2000, the original book was in the possession of Arthur Maspero, Espada Acequia irrigator in charge of collecting the water dues.]

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Espada Ditch Company  
Minutes, Preliminary Meeting, December 22, 1894

At a Preliminary Meeting held in the Court House of San Antonio at 10 a.m. on the 22<sup>nd</sup> day of December 1894 to consider the advisability of forming a company of those holding rights in the Espada Ditch for the improvement, maintenance and administration of the same. After Messrs. Arnaud and Hodson, on the motion of Mr. Alex Walton, had been elected respectively temporary Chairman and Secretary, the meeting was called to order by the Chairman and a short statement of the projected company and its objects read in English by the Secretary and these explained in Spanish by Messrs. Crawford.... [and] De Witt.

After some discussion between Messrs. Santiago Gutierrez and Alex Walton, it was resolved that the chair appoint a committee of three to find how many persons will come into the company and for how many acres each, and the report by Saturday next. Messrs. Rosalino Diaz, Camille Payen and Alex Walton were nominated. Mr. Walton then proposed and Mr.

Trueheast seconded the motion that a meeting should be held at the same time and place on Saturday, 29 December, for the election of officers; this was carried unanimously and the meeting dissolved.

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Minutes, General Meeting, December 29, 1894

At a meeting held at the Court House, San Antonio, on the morning of December 29, 1894. Mr. Arnaud is the chair. The minutes of the last meeting having been read and adopted. It was resolved that the constitutions and by-laws of the company should be read, discussed and voted on, each person being entitled to one vote for each hour of water to which he is entitled. The constitution and by-laws were then read by the Secretary and translated and explained in Spanish by Mr. Crawford. Mr. Walton then moved and Mr. Crawford seconded the adoption of these documents. The constitution was unanimously adopted. The voting being as follows:

Mr. Rosalino Diaz	24
Mr. Eli Arnaud	82
Mr. Canuto Rivas	10
Mr. Camille Payen	24
Mr. Charles E. Hodson	5
Mrs. W. A. Gage	192
Mr. Jean Baptiste Chavaneux	12
Mr. Sabino Olivas	<u>5</u>
Total	354

Article III, Section 2 of the By-Laws was attested by the insertion of the words: "associated with a duly elected member of the board shall constitute a committee to control," to follow after "General Manager." Both papers were signed by Messrs. Walton, Arnaud, Chavaneux, Payen, Hodson, Olivas, Diaz and Rivas. The following Directors were then unanimously elected to serve for three years:

Mr. Alex Walton  
Mr. Eli Arnaud  
Mr. Rosalino Diaz  
Mr. Camille Payen  
Mr. Jean Baptiste Chavaneux  
Mr. Charles E. Hodson  
Mr. Sabino Olivas

This terminated the proceedings.

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Minutes, April 17, 1895

At a meeting of Directors held at the Espada Mission on the 17<sup>th</sup> day of April 1895, present: Mr. Eli Arnaud, Alex Walton, Rosalino Diaz, Sabino Olivas, and Charles E. Hodson. It was resolved that an assessment of \$1.00 per acre be made to cover the costs of cleaning the ditch from the aqueduct to the dam, as follows:

Names	
Mrs. Gage	\$200
Mr. Arnaud	50
Mr. Diaz	24
Mr. Chavaneux	8
Mr. Payen	16
Mr. Loeloff	6
Mr. Bolner	<u>6</u>
Total	\$310

Messrs. Hodson and Mr. Treviño proposed the adjustment of their claims against the Association consequent of damage to crops by withdrawal of water for several months, by arbitration, which was disallowed.

Eli Arnaud

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Grant of Water, March 15, 1897

State of Texas

County of Bexar

This is to certify that we the undersigned owners of water rights in the Mission Espada Ditch in said County of Bexar, do hereby grant to Rosalino Diaz 12 hours more water, making his interest 36 instead of 24 hours, in said ditch, provided that in granting the 12 hours extra, none of the original water rights shall be disturbed. The consideration for which this grant is made is that said Diaz did work to the amount of \$68.00 more than his assessment in the reconstruction of said ditch in 1895, and furthermore, the original numbers of hours he held in said Espada ditch was insufficient to properly water his land.

