Chapter 21

Environmental Justice Issues and Chicano/a Land Grants

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"Sin tierra no hay ser"

Northern New Mexico land grantee

"I believe the quality of life in the forest is
directly linked to the quality of life in the community."

Hon. Bill Redmond, New Mexico

The concept of "environmental justice" goes beyond that of "environmental racism" by encompassing the subjection of minority and low-income communities to environmental health hazards and undesirable land uses, *and* by imbuing the relationships among humans and the natural environment with the notion of justice (Taylor, 2000a; Yang, 2002). The latter concept refers to racial discrimination in environmental policymaking and the hazardous consequences among communities of color that follow from it. In contrast, environmental justice is about overcoming environmental discrimination. With regard to rights and equal protection, environmental justice is about inclusion rather than about exclusion. Thus, the struggle for environmental justice includes such issues as land and water use rights, cultural survival, inclusion in environmental decision-making processes, and other issues by racially oppressed groups in society. Environmental justice is about more than the equitable distribution of environmental hazards, the equitable distribution of risks, or about ". . . equal protection of environmental and public health regulations" (Bullard, 1996: 493).

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." While the environmental justice movement has tended to focus on local environmental hazards, its discourse recognizes the broader issues of justice, rights, and self-determination. 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 treaties that guarantee the rights and customs of peoples incorporated through conquest.[2] Thus, environmental justice is about making whole and protecting ethnic minority communities within the context of their traditional lifeways.

This paper examines the environmental justice and related policy issues surrounding Chicano/a or Hispano land grants in northern New Mexico and southern Colorado, and provides directions for addressing them.[3] 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 the land grant communities.

Northern New Mexico and south-central Colorado is regarded as the "Hispano homeland" (Nostrand, 1992), a region where distinct Hispano cultural and social organizational forms took hold more than three centuries ago, and which are still reflected in the lives of the people and their communities today (Smith, 1998; Hunner, 2001; Gray Fisher, 2008). The material organization of Hispanos is rooted in Spanish and Mexican colonization

policies, and their diminished and threatened cultural existence today is based on American colonization policies. Their future lies with 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 the locals can participate in the management of natural resources with the support of the governmental agencies.

Historical Overview

Land grants were the principal mechanism used to settle New Spain. From Florida to California, 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.[4] When the United States completed its forced purchase of Mexico's northern territories through the Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico (commonly known at 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, which formally concluded the American Mexican War and set the new boundary between the United States and Mexico, guaranteed the rights of those Mexicans who elected to become U.S.

citizens. The U.S. Senate struck Article X, which secured the validity of land grants, from the treaty, and made other modifications when it ratified it in March, 1848. Two months later, at the city of Querétaro, Mexico, American and Mexican government representatives met to exchange ratifications of the treaty, and Mexican officials rightly sought to have the American Government clarify its intentions when it changed the contents of the treaty. Out of that exchange emerged a clarification of the amendments that came to be known as the Protocol of Querétaro.

Whereas Article X in the original version of the treaty clearly secured the validity of the grants of land made by competent authorities in the territories ceded to the U.S., the Protocol stated the following:

> The American Government, by suppressing the Xth article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.
>
> Conformably to the law of the United States, legitimate titles to every description of property personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May 1846, and in Texas up to the 2d of March 1836 (GAO, 2004: 178).

Although neither of the two nations ratified the Protocol, it was part of the exchange of ratifications of the treaty by both governments at Querétaro. In March of the following year, the U.S. Senate decided in the negative on a resolution to bind the Protocol to the treaty. It then

promptly proceeded to adopt a resolution stating that the Protocol was not part of the Treaty of Guadalupe Hidalgo. What remained in the Treaty pertaining to the rights of the new citizens was the modified Article IX, which stated that Mexicans remaining in the newly acquired territories would be ". . . maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction" (Treaty of Guadalupe Hidalgo, 1848).

The underlying reasons for eliminating Article X from the Treaty and refusing to adopt the Protocol of Querétaro as part of the Treaty included objections by Texas regarding the boundaries of the Territory,[5] the view that it was unnecessary to affirm the grants of land since "valid titles . . . were unaffected by the change of sovereignty," (Morrow, 1923: 7), and the fear that titles that had lapsed under Mexican laws might be revived under the provisions of Article X (Ibid.). A more skeptical view would argue that the United States preferred some level of ambiguity to prevail as to the status of the land grants until it had the mechanisms in place by which it could assume civil control of the region and begin its own colonization processes, including those by which it could assess the legal and formal standing of land grant claims. It was within this context of conflict and political differences that the Spanish and Mexican land grants within Texas, New Mexico and California became a part of the United States.

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; Correia, 2009). Cultural conflicts, fraud, litigation, taxation, violence, and other

processes were central to the separation of the land from Mexican Americans, but it was the U.S. government, specifically its legal system regarding land ownership, which provided the political conditions within which that separation could occur (Westphall, 1958a; 1958b). Scholars tend to agree that the confirmation of land grants in Texas and California was relatively fair, but those in New Mexico (including Arizona) 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 and had as one of its duties "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). A succession of individuals held the office of Surveyor General in New Mexico during the territorial period, and their work was variable both in quality and amount. One, Henry A. Atkinson, who served as Surveyor General from 1876 to 1884, became a partner of key members of the Santa Fe Ring, forming land companies with them and engaging in land deals with them in the 1880s (Eastman, 1991). During his tenure the greatest amount of surveying in New Mexico was conducted, but irregularities were so common that it would not be far-fetched to state that chicanery and fraud peaked during his tenure. 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 continued to adjudicate land grant claims until 1904. Rejecting 94 percent of the claimed acreage,

several claimants appealed their claims, and the Court and its work remain controversial up to the present (Ibid.). Especially controversial is the issue of the common lands (Eastman, 1991).

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).

An additional problem for land grantees was the extension of preemption rights to certain lands to white males above the age of 21 years who were residing in the Territory prior to January 1853. 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 exacerbated by the fact that the Territory and its land grants had not yet been surveyed, nor had its land grants been confirmed; indeed, the Office of the Survey General had not yet begun its work (Martinez, 1987). Moreover, Americans held the attitude that any lands that did not have Mexicans or Indians living on them were available for private acquisition (Forrest, 1989). In a sense, there were no Mexican land claims that they were bound to respect.

Two relatively recent studies by the United States General Accounting Office (2001; 2004) identified 295 land grants made within the present-day boundaries of New Mexico and presented options that Congress might use to address persisting concerns. It further identified 154 or 52 percent 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 have used and continue to use the term. The fact that lands were set aside for communal uses and were part of the land grants that defined them was and is not disputed; rather it was their validity that was deemed problematic. The majority of claims involving communal lands were rejected through the various validation processes set up by the United States, those that did not go into private hands became part of the public lands, including the nation's national forests (Knowlton, 1975; Martinez, 1987).

Environmental Justice Issues and Land Grants

Common Lands

The issue of "community land grants" continues to be raised by Hispanos in northern New Mexico and southern Colorado (Knowlton, 1975). "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). The vega in San Luis, Colorado is an example of a commons that has its roots in a Mexican land grant. Anton Chico, Abiquiu, Tecolote, Antonio Martinez and others are examples in New Mexico. Although the amount of common lands that Hispanos acquired through Spanish and Mexican land grants is unknown, claims have been

made for the past 150 years, often without favorable responses by the U.S. government (GAO, 2004). Consequently, "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" (Eastman, 1991: 104). Because commons lost through chicanery, deceit and fraud tended to become private properties, the issues of ownership and use tend to center on those that became public lands. Consequently, their management tends to involve the U.S. Forest Service, or "la floresta," as local Hispanos refer to it, the Bureau of Land Management and other Federal agencies. A significant exception is the case involving the commons within the original Sangre de Cristo land grant in San Luis, Colorado, where reclamantes contested private ownership of La Sierra (or the Mountain Tract), an ancestral common land (Goldstein, 2003; Gomez, 2004).

