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# Dating the Caño Ditch: Detective Work in the Pojoaque Valley

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DANIEL TYLER

Although no two persons have the same view of what public historians are, or what they do, most would agree that their work is receiving increasing attention as our society becomes ever more litigious. In contrast to academic historians, who pursue "truth" as teachers and writers in a relatively pressureless environment, the public historian is often hired to assist in winning a litigant's case. In this role, the historian must respond to court-imposed time limits and the subtle, if not direct, suggestion from an attorney that findings should be consistent with strategy for successful litigation. In this environment, a naive university professor will get into trouble unless integrity, objectivity, and independence are maintained.

An invitation to serve as expert witness or consultant is heady wine, the flavor of which most definitely improves with the offer of money. Professorial salaries have never lured historians into the profession, but the "joy of teaching young, inquisitive minds," and the "solace to read, research, and write," sometimes pale after a decade or so when children head for college and debts begin to accumulate. The opportunity to make extra money becomes more attractive. No doubt, some will deny that elemental greed has anything to do with the decision to hire out as

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a public historian, but it is a lure, and for most of us the siren's song seduces as readily as that of our mistress, Clio.

Money is not everything. Historians who work with the public can also see how their special skills can be applied to real life problems outside the "ivory tower." Teachers have been on the defensive lately, trying to persuade the present generation of students that humanities and social sciences have values that far exceed, in the long run, the limited accomplishment of computer mastery. The historian as paid consultant should not be seen as a sellout by the profession and may, in fact, do more to sell the ongoing importance of historical research than all the historiographical lessons presented to university students in this technological age. In short, academic historians ought not be ashamed of using their talents in the marketplace, as long as they refuse to be corrupted by a value system which may view "truth" as somewhat irrelevant.

With this short philosophical background, the reader should know that this historian was hired by a private party to investigate the age of an acequia in the Pojoaque Valley. The salary offered was modest, but attractive, the research promised to be interesting, and the task was capable of completion in the summer.

Ditch dating is an interesting kind of detective work involving research in a variety of archival materials. Archaeology, oral tradition, and geology may prove as significant to the researcher as written records. In fact, the historian would be well advised to resist the temptation to focus on a single document as evidence of an acequia's first use. Considered a "smoking gun" in present-day litigation, this kind of solitary evidence may prove to have rusted parts and wet powder in court under a barrage of cross-examination.

A better approach involves the creation of reasonable probability scenarios. This means working backwards in time with the aid of land deeds, agricultural statistics, demographic records, and other written documents relating to water litigation.

The age of the Caño Ditch became significant as a result of steps taken in *State of New Mexico v. R. Lee Aamodt, et al.* (No. 6639-Civil). This case, one of the oldest in the United States' district court system, represents New Mexico's desire to quantify once and for all the rights of the Tewa Pueblos and their non-Indian neighbors to water in the Pojoaque Valley. As of this writing, the judge has not yet reached a decision, and this makes all parties quite nervous. Because of this uncertainty, and because the Pueblos have argued for a "time immemorial" priority to water in the Tesuque and Pojoaque-Nambé streams, the non-Indian water users hope to prove that their lands were watered by acequias built long before the United States conquered New Mexico. They are fully aware that if the court awards a "time immemorial" right to the

Indians, a bitter competition will begin among non-Indian users for the remaining water. First in time, first in right—the doctrine of prior appropriation.

In anticipation of priority disputes, the New Mexico state engineer has awarded dates to all the ditches in the Río Pojoaque stream system based on known documentation. Two ditches that water the Louise Trigg ranch (*Las Acequias*) in the Pojoaque Valley, the Ortiz and the Rincón, were given dates of 1739 and 1789 respectively. The third and most important ditch, the Caño, was dated April 1, 1859, based on a statement of inheritance by Miguel González submitted to the Court of Private Land Claims as evidence of land privately owned within the Pojoaque Pueblo.<sup>1</sup> Fearing a low "priority" if this date stands unchallenged, the non-Indian owners of Caño water rights began exploring the possibility that this vital source of water might have had a lineage as long and as noble as its neighbors, the Rincón and the Ortiz. They hired a historian to do the work.

