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**Environmental Justice Issues and Chicano/a Land Grants  
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# **Environmental Justice Issues and Chicano/a Land Grants**

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## **Abstract**

The author addresses each of the following areas: the loss of local community access to historic common lands; rural poverty associated with the loss of access; environmental degradation of watersheds as a consequence of capitalist development and expropriation of resources through mining, timbering, and other extractive activities, and the destruction of communal lifestyles that give meaning and purpose to the land grant communities. by examining the historical background of Hispano land grants and reviewing the major environmental issues regarding historic Hispano common lands. The author concludes by proposing that Hispano land grants be given a special designation as a means to address the historic claims of land grant heirs and to preserve the cultural practices associated with them.

## **Environmental Justice Issues and Chicano/a Land Grants**

The Treaty of Guadalupe Hidalgo settled the American Mexican War in 1848 and guaranteed the rights of Mexican persons remaining on the lands that became part of the United States. The steps taken by the U.S. to take control of the newly acquired region resulted in the new U.S. citizens quickly being dispossessed of millions of acres of their lands. Today, heirs of the Spanish and Mexican land grants, like their forebears, pursue their claims to land grants in the American court systems, through their legislators, and sometimes through direct action. The major environmental justice issues associated with the loss of these land grants include: 1) the loss of local community access to historic common lands; 2) rural poverty associated with the loss of access; 3) environmental degradation of watersheds as a consequence of capitalist development and expropriation of resources through mining, timbering, and other extractive activities, and 4) the destruction of communal lifestyles that give meaning and purpose to the land grant communities. This paper addresses each of these areas by examining the historical background of Hispano land grants and reviewing the major environmental issues regarding historic Hispano common lands. It concludes by proposing that Hispano land grants be given a special designation as a means to address the historic claims of land grant heirs and to preserve the cultural practices associated with them.

## **Introduction**

Principle 5 of the Principles of Environmental Justice stemming from the First National People of Color Environmental Leadership Summit, held in Washington DC in 1991, states that: “Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.”<sup>1</sup> When it comes to Chicano/a, in this case Hispano, land grant communities, environmental justice takes as its first principle the restoration of ancestral lands and is about honoring the Treaty that guarantees the rights and customs of a people incorporated through conquest.<sup>2</sup> In this case, environmental justice is about making whole and protecting Hispano land grant communities within the context of their traditional lifeways.

This paper examines environmental justice and related policy issues surrounding Hispano community land grants in northern New Mexico and southern Colorado, and provides directions for addressing them. More specifically, it addresses the following issues: 1) the loss of local community access to historic common lands; 2) rural poverty associated with the loss of access; 3) environmental degradation of watersheds as a consequence of capitalist development and expropriation of resources through mining, timbering, and other extractive activities, and 4) destruction of communal lifestyles that give meaning and purpose to land grant communities.

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<sup>1</sup> These principles are available on-line at the following URL: <http://www.ejrc.cau.edu/princej.html>.

<sup>2</sup> Hispanos are that subgroup of Chicano/as (or Mexican Americans) that has direct historical roots in the Spanish and Mexican land grants in northern and southern New Mexico (referred to as the Hispano Homeland; see Nostrand, 1992). The term “Hispanos” emphasizes the subgroup’s subcultural distinctiveness and avoids confusion with Latinos and Hispanics, which are too broad and inclusive in what they subsume.

Northern New Mexico and south-central Colorado is a region where distinct Hispano cultural and social organizational forms took hold more than three centuries ago, and where they are still reflected in the lives of the people and their communities today (Smith, 1998; Hunner, 2001). The material organization of Hispano communities is rooted in Spanish and Mexican colonization policies, and their diminished and threatened cultural existence today is based on American colonization policies. Their cultural future lies with needed modifications of existing policies and the enactment of new policies that will protect their historic rights and support them in the management of the natural resources that belong to them. Environmental justice for Hispanos has to do with the restoration of use rights and ownership of the land grants, the preservation of the cultural distinctiveness of the region, its landscape, its customs and traditions, and reclamation of the lands and waters that have been degraded by the extractive, recreational, and public management industries. It also has to do with the development and implementation of organizational mechanisms by which locals can participate in the management of natural resources with the support of governmental agencies.

#### Historical Overview

From Florida to California, New Spain's settler communities developed in accordance with the provisions of Spanish land grants, and when Mexico gained its independence from Spain, it continued to make land grants to persons petitioning for lands, especially in Texas and New Mexico, where it sought to stave off encroachments by American settlers.<sup>3</sup> When the United States completed its forced purchase of Mexico's northern territories through the Treaty of Guadalupe Hidalgo in 1848 and the Gadsen Purchase in 1853, it acquired peoples and lands vastly different from its own. The Treaty of Guadalupe Hidalgo set the new boundary between the United States and Mexico and guaranteed the rights of those Mexicans who elected to become U.S. citizens (U.S. Congress, 1848). Within a matter of four decades, Mexican Americans had been dispossessed of the majority of their lands, especially in New Mexico, where the Santa Fe Ring (a gang of American lawyers, judges, and policymakers) worked tirelessly to amass wealth in the form of land (Eastman, 1991; Knowlton, 1975; Martinez, 1987; Morrow, 1923; Raisch, 2000). Cultural conflicts, fraud, litigation, taxation, violence, and other processes were central to the separation of Mexican Americans from their lands, but it was the U.S. Government that provided the political and legal institutions within which that separation could occur (Westphall, 1958a; 1958b). Beyerlein (1991) describes some of the differences between Spanish/Mexican and American laws that negatively impacted the new citizens as follows:

Mexican and Spanish law recognized oral agreements; English law did not. The United States required claimants to live on the land, but most of these claimants lived in communities... Translations of deeds from Spanish to English created problems with proof of title. Record keeping was lax, and the unwritten transfer of title common, but the United States did not recognize claims without written proof of ownership (pp. 217-218).

Scholars generally agree that the confirmation of land grants in Texas and California was relatively fair, but those in New Mexico were fraught with a broad range of problems (Eastman, 1991). The Territory of New Mexico was created in 1850 following controversies regarding slavery and the boundaries of Texas, which claimed portions of New Mexico. The Territory included present-day Arizona and portions of Colorado, which became territories in 1863 and 1861, respectively.

The Office of Surveyor General of New Mexico was created in 1854 "to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico (U.S. Congress, 1854: 308). The work of the different Surveyors General in New Mexico was variable both in quality and amount. One, Henry A. Atkinson (1876 to 1884), became a partner of key members of the Santa Fe Ring, forming land companies with them and engaging in land deals in the 1880s (Eastman, 1991). As a result of widespread dissatisfaction with the Office of the Surveyor General, Congress created the Court of Private Land Claims in 1891 (Gomez, 1985; Martinez, 1987). The five-member Court began its work in July of that year and adjudicated land grant claims until 1904. Rejecting 94% of the claimed acreage, several claimants appealed its decisions, and the Court and its work remain controversial up to the present (*Ibid.*). Especially controversial was its repeated rejection of common lands claims (Eastman, 1991).

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<sup>3</sup> Ironically, one approach used by Mexico was to authorize land grants to Americans petitioning for land and willing to become both Mexican citizens and Catholics. It was these new land grantees who led the Texas rebellion against Mexico in the 1830s.

An additional problem for land grantees was the extension in 1853 of preemption rights to public lands to white males above the age of 21 years who were residing in the Territory prior to January of that year. Although land grants were reserved from sale or other disposal by the Government, and were exempted from the lands available under the preemption acts, these acts and their extension promoted encroachment on Hispano land grants. The problem was further exacerbated by the fact that the Territory and its land grants had not yet been surveyed, and its land grants had not been confirmed—indeed, the Office of the Survey General had not yet begun its work (Martinez, 1987).

A recent study by the United States General Accounting Office (GAO) (2001) identified 295 land grants made within the present-day boundaries of New Mexico. It further identified 154 or 52% of them as “community land grants,” meaning that they had lands “...set aside for general communal use (*ejidos*) or for specific purposes, including hunting (*caza*), pasture (*pastos*), wood gathering (*leña*), or watering (*abrevederos*)” (7). Although neither Spanish nor Mexican laws define or use the term “community land grants” (GAO, 2001), scholars continue to use the term.

#### Environmental Justice Issues and Land Grants

##### Common Lands

“Commons or community land refers to that part of land grants that residents have rights to use for grazing, wood cutting or other activities which is administered for the community by a board of trustees” (Eastman, 1991). Examples include the “vega” in San Luis, Colorado and Anton Chico, Abiquiu, Tecolote, Antonio Martinez and others in New Mexico. Although the amount of common lands held by Hispanos at the time of the conquest is unknown, Eastman (1991) argues that “nearly all community grants have had their commons at least somewhat reduced; more than three fourths of them have sold, assigned or lost essentially all their commons” (p. 104).

Despite the confusion regarding the validity of Spanish and Mexican land grants in the region, federal legislation from the 1870’s onward opened up the Hispano homeland for further encroachment and settlement by Americans, including the Federal Government itself. The Mining Act of 1872 opened up all lands belonging to the United States, surveyed and unsurveyed, to mining exploration, occupation and purchase by citizens, further complicating the problems set in motion by preemption.<sup>4</sup> The Timber Cutting Act of 1878 allowed settlers and miners to cut timber for their own use on public lands free of charge. The establishment of the Jemez and Taos Forest Reserves in 1905 and 1906, respectively, placed much of Hispano common lands directly under Government control. The boundaries of these reserves were later modified and the reserves consolidated into the Carson (Taos, 1908) and Santa Fe (Jemez, 1915) National Forests. Ultimately, the majority of Hispano communal lands became part of the nation’s national forests.