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,[6] further complicating the problems set in motion by preemption. In addition, the Timber Cutting Act of 1878 allowed settlers and miners to cut timber for their own use on public lands free of charge. The Forest Reserve Act of 1891 repealed this act and authorized the President to set apart forest reserve lands in any part of the public domain. Congress had established Yellowstone Park Timberland Reserve in 1872, and in 1891, the President used his newly established authority to create the first of what became the national forests on lands adjacent to the Park. In 1897, the Forest Management Act specified that the purpose of forest reserves is "to improve and protect the forest within the reservation, or for . . . securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States"

(available on-line: http://www.cfr.washington.edu/classes.common/comweb/Case%20Studies/usa/yellowstone/yellowstone/Project1/Yellowstone Docs/ORGANIC%20ACT%20OF%201897.pdf). It further stipulated that the Secretary of the Interior is permitted to regulate the harvesting of timber, mining of mineral resources, and use of water on forest reservations.

In 1905, the President set aside the Jemez Forest Reserve in New Mexico, and in 1906, he set aside the Taos Forest Reserve. The boundaries of the former were modified repeatedly through 1913, and then in 1915 it was consolidated into the newly created Santa Fe National Forest. The Taos Forest Reserve was consolidated into the Carson National Forest in 1908, nearly four years before New Mexico became a state,[7] and one year before Aldo Leopold, who later became America's most influential conservationist of the twentieth Century, graduated from Yale University with a master's degree in forestry.

In 1911, Leopold was appointed deputy supervisor of the Carson National Forest, and in 1912, he was appointed supervisor, taking up residence in Tres Piedras, a small settlement west of Taos in northern New Mexico. He was now squarely within the Hispano homeland. In this region, Hispanos had long used the forests for grazing sheep. Later, after the occurrence of management and economic shifts, they began to graze cattle. Leopold arrived in those years following the regional economic boom in sheep that occurred in the last part of the nineteenth Century. According to Brown and Carmony (1990), Leopold was met with suspicion on the part of Hispano stockmen, who had concerns about the common lands that had been made part of the National Forest system, and "problems of unhealthy land—overgrazed meadows, erosion gullies, and a lack of game" (p. 7). As supervisor, Leopold founded the Carson Pine Cone, a

newsletter he used to promote his ideas. In 1913, Leopold became ill and was forced to abandon his forest stewardship, and although he continued to serve with the Forest Service until 1928, he was never again to serve as a supervisor of a national forest. Whether or not the forests had been overgrazed prior to his arrival, and to what extent, is open to debate given that Leopold was not intimately familiar with semi-arid environments. Indeed, once he understood that the Southwest was considerably different from the Midwest, where he grew up, he began to modify his principles of forest and game management (Leopold, 1949).

Many of the Hispano concerns and grievances regarding common lands that Leopold heard while in northern New Mexico persist today. The only difference is that the U.S. Forest Service, after nearly a century of managing the national forests, is clearly implicated within the concerns expressed today (Atencio, 1967; Wright, 1994; Krahl and Henderson, 1998). At hearings conducted by the House Committee on Resources, through its Subcommittee on Forests and Forest Health, in Española, New Mexico on August 12, 1998, several individuals brought forth concerns regarding the declining health of the forest as a result of Forest Service policies. For instance, Jake Vigil, from El Rito, New Mexico, who made his presentation in Spanish, which was translated in the transcription, stated the following:

> All of my life has been spent on making a living in the Carson National Forest in the Tres Piedras District raising sheep and cattle with my father. . . Sadly, over the years I have noticed a decline in the health of the forest, not because of sheep and cattle—years ago we grazed more livestock than they (sic) do today. But because of inappropriate Forest Service policies and the implementation of so-

called environmental reforms, my beloved land is suffering (U.S. Congress, House Committee on Resources, 1998, pp. 43-44).

Mr. Vigil goes on to express concern about the 40-60 utilization policy, which he describes as utilization of 40 percent of the forage and conservation of 60 percent. He describes this policy as ridiculous and sees it as the result of compromises that the Forest Service has made to environmentalists, by which he means American Greens "who want to make the forests into some idea of what they think the forests should look like" (Ibid.).[8] Not only do the Greens disregard the fact that one of the reasons northern New Mexico remains relatively "pristine" is because of the land management practices of Hispanos, but they assume, as dominant group members, that they know what is best for the land.

Another presenter at the hearing, Ike de Vargas, member of La Companía Ocho, a small logging and milling company at the Vallecitos Sustained Yield Unit near Madera, New Mexico, commented that locals created a cooperative business in 1994 to produce timber products. Their relationship with the Forest Service was problematic from the beginning of the venture. Having obtained needed financing on the basis of a letter from the Forest Service promising access to timber for at least 50 years, the locals' co-op initiative came quickly to a halt as a result of an 18-month injunction stemming from a lawsuit against the Forest Service by environmentalists seeking to protect the Mexican spotted owl. In effect, this effort by environmentalists left local Hispanos with a substantial debt burden and few means by which to generate revenues. According to Mr. De Vargas, the locals were surprised that so much of the region had been designated as a critical habitat for the spotted owl, especially since the locals are not familiar

with the spotted owl in the region (U.S. Congress, Committee on Resources, 1998).

The loss of local community access to historic common lands remains an issue of contention among land grantees. Gerald Chacon, from Santa Fe, New Mexico, made the following comments to the Subcommittee:

> . . . I am sure you are very well aware that most of the Carson National Forest and the Santa Fe National Forest were all part of Spanish and Mexican land grants. Our people have always been land-based livestock producers with a successful history of livestock production going back to ancestral Spain . . . Today, as in our past, we have a proud history of serving the community and working with government, even when that same governance (sic) took community lands for the establishment of public domain. Still today title to much of the forest land is not clear (Ibid., p. 21).

Some land grantees with claims of historic access to common lands that today are part of the public domain have adjusted 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. Despite nearly a decade of collaborative efforts at forest restoration, mostly through grant-making, the Forest Service still has not integrated diverse cultural approaches into its collaborative models (U.S. Forest Service, 2009).

Rural Poverty

One of the most salient features of the Hispano homeland is poverty—persistent poverty. According to George I. Sanchez (1967), the United States

has not been responsive to the needs of New Mexicans, leaving them to fend for themselves after having been dispossessed of their lands. The displacement of Hispanos from much of their ancestral lands resulted in limited and managed access to public lands, and a system of subsistence farming that became increasingly difficult as families subdivided their plots of land across the generations (Knowlton, 1975). Additionally, the expert approach to the management of public lands by government agencies reduced the traditional uses of these resources by Hispanos and increased the multiple uses by Americans, the shift reflecting the tremendous power imbalances between the dominant and minority groups in the region. At hearings held before the Subcommittee on Equal Opportunities of the Committee on Education and Labor, House of Representatives, 94th Congress, lst Session on H.R. 50, H.R. 2276, and H.R. 5937 in 1975 at Santa Fe, New Mexico, Clark Knowlton characterized the poverty situation as follows:

> [A]n extremely high incidence of poverty is found among the Mexican Americans and other minority groups such as the American Indians in the South. 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 access to the natural resources of the region (water, timber, and mineral resources). One consequence of this externally induced poverty was "the destruction of the traditional Spanish-American rural upper and middle-class groupings," the 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.[9] 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. According to Knowlton (1975), the move to urban areas did not always solve their problems, as they tended, as Sanchez had argued (1967) to lack the skills, the education, and the knowledge of urban culture to succeed in their new environments. Knowlton 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 (1975, p. 71). The other side of that movement, however, is the continuing transfer of land from Hispanos to dominant group members.

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 the local populations. The agencies make little effort to recognize that the Hispano population differs from Americans "in culture, language, values, aspirations, and definition of social and economic problems" (p. 119). A tendency by government agencies and their personnel has been to impose their views of the situation on the Hispano population, not only patronizing them, but also treating them like children who need to be taught what is best for them. 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 one in which the forest ranger was seen by Hispanos as a trooper occupying their land and guarding the spoils of the American Mexican War.