Some obstacles encountered in this kind of research are formidable. There is ample evidence, for example, that non-Indian Hispanic settlers moved into the Pojoaque Valley shortly after the founding of the Villa of Santa Cruz de la Cañada in 1695. Both Diego de Vargas and Pedro Rodríguez Cubero used their gubernatorial prerogative to authorize settlement within what would now be classified as the pueblo league. After these farmers and land speculators settled down, they purchased additional lands from the Indians of Nambé and Pojoaque, although not always in accordance with Spanish law.<sup>2</sup> A research problem emerges from the fact that boundaries were poorly defined, often mentioning only the adjoining property of a neighbor; landmarks changed names with the passage of time; and river frontages were measured in varas which were at best rough approximations of distances agreed on by interested parties. In addition, land exchanges were not regularly recorded, particularly in the Mexican period when it cost a prohibitive twelve pesos to file a document with the constitutional alcalde.<sup>3</sup> Consequently, many land transfers were made with nothing more than verbal understanding. All of this means that major roadblocks confront anyone trying to pursue a title chain backwards from the twentieth century into the Hispanic

1. State Engineer's Abstract of Documents on Water Right Priorities for Ditches Within the Río Pojoaque Stream System, March 20, 1984. The basis for the Caño date is the Estate of Miguel González, April 1, 1859, submitted as part of Private Claim No. 291, Pueblo Lands Board, abstract 85, file 300, 7-9-8.

2. See Myra Ellen Jenkins, "Spanish Land Grants in the Tewa Area," *New Mexico Historical Review*, 47 (April 1972), 113-34. A few of the pueblo land sales to non-Indians are recorded in Santa Fe County Deed Books as follows: R-367, S-72/3, P-221, R-292, R-295, R-439, S-269, etc.

3. Deed from Francisco Ortiz to Juan Trujillo, March 5, 1831, recorded in Deed Book S-257/8, Santa Fe County, New Mexico.

period when the fertile lands of *Las Acequias* might have been watered by the Caño Ditch. Add to this the confusion presented by changing ditch names,<sup>4</sup> complicated family lineages (in this case, the prolific Ortiz family),<sup>5</sup> and the difficulty of finding sworn testimony dealing with land ownership and cultivation. What you end up with is a labyrinth of tantalizing details, dead-ends, false starts, and discoveries which lead nowhere—and no “smoking gun.”

What you can do is prepare a reasonable probability scenario. If you can find one significant piece of land lying under the Caño Ditch, in this case a piece legally granted to non-Indians in the eighteenth century, and if you can find evidence that all or part was used for crop production, produced *pesos de la tierra* (agricultural goods), or was exchanged at any time as *tierra de labor* (farming land), it would be reasonable to assume that the water making possible this farming activity came from the Caño Ditch.

You can also pursue the logic of the ethnologists. Florence Hawley Ellis, for example, is of the opinion that the ditch system in the Pojoaque Valley is the same now as it was in prehistoric times. As a result of finding sherds and other evidence of socio-economic activity in the area, she argues that when the Pojoaque Indians were required to cultivate additional lands north of the Pueblo in order to produce food for a larger population during Pueblo III and Pueblo IV periods, the Caño Ditch was constructed.<sup>6</sup> This would date the Caño in the eleventh or twelfth century, and if a court would accept Ellis' testimony, further research would be unnecessary. But too many lawyers question this kind of evidence, and too much is at stake to rest a case only on Ellis' superb research. So, we return to the search for land under the Caño which might have been agriculturally productive before 1859. To do so, we focus on the Durán de Armijo grant of 1739.