Given at San Antonio this 15<sup>th</sup> day of March 1897

Mary W. Gage, by A. Y. Walton Jr., agent

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Work Record List, March 6, 1899

March 6, 1899 commenced cleaning ditch and finished March 10<sup>th</sup>. Worked four men on dam three days repairing same. All parties furnished their proper share of labor as seen below:

Ashley	1 ½ [days]
[Lunsherd?]	7
Olivas	3
Rivas No. 1	3
Gutierrez	2
Rivas No. 2	3
Bustillos	3
[Bucher No. 1?]	5
Diaz	10
Bolner	2 ½
Maspero	5
Galli	5
[Bucher No. 2?]	2
Bertolini	5
Payen	5
Arnaud	10
Walton	40
[Smith?]	3
Pizzini	18
D. Diaz	<u>5</u>
Total No. of Days	135

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Minutes, March 1<sup>st</sup>, 1908

The Espada Ditch Company met in the Espada school house at 3 p.m., March 1<sup>st</sup>, 1908. Mr. William Cassin in chair. The minutes of February 3<sup>rd</sup>, 1907 read and [the] members present approved. The expense and receipt for 1907 submitted by William Cassin. Approved [by] all members of Company. Motion made that a committee of three be elected to do work needed on ditch and to look after interest of Company. Carried. Motion made that the ditch committee to employ man to work on ditch when they think it necessary. So ordered. Motion declared in order to elect Chairman and Secretary. W. F. Davis was elected Chairman, 1 year. O. Graf was elected Secretary, 1 year. Members present: William Cassin, Mr. Pizzini, O. Graf, F. Ashley, Mr. Luntz, Mr. R. Diaz, Mr. D. Diaz, P. Hougue, W. F. Davis, Mr. Gutierrez, D. Bustillo, J. Bolner.



Motion made that the funds of the company be turned over and all money collected by the ditch committee. So carried. Motion made to sell the water rights of the Jones place to the highest bidder for 1908. So carried. Motion made that the ditch committee have power to sell all surplus water to the highest bidder for 1908. So carried. Motion made that \$9.60 be allowed William Cassin for services rendered. So carried.

W. F. Davis  
Secretary

Cash account to be handled by the committee.

Ditch Committee:

Mr. Pizzini  
Mr. Ashley  
Mr. R. Diaz

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Minutes, February 25, 1912

At a general meeting held at the Espada School House Feb. 25, 1912. There were present: William Cassin, F. J. Ashley, Frank Pizzini, Fidel Dias, Otto Graf, Savino Olivas, Davi Dias, Santiago Dias, Chas Boldner, Antonio Rivas and Joe Olivas. First order of business was reading of minutes of last meeting. Which was approved and adopted. Next order of business was a motion before the house to elect all the present or old officers for one more year. As there were no objections, the motion was approved.

Names of officers

3 Ditch Commissioners:

William Cassin  
Frank Pizzini  
Fidel Dias

Secretary: Otto Graf

Treasurer: Frank Pizzini

President: F. J. Ashley

Next business was a motion to give the commissioners a right to sell any water where a landowner fails to pay his assessment. Motion was approved. Next order was a motion to make an assessment of 50 cents an hour for water on all lands south of Otto Graf Place and 40 cents an hour for water for all land north of Otto Graf Place. Motion was approved and adopted. It was further agreed to appoint a committee of five to look over the books and regulate the water. Committeemen named to regulate the water: William Cassin, Frank Pizzini, J. F. Ashley, Otto Graf, Fidel Diaz. No other business before the meeting adjourned.