The U.S. Forest Service, after nearly a century of managing the national forests, is frequently a target of concerns expressed by Hispanos about common land issues in the region (Atencio, 1967; Krahl and Henderson, 1998; Wright, 1994). At hearings conducted by the Subcommittee on Forests and Forest Health of the House Committee on Resources, in Española, New Mexico on August 12, 1998, several individuals brought forth concerns regarding management and the declining health of the forest as a result of Forest Service policies. These include the following:

Although the U.S. Government took Hispano common lands and created the Carson National Forest and the Santa Fe National Forest, and although title to the land remains unclear, Hispanos have been willing to work with the Government in their management even though the Government has not been a good or willing partner (Gerald Chacon, U.S. Congress, House Committee on Resources, 1998).<sup>5</sup>

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<sup>4</sup> It is important to note that Natives were not considered citizens so they were not eligible to participate under the provisions of this Act. By law, Mexican Americans were eligible, but it is doubtful that many were aware of the passage of the law. It is unclear whether Pueblos were eligible since they were considered Indians for some things but not for others. It is doubtful that any participated under this program.

<sup>5</sup> It is important to note that Hispanos perceive themselves as environmentalists and as good stewards of the land and natural resources. See Raisch (2000) for several citations that provide empirical support for this statement. In this paper, however, because of the conflicts that are occurring in the Hispano homeland, the term environmentalists is used to refer to American Greens, those individuals and organizations, whether mainstream or radical, who reflect the environmental values of Americans rather than those of indigenous peoples. For an early and more extensive treatment of this issue see Peña, 1992.

The U.S. Forest Service has mismanaged the national forests in the region through inappropriate utilization policies, implementation of culturally insensitive environmental reforms, and compromises to environmental activists (Jake Vigil, *Ibid.*).

Conflicts with environmentalists and the designation of sections of the national forests in the region as potential habitat for the Mexican spotted owl have negatively impacted local Hispano timbering activities, thereby threatening the economic stability of Hispano communities (Ike de Vargas, U.S. Congress, Committee on Resources, 1998). Some land grantees sought to adjust to the situation by seeking to work with governmental agencies managing the use of these lands (Atencio, 1967). However, they have not always been treated well, and they have not always been included in the management process, although today's management paradigms tend to be more inclusive than they have been in the past.

#### Rural Poverty

One of the most salient features of the Hispano homeland is poverty—persistent poverty. Basically, the United States left New Mexicans to fend for themselves after having facilitated the dispossession of their lands (Martinez, 1988; Sanchez, 1967). Displacement of Hispanos from much of their ancestral lands resulted in limited and managed access to public lands, and in a pattern of subsistence farming that became increasingly difficult as families subdivided their plots of land across the generations (Knowlton, 1967; 1975). Additionally, governmental management of public lands reduced traditional uses of these resources by Hispanos while increasing multiple uses by Americans, the shift reflecting the tremendous power imbalances between dominant and minority groups in the region. At hearings conducted by the Subcommittee on Equal Opportunities of the House Committee on Education and Labor in 1975 at Santa Fe, New Mexico, Clark Knowlton characterized the poverty situation as follows: Northern New Mexico and southern Colorado, a unique Spanish-speaking area, is one of the poorest regions in the United States as measured by any social index such as malnutrition, infant and maternal death rates, low span of life, dropout rates, outmigration, unemployment, deplorably low living standards, financially starved public institutions, and Government neglect (*Ibid.*, p. 58).

The causes of poverty, according to Knowlton (1975), were the loss of land ownership and loss of access to the natural resources of the region (water, timber, and mineral resources). Consequences of this externally induced poverty included “the destruction of the traditional Spanish-American rural upper and middle-class groupings,” acceleration of cultural breakdown, and high rates of demographic shift, with Hispanos moving to urban areas and Americans succeeding them by moving into the region (Knowlton, 1975).<sup>6</sup> Essentially, a land-based population was transformed into a proletarian population, one that was forced to migrate to urban centers in search of employment, where they were incorporated within the already existing racial division of labor. According to Knowlton (1975), moving to urban areas did not always solve their problems, as they tended to lack the skills, the education, and the knowledge of urban culture to succeed in their new environments. He states, “For many of them, the movement is only one from rural to urban poverty; and it also represents the transfer of complex social and economic problems from the rural to the urban areas (*Ibid.*, p. 71).

While State and Federal agencies (and philanthropic foundations) have sporadically attempted to address the problem of poverty in the region, they have failed repeatedly. These failures are due, according to Knowlton, to the inability of these agencies and organizations to establish effective communication with local populations. The agencies ignore the fact that the Hispano population differs from Americans “in culture, language, values, aspirations, and definition of social and economic problems” (p. 119). The result has been the development and evolution of distrust and suspicion of Government by locals, who recognize that the Government has been directly responsible for their economic plight. Tomas Atencio (1967), characterized this distrust in the 1960s, when relations were especially tense, as follows:

It is not uncommon for the native population to see the forest ranger in his olive drab uniform as an American occupational trooper guarding the spoils of the Mexican American War (p. 35).

Relations have evolved slightly for the better since Atencio presented this view of the relations between Hispanos and Forest Rangers. Despite improvements in relations, Hispano leaders in the region still seek a more cooperative

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<sup>6</sup> Succession usually applies to urban areas and involves “moving up” in society. In this case, Hispanos are moving out and usually down, while Americans gentrify the Hispano homeland. See Martinez, 1988, for an overview of these processes.