Vicente Durán de Armijo petitioned Governor Gaspar Domingo de

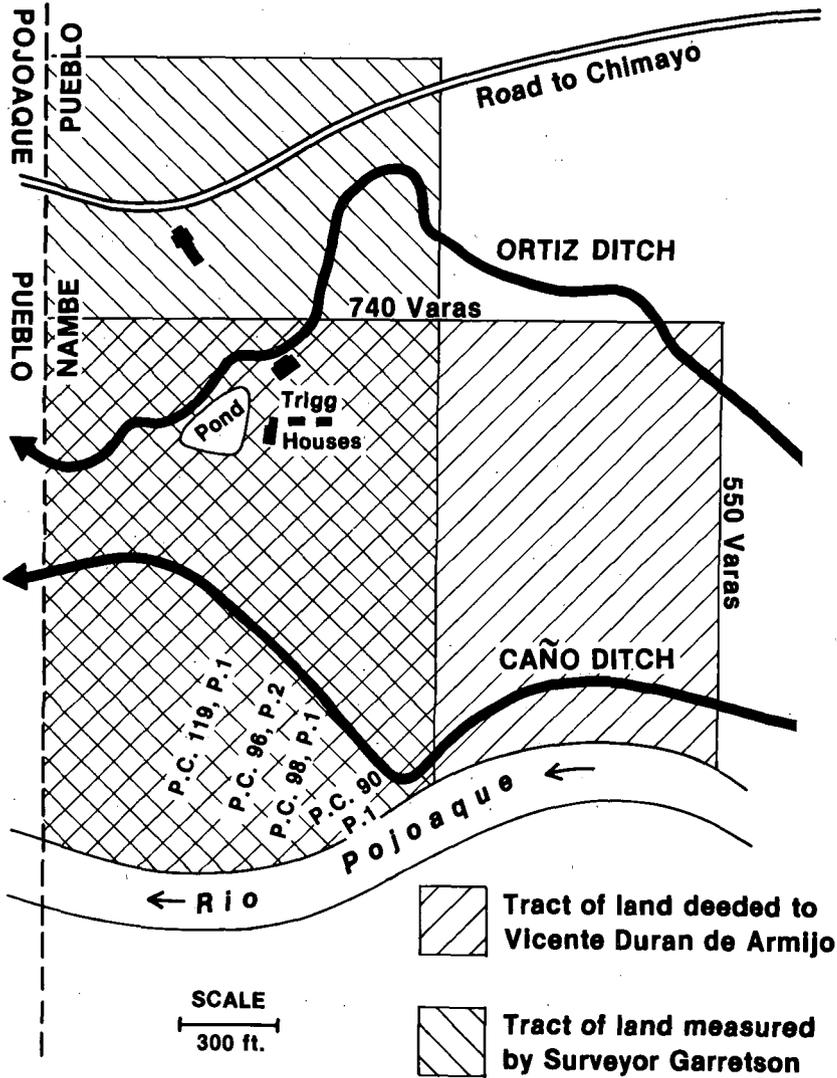
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4. For example, the Acequia Los Ortizes was also called Acequia de Gaspar Ortiz (see Pueblo Lands Board testimony for P.C. 96, Parcel No. 4); the Pueblo Acequia was also known as the Acequia de Las Joyas (see Pueblo Land Boards testimony, P.C. No. 277); La Acequia del Pueblo was confused with La Acequia del Llano (see Santa Fe County Deed Book R-196/7); and the Nueva Ditch was sometimes known as La Acequia de las Joyas del Llano Frío (see Territorial District Court Records, Santa Fe County, Case No. 4144).

5. David Ortiz, who has an interest in the Caño Ditch and who is a direct descendant of Nicolas Ortiz and María Coronado, shared his family tree with me. It is obvious from his data and that of Myra Ellen Jenkins, that the Ortizes and Romeros had large families and significant amounts of property in the Pojoaque Valley since the 1690s.

6. See evidence prepared by Florence Hawley Ellis, “Nambé: Their Past Agricultural Use of Territory.” Exhibit: N. 1 (U.S. Exhibit 84), 1967, revised 1974, p. 23, submitted in *State of New Mexico v. R. Lee Aamodt, et al.* (No. 6639-Civil); see also her deposition, October 17, 1979, pp. 371.8, 298.1, and transcript of hearing before the Special Master, December 11, 1979, Vol. II, p. 313.6.

**MAP SHOWING DIFFERENCE BETWEEN LAND GRANTED TO VICENTE DURAN DE ARMIJO AND THAT CONFIRMED BY SURVEYOR GARRETSON**



Taken from State of New Mexico Office of State Engineer Upper Rio Grande Hydrographic Survey Nambé-Pojoaque-Tesuque 1964 Sheet No.10

Mendoza for a grant of lands east and south of Nambé Pueblo. The governor, who was in favor in principle, refused to grant the specific lands asked for, because he had received objections from the Indians. Instead, Durán de Armijo was placed in possession of two tracts of land on the northwest side of the pueblo's lands well within the so-called pueblo league. The smaller tract was located below the Río Pojoaque; the larger one, described as measuring 740 varas east and west and 550 varas north to south, lay just north of the river. Its southern boundary was defined as the Río Pojoaque; the northern and western boundaries were the lands of General Juan Paéz Hurtado, and the eastern boundary stretched along the Camino Real.<sup>7</sup> No records prove that Durán de Armijo actually farmed the land, but when the alcalde mayor of Santa Cruz confirmed the grant to him on October 5, 1789, Durán de Armijo had offered to cultivate and settle the land as directed by royal decrees.<sup>8</sup>