Otto Graf

Secretary

J. F. Ashley, President

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Minutes, April 28<sup>th</sup> 1912

At a special meeting held at the Espada School House by the Espada Ditch Association, April 28, 1912. There were present: William Cassin, Frank Pizzini, J. F. Ashley, Otto Graf, John B. Eccell, Jose Olivas and Antonio Rivas. First business before the meeting was to sell 6 hours of surplus water to the highest bidder which was approved and adopted. John Eccell being the highest bidder which was \$28.00. It was also approved to open up the sealed bids for the 31<sup>st</sup> [day of the month] water which had been received by Frank Pizzini. After opening and examining all bids, it was found that Otto Graf being the highest bidder which was \$20.50.

No other business before the house, the meeting was adjourned.

J. F. Ashley, President  
Otto Graf, Secretary

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Water List by Hours of Water per Month in 1912

The composite list of twenty irrigators below represents the schedule for water distribution twice monthly during 1912 twenty-four hours daily. In the hours column the first quantity refers to water allocation from the 1<sup>st</sup> of the month through six p.m. on the 16<sup>th</sup>, starting with J. F. Ashley, and ending with six hours of surplus waters which normally would be sold to the highest bidder. At that point, the rotation would begin anew from six p.m. on the 16<sup>th</sup> through the end of the month.

The second quantity indicates the number of hours due each irrigator during the second half of the month. Months with 31 days would have six hours of surplus water on the 30<sup>th</sup> and another 24 hours on the 31<sup>st</sup>, and these too would be sold. In the end, every hour of available time would be accounted for and distributed, 744 total hours in the example below.

<u>NAMES</u>	<u>HOURS</u>	<u>NAMES</u>	<u>HOURS</u>
Ashley, J. F. 1 <sup>st</sup> , 16 <sup>th</sup>	12 + 12	G. Maspero	8 + 8
H. Trago	6 + 6	S. Diaz	14 ½ + 14 ½
S. Olivas	6 + 6	D. Diaz	6 + 6
A. Rivas	6 + 6	R. Lambert	12 + 12
E. Gutierrez	6 + 6	Wm. Cassin	60 + 60
L. Kunze	6 + 6	H. Pauley	6 + 6
D. Bustillo	6 + 6	F. Pizzini	54 + 54
O. Graf	6 + 6	S. Diaz	12 + 12
R. Diaz	24 + 24	Wm. Cassin	102 + 78
[P. Messinger?]	6 + 6	Surplus 16 <sup>th</sup> , 30 <sup>th</sup>	6 + 6
G. Boldner	7 ½ + 7 ½	Surplus 31 <sup>st</sup>	24

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Minutes, March 18, 1914

The annual meeting of the Espada Ditch Association was held March 18, 1914 at the Espada School House, and the following members [were] present: William Cassin, Otto Graf, Juon Eccell, F. Pizzini, F. Diaz, J. Ashley, and H. Pauly. The meeting was opened and Mr. Pizzini's report on disbursements was received for 1912 and 1913 and approved. A motion was made to inspect right of way of ditch to see if anybody was encroaching on the ditch. The motion passed. A motion before the house to clean the ditch end to end was passed. Bids for the surplus water to be opened the Mr. F. Pizzini's store on the 20<sup>th</sup> of March 1914 was passed. Mr. Cassin was instructed to hire an attorney to file on water rights. All the old members were re-elected with the exception of Mr. Graf, and Henry Pauly succeeded him. No more business, the meeting closed.

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Resolution, May 1914

Application for filing on water rights to the State of Texas. The President of this Association, James Ashley, and the Secretary, Henry C. A. Pauly, are hereby authorized to file and make the necessary statements or applications required by law to confirm and establish our rights to the use of the waters of the San Antonio River, and the Espada Ditch, for irrigation purposes, being the same rights which we and our predecessors have been continuously using for more than seventy years past, and to do and perform any and all acts or things necessary in the premises which may be required by law and be for the benefit of this Association and for the benefit for each of its individual members.