Relations have evolved for the better since Atencio presented this view of the relations between Hispanos and Forest Rangers. Not unlike then, however, Hispano leaders in the region today still seek a more cooperative 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.

Max Cordova, President of the Truchas Land Grant Association, made the following comments at the field hearing of the House Committee on Resources, Subcommittee on Forests and Forest Health, in 1998:

> In 1998, we 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 undertake (p. 18).

The view that government agencies managing public lands in the region should work collaboratively with the local Hispano population is one that is long-held and valued by the latter.

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 rather than exploitive relationship to nature. It is in this context that the environmental justice movement has been helpful in opening dialogues, or at least producing a discourse, that could eventually facilitate the inclusion of cultural sensibilities intended to augment and enhance our nation's understanding of the relationship between culture and the environment.[10]

Environmental Degradation

The degradation of the environment limits the capacities of communities to sustain themselves over time and mobilizes them against the powerful corporations that reap profits from quick operations that leave distressed communities in the wake of their departures. 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. The peak period was in the final part of the nineteenth Century and was due to demands by American markets, especially the military (Deutsch, 1987). The Spaniards were the first Europeans to extensively mine the region, followed by Americans, who were attracted to the region by rumors of abandoned but rich Spanish mines. Consequently, the region saw increased interest in mining in that period following the Civil War (Pearson, 1986).

Gold, silver and copper were the primary attractions, with a claim at Red River offering possibilities in copper, and the upper reaches of the Rio Hondo offering possibilities in gold and silver. Despite considerable optimism, the filing of numerous claims, and sales of claims many times over, the great riches that prospectors had wished for never materialized. At least not in those particular minerals; riches were to come many later years in the form of molybdenum (and through recreational activities).[11] The mining claims made during this period disrupted the livestock activities of the local Hispano population, and the claims that were filed treaded on their common lands.

Success in mining went to the Molybdenum Corporation of America, which began operations with a small underground mine in the Sangre de Cristo Mountains in northern New Mexico in 1920. From those humble beginnings the mine and the company have both grown. Formerly owned by Union Oil Company of California, Molycorp today is Chevron Mining Inc. – Questa Mine, and the mining operation enjoys global status as a provider of molybdenum and lanthanides concentrates, oxides, and compounds. The mine is located near Questa, New Mexico, an Hispano community that has both benefited and suffered from the economic activities of the mine. For several decades the mine was one of the major economic mainstays in the region, providing stable economic employment for hundreds of workers from nearby communities. And, although the workers are showing the negative health effects of working with molybdenum and related compounds, their families benefited economically from their employment.

At the same time, the environmental degradation that has occurred as a result of the mining activities is immense. In accordance with Section 60-36-11 of Article 36, Chapter 69 of New Mexico Statutes, which incorporates

requirements set forth by the New Mexico Mining Act of 1993, owners and/or operators of mining operations must submit a closeout plan that specifies how the environment will be restored to a self-sustaining ecosystem following closure. Due to pollution by the mine, community and environmental groups, especially Amigos Bravos, Inc., have brought pressure to bear on Molycorp to engage in environmental restoration. And, although the mine may not close for another forty years, reclamation by Molycorp was to begin in the summer of 2002, though little was done in this regard.

The molybdenum mine is located approximately four miles east of Questa, high above the Red River, which drains into the Rio Grande. It is the largest mining operation in the Rio Grande watershed. It has tailings ponds located about six miles west of the mine on approximately one square mile of land. Approximately 1,100 people reside in a resort town within one mile of the tailings ponds. The mine is surrounded by the Carson National Forest and is approximately two miles from the Latir Peaks Wilderness Area. In the 1960s, Molycorp changed from underground to open pit mining operations, and then in the 1980s it went back to underground mining operations. Low molybdenum prices caused the mine to close in the 1980s and again in the 1990s for periods of two to three years. During those periods the company was experiencing labor strife, and many workers believe the shutdowns were attempts to break organized labor. With the advent of open pit mining and an emergent environmental consciousness, locals began to take an increased interest in the health of the river. Local residents formed Concerned Citizens of Questa, but the largely low-income Hispano community did not have the resources to effectively take on the challenge of reforming the multibillion-dollar corporation. It was not until other environmentally

concerned organizations joined the fray that change began to occur. One of these organizations is the Amigos Bravos.

Amigos Bravos, one of several "green" environmental organizations in the region, has effectively used the courts to force Molycorp to take a more environmentally responsive stance. It also sought the intervention of the Environmental Protection Agency (EPA), initially with relatively less success, but through lawsuits alleging the EPA was ignoring its duties under the federal Clean Water Act, it has spurred the EPA into action. Amigos Bravos contends that Molycorp has been discharging harmful chemicals into the surrounding environment for the past three decades, including sulphuric acid, cadmium, chromium, lead, iron, manganese, zinc, and beryllium. Molycorp has a massive open pit that includes several hundred acres, and several more are under more than 320 million tons of heavy metal-laced, acid-generating mine wastes. Drainage from the pit and from the tailings piles has been shown to have negatively impacted the water quality of the Red River, which flows westerly into the Rio Grande River, approximately three miles downstream of the tailings ponds. Moreover, up to 80 spills occurred between 1966 and 1976 on the mine's 9-mile pipeline that carries tailings and water from the mine to the tailings ponds. The pipeline runs parallel to the river, often within a few feet of it.

In 1992, the New Mexico Water Quality Control Commission submitted a report to the U.S. Congress documenting elevated levels of numerous metals within the vicinity of the mine, and subsequent reports have established significant metal contamination in the Red River due to uncontrolled runoff from the mine and to seepage from contaminated ground water impacted by mining operations. Red River was once a highly regarded trout stream, but today it is often referred to as a "dead stream," at least that section

downstream from the mine. Of concern to the EPA is a state fish hatchery that is located west of the mine. Although Amigos Bravos supported a comprehensive and enforceable cleanup agreement with the state, it took several failed attempts to negotiate effectively with Molycorp before the EPA developed a proposed plan for cleanup of Molycorp, Inc. After a series of public hearings, the plan was released to the public in January of 2010.

Over the past decade Hispanic locals have been concerned that closure of the mine could have a negative impact on the economic wellbeing of the community. There is no doubt whatsoever that the mine has been the economic lifeblood of the community for several decades. The cleanup, however, would include a comprehensive health assessment. Over the past decade Molycorp has been one of Region III's high priority Resource Conservation and Recovery Act (RCRA) corrective action sites, which emphasized avoiding threats to human health. Following active involvement by the EPA, however, and after an Environmental Indicator inspection, a risk assessment, and a Public Health Assessment were conducted, cleanup options under the Superfund Law have finally been proposed by the EPA. In the meantime, the community worries about water quality and the sustainability of its cultural lifeways.

Environmental degradation by extractive industries is evident in other parts of the region as well. Forty miles north of Questa, just a few miles across the Colorado-New Mexico state line sits the community of San Luis, Colorado, an historic Hispano community. The Hispano village of San Luis has been subjected to two major industrial efforts over the last few decades that have threatened the agro-pastoral basis of the community. San Luis, situated on the northern edge of the Hispano homeland, was settled in the mid-nineteenth Century as part of the Sangre de Cristo land grant. Today it still reflects the Hispano culture, its values, and its agropastoral

practices. Despite tremendous out-migration by Hispanos over the past five decades and the engulfing processes of acculturation, the community continues to maintain its cultural traditions and seeks the restoration of the common lands. In May of 2002, it gained a major victory when the Colorado Supreme Court decided in Lobato v. Taylor that Hispano landowners have access rights to a mountain tract known simultaneously as La Sierra, the Taylor Ranch, and the Mountain Tract, for "reasonable grazing, firewood, and timber."[12] The Tract, which has changed owners in the last decade, in now in the hands of Bobby and Dottie Hill, who acquired it from Lou Pai, a former executive at Enron, who purchased it from the Taylor family. Extractive industries have had a negative impact in the region over the past several decades, especially through activities on the Taylor Ranch. These include Earth Sciences Inc. (ESI) and Battle Mountain Gold (BMG), mining corporations, and a small group of logging companies that harvested timber on the Mountain Tract when the Taylor family owned it.