When Surveyor General William Pelham was trying to quiet title to private land claims in 1859, he received a petition from the grandson of Gaspar Ortiz I on June 10, 1859, in which the petitioner requested confirmation of the Durán de Armijo grant. The grandson argued that his grandfather had purchased the land from Durán de Armijo and that the conveyance had been lost. In the testimony that followed, two octogenarian witnesses swore that they had known Gaspar Ortiz I, and that he had lived on and cultivated the land from 1789 to his death in 1824. One of the witnesses, too blind to sign his name, testified to the fact that he had seen the deed executed between Vicente Durán de Armijo and Gaspar Ortiz I, "about thirty years ago [1829] in Gaspar Ortiz's hands."<sup>9</sup> Pelham approved the grant, the smallest confirmed private land claim in New Mexico, but argued that the chain of title out of the original grantee to the claimant was inchoate. In his report, he approved the land "to the legal representatives of Vicente Durán de Armijo, and ordered [it] to be transmitted to Congress for its action in the premises."<sup>10</sup> Because this land is believed to be part of *Las Acequias*, and because there is at least a suggestion that it was cultivated prior to 1859, the next move was to try to locate it.

The John W. Garretson surveys of Nambé and Pojoaque Pueblos

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7. Records of the Surveyor General, #31, Gaspar Ortiz Grant, New Mexico State Archives and Records Center (hereinafter cited as NMSARC).

8. *Ibid.*

9. Testimony of Antonio Quintance [sic], June 30, 1859, before William Pelham, Surveyor General, Santa Fe, New Mexico. From copies printed in U.S. Congress, House Committee on Private Land Claims, in *Private Land Claims in New Mexico* (Washington, D.C.: Government Printing Office, 1861), 178–79.

10. *Ibid.*, 80. Also see J. J. Bowden, "Private Land Claims in the Southwest" (6 vols., LLM thesis, Southern Methodist University, 1969), 3:606–9.

were executed in June 1859. At that time, the common boundary between the two pueblos was established at approximately one and one-half miles due west of the Nambé church.<sup>11</sup> From that point, Garretson measured the 13,520 acres of Pojoaque and 13,586 acres of Nambé. The north-south line common to both pueblos runs through the southeast portion of *Las Acequias*.

The Gaspar Ortiz grant was not surveyed until March 17, 1877. At that time, U.S. Deputy Surveyors Stephen C. McElroy and Daniel Sawyer surveyed the two tracts originally granted to Vicente Durán de Armijo, carefully following the pueblo boundary line established by John Garretson. For some reason, best known only to them, the grant limits selected for the survey were in no way similar to what had been approved by Surveyor General Pelham and the United States Congress.<sup>12</sup> Although they started correctly from the Río Pojoaque and measured the land within Nambé Pueblo, they seem to have almost reversed the dimensions and in the process shorted the grantees 13.48 acres. No explanation is given, but it is likely that the measurements were revised so as not to intrude too close to the center of Nambé Pueblo. The surveyor's notes say only that the land is "nearly all tillable and under cultivation." Although McElroy and Sawyer crossed over at least two ditches, they mentioned neither.<sup>13</sup>

The land surveyed was in approximately the right area. Perhaps it could be further identified by the Camino Real referred to in the 1739 grant documents as Durán de Armijo's eastern boundary. But locating an eighteenth-century highway in 1984 is no easy task. The eastern perimeter of *Las Acequias* just happens to be a dirt road crossing the river and heading for Santa Fe. Aerial surveys of 1935 show a highway coming up to Nambé Pueblo from Cuyamungué, but it drops off the escarpment south of the Río Pojoaque and crosses into Nambé farther east.<sup>14</sup> Conversations with old-timers in the area and tours on foot failed to define the precise location of the old Camino Real. The perimeter road may indeed be the eastern boundary of the Durán de Armijo grant,

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11. John Garretson ran the north-south line separating the two pueblos from a point measured at one mile, thirty-four chains, and ninety links west of the church at Nambé. See the plats (Pojoaque and Nambé) in U.S., Department of Interior, Bureau of Land Management, Vol. G1266, on microfiche, BLM, Santa Fe, New Mexico.