Which said resolution has been duly entered upon the minutes of said Association and evidences the right, power and authority, of the President and Secretary of said Association to act herein. Witness our hands in duplicate this day \_\_\_ of May A. D., 1914

President, J. F. Ashley  
Secretary, Henry C. A. Pauly

The foregoing proceedings were transacted, and the resolution was unanimously adopted by all of those present, to wit.

J. F. Ashley, President

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Minutes, March 7, 1915

The regular annual meeting of the Espada Ditch Association was held at Espada School House, March 7, 1915. The meeting was called to order by the President, J. Ashley, and

those present were: Messrs. William Cassin, J. Ashley, J. Bolner, O. Graf, F. Diaz, D. Diaz, M. Endicot, F. Bustillos, and Henry Pauly. Mr. Cassin submitted his report of the state water rights to the Espada Ditch. His [is] going to Austin for that purpose. Mr. Pizzini presented his annual report which was past and approved.

A motion for election of officers was made by Mr. Graf and all the old officers were reelected. A motion to clean the ditch from end to end was passed. The ditch was to be cleaned by three gangs under the heads of O. Graf, M. Endicot and Henry Pauly. Each having his part of the ditch to clean. Bids for the surplus water to be opened at Mr. Pizzini's Store, at 3: 30 on the last Saturday in March. No other business, the meeting closed.

J. F. Ashley, President  
Henry Pauly, Secretary

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Minutes, March 12, 1916

San Antonio  
March 12, 1916

The regular annual meeting of the Espada Ditch Association was held March 12, 1916. Those present were: William Cassin, J. Ashley, O. Graf, F. Pizzini, H. Pauly, S. Diaz, F. Diaz, J. Bolner, J. Olivas, A. Rivas.

The meeting was opened by the President, J. Ashley, and the following business transacted:

1. To clean the whole ditch with full head of water. The motion was carried, and H. Pauly was instructed to do so.
2. A motion was made to put a concrete wall on the east side of ditch on James Place. Mr. Cassin was instructed to secure the service of some men or contractor and see what it would cost, and then to call a special meeting to decide what would be best to do.
3. The motion was passed.
4. The report of Mr. Pizzini was read and accepted.
5. Then came the election of officers of which J. Ashley was elected President, H. Pauly Secretary, F. Pizzini Treasurer. Commissioners: Edwin Cassin, F. Diaz and O. Graf.

The recleaning of ditch in the summer was left to the three commissioners. The extra water bids are to be opened at M. Pizzini's store on the 19 of March and to be accompanied by the cash. No other business, the meeting adjourned.

Henry C. A. Pauly  
Secretary

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Minutes, May 12, 1922

Meeting called for the purpose of sale of water. The same being twice a month, being on the first of every month, twice a month on the sixteen, again six hours twice a month. Bids to be sent to Mr. Pizzini's store to open the bids from tomorrow a week.

Hillyer Dutch Lumber Co.	\$26.70
Cement 109 sacks	109.00
Bolner, 2 sacks cement	2.00
Nails, 20 lbs.	1.60
James, 65 lbs. Wire	3.00
Pizzini, 100 empty sacks	5.00
James, 65 empty sacks	3.00
Labor and hauling	127.75
James Ashley for attending the work	
Three dollars a day, work 14 days	42.00
Received from Pizzini	\$184.00

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Minutes, March 28, 1933

A meeting was called by the Espada Ditch Company for the purpose of cleaning and repair of the ditch.... No assessment for labor dollars a day was made because the ditch was in very good condition; and meeting was called for the first Sunday in April to discuss the bylaws of the ditch. Also, the extra water to be sold at Bolner's store the first of April to the highest bidder for cash. The following members were present at the meeting:

Ed Cassin	Ed B. Gutierrez
Joe Bolner	Louis Kunze, Jr.
Santiago Diaz	D. Mesinger
Otto Graf	Jose Bustillos

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Minutes, June 24, 1937

A meeting was called by the Espada Ditch Association, this dated at 8 o'clock p.m. at J. Maspero's Store, to arrange the price of the work done at the aqueduct of the Espada Ditch, to repair the walls of the ditch, which amounts to [one] hundred and forty three dollars and six cents, \$143.06.