Government—one that is willing to recognize the capacity and strength of local knowledge and employ it in the management of public resources and the development of the region (Martinez, 2002).

Today, Hispanos are being integrated into an emergent service economy that is based on tourism and outdoor recreation. At the same time, Hispano families remain dependent on the natural resources of the region. Max Cordova, President of the Truchas Land Grant Association, made the following comments at field hearings in 1998: ...[W]e are still very forest-dependent. Some of the problems that we are facing today are unemployment; diminished access to Forest Service land for fishing, for grazing, for hunting, personal use, building materials and firewood... Because of the poverty that we have in the area, it is my belief that the Forest Service must walk hand in hand with us in any policy they (sic) undertake (p. 18). Poverty is, of course, relative. Hispanos, by virtue of historical isolation, were and are poor by all traditional measures of poverty, but they were and are rich in cultural traditions, ethnic pride, and a sense of community. Despite the loss of millions of acres of land and the poverty that followed as a result, Hispanos have been able to preserve and sustain elements of their cultural traditions through the material organization of their communities that today contain the promise of informing environmentalists, government bureaucrats, and business people of an alternative worldview that is oriented toward sustainability and a harmonious relationship to nature. It is in this area that the environmental justice movement has been helpful by producing a discourse that seeks to include cultural sensibilities as part of the nation's understanding of the environment.<sup>7</sup>

### **Environmental Degradation**

Environmental degradation of rural environments is tied to the extraction of raw resources and the use of public lands for grazing and recreational purposes. Mining and timbering have been occurring in the region by Hispanos and Americans for over two centuries, and for much longer periods by Native Americans, who used silver and turquoise in the production of jewelry and timber in the construction of their pueblo homes. Hispanos have been grazing livestock (mostly sheep and more recently cattle) in the region for nearly three centuries, although the peak period was in the final part of the 19<sup>th</sup> Century in response to demands by American markets (Deutsch, 1987). Spaniards were the first Europeans to extensively mine the region, followed by Americans, who were attracted by rumors of abandoned but rich Spanish mines. Consequently, the region saw increased interest in mining in that period following the Civil War, but the great riches that prospectors had wished for never materialized (Pearson, 1984). At least not in gold or silver, riches were to come many later years in the form of molybdenum.<sup>8</sup> Riches were also to be found in logging and the development of recreational areas. Mining and logging activities in the region are associated with the following issues regarding Hispano land grants:

Mining corporations are allowed to pollute the environment repeatedly before aggressive government intervention occurs. This was the case with the Molybdenum Corporation of America, a subsidiary of Union Oil Company of California, located near Questa, New Mexico. It was also the case with Battle Mountain Gold, one of the world's largest mining companies, which operated a strip mine and cyanide leaching facility in the Rito Seco watershed just outside of San Luis, Colorado (Peña and Gallegos, 1993).

Lack of government intervention in massive extractive activities on privately owned but legally disputed Hispano commons lands is problematic and favors both private owners and corporations. This was the case with the Taylor Ranch near San Luis, Colorado, where massive volumes of timber were harvested during the 1990s despite the fact that litigation over the land was underway.<sup>9</sup> Ultimately, the Colorado Supreme Court decided in *Lobato vs. Taylor*

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<sup>7</sup> See Quivik (2001) for a discussion regarding the importance of the preservation and interpretation of cultural resources within our national environmental priorities.

<sup>8</sup> Molybdenum is used principally as an alloying agent to strengthen and harden steel, cast iron, and superalloys. It is used primarily in the form of molybdic oxide or ferromolybdenum in combination with or added to chromium, columbium (niobium), manganese, nickel, tungsten, or other alloy metals. Molybdenum also is used as a refractory metal in numerous chemical applications, including catalysts, lubricants, and pigments.

<sup>9</sup> In 1997, Lou Pai, a former Enron executive, began to acquire the Ranch in portions. He eventually ended the logging activities, and established the Jaroso Creek Ranch and the Culebra Ranch, although the property is still referred to as the Taylor Ranch by locals.

that local Hispanos have access rights for “reasonable grazing, firewood, and timber.” Ironically, this decision came after the forests had been depleted and, as a result, the watershed negatively impacted.<sup>10,11</sup>

Management by the U.S. Forest Service has also destabilized the ecological system and reduced surface waters to *acequias*, which support the agro-pastoral traditions of Hispano communities. For instance:

Land grant communities downstream from the Pecos Wilderness Area, for instance, have experienced a decrease in surface waters reaching their *acequias*. This decrease stems from the commercial forestry mind-set of the Forest Service to suppress all fires (Olsen, 1999). Over the past 90 years this practice has resulted in thicker stands of spruce and fir that consume more water. As Olsen (1999) puts it, “evapotranspiration and plant interception of precipitation reduce infiltration and recharge of hillslope aquifers, resulting in less surface water in downslope streams” (p. 825).