12. Vicente Durán de Armijo was awarded a grant that measured 740 varas (2035', using a 33" vara) east and west by 550 varas (1512.5') north and south, for a total of 70.66 acres. Daniel Sawyer and Stephen McElroy measured a grant with an east-west dimension of 1231.56' and a north-south dimension of 2424.18', making a total of 57.18 acres.

13. Transcript of Field Notes, Gaspar Ortiz Grant No. 31, approved by Henry M. Atkinson, United States Surveyor General, June 5, 1877, Vol. 0150, pp. 752-55, BLM, Santa Fe, New Mexico.

14. Copies of aerial photos taken in 1935 sent from the National Archives, now located in the State Engineer's Office. See photos numbered 1292, 1293 (Nambé).

but too many other possibilities negate the hoped for empirical evidence. Better to pursue the Caño Ditch through Pueblo Lands Board records, some of which provide testimony of retired farmers who worked the lands of *Las Acequias* long before it was put together as a ranch by Cyrus McCormick in the 1920s.

The Pueblo Lands Act of June 7, 1924, was designed to quiet title to non-Indian land claims "within the exterior boundaries of any lands granted or confirmed by the Pueblo Indians of New Mexico by any authority of the United States."<sup>15</sup> The Pueblo Lands Board was organized by this act. It was required to recognize non-Indian claims to Pueblo lands if they were based on a deed and had begun before January 6, 1902, or, if no written document was available, if the claimant could prove adverse possession dating from March 16, 1889. The board began its work in 1925 and completed its final report in 1933. The procedure it adopted was to publish general notices asking potential claimants to produce written deeds and property tax receipts. From these written documents and its own research in county courthouses, the board compiled an abstract of title to each non-Indian tract. The final step was to have a mass hearing at the site of the grant, at which time the non-Indians could present whatever supplemental information they had about the history of the particular tract. Because the chains of title were usually incomplete and the written deeds themselves extremely vague, the information produced at these hearings provided valuable evidence on land tenure patterns.

Descendants of the Ortiz family testified when Private Claims (PCs) in the area of the Durán de Armijo grant were brought before the Pueblo Lands Board.<sup>16</sup> They swore that some of the land had been purchased from the Indians by Gaspar Ortiz, that it had been watered by both the Ortiz and Caño ditches,<sup>17</sup> that it had been passed down to them by way of a will which Gaspar Ortiz wrote before he died on August 24, 1824,<sup>18</sup> that their water rights were over one hundred years old,<sup>19</sup> and that the

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15. Quoted from the act by G. Emlen Hall, *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800–1933* (Albuquerque: University of New Mexico Press, 1984), 244. Additional references to the Pueblo Lands Board are based on *Four Leagues*.

16. These would be P.C. 90, Parcel No. 1; P.C. 98, Parcel No. 1; P.C. 96, Parcel No. 2; P.C. 119, Parcel No. 1; P.C. 87, Parcel No. 2; P.C. 40, Parcel No. 1; and P.C. 322. See State of New Mexico, Office of the State Engineer, Upper Rio Grande Hydrographic Survey, Nambé, Pojoaque, Tesuque, Sheet No. 10.

17. Pueblo Lands Board testimony (hereafter referred to as PLB), P.C. 90, Parcel No. 1, Bouquet Ranch, Pojoaque. Testimony of José C. Sandoval, April 14, 1926. Copies of these documents are in the Office of the State Engineer, originals in the Bureau of Indian Affairs, Albuquerque, New Mexico.

18. *Ibid.*, testimony of Teodocio Ortiz and Julio Ortiz, April 9, 1926, PLB, P.C. 96, Parcel No. 2.

19. *Ibid.*, Testimony of Juan B. Rivera, April 12, 1926, PLB, P.C. 119, Parcel No. 1.

land had been lived on and cultivated as long as anyone could remember.<sup>20</sup>

These are nice recollections, but are they accurate enough to withstand cross-examination in court? Could it be that the Santa Fe County Deed Books contain supporting documents needed to prove the testimony of the Ortiz descendants? The Aamodt Case has brought to light the existence of many Spanish and Mexican period land titles that were relatively unknown, because they were not registered in Deed Books until the 1880s and early 1890s. With the guidance of John O. Baxter, author of a pioneering report on Pojoaque and Tesuque valley irrigation systems,<sup>21</sup> and my wife who helped research these deeds, several clues finally emerged.