In the 1970s, Earth Sciences operated a cyanide-leaching facility at a site three miles northeast of San Luis. The company closed down in 1979 following spills that contaminated the waters of the Rito Seco that required the active intervention of the Colorado Department of Health and the U.S. Environmental Protection Agency (Peña and Gallegos, 1993). Despite an order by the EPA for ESI to reclaim the cyanide-leach pad area, the company did little cleanup. Instead, it sold the mining claim to BMG, a Houston-based mining company, which purchased additional mineral rights in the Rito Seco watershed. BMG is one of the world's largest mining companies, with mining sites in the U.S., Canada, Australia, and South America. In 1987, BMG announced plans to operate a strip mine and cyanide leaching facility at the site, and despite opposition by locals, it opened the mine in 1990.

The company promised "the most environmentally friendly cyanide mining operation ever designed" (Schneider, 2001). The state-of-the-art operation did little to protect the water, however, and the mine's first anniversary was marred by a $169,000 fine by the State for problems related to high levels of cyanide in mine waste (Ibid.). Over the next six years, the State and the EPA took turns citing and fining BMG for a series of leaks. Felix Romero, a San Luis local business and community leader, sees water as the most valuable commodity in this high semi-arid region of the country: "Water is our heritage. If we dry up, what's our land worth? What's our lives worth? If you don't have water, what do you have? Nothing. Nothing at all" (Schneider, 2001).

Despite efforts to reduce contamination, leaks continued and in 1999 the Colorado Department of Health and the State's Water Quality Control Division issued a notice of violation and a cease and desist order. They also ordered the company to notify the Water Quality Control Division on how it planned to correct the water contamination problem. By 2000, the company was reporting losses of millions of dollars, partly as a result of low gold prices, but also because of numerous legal and permit battles in Washington and Montana. Unlike its predecessor, it implemented its reclamation plan, and in 2001 sold its assets to Newmont Mining Corp., the largest gold producer in North America, which took over obligations to protect San Luis from the toxic mine water. NOTE THIS IN BILL FISCHER'S ESSAY, AND CROSS-REF Whether or not the mining area is completely reclaimed remains to be seen. As the community saw its struggles against BMG come to an end, a new foe or set of foes began moving in: the logging companies.

The harvesting of massive volumes of timber from the Taylor Ranch during the 1990s has greatly impacted the community, further draining its

resources and energies in its struggle to protect the natural resources that surround it.[13] La Sierra was part of the Sangre de Cristo land grant, most of which became privatized in the nineteenth Century in the heyday of landgrabbing and chicanery. The Taylor family from South Carolina purchased the tract, which is approximately 77,500 acres, in 1960 for $493,000. Since then, the Taylor Ranch, as it has come to be known, has been embroiled in tense relations with local Hispanos over access rights to grazing, firewood, and subsistence timber harvesting. These rights were finally affirmed in May, 2002, as mentioned above. After the purchase in 1960, Taylor quickly enclosed his newly acquired property and began to have it patrolled by armed horsemen. In the 1990s, the second-generation patriarch of the Ranch, Zachary Taylor, was bent on logging the mountain tract and signed three logging contracts that resulted in a massive harvesting of timber during the 1990s. Despite organized protests by locals and environmentalists that resulted in repeated arrests of demonstrators, the logging continued, impacting the watershed, local roads and bridges, and the heart of the community.[14]

In 1997, Robert Curry, a watershed scientist from the University of California, Santa Cruz, observed La Sierra by plane and reported that the logging had been so extensive and rapid that he believed only one year of harvesting remained. In contrast, Zachary Taylor maintained that the timber companies were "thinning" about 50 percent of the forest on 6,000 to 9,000 acres, and that the watershed showed no degradation. Because the logging occurred on private land, locals were unable to involve environmental protection agencies, except for monitoring purposes. During this period, efforts by the State, environmental, and local organizations to purchase the land failed despite protracted negotiations that in hindsight appear to have

been stalling tactics by the ranch owners in order to reap the benefits of logging, which 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.[15] In 1999, locals lost a bid for a temporary restraining order to halt logging operations. U.S. District Court Judge John L. Kane, Jr. opined that Costilla County had not met the required burden of proof that serious damage would result unless the court granted the temporary restraining order.

In 1997, Lou Pai began to acquire the Ranch in portions. He claimed he wanted to enjoy the splendor of the property, including Culebra Peak, which is the only privately owned "fourteener" in Colorado.[16] Pai ended the logging activities, and established the Jaroso Creek Ranch and the Culebra Ranch, although the property is still referred to as the "La sierra" or Taylor Ranch by locals. It is not known how much Pai paid for the Taylor Ranch, but in 1993, its value was assessed at about $20 million. Locals were unable to make the purchase, despite that fact that they have "always wanted to buy the land," according to Maclovio Martinez, the Costilla County assessor in San Luis. Soon after, Pai was implicated in the Enron scandal, and was sued for allegedly dumping his stock before the Houston-based company went bankrupt. In 2004, he sold the Ranch to Bobby and Dottie Hill of Glen Rose, Texas, who renamed the property Cielo Vista Ranch. As they promote premier elk hunting for those who can afford it, locals, always the objects of others' intentions, stand by to see what form the next threat to their lifeways will take. In April, 2002 the Sierra Club sent a letter signed by 221 scientists, including Dr. Edward O. Wilson and other prominent biologists, to President Bush calling for an end to all logging on federal lands. The letter argued that the value of the timber produced paled in comparison with the

environmental damage caused by the harvests. Unfortunately, the letter did not reference "common lands."

Environmental degradation is not limited to mining and logging, however, and can and does involve the U.S. Forest Service and its management of the national forests. For instance, land grant communities downstream from the Pecos Wilderness Area have experienced a decrease in surface waters reaching their acequias. This decrease stems from the fire suppression approaches of the Forest Service (Olsen, 1999). In this case, the Forest Service, using a commercial forestry mind-set, suppresses all fires in the forests of the region, a practice that has been going on for more than 90 years (Berry, 2007). The result includes 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). While these measures may not be seen as environmental degradation, they certainly destabilize the ecology system and negatively impact the capacity of acequia communities to sustain themselves and erode their cultural and traditional bases.

Destruction of Communal Lifestyles

The future of Hispano acequia 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. In addition, the lifeways embody 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; Martinez, 2007). 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). This view was expressed by Candido Valerio, acequia commissioner, at a 1991 court hearing in New Mexico: "We share the water…based on need. If we feel that a field needs some water, we can help that person . . . Those are the customs that were developed and used by our ancestors" (Quoted in Rivera, 1998: 167; Also see Ebright, 2001). This view is reflective of the customary practices surrounding water management by Hispanos.

Judge Art Encinias expressed the relationship between water and the sustainability of Hispano communities in the region in a case involving a request for water transfer by Tierra Grande Corporation in 1985, when he reversed the State Engineer's approval of the application. The case involved the transfer of water from the Ensenada Ditch to the corporation's ski resort development project. In essence, this 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 & Water Association, et al.). In this case 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" (In Rivera, 1998: 174). Moreover, he continued, the region is recognized nationally for its cultural value, which is not measurable in dollars and cents. 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 on the basis of their own traditions and culture. In 1985, the New Mexico Legislature passed a conservation and public-welfare statute that modified the conditions governing the transfer of water rights by adding the provision that the changes are to be made "without detriment to existing water rights and are not contrary to conservation of water within the state and not detrimental to the public welfare of the state . . ." (N.M. Stat. Ann. 72-5-23). This provision would have provided a stronger basis for the Encinias decision had it been in effect at the time, as 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, and represents a clash of social formations that has been going on or nearly two centuries. The Encinias statement privileges 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 that of Hispanos, and there will be 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 & 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.