The following members were present, Joe Bolner, Jim Maspero, Ed B. Gutierrez, and was assessed fifty cents an hour to cover the expenses of the work done on the walls.

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Minutes, April 9, 1946

A meeting was called to assess [the] dollars an hour to clean the ditch. Also, the six hours of water of the sixteenth was sold to Henry Graf, \$10.00. Twenty four hours of the thirty-first was sold [to] Jim Maspero, \$10.00. The following members of ditch were present. They all agreed to [the] transaction. The Secretary gets his water free. Jim Maspero was appointed commissioner of the ditch.

T. J. Goad	A. Diaz
J. Bolner	M. Diaz
J. Maspero	Ed B. Gutierrez
H. Graff	

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Minutes, March 31, 1954

A meeting was called by the Commission of the Ditch Company for the purpose [to] collect some money to start the cleaning of the ditch and the charge for the water users was left at two dollars an hour like it was last year. The water of the thirty-first of certain months was sold to Mr. Dean for \$12.00 dollars; wages for labor to work in the ditch was left to the Commission to pay whatever they think is right; and six hours of water of [the] sixteenth of every month was sold to Mr. Henry Graff for ten dollars; Ed B. Gutierrez gets ten dollars a year and 3 hours water for his service for making a report of all the crops they plant on the land.

At the meeting, the following were present: Dave Bolner, J. Dean, Jr., C. Jackson, Jim Maspero, Mamesto Diaz, [Dave] McRae, [Aurelio] Ayala, Ed B. Gutierrez.

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Minutes, February 17, 1960

Our last meeting was held on the 17<sup>th</sup> of February, 1960 wich was attended by 10 members. At the meeting, the cleaning of the ditch was discussed. Jim Maspero was again chosen to secure men to do the labor. Mr. Henry Graff volunteered to help him. It was decided to pay Mr. Maspero \$10.00 a day while he was working on the ditch and to try and get the laborers for \$6.00 a day.

Our [water] rates for this year were set at \$5.00 an hour again. All extra water was sold at bid.

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Minutes, May 30, 1962

Our last meeting was held at the Espada Hall on May 30, 1962. Discussions were held of ways to collect last year's unpaid dues. It was agreed to accept unpaid dues at ½ price. But dues for this year, 1962, will be paid in full or not accepted. Mr. Garza's water was discussed as they said they would not want it anymore, at least not for this year. It was decided to stop the flow of water on the lower ditch.

Mr. Bledsoe of the School for Exceptional Children requested permission to use water from the ditch. He agrees to pay \$5.00 an hour for 24 hours a month. The Ditch Company is to hold option on a year to year basis.

Cleaning of the ditch was brought up. It was agreed to pay men \$1.00 an hour and the commissioner \$10.00 a day when working. Various members present paid their dues with one member making an extra donation to help get our fund started for the cleaning of the ditch.

L. H. McRae  
Secretary

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Minutes, 1970

Our last meeting was held at Mr. Maspero's place. Besides our regular members, this meeting was also attended by Mr. James Thompson of the San Antonio River Authority. Mr. Thompson was here to explain a proposed relocation of our ditch in the Berg's Mill area. The River Authority explained that a mutual trade was the best and easiest way to relocate the ditch. After some discussion, a motion was made for the trade and [the motion] carried. This proposed new ditch will have a one year guarantee against leakage.

In other business, our assessment was set at \$10.00 an hour for the coming year. It was brought out that the company still owes Arthur Maspero \$330.25 for money he put out of his own to cover ditch cleaning that was done by the backhoe [that] the Ditch Company contracted. After a discussion on ways to clean and finance ditch work, the meeting closed.