### **Destruction of Communal Lifestyles**

The future of Hispano lifeways is predicated on access to healthy lands and waters. The material organization of Hispano lifeways embodies distinct cultural views and practices that emphasize communal ownership of land and water and principles of mutual aid. These views and principles, along with their attendant practices, stand in sharp contrast to the principles of private ownership that undergird capitalist societies (Atencio, 1967). The management of *acequias*, for instance, by *acequia* associations reflect the principles of local democracy in the management of natural resources. One of the customary aspects of these community-based, water management associations is the practice of “sharing the water” during good times and bad times. In other words, water-sharing regimes also “share the shortages” (Ebright, 2001; Rivera, 1998). Without water for irrigation the agro-pastoral basis of Hispano culture cannot be sustained. Irrigation water in Hispano communities is threatened in the following ways:

Water is transferred from irrigation uses to other uses, including the creation of landscape ponds for resorts (See *Sleeper, et al. v. Ensenada Land and Water Association, et al.*, 760 P.2d 787).

Separation of water rights from the land to be bought and sold as a commodity.

Forfeiture of water rights through non-use as a result of legislation passed in New Mexico in the early 1990s.

Judge Art Encinias expressed the relationship between water and the sustainability of Hispano communities in 1985 when he reversed the State Engineer’s approval of the application by Tierra Grande Corporation to transfer water from the Ensenada Ditch to the corporation’s ski resort development project. The transfer changed the purpose, the place of use, and the point of diversion of surface waters rights appertunant to the Ensenada Ditch (*Sleeper, et al. v. Ensenada Land and Water Association, et al.*, 760 P.2d 787). Judge Encinias framed his decision on the basis of public interest, arguing that although poverty-stricken locals would most likely find employment in the tourist economy that would follow from the development, the applicants were wrong to assume that “greater economic benefits are more desirable than the preservation of a cultural identity” (Quoted in Rivera, 1998: 174). Judge Encinias concluded his decision with the following statement:

I am persuaded that to transfer water rights, devoted for more than a century to agricultural purposes, in order to construct a playground for those who can pay is a poor trade, indeed. I find that the proposed transfer of water rights is clearly contrary to the public interest and, on that separate basis, the Application should be denied...(*Ibid.*, p. 174).

Although the decision by Judge Encinias was reversed by the Court of Appeals of New Mexico in 1988, both the decision and the language used by the Judge stand as landmarks in the struggles by Hispanos to protect their property rights and their cultural traditions. The Court of Appeals ruled that the lower court’s decision had incorporated “a broader view of the public interest than in our judgment the legislature contemplated in enacting the controlling statute” (*Sleeper*, 760 P.2d at 792). The *Sleeper* case is significant to the study of the protection of Hispano lifeways because it juxtaposes the interests of Hispanos and Americans. The Encinias statement emphasizes the preservation of culture over economic gain, while the Court of Appeals emphasizes a narrow view of public interest that privileges the interests of individual property owners and corporations. This case makes transparent the fact that government agencies and other societal institutions are grounded in a culture different from

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<sup>10</sup> The struggle against the logging companies brought local Hispanos and American Greens together as allies. This alliance warrants further study, as the tendency has been for the two camps to be in conflict as a result of conflicting environmental values.

<sup>11</sup> Logging negatively impacted the watershed by altering runoff cycles, promoting accelerated runoff, increasing siltation of downstream irrigation ditches, and further marginalizing the local *acequia* irrigation system. *Acequias* are gravity-driven irrigation ditches that are managed by democratic organizations within Hispano communities.

that of Hispanos, and there is a tendency for these agencies and institutions to make decisions that benefit Americans as a result of a congruity of values. For instance, the same statute that provides for the protection of the public welfare when transferring water rights also provides for the separation of water from the land, which goes against the usufructory principles of water use and management among Hispanos (See Peña and Mondragon-Valdez, 1997; Martinez, 2002). Since the notion of public welfare is not defined, it is not likely that cultural preservation will be given preference over the commodification of water—which already undergirds the statute governing the transfer of water rights.

In 1991, New Mexico passed a water forfeiture (or “use it or lose it”) law that causes water rights that have not been utilized for a period of four years to revert back to “the public.” Exempted from forfeiture are those water rights that are placed in conservation programs by *acequia* associations or other jurisdictional entities. The law made it especially difficult for those families that were “pushed out” of their family plots to search for employment elsewhere, always holding on to the dream of returning and making the land productive again. Under this law, failure to use all or any part of the water claimed by a party for a period of four years results in the water reverting to the public domain to be held as unappropriated public water (NM Stat. Ann. 75-2-28). The law provides both due process and conditions under which the clock can be made to stop running, including extensions of time granted by the State Engineer, military service, and others. Additionally, placement of water rights in state engineer-approved water conservation programs during periods of non-use also exempts them from the “clock.” As a result, the Taos Valley Acequia Association, which represents 64 *acequias*, and the Rio Chama Acequia Association, which represents 27, began working with the State Engineer’s Office in 1998 to pilot an *acequia* conservation program (Shiller, 1998). While this approach to retaining Hispano water rights may work, every law passed by the state legislature brings land grant communities more and more within the legal rationality of the state—a rationality that differs from the customs and practices of Hispano communities themselves. As this process continues, beginning with the laws of the Territorial period, the autonomy of the *acequia* communities is diminished and the instrumental-capitalist logic of the state is enhanced.

