

Dancing for Water

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Dancing for Water

STANLEY CRAWFORD

Everyone has been startled at least once by the miraculous imagery of the saying that water can be made to flow uphill toward money. It is perhaps part of the genius of the image that for the moment at least it seems to settle the arguments that bring it into play. Everything has its price. We live in a world of buying and selling. We all know that. What else can we say?

Yet we also live in a world of other kinds of value, and sooner or later we will need to ask whether it is good for anything but money that water can be made to flow uphill, whether it is bad for streams, rivers, traditions, communities, and even individuals.

Several weeks ago I sat in on a water rights adjudication hearing in Santa Fe—my first, so I was able to pretend to view it through somewhat innocent eyes. There was the small, cramped courtroom in the Federal Courthouse, probably not unlike courtrooms and hearing rooms where these proceedings have droned on in New Mexico for hours and days and months and even years and decades. There were the twenty-five or thirty silent, patient defendants, Questa landowners, working men, probably miners or former miners, Hispanic all, dressed in plaid western shirts and cowboy boots. There were the attorneys and legal assistants for the Office of the State Engineer, four in all, Anglos all, with their table covered with huge aerial photographs, yellow legal pads, clipboards of lists, notebooks. There was the plaintiffs' comparatively empty table, presided over by a lone attorney from Northern New Mexico Legal Services and a volunteer assistant from Questa. There was a tripod from which hung detailed maps of the section of Questa being debated, with parcels of land blocked out in green and red and pink. There was the imitation wood panelled box of the witness stand where sat, during my time there, a succession of Mr. Raels and Mr. Valdezes. There was the judge, a kindly black-suited gentleman who patiently elicited and presided

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over a river of minutiae about fences and culverts and walls and houses and ditches and pastures and the placement of this or that boulder, all of which made up the substance of the proceeding.

What I witnessed for a few hours was the operation of that legal mechanism by which water is prepared for its eventual pumping toward money. It has to be adjudicated, it has to have its claims of ownership documented, it has to have its title quieted, it has to be made merchantable, saleable, which is what enables it to be freed up from land, acequia, community, and tradition. A horrendously expensive process in itself, this legal preparation, as anyone can easily estimate by calculating the legal hours, the research time, surveying time, driving time, lost work hours, and so on, that must go into a hearing of this sort, a hearing that lasted well over a week. And this was a small one at that, concerning some relatively small parcels of land that had been left out of a previous adjudication suit. And in the larger sense there may never even be an end result. The number of re-adjudication suits being opened up suggests that the process may well be perpetual. And who pays? Who else? In a state with a regressive tax structure, the expense of it all will be disproportionately borne by those most likely to suffer from its effects. And wherever there has been an end result, it has been to pave the way toward the dissolution of the traditional connection between land and water, and to break down the fragile webbing that binds water to land and to acequia and to what may be called community itself in rural areas of northern New Mexico.

The adjudication of water rights, I have come to believe, is social policy disguised as something else. The four articles in this issue of *Journal of the Southwest* suggest the ways in which a process that pretends to rationalize water distribution is bound to have catastrophic results on traditional ways of life. The four authors collectively suggest that an action of such far-ranging and deep consequences, whether these are intended or not, needs to be openly and exhaustively debated in the public forum well before it moves into the hermetical, adversarial climate of the legal system. These articles lay the groundwork for such a debate.

Yet there was something dully reassuring about the hearing I attended. No sparrow that fell thirty years before would be overlooked by the court, no garden grown by a grandmother or tenant or neighbor or friend within living memory. But before my eyes began to glaze over and my own memory set about sorting through other

lists, the grand oddness of it all flashed through my mind. There was something missing. Questa was here, in this courtroom, but also most obviously, in the deepest sense, Questa was still where it was, spread out over the sloping land a hundred or so miles to the north. What we were looking at was a Questa that had been evaporated out of its real setting to be reconstituted here, in distilled form, in this courtroom—a Questa which had been driven through the abstract filters of quantification and the law, depositing here a powdery residue. The real place for these hearings, I thought, should be in the very fields and orchards and gardens of the actual landscape, and they should be conducted while climbing fences, wandering down driveways, walking ditches, sitting on boulders, while eating and drinking, in the wind and the rain and snow—not here, under fluorescent lights, in air that has been warmed too many times by the city's fevered lungs.

Water should go—we all know—to those who tend it, who use it, who love it, who dance for it, and it should flow downhill from stream to river, and river to sea. Yet we have licensed our society to scheme for it to flow toward those with money and power, and we have turned over our public servants to them, we have in effect given them the keys to the treasury so that no expense will be spared in drawing lines, making maps, conducting research, making surveys, and filling vaults and basements with mountains of legal testimony.

What is oddest of all—I thought as I regained the open sky of a fretful March afternoon—is that all this legalistic hairsplitting over water rights needs the long-term ratifications of the weather in order to work at all. And the weather, of course, is what no one can ever bring to court. Being, I suppose you would say, above the law. Capable, in short, of rendering the vast social labor of adjudication quite irrelevant—in these times of rapid climatic change all over the globe. A kind of higher adjudication of the environment, you might say, that could be trying to tell us that fooling around with the elements is something we should think and talk long and carefully about before anything else, and in ways that make us all more neighborly, not less so. ❖