In Santa Fe County Deed Books can be found a land exchange dated October 27, 1790, recorded on December 31, 1887, in which Gaspar Ortiz purchased a parcel of land from the Indian Lázaro and five other natives of Nambé Pueblo.<sup>22</sup> The Indians produced a license issued to Lázaro on May 19, 1789, by Governor Fernando de la Concha which stipulated that the pueblos of Pojoaque and Nambé had forty days to exercise a first right of refusal. Failure to act would mean that the land could be sold to a third party.<sup>23</sup> On May 20, 1793, Don Gaspar purchased additional land. This deed was recorded on January 2, 1888.<sup>24</sup> Each deed mentions an acequia crossing the property. Deed Book R documents the sale of land from Miguel Quintana to Gaspar Ortiz [II?] made on April 2, 1846, recorded on December 23, 1887. The property description also mentions an old acequia as the northern boundary.<sup>25</sup>

All three of these deeds were submitted in evidence for Private Claim 90, Parcel No. 1. According to the New Mexico State Engineer's Hydrographic Survey Map of the Upper Rio Grande (1964), which was based on this evidence when it was submitted to the Pueblo Lands Board, the ditch mentioned in the deeds has to be the Caño.<sup>26</sup> But because the boundaries of all three lots are vague, and the Ortiz Ditch runs in the same vicinity, the survey map could be in error, so down the

20. PLB testimony, P.C. 87, Parcel No. 2, P.C. 40, Parcel No. 1, and Gaspar Ortiz Grant, No. 31, NMSRCA.

21. John O. Baxter, "Spanish Irrigation in the Pojoaque and Tesuque Valleys during the Eighteenth and Early Nineteenth Centuries." A study prepared for the Office of the State Engineer, August 1983.

22. Santa Fe County, Deed Book S, 72-73.

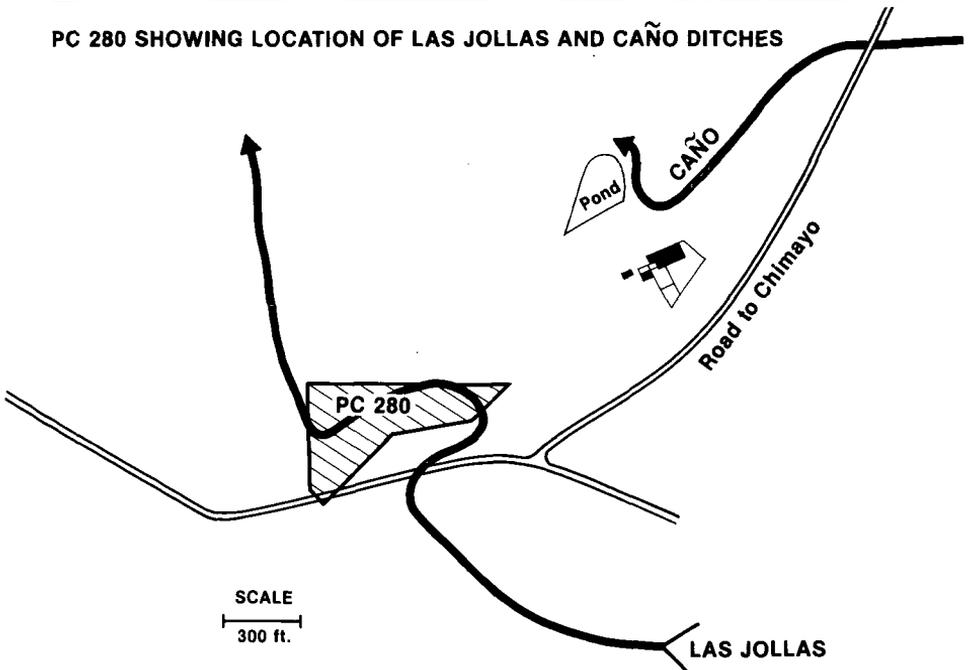
23. Baxter, "Spanish Irrigation," 32, n.9, in which the author cites Miscellaneous Pueblo Indian Records, NMSARC.

24. Santa Fe County, Deed Book S, 73-74.

25. *Ibid.*, Deed Book R, 193-94.