Overall, Hispanos have been negatively impacted by the economic development of the region when looked at from the point of view of cultural preservation and group lifeways. While some individuals have benefited economically through employment with the extractive industries that have operated in the region, others have been negatively impacted. For instance, Roger Herrera, a resident of Questa who has been fighting Molycorp since 1968, suspects that his family and his livestock have been exposed to metal contamination by the mine (Atencio, 2000). A likely result is that the agro-pastoral lifestyle of Hispanos is greatly threatened, as is their continued residency in the area, unless the underground water wells and surface waters can be effectively cleaned up. Water, in some cases, is no longer IS 'THOUGT TO" MISSING HERE? be safe for drinking or for irrigation. Other problems include dust from the tailings being carried by winds and settling in the community, subjecting young and old alike to the hazards of metal contamination. Dust storms have been so severe in Questa that schools have at times been shut down and athletic events canceled (Atencio, 2000).

The contamination of underground and surface waters in Questa reflects not only the disregard of corporations for the well-being of local communities, but the political relationships that prevail between powerful corporate owners and managers and government leaders and bureaucrats, who often are willing to render decisions in favor of their "corporate buddies." In a sense, this is a form of corruption, an activity that has plagued Hispano communities since the middle of the nineteenth Century. Perhaps as a result of institutional integration, there is a tendency for American institutions to close ranks with each other as they address the issues and concerns of Hispanos, whether they have to do with land grants, education, institutional discrimination, health, or other areas.

Environmental degradation in and external regulation of the Hispano homeland is intricately related to the destruction of Hispano lifeways. Whether it is polluting the rivers 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. Environmental degradation and external regulation by American forces, whether in the form of extractive industries, outdoor recreational activities or environmental protection, 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.[17] 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

American government is a complex of institutional bureaucracies and techno-bureaucratic languages that are based on economic and political considerations from outside the Hispano homeland. Hispanos, then, are left out of decision-making and management processes that ultimately impact their lives and their communities. In a maze of laws and regulations, whether at local, state, regional, or national levels, are policies focused on preventing environmental degradation and in promoting environmental reclamation. From the beginning of the twentieth Century to its end, American governmental agencies passed legislation and enacted laws and policies to commodify and conserve and protect the nation's public lands, its waters, and other natural resources. At the same time, there have been doctrinal developments in the legal arena that have made it difficult for individuals to enforce regulations, forcing them instead to rely on administrative remedies (Yang, 2002). From the federal environmental protection acts to management policies by governmental agencies such as the U.S. Forest Service, there exists a broad range of issues that have to do with enforcement and relevance relative to indigenous populations that can only be treated in a multi-volume work by a range of experts in key areas. Suffice it to say that enforcement of policies is problematic in the environmental arena in the same way that racial issues arise in other sectors of society. That is, there is great variability in the attitudes and behaviors of agency representatives across the range of levels that characterize any specific agency, with some behaviors reflecting hostility, others benign neglect, and still other empathy.

The starting point for addressing the issue of relevance is the recognition that Hispanos are an indigenous population whose property,

political, civil, and cultural rights have been trampled upon for over 150 years. Yet, they are still here, and it is precisely at this historical moment that the greatest possibility exists for addressing their rights as a conquered population, for today two previously separate and distinct public discourses, those on diversity and environmental issues, are converging and creating the space for the integration of cultural and environmental issues.

Enforcement of Laws, Regulations, and Policies

Enforcement of environmental laws, regulations, and policies, like their enactment, occurs in a context of competing interests, where some groups are better positioned than others to impact government agencies on their own behalf (Raisch, 2000). 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, and had these people in mind when he made this remarkably revealing statement. Since the nineteenth Century, Hispanos have been in the courts seeking redress for the wrongs that Americans and their governments have committed against them, especially with regard to questions of land and land ownership. They were in court before the Court of Private Land Claims was established, they went before the Court of Private Land Claims, before state courts, and before federal courts, and they continue to be in the courts today.[18] They also have been before county commissioners, state regulatory agencies, state legislatures, federal regulatory agencies and the U.S. Congress. They have sought redress and protection for their interests through every mechanism available by the state, and on occasion they have resorted to violence to protect what they believe is rightfully

theirs (Correia, 2008). And still their struggles continue—struggles that in the long run weaken their resources and their energies.[19] 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.

Because the state is the arbiter of competing claims, different organized groups in society take their claims before state entities, whether they are for the enactment or the enforcement of laws, and often these claims conflict with each other in adversarial proceedings that ultimately make the state itself contested terrain. Whether it be the Mining Act of 1872, the Taylor Grazing Act of 1934, the Bald Eagle Protection Act of 1940, the Fish and Wildlife Act of 1956, the Civil Rights Act of 1964, the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, the Safe Drinking Water Act of 1974, the Resource Conservation Recovery Act of 1976, the National Forest Management Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), the Toxic Substances Control Act of 1986, the Reclamation Recreation Act of 1992, or some other act or the multitude of executive orders issued by the White House, each and every one of them can, through enforcement, be brought to bear upon Hispano communities in ways which negatively impact them because of the influence that other interests (corporations or environmental groups) have in the enforcement of these laws and policies. Interest groups that have the wherewithal to impact the enforcement of environmental laws do so by using administrative procedures to seek determinations by federal agencies, 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).

An example of how the enforcement of existing environmental laws negatively impacts Hispanos stems from the proactive environmental work of the Forest Guardians, a Santa Fe-based conservation organization committed to the preservation and restoration of biodiversity and natural systems on public and private lands in the Southwest. The organization, which was very active in the 1990s, when it had approximately 2,500 members across New Mexico and Arizona, pushed forth several environmental issues in northern New Mexico, including the designation of the Mexican Spotted Owl and the Rio Grande Silvery Minnow as endangered species. The decade-long effort to designate critical habitat on certain lands in Arizona, New Mexico, Utah, and Colorado for the Spotted Owl culminated in 2001, with the U.S. Fish and Wildlife Service making the designation. Although the number of spotted owls found or sighted in northern New Mexico is very limited, with the greatest number being in Arizona, the designation recognized that the owl utilizes a large geographic range in a fragmented manner corresponding to the availability of forested mountains and canyons. Although the owl does not inhabit the northern New Mexico region in large numbers, the region serves as a "potential habitat." The impact of the designation is yet to be fully felt, and it is not likely to widely impact the general population, but the impact of the designation on the lives and well being of Hispanos in the region is likely to be greater.

As mentioned above, the injunction of 1995 halted the timbering activities of Hispanos at Vallecitos, a sustained yield unit designated in 1947. La Companía Ocho, the small logging company that held the logging contracts referred to as the Manga sales, was prevented from logging by the activities of the Forest Guardians and other environmental groups. La Companía obtained the logging contracts only after filing a lawsuit against

the U.S. Forest Service for failing to meet the requirements of the Sustained Yield Act. Because of competing interests relations between Hispanos and environmental groups in the region have been remain quite tense. And, historically relations between Hispanos and the U.S. Forest Service have been tense.[20] The result is that the conflict involves several parties, with Hispanos being squeezed more and more by both the Federal Government and environmental groups.

Ike de Vargas, a member of La Compañía, made the following comments at the field hearing of the House Committee on Resources in 1998:

> The way the Endangered Species Act [was enforced]—specifically the spotted owl, the Mexican spotted owl thing, was especially wrangling to us because we knew there were no animals of that nature here . . . So we were very perplexed that the entire region, entire area, would be designated as critical habitat for the spotted owl. It didn't seem appropriate because, if we are going to set aside habitat for nonexistent owls, then we can set aside land for anything . . . (U.S. Congress, House Committee on Resources, 1998: 16-17).