Environmental degradation and external regulation of natural resources within the Hispano homeland is intricately related to the destruction of Hispano lifeways. Whether it is polluting or altering the rivers through extractive industries, outdoor recreational activities or environmental protection, or restricting access to firewood that is used to heat homes, external forces diminish the capacity of Hispano communities to sustain themselves at the level of the material *and* the spiritual, as the latter is dependent on the former. Without healthy lands and waters, the agropastoral cycles of Hispano lifeways cannot be maintained. These external forces diminish the material practices that sustain the culture of Hispanos and rob their communities of their historical identities, their collective memories, and the personal and communal satisfaction of living off the land—their ancestral lands.<sup>12</sup> The future of Hispano lifeways can only be assured through continued vigilance and adherence to the principles of constitutional law and environmental justice, especially in the policy arena.

#### The Policy Context

Enactment and enforcement of environmental laws, regulations, and policies occur in contexts of competing interests, with some groups better positioned than others to impact government agencies on their own behalf (Raisch, 2000; Fairfax, Fortmann, Hawkins, Huntsinger, Peluso and Wolf, 1999). At the field hearings before the House Committee on Resources in 1998, Gerald Chacon, District Director of the Cooperative Extension Service, Santa Fe, New Mexico, stated, “Land-based people are doomed to a life in the courtroom” (U.S. Congress, Committee on Resources, 1998: 22). Mr. Chacon was speaking on behalf on Hispano land-grantees and *reclamantes* when he made this remarkably revealing statement. Mr. Chacon is absolutely right, to be an Hispano land grantee in American society dooms one to a life of struggle against the relentless forces of American society. Both enforcement and the lack of enforcement of environmental laws and executive orders negatively impact Hispano communities because of the influences that special interests have on these processes. Interest groups impact the enforcement of environmental laws by using administrative procedures, by petitioning agencies to provide standards for rulemaking, by challenging agency actions through administrative appeal procedures, and by suing the agencies under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Instances of how Hispanos are negatively impacted by competing influences on policy enforcement include the following: The designation of the Mexican spotted owl has negatively impacted the timbering activities of Hispano cooperatives.

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<sup>12</sup> For a discussion of the notion of the Hispano sense of place see Martinez, 2002.



The designation of the silvery minnow as an endangered species has threatened the waters of *acequia* ditches. These designations resulted from pressures on the Government by environmental organizations without regard for their impact on Hispano communities. As a result, there are tense relations among Hispanos, environmentalists, and the Forest Service. Overall, it appears that there is little room for Hispanos within the views of the Federal Government, Greens and other Americans in the management of the natural resources of the region, at least not within the current discourse.

### Forest Management Philosophies

There was a brief period in the 1970s when a change in management philosophy occurred within the Forest Service, and the agency began to work more effectively with Hispano communities. The change resulted from the struggles the Forest Service had with the Alianza Federal de Mercedes, a land grants organization founded in northern New Mexico and based in Rio Arriba County. The new approach emphasized for the first time in the agency's history recognition of and respect for the cultural distinctiveness of Hispano lifeways.<sup>13</sup> Hispanos, who keep requesting that it be reinstated, refer to this management philosophy as the "Region III policy."

As a result of Cabinet Committee hearings held in 1967 at El Paso, Texas on Mexican American issues, the Secretary of Agriculture requested that the Chief Forester treat Hispanos in northern New Mexico as a "special situation" and conduct an analysis of land use priorities in the region.<sup>14</sup> This message was conveyed down the ranks to William D. Hurst, Regional Forester for Region III, who communicated it to his subordinates in the Carson, Cibola, and Santa Fe National Forests, in a memorandum dated January 29, 1968:

It is time...to make a comprehensive analysis of the Northern New Mexico situation and determine how the resources of the National Forests and our work on the National Forests can most effectively contribute to the needs of the local people. To this end, a Forest Officer will be assigned full time to this task for a 4-week period, beginning February 12. His analysis, along with recommendations for an action program, will be ready for staff review with the Forest Supervisors concerned by March 11, 1968.

M. J. Hassell (1968) examined the problems between Hispanos and the U.S. Forest Service and framed the general problem in northern New Mexico as follows: Many of the people of northern New Mexico, who are of Spanish extraction, are behind the rest of the State socially and economically; standards of living are often lower and, in some cases, dire poverty exists. This basic problem has political and cultural aspects which involve the Forest Service (emphasis in original) (*Ibid.*, p. 2).