26. John Baxter concluded that it was the Ortiz Ditch in his 1983 report ("Spanish Irrigation," 32), but on cross-examination during a later phase of the Aamodt Case, he agreed that the deeds could also be referring to the Caño. See letter to the author from Neil C. Stillinger, March 11, 1985.

**PC 280 SHOWING LOCATION OF LAS JOLLAS AND CAÑO DITCHES**



**Taken from State of New Mexico Office of State Engineer Upper Rio Grande Hydrographic Survey Nambé-Pojoaque-Tesuque 1964 Sheet No. 8**

Caño Ditch we go looking for other tracts of land whose titles might also include an early deed. PC 280 seems to hold the key.

Clearly located under the waterfall of the Caño, PC 280 is described in a warranty deed dated November 10, 1924, as 145 varas of land with a one-half water right from the Caño Ditch and a one-quarter right from the Las Jollas Ditch. This claim was rejected at first by the Pueblo Lands Board, but the Pueblo of Pojoaque later agreed to make an exchange with non-Indians resulting in a quitclaim deed registered on November 4, 1940.<sup>27</sup> The land was surveyed to contain 3.829 acres, and the earliest deed offered in support of the property carries a date of March 5, 1831.<sup>28</sup> It describes a sale of 145 varas from Francisco Ortiz to Juan Trujillo for 262 "*pesos de la tierra*," and locates the land in an area bordered by what is now known as Woolley's Wash under the Caño Ditch.

Having searched the world over, as it were—PLB records, county deeds, abstracts of title, Mexican and Spanish period land records, litigation records of Pojoaque Valley ditches, personal interviews, on-site tours, contemporary accounts of Nambé and Pojoaque in the eighteenth

27. Abstract of title belonging to Virginia Goodwin, Pojoaque, New Mexico, 17, 18, 20, 25.

28. Santa Fe County, Deed Book S, 257–58; recorded either January 27 or January 28, 1888.

and nineteenth centuries—and finding that none of the previous research proved as clearly as this one Mexican period deed that the Caño was, indeed, used before April 1859, jubilation reigned among some of the non-Indian water users. But was there a stone left unturned? Was there a blind spot? Was there any way to make the evidence even more compelling?

A current survey of PC 280 was needed to make absolutely sure it was correctly located on the State Engineer's map. When this job was finally accomplished, the metes and bounds appeared in the right place, and a ditch snaked across the property where it was supposed to be.<sup>29</sup> The only problem was that the ditch was the Las Jollas, and its earliest use, according to the New Mexico State Engineer, was October 15, 1716.<sup>30</sup> The Caño probably watered some of the land before or after the Las Jollas was built; it was nearby. But all the evidence considered still precluded a dating of the Caño Ditch with absolute certainty.

The final report? A mixed bag, as they say. The Caño might have been prehistoric; it was probably involved in land purchases made by the Ortiz family; and almost certainly it was used by farmers who moved onto the north end of the Pojoaque league in the eighteenth and nineteenth centuries. That it was in use prior to 1859 seems clear, but exactly when it was built may never be known. In this kind of historical investigation, a good detective knows his limitations.

Overall, however, this historian must conclude that public history under contract produced rewards. It necessitated familiarity with a new set of documents which had not been thoroughly understood before. It required contact with professionals in other disciplines—map makers, aerial photographers, anthropologists, hydrologists, surveyors, to name but a few—whose research and advice were both useful and educational. It provided an opportunity to work in a fresh environment, away from the university, thus serving as something of a mini-sabbatical. The project stimulated new ideas and plenty of questions that are now being shared with students and colleagues. Ties were formed with others who have a similar interest in New Mexico acequias, and a network of information now exists where none had been thought of previously. For critics who still feel that this kind of work may prostitute historical ethics, the only fair response is, "Try it!" The work can be hard, but the rewards are unlimited, and it can even be fun.

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29. Letter to the author from Neil C. Stillinger, July 23, 1984, that enclosed a copy of Sheet No. 8, Upper Rio Grande Hydrographic Survey, 1964, on which was drawn P.C. 280.

30. State Engineer, List of Río Pojoaque Stream System Water Right Priorities, prepared for *State of New Mexico v. R. Lee Aarnodt, et al.* by Peter Thomas White, Special Assistant Attorney General, December 1, 1983.



Hondale Tomato Cannery, Luna County, ca. 1920. Courtesy of Rio Grande Historical Collections, New Mexico State University Library.