De Vargas then made an interesting comment that was echoed repeatedly by other Hispanos who spoke at the field hearings:

> We have situations where the courts have ruled that the Forest Service cannot proceed to enforce agreements with the environment groups. They do it anyway. The Forest Service has not been a good neighbor to northern New Mexico for a long time. It is just recently that they have been starting to think about working with us as a result of the controversy regarding the land management years. The people are extremely resentful (Ibid.).

Another issue that came up repeatedly at the field hearings was a concern by Hispanos that the "Region III policy" was no longer in effect beyond serving as a management philosophy. Speakers requested that the policy be reinstated (This policy is discussed in the next section, following the discussion on the Rio Grande Silvery Minnow.).

The designation of the Rio Grande Silvery Minnow as an endangered species has significant consequences for the acequias and the agropastoral lifeways of Hispanos. The silvery minnow, once common in several western rivers, has emerald reflections and reaches lengths of up to 3 ½ inches. Due to the damming of rivers and water diversion, the silvery minnow is today confined to a short stretch of the Rio Grande in the Middle Rio Grande Conservancy District, especially the 160 miles between Cochiti Dam and the headwaters of Elephant Butte Dam. The majority of the minnows are found in the downstream sections of this part of the river, the section most likely to suffer during periods of drought.

The administrative process to designate the silvery minnow as an endangered species and to designate its critical habitat began in 1991. In 1994, the Secretary of the Interior listed the minnow as an endangered species, but did not designate its critical habitat. In April 1997, when two environmental groups (Forest Guardians and Defenders of Wildlife) brought legal action against the Secretary, the critical habitat still had not been designated. As a result of the proactive actions of these and other environmental groups, efforts to save the silvery minnow gained momentum, and in 1997, Amigos Bravos, a "green" environmental group, was appointed by the U.S. Fish and Wildlife Service to serve as the environmental representative to the Rio Grande Silvery Minnow Recovery Team, which worked to develop a recovery plan. As the number of legal cases increased over a multitude of

issues, Judge Mechem consolidated the cases and ordered the feuding parties, including the U.S. Fish and Wildlife Service, to enter mediation. A tentative agreement involving numerous parties was reached on July 29, 2000, and a final agreement was reached on June 29, 2001. The agreement involves supplementing the middle Rio Grande valley water supply, and several water management agencies have contributed water, including the State of Colorado.

The need to increase the water flow in the Rio Grande impacts the acequias as they are diversionary water works. Certainly, they are not as huge as those diversionary projects stemming from dams, but it does pit them against both municipalities and other powerful entities whose own water supplies are threatened in a context of adversarial relations among multiple parties. While the agreements have not directly involved the acequia associations, their members are concerned about the overall impact of the demand for increased water flow to the river. As a result of the stances some Hispanos have taken toward the enforcement of such acts as the Endangered Species Acts, some environmentalists have seen them as being against conservation. Tense relations persist, and are best characterized by Ernest Torrez, a Vietnam Veteran who spoke before the House Committee on Resources:

> I have a document here... 'The Potential Economic Consequences of Designing Critical Habitat for the Rio Grande Silvery Minnow.' . . . The document says on page 115, 'All else remaining equal, reductions in Socorro County have a greater likelihood of affecting low-income groups, given the concentration of persistent poverty in the county. . . There is no regard here [in the environmental movement] for the human equation (U.S. Congress, 1998: 78).

To Torrez' perspective can be added the notion that there is little or no room for Hispanos, as 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. Palemon Martinez, secretary-treasurer of the Northern New Mexico Stockmen's Association, expressed an alternative view to that of these groups when he spoke at the field hearings of the House Committee on Resources in 1998:

> The Endangered Species Act may have appeared like a needed and noble Act. The result has instead become a nightmare, legal and scientific entanglement that will destroy property rights, customs, cultures, bankrupt governments and individuals and not produce the intended noble results. WE RECOMMEND A REINVENTION OF THE ENDANGERED SPECIES ACT. WE ALSO RECOMMEND A REDIRECTION OF THE SPECIES RECOVERY DIRECTLY (sic) RATHER THAN ON SENSELESS LITIGATION (emphasis in original; U.S. Congress, House Committee on Resources, 1998: 119).

Fortunately, the silvery minnow is making a comeback, and recently 430 thousand were released into the Rio Grande in the Big Bend area of Texas. While this may serve to reduce tensions in northern New Mexico, other conservation issues are bound to arise.

Forest Management

National rather than local interests have driven the management of the national forests, although on occasion, local interests have assumed a degree of priority. As a result, tense relations between Hispanos and the U.S. Forest Service exploded in the mid-1960s under the leadership of the Alianza Federal de Mercedes, a land grants organization founded in northern New Mexico and based in Rio Arriba County. Tensions had been mounting for

decades, but under the Alianza's flamboyant leader, Reies López Tijerina, the members armed themselves and took direct action. Although the New Mexico State Police and the National Guard quickly (and some might say brutally) quelled the efforts of the Alianza, its work brought out some of the deep-rooted problems that existed on the issue of land grants and between Hispanos and the U.S. Forest Service.[21] In 1967, Cabinet Committee hearings were held at El Paso, Texas regarding the many dimensions of Mexican American affairs.[22] Orville L. Freeman, Secretary of Agriculture, sent a memorandum dated October 28, 1967, to Edward P. Cliff, Chief Forester, acknowledging tense relations between the Forest Service and "the little people," and asking how locals might be better served in the areas of grazing and recreation. Freeman, who served on the Inter-Agency Committee on Mexican American Affairs, which held the Cabinet Committee Hearings in El Paso in 1967, suggested a modification in the grazing policy relative to early permit holders, and concluded his communiqué with this statement:

> In any event, I thought it a useful experience and a good exercise in democracy to listen to these folks. I'm certain that some of them are most difficult to work with. Nonetheless, we must make very special efforts to reach them.

Cliff responded to the Secretary in a memorandum dated November 16, 1967, that increases in appropriations were required in both grazing and recreation areas in order to develop and manage range resources. He also stated that he was asking William D. Hurst, Regional Forester, "to consider Northern New Mexico a special situation and to make a considered analysis of land use priorities." Hurst communicated these instructions from the Chief to his own subordinates in the Carson, Cibola, and Santa Fe National Forests, all

forests within Region III, in a memorandum dated January 29, 1968. He further stated the following:

> 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 submitted his report that spring. His report and the resulting actions are the referents of comments by Hispanos when they speak of the "Region III policy" or the "Northern New Mexico Agreement."

In his report, Hassell framed the 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. While Hassell's thinking reflected the American viewpoint-—that is, he thought in assimilationist, instrumental and economic terms—-he was sympathetic to the plight of Hispanos and recognized the pivotal position

held by the Forest Service.[23] The strategy for achieving the ultimate goal was what led to improved relations for a period of time between Hispanos and the Forest Service. 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).

Hassell's report provided 99 recommendations for the Forest Service to consider for implementation as it sought to improve relations with Hispanos. The report was discussed at length among Forest Service and Department of Agriculture administrators, with several internal reviews conducted of it. Adoption of the recommendations would entail a reorientation in policies and practices, and the Forest Service began to make some changes in relation to Hispanos in northern New Mexico, with at least three follow-up reports conducted to assess the progress of implementation. Internal memoranda indicate that sixteen of the recommendations were accepted without reservation and actions were taken to implement them.[24] William D. Hurst, the Regional Forester for Region III, which includes New Mexico and Arizona, took the Hassell recommendations seriously and moved aggressively to implement those where internal agreement had been reached and which could be done within the capacity of the resources available at the time. In a memorandum dated March 6,1972, Hurst communicated the following view 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 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." (Also quoted in Schiller, 2000).

Hurst further stated that Forest Service objectives and policies must be altered to recognize and be responsive to the culture and peoples of the region.