The solution, as he saw it, was to bring Hispanos into the mainstream of American life by providing education, training, and employment through a concerted effort by many organizations—the Forest Service being one of them. Hassell described the approach that the Forest Service could employ to make its own contribution to the lives of Hispanos as follows: It is likely...that the largest contribution that can be made is to recognize the great need for personal contact, participation in community affairs, and cooperative programs of other agencies, and then organize and reorient [agency] thinking to meet those needs (emphasis in original) (*Ibid.*, p. 3). William D. Hurst, the Regional Forester, took the report seriously and moved aggressively to implement its recommendations.<sup>15</sup> Three years later, in a memorandum dated March 6, 1972, Hurst communicated the following to forest supervisors and district rangers in his Region: [T]he uniqueness and value of Spanish-American and Indian cultures in the southwest must be recognized and efforts of the Forest Service must be directed toward their preservation. These cultures

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<sup>13</sup> The issue of land grants was not treated directly in the aftermath of the activities by the Alianza, but related problems such as poor relations with the Forest Service and its relationship to persistent poverty became evident as the turmoil subsided. See Atencio (1967).

<sup>14</sup> The hearings were conducted by The Inter-Agency Committee on Mexican American Affairs, which was established by President Johnson on June 9, 1967, to "hear solutions to Mexican American Problems; assure that Federal Programs are reaching the Mexican Americans and providing the assistance they need; seek out new programs to handle problems that are unique to the Mexican American Community." See the citation for Knowlton (1967), for the complete reference to the proceedings.

<sup>15</sup> See the memorandum by WM. D. Hurst, Regional Forester to Assistant Regional Foresters and Forest Supervisors, Carson and Santa Fe National Forests dated April 10, 1969.

should be considered ‘resources’ in much the same sense as Wilderness is considered a resource with Forest Service programs and plans made compatible with their future well-being and continuance.”<sup>16</sup> Hurst further stated that Forest Service objectives and policies needed to be altered to recognize and be responsive to the culture and peoples of the region. Without its champion, however, this policy approach would not last long. Hurst moved on to other career positions and the impact of this management philosophy decreased. Take, for example, the matter of *acequia* maintenance, an activity that pre-dates American jurisdiction in the region. In the late 1990s, the Nacimiento Community Ditch Association near Cuba, New Mexico wrangled with the Santa Fe National Forest over access rights to make improvements to *acequia* waterworks in the San Pedro Parks Wilderness Area. The issue had to do with whether or not *acequia parciantes* (water rights holders) have the right to maintain and repair *acequias* that pass through public lands (Matthew and Schiller, 2001). Hispanos claimed that rights-of-way for water conveyance are permitted under the Mining Act of 1866, which provides easement without the necessity of permit or other authorization (*Ibid.*). The Forest Service, on the other hand, claimed that the Federal Lands Policy Act of 1976 authorizes it to regulate rights-of-way on National Forest Systems, including ditches and other facilities used for the distribution of water. Finally, in the Fall of 2001, when the nation celebrated the 25<sup>th</sup> Anniversary of the Federal Land Policy and Management Act, the U.S. Forest Service relented and the Regional Forester sent a letter stating that no special-use authorization was required to conduct normal maintenance or minor improvements on the ditch.

The history of the implementation of the “Region III Policy” shows that without committed leadership to serving Hispanos, the Forest Service has the tendency to fall back on old habits—ones supported by deeply-in-grained attitudes, culture, and organizational bureaucracy. Today, the management watchword from the Forest Service is “collaborative stewardship.” The situation of Hispanos, however, goes beyond this management concept and requires a formal recognition of historical and permanent rights to use the natural resources of the region, with the Forest Service and other agencies engaged in co-management of the resources—one in which Hispanos are aided by government agencies rather than the agencies taking the role of benevolent (or is it authoritarian and paternalistic) managers. By adopting the “operational philosophy” articulated in the Hassell report government agencies at both federal and state levels would greatly improve relations with Hispano communities and begin the process of rebuilding the democratic management bases of these communities, whose local environmental responsibilities were long ago usurped by governmental agencies. Implementation of this philosophy would integrate Hispano cultural resources within the management of natural resources. Until the overall problem is solved in a permanent (and hopefully constructive) manner, the issues of water, access rights, and agency management approaches remain problematic.

The Hurst epoch remains vivid in the minds of Hispanos in northern New Mexico. It was during this period that Hispanos created Grazing Associations and through them began to manage grazing allotments. This organizational mechanism is an example of how the Forest Service can truly work with local communities to manage natural resources while the “land grant problem” is resolved on a more just and permanent basis. The more involved the locals are in the management of natural resources, the more knowledge and experience they gain, and the more capable they are of developing as effective stewards of the land. An area in which such an organizational mechanism could be piloted is timber management. Fuel wood harvesting could be used strategically to thin the forests and thereby reduce evapotranspiration and plant interception of precipitation, processes that have reduced the amount of surface water in downslope streams in certain areas in northern New Mexico (Olsen, 1999).

In addition to the inclusion of local communities in the management of natural resources is the issue of restoring the historical use rights of land grant communities to their “common lands.” An historic precedent for this was recently set in Colorado in the *Lobato v. Taylor* case. The restoration of land use rights stands as a transition phase between what exists today and the call for full restoration of the common lands. The transition period can best be facilitated by the design and implementation of organizational mechanisms that promote community participation and build capacity for local management of natural resources.