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## Appendix H: Water Schedule, Espada Acequia, c. 1950s and 1960s

As with Acequia San Juan and the other irrigation systems of San Antonio, the Espada Acequia also operated on the basis of a water schedule well into the twentieth century. During the 1950s and 1960s, the rotation of turns was set on a thirty-day cycle entitling each irrigator to water twice monthly according to his/her proportionate share of the 720 available hours. These proportions were based on the system of *dulas* awarded the original grantees in 1824. After the 1960s, the number of active irrigators dwindled considerably, eliminating the need for a formal schedule of water turns. The list below was the last printed schedule dividing the thirty-day cycle of water among members of the Espada Ditch Company.

In his study of the origins of irrigation practices in San Antonio, Glick (1972) notes that *dula* is an Arabism, transplanted from the Canary Islands, meaning a rotation or turn, where irrigators take water in a set order according to the number of hours for which they have rights. The usage of *dula* varies across localities in southeastern Spain, and in the case of the San Antonio mission period after secularization, Glick explains, the term expressed both water and land measures at once: one *suerte* equaled one *dula* and one *dula* equaled twenty-four hours of a water turn. At both Espada and San Juan Acequias, *dulas* were fractionated proportionate to the amount of land with irrigation rights.

[Sources: Arthur Maspero, interview notes by José A. Rivera, April 28, 1999 and May 19, 2000; Thomas F. Glick, The Old World Background of the Irrigation System of San Antonio, Texas (Texas Western Press, 1972), pp. 9, 11, 25, 32, 42-43, 54.]

Mr. J. Ashley .....12 hours	Mrs. O. Graff .....6 hours
1 <sup>st</sup> [of month] 6 a.m.	3 <sup>rd</sup> [of month] 6 a.m.
16 <sup>th</sup> 6 p.m.	18 <sup>th</sup> 6 p.m.
1 <sup>st</sup> 6 p.m.	3 <sup>rd</sup> 12 a.m.
17 <sup>th</sup> 6 a.m.	18 <sup>th</sup> 12 p.m.
Mrs. Wensley ..... 6 hours	Mr. A. Díaz .....7 hours
1 <sup>st</sup> 6 p.m.	3 <sup>rd</sup> 12 a.m.
17 <sup>th</sup> 6 a.m.	18 <sup>th</sup> 12 p.m.
1 <sup>st</sup> 12 p.m.	3 <sup>rd</sup> 7 p.m.
2 <sup>nd</sup> 6 a.m.	4 <sup>th</sup> 4 a.m.
17 <sup>th</sup> 12 a.m.	19 <sup>th</sup> 7 a.m.
17 <sup>th</sup> 6 p.m.	19 <sup>th</sup> 4 p.m.
Mr. L. Kunze ..... 1½ hours	Mrs. E. C. Díaz ..... 8 hours
2 <sup>nd</sup> 6 a.m.	4 <sup>th</sup> 4 a.m.
17 <sup>th</sup> 6 p.m.	19 <sup>th</sup> 4 p.m.
2 <sup>nd</sup> 7:30 a.m.	4 <sup>th</sup> 12 a.m.
17 <sup>th</sup> 7:30 p.m.	19 <sup>th</sup> 12 p.m.
Mrs. Rivas .....1½ hours	Mr. J. Bolner ..... 7½ hours
2 <sup>nd</sup> 7:30 a.m.	4 <sup>th</sup> 12 a.m.
17 <sup>th</sup> 7:30 p.m.	19 <sup>th</sup> 12 p.m.
2 <sup>nd</sup> 9 a.m.	4 <sup>th</sup> 7:30 p.m.
17 <sup>th</sup> 9 p.m.	20 <sup>th</sup> 7:30 a.m.