While this initiative did not result in a complete overhaul of Forest Service policies, the work of Hurst resulted, at least in the short run, in improved relations between Hispanos and the Forest Service. A complete analysis of the institutionalization of the report's recommendations is beyond the scope of this paper, but indicative of the importance of the Hurst and Hassell positions is the fact that locals continue to ask that "the policy" be brought back in order to improve today's deteriorating relations (House Committee on Resources, 1998).

The final speaker at the field hearings of the House Committee on Resources was Palemon Martinez, who made reference to the "Northern New Mexico Policy" in his comments:

> We felt this was a positive action and we recently recommended this policy to Regional Forester Towns, and was seemingly well received. We understand that this Policy was also recommended by the Carson and Santa Fe National Forests. We also heard that although recommended, the legal reviews by higher level legal staff rejected the "POLICY" and that "POLICY" could not be different than elsewhere. WHAT IF WE CALLED

> IT "NORTHERN NEW MEXICO PHILOSOPHY"? The key is the approach and the sensitivity to custom and culture as the case may be (U.S. Congress, House Committee on Resources, 1998: 119; emphasis in the original).

In December, 1999, Congressman Tom Udall also sent a letter to Eleanor Towns, Southwest Regional Forester, urging her to revisit the Hassell report, but it, too, do not produce a proactive response.

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.[25] 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 the government agencies rather than the agencies taking the role of benevolent (or is it authoritarian and paternalistic) managers.

Land Grants and the Problems of Redress

In conformity with 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 to rebuild 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. Working with communities rather than working for communities is a much more democratic approach, as the latter tends to devolve into paternalistic, authoritarian bureaucratic

regimes that ignore the needs of communities and in the long run breed resentment. Until the overall problem is solved in a permanent (and hopefully constructive) manner, the issues of water, access rights, and agency management approaches remains problematic.

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. Loss of water rights under this law became a cause of great concern among Hispanos, who, like their ancestors, felt the strong arm of the State, this time in the form of the State Engineer. The law made it especially difficult for those families that were displaced by economic forces and "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 to be held as unappropriated public water (NM Stat. Ann. 75-2-28). The State Engineer is required to give holders of water rights notice of nonuse, and the party has the opportunity to use the water beneficially in order to retain the water rights. The law provides 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 (Schiller, 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 the 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. Take for example the matter of acequia maintenance, an activity that pre-dates American jurisdiction in the region.[26]

The issue has to do with whether or not acequia parciantes (water rights holders) have the right to maintain and repair acequias that pass through public lands. The Nacimiento Community Ditch Association near Cuba, New Mexico, for instance, wrangled with the Santa Fe National Forest for the past few years over access rights to make improvements to acequia waterworks in the San Pedro Parks Wilderness Area. Having approached the Forest Service about the proposed work, the Association was told that it needed a special use permit for its entire acequia system (Matthews and Schiller, 2001). Hispanos claim 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, claims 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. Interestingly, the Federal Lands Policy Act specifically excludes "land designated as wilderness" from this specific authority. In any case, this example

illustrates the continuing authoritarian attitude of the Forest Service, one that usurps the traditional and legal rights of the acequia communities and dismisses their claims as legitimate. Finally, in the Fall of 2001, 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. Ironically, 2001 was the year that the nation celebrated the twenty-fifth anniversary of the Federal Land Policy and Management Act on October 21. Once again, Hispanos had a bittersweet experience with the U.S. Forest Service.

The U.S. Forest Service has been recognized in recent years for adopting and implementing a "collaborative stewardship" model in working with communities. In 1998, the Ford Foundation, through the John F. Kennedy School of Government at Harvard University, awarded the Northern New Mexico Collaborative Stewardship project an "Innovations in Government Award." It was one of ten programs to receive the award. This particular program received the award for its work in making forest management on the Camino Real Ranger District of the Carson National Forest more democratic and inclusive. The historical mind, however, does not forget that community democratic practices have been usurped and "innovations" in the present are actually reflections of the institutionalization of that usurpation. Hispano communities know this, but by virtue of their situation, they are forced to cooperate with any initiative that will give them more voice in the management of their lands. Such are the options available to subordinated communities. Moreover, collaborative stewardship models are not new--as mentioned above, the Hurst and Hassell models are actually exemplars of collaborative stewardship, models that the U.S. Forest Service continues to

ignore today despite the fact that they were developed from within the organization.

The Hurst epoch remains vivid in the minds of Hispanos in northern New Mexico, as evidenced by their repeated calls to return to that policy approach. It was during that 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. More organizational mechanisms like the grazing associations are needed to build the knowledge and skills capacities in natural resource management by Hispano communities--capacities that have been diminished and become limited by governmental usurpation of local democratic and management traditions. 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, where the Colorado Supreme Court restored access and use rights on former common lands now under private ownership. In that case, a majority of the Court decided that local

Hispano landowners have use rights to grazing, fuel wood harvesting, and timber harvesting for personal use.

Although Justice Kourlis dissented and opined that communal grants were not recognized by Colorado Territorial law by virtue of the fact that it required the names of the parties in the conveyance of real estate interests, the Court decided in favor of Hispano plaintiffs. According to Kourlis, the conveyance of the Sangre de Cristo land grant through the documents of Charles Beaubien, the original grantee, did not meet the requirement of the law. Kourlis argued that the requirement by the law that the Beaubien document identify the grantees by name "is indicative of the territorial legislature's overt decision not to honor community grants that failed to mention specific grantees" (Supreme Court of Colorado, Case No. 00SC527, at 80). In effect, Kourlis gave precedence to state law over constitutional law. She further argued that case law does not recognize communal grants and requires recorded title to property rather than inquiring into the history or traditions prevailing at the time of annexation by the United States.

Despite these views, which are reminiscent of those held by judges and policymakers in the nineteenth Century, the Court ruled that "the [Hispano] landowners have implied rights in Taylor's land for the access detailed in the Beaubien Document--pasture, firewood, and timber. These easements should be limited to reasonable use--the grazing access is limited to a reasonable number of livestock given the size of the vara strips; the firewood limited to that needed for each residence; and the timber limited to that needed to construct and maintain residence and farm buildings located on the vara strips" (Ibid.). After forty-one years of direct denial of access to their ancestral common lands, Hispanos in San Luis finally had their use rights restored—although in a limited manner since the State will most likely

regulate their use rather than promote local democratic mechanisms by which the locals can manage communal use themselves. A significant feature of this case is that it involved common lands that have been under private ownership for more than a century.

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. Environmental justice, from a Hispano perspective, is about the full and complete restoration of those rights guaranteed by the Treaty of Guadalupe Hidalgo. The passage of time dulls the collective memory and increases the bureaucratic maze, but it does not diminish the legitimacy of the claims.

Moving Toward Redress

Issues of Mexican and Spanish land grants have been problematic for over a century and a half and have not been resolved despite repeated efforts by Hispanos to have their rights and their lands restored. While the ideology of assimilation was still prevalent in the 1960s, the Civil Rights Movement cracked open the hegemonic discourses 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; . . . 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, such that all ensuring laws could not "impair such old vested rights." To support its position, the Alianza cites 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.

In United States v. Percheman (32 U.S. 51), which involved a dispute over land claims in Florida, Chief Justice Marshall made the following comments in 1833:

> It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled: The people change their allegiance; their relation to their ancient sovereign is dissolved, but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? (32 U.S. at 82).

The second case referred to by the Alianza involved United States v. Moreno (68 U.S. 400), which involved a dispute over land claims in California in

1863. In that case, Justice Swayne, in delivering the opinion of the court, made the following comments:

> [Spain and Mexico]. . . are the spring heads of all the land titles in California, existing at the time of the cession of that country to the United States by the Treaty of Guadalupe Hidalgo. That cession did not impair the rights of private property. They were consecrated by the law of nations, and protected by the treaty. The treaty stipulation was but a formal recognition of pre-existing sanction in the law of nations. The act of March 30, 1851, was passed to assure to the inhabitants of the ceded territory the benefit of the rights of property thus secured to them. It recognizes alike legal and equitable rights, and should be administered in a large and liberal spirit. A right of any validity before the cession was equally valid afterwards, and while it is the duty of the court in the cases which may come before it to guard carefully against claims originating in fraud, it is equally their duty to see that no rightful claim is rejected. No nation can have any higher interest than the right administration of justice (68 U.S. at 8).