### **Moving Toward Redress**

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<sup>16</sup> In this memorandum Hurst refers to the Region III Policy as the “Southwestern Region Policy on Managing National Forest Lands in the Northern Part of New Mexico.”

The Civil Rights Movement opened the hegemonic discourses of assimilation to allow for the articulation of the ideas of cultural pluralism and self-determination. In 1966, the Alianza Federal de Mercedes articulated these views in a small publication examining the land grant problem: The Spanish people do not want or seek to integrate with the Anglos. They want to be left alone. The Spanish people do not want new laws enacted; but rather they want to have the laws already enacted adequately enforced, so that all people can receive equal protection of the law for what the law really is [and]... so that all men [and women] may have dignity before the law and the community (1966: 19). The Alianza was referring to the priority of the Treaty of Guadalupe Hidalgo in the property rights of Hispanos. To support its position, the Alianza cited relevant passages from two U.S. Supreme Court decisions involving the acquisition of lands through international treaties, namely, the Adams-Onís Treaty by which the U.S. acquired Florida, and the Treaty of Guadalupe Hidalgo, by which it acquired the Southwest.<sup>17</sup> The Alianza also cited several other cases in which the courts have respected constitutional law in property rights, yet other sectors of the Government have not respected those rights, and in doing so have breached the Treaty of Guadalupe Hidalgo and denied justice to Hispanos (Alianza, 1966).

While it is impossible to be left alone in an all-consuming capitalist society, it is possible to acknowledge and restore the validity of historic land claims by Hispanos and to set up management structures that can co-exist within the dynamics of American society. The Alianza may have been wrong—there is need for at least one more law to be enacted, one that would provide a special designation for community land grants (Kutsche, 1983) and sets them aside and protects them in the same way that Pueblo Indian lands have been set aside and protected. A Land Claims Commission could be set up that would define the boundaries of the community land grants. Such was done in the case of Pueblo Indians in 1924.

While Hispanos are an Indian tribe, although many are of Indian ancestry as a result of intergroup mixing that began as early as the 17<sup>th</sup> Century, they are an indigenous people with a history of more than two hundred years in the region prior to the presence of the U.S. Government.<sup>18</sup> Their culture, their customs and practices, and their laws were and are vastly different from those of the United States. Although the rationale for the protection of Indians by the Federal Government involves the “primitiveness” of their living conditions, the validity of and respect for international treaties ratified by the U.S. Congress can be made the basis for respecting the property rights of Hispanos. In order to move toward the full restoration of the common lands, American society must begin to sort out the precedence among constitutional, case and statutory laws. The ultimate solution to the problem of Hispano land grants is for American society to provide a special designation for Spanish and Mexican land grants that not only makes them whole again, but protects them against the exigencies of capitalism. That is, it prohibits the commodification of water and gives priority to cultural values in the management of the natural resources of the region. In addition, it is important that it supports an array of community management mechanisms that bolster the capacities of these communities to manage their own resources.

#### Conclusion

Hispanos constitute a distinct subgroup within the Latino population that has legitimate historic claims to ancestral lands under the Treaty of Guadalupe Hidalgo. Over the past one hundred and fifty years this population subgroup has been subjected to a multiplicity of wrongs by all levels of government and by individuals and corporations who have encroached upon their lands, their waters, and their communities. They have been subjected to the boom and bust cycles of extractive industries that have degraded the environment and diminished their capacity to sustain their agropastoral lifestyles. They have been subjected to contradictory court rulings, legislative acts, statutes, regulations, and policies—all of which have increased restrictions on their use of natural resources and diminished their local democratic traditions in the management of natural resources. Today they are caught in the struggles between extractive industries, environmentalists, and governmental entities, all of which represent values, traditions, and perspectives different from their own.

In the struggle for environmental justice, Hispano land grant communities differ from most all other communities. Their status under the Treaty of Guadalupe Hidalgo puts them in different standing from all those peoples who immigrated to this country and settled in American cities and communities. Hispanos, in contrast to immigrants, are an indigenous population with cultural traditions and practices that are protected by the Treaty despite the fact that

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<sup>17</sup> *United States v. Percheman* (32 U.S. 51) and *United States v. Moreno* (68 U.S. 400).

<sup>18</sup> The limited rights imposed on Indians by the Federal Government in the 19<sup>th</sup> Century forced many Chicanos to deny their Indian heritage in order to “attain” full rights as citizens. Little did they know that in the long run, the status of Indian would have provided some protection to their property rights.

the United States Government refuses to uphold the Treaty in practice, at least with regard to the descendants of those Mexicans who became citizens of the United States under the Treaty.

Ultimately, environmental justice for Hispanos is about restoration of their ancestral lands and about building their capacity to manage those lands effectively and wisely. In the meantime, environmental justice is about developing new management approaches among government agencies to work more closely with Hispano communities in the management of natural resources within the public domain and to integrate the values and needs of these communities as priorities within the implementation and enforcement of regulations pertaining to environmental protection and reclamation—that is, management with a sensibility for Hispano cultural preservation. The bedrock of that management system is the communal/democratic heritage of the group, and the scientific knowledge of American society.

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