Mr. Forrest .....	1½ hours	Mr. G. B. Maspero ...	22½ hours
2 <sup>nd</sup> 9 a.m.	2 <sup>nd</sup> 10:30 a.m.	4 <sup>th</sup> 7:30 p.m.	5 <sup>th</sup> 6 p.m.
17 <sup>th</sup> 9 p.m.	17 <sup>th</sup> 10:30 p.m.	20 <sup>th</sup> 7:30 a.m.	21 <sup>st</sup> 6 a.m.
Mr. E. Olivas .....	1½ hours	Mr. J. Degasperi .....	6 hours
2 <sup>nd</sup> 10:30 a.m.	2 <sup>nd</sup> 12 a.m.	5 <sup>th</sup> 6 p.m.	5 <sup>th</sup> 12 p.m.
17 <sup>th</sup> 10:30 p.m.	17 <sup>th</sup> 12 p.m.	21 <sup>st</sup> 6 a.m.	21 <sup>st</sup> 12 a.m.
Mr. A. G. Salinas .....	3 hours	Mr. Avelino Garza ...	12 hours
2 <sup>nd</sup> 12 a.m.	2 <sup>nd</sup> 3 p.m.	5 <sup>th</sup> 12 p.m.	6 <sup>th</sup> 12 a.m.
17 <sup>th</sup> 12 p.m.	18 <sup>th</sup> 3 a.m.	21 <sup>st</sup> 12 a.m.	21 <sup>st</sup> 12 p.m.
Mr. Ed Gutierrez .....	3 hours	Mr. Moody .....	60 hours
2 <sup>nd</sup> 3 p.m.	2 <sup>nd</sup> 6 p.m.	6 <sup>th</sup> 12 a.m.	8 <sup>th</sup> 12 p.m.
18 <sup>th</sup> 3 a.m.	18 <sup>th</sup> 6 a.m.	21 <sup>st</sup> 12 p.m.	24 <sup>th</sup> 6 a.m.
Mr. L. Kunze .....	3 hours	Dr. Robinson .....	6 hours
2 <sup>nd</sup> 6 p.m.	2 <sup>nd</sup> 9 p.m.	8 <sup>th</sup> 12 p.m.	9 <sup>th</sup> 6 a.m.
18 <sup>th</sup> 6 a.m.	18 <sup>th</sup> 9 a.m.	24 <sup>th</sup> 12 a.m.	24 <sup>th</sup> 6 p.m.
Mrs. R. Rivas .....	1½ hours	Mr. Jackson .....	6 hours
2 <sup>nd</sup> 9 p.m.	2 <sup>nd</sup> 10:30 p.m.	9 <sup>th</sup> 6 a.m.	9 <sup>th</sup> 12 a.m.
18 <sup>th</sup> 9 a.m.	18 <sup>th</sup> 10:30 a.m.	24 <sup>th</sup> 6 p.m.	24 <sup>th</sup> 12 p.m.
Mr. E. Olevos .....	1½ hours	Mr. Antonio Garza ...	54 hours
2 <sup>nd</sup> 10:30 p.m.	2 <sup>nd</sup> 12 p.m.	9 <sup>th</sup> 12 a.m.	11 <sup>th</sup> 6 p.m.
18 <sup>th</sup> 10:30 a.m.	18 <sup>th</sup> 12 a.m.	24 <sup>th</sup> 12 p.m.	27 <sup>th</sup> 6 a.m.
Mrs. P. Meninez .....	3 hours	Mr. J. Degasperi .....	12 hours
2 <sup>nd</sup> 12 p.m.	3 <sup>rd</sup> 3 a.m.	11 <sup>th</sup> 6 p.m.	12 <sup>th</sup> 6 a.m.
18 <sup>th</sup> 12 a.m.	18 <sup>th</sup> 3 p.m.	27 <sup>th</sup> 6 a.m.	27 <sup>th</sup> 6 p.m.
Mr. Mr. Bustillo .....	3 hours	Mr. Moody .....	90 hours
3 <sup>rd</sup> 3 a.m.	3 <sup>rd</sup> 6 a.m.	12 <sup>th</sup> 6 a.m.	16 <sup>th</sup> 12 a.m.
18 <sup>th</sup> 3 p.m.	18 <sup>th</sup> 6 p.m.	27 <sup>th</sup> 6 p.m.	30 <sup>th</sup> 12 p.m.