While these courts recognized the standing of constitutional law relative to the rights of property holders in ceded lands, the history of land grant cases in New Mexico shows that constitutional law has not always been respected. The Alianza cites 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, as the Alianza suggests, 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. This would require a special designation for the community land grants, one that sets them aside in the same manner that Pueblo Indian lands have been set aside. In this sense, the Alianza may have been wrong—there is need for at least one more law to be enacted, one that would create protection for Hispano land grants similar to that provided to Native American lands, though without the dreaded management of the Department of Interior and the Bureau of Indian Affairs, whose histories in intergroup relations are perhaps worse than those of the U.S. Forest Service. Paul Kutsche, whose scholarly interests have taken him to northern New Mexico where he has conducted research on Hispano communities, presented this idea in 1983 at the Western Social Science Association. A Land Claims Commission could be set up that would define the boundaries of the community land grants.

Although Hispanos present a unique case for the United States, their case is not unlike that of the Pueblo natives in New Mexico. In United States v. Joseph (94 U.S. 614, 1876) the U.S. Supreme Court ruled that the people who constituted the Pueblo of Taos were not Indians within the meaning of the Indian Trade and Intercourse Act of June 30, 1834. The Act declared, among other things, that white persons making settlement on or surveying lands belonging to any Indian tribe were subject to penalties. The rationale was that the Pueblos had nothing in common with Indians due to the degree of civilization they had achieved and to the fact of their willing submission to the laws of the Mexican Government. The Court, however, recognized that the Taos Pueblos "held their lands in common."[27] In essence, the Pueblos at this time had the same standing as Mexican Americans—they were free citizens of

the U.S. whose civil and political rights were to be respected by all. Of course, history shows the latter not to have been the case.

In 1913, the U.S. Supreme Court, in United States v. Sandoval, addressed the matter of whether or not Congress had the power to exclude liquor from the lands of the Pueblos, as the Court had ruled in 1876 that they were not Indians. Counsel for the United States argued that the level of civilization attained by and the citizenship of the Pueblos were not inconsistent with their status as wards of the Government. The Court ruled that the Pueblos are indeed Indians and subject to the constitutional power of Congress over Indians, including the prohibition of the sale of liquor to Indians. The ruling was based on a "uniform course of action beginning in 1854 . . . [of] the Government hav[ing] regarded and treated the Pueblos of New Mexico as dependent communities entitled to its aid and protection, like other Indian tribes . . . " (231 U.S. 28, at 47).[28] The Court further opined that the lands of the Pueblo Indians were held by communal title, that such lands are public lands of the [P]ueblo, and so the situation is essentially the same as it was with the Five Civilized Tribes . . . " (Ibid., at 48). In 1924, Congress passed the Pueblo Lands Act, which addressed many of the land claims and grievances of the Pueblos, including the forced removal of Hispano families from "Pueblo lands."

While it cannot not be argued that Hispanos are an Indian tribe, although many are of Indian ancestry as a result of intergroup mixing that began as early as the seventeenth 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.[29] 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.

Through racism, American society has perpetuated the existence of Hispanos as an ethnic minority group conscious of its history, its oppressed status, and its historic claims to land grants. Although some scholars claim that Hispanos use ethnic identity as a resource in their struggle for justice (Raisch, 2000), it is not the use of ethnic identity as a resource in the struggle against continued encroachments on their communities and region that sustains Hispanos, rather it is their political economic interests in the historical context of conquest and exploitation--a dynamic that forces them to fall back on the only resource that they have to resist further exploitation of the homeland, their cultural heritage. To a great extent, their culture is their only resource—-their ethnic identity stems from it. Fortunately, the tide has shifted against assimilation into American society. As the process of globalization continues to generate local struggles against the uniformitarianism of capitalism, the struggle for cultural preservation also continues to gain increasing interest and support. In this context, American society has to deal with the historic claims of Hispanos, and the dynamics have begun to shift against its paternalistic exploitative modes of management.

The pluralistic features of American society point to immense possibilities relative to Hispanos. The Lobato v. Taylor case signals a break in the hegemonic structures of the primary sector of the capitalist economy, perhaps because the cycles of exploitation have depleted the natural resources to the extent that a long period of conservation is necessary for

their reclamation, or perhaps access to raw resources in other parts of the globe are easier today as a result of the incorporation of many nations within the orbit of capitalism. Whatever the case may be, the situation holds great promise for the restoration of the historic claims of Hispanos in northern New Mexico and southern Colorado. In moving toward redress, it is imperative that the transition period involves well-defined steps to build capacity among Hispano communities to effectively manage their ancestral lands. The bedrock of that management system is the communal/democratic heritage of the group, and the scientific knowledge of American society.

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 government 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 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.

Endnotes

1. I thank Lorenzo Almada, Francisco Villarruel and Arturo Vega for their critical comments on earlier drafts of this manuscript. Their close readings and keen minds have made for a better product.

2. Hispanos are that subgroup of Chicano/as that has direct historical roots in the Spanish and Mexican land grants in northern and southern New Mexico (referred to as the Hispano Homeland). Hispanos is the author's preferred term for referring to this population grouping and emphasizing its subcultural distinctiveness, and for avoiding confusion with the more general terms, such as Mexican American, Latino, and Hispanic, which are too broad and inclusive in what they subsume.

3. The paper's focus is limited to this region because this is where the issue of land grants remains salient and problematic. It may be because much of the common lands became public that it remains an issue. Issues arise in south Texas on occasion, but they seldom arise in Arizona and California.

4. Ironically, one approach used by Mexico was to authorize land grants to Americans who became Mexican citizens and converted to Catholicism. It was these new land grantees who led the Texas rebellion against Mexico in the 1830s.

5. At the time, "Imperial Texas" claimed a considerable amount of territory, including sections of New Mexico, Oklahoma, Colorado and Kansas.

6. It is important to note that Natives where 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 and not considered Indians for others. It is doubtful that any participated under this program.

7. The Territory of New Mexico had sought statehood on at least two prior occasions, but had been rejected. It was not until Americans had sufficiently taken control of its institutions and brought it within the orbit of the dominant legal and economic frameworks that New Mexico was finally granted statehood.

8. It is important to note that Hispanos perceive themselves as environmentalists and as good stewards of the land and natural resources. See Raish (2000) for several citations that provide empirical support for this statement. In this paper, however, because of the discourse that is 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.

9. 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.

10. See Quivik (2001) for a discussion regarding the importance of the preservation and interpretation of cultural resources within our national environmental priorities.

11. 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. The capacity and versatility of molybdenum in enhancing a variety of alloy properties has ensured its role in contemporary industrial technology,

which more and more requires materials that are can withstand high stress, expanded temperature ranges, and highly corrosive environments. Molybdenum also is used as a refractory metal in numerous chemical applications, including catalysts, lubricants, and pigments.

12. Pai purchased the Mountain Tract from Zachary Taylor, whose father purchased it in 1960. The Taylor family epitomized the arrogance that comes with wealth, and their manner of relating to the local community was that of single-minded exclusion. Consequently, their term as owners was marked by overt and covert conflicts, litigation, and public demonstrations. The Tract is still referred to as the Taylor Ranch by locals when referencing its private ownership, and as La Sierra when referencing its common ownership. This difference in names reminds one of the contested islands called the Malvinas by Argentinians and the Falkland Islands by the British. La Sierra is the Hispanos' own contested island.

13. The impact of external forces have distorted the community's development. In a sense, this is parallel to the situation of the Soviet Union, which became a militarized society as a result of continuous external threat by the United States and the other Western powers. Hispano communities have not been able to develop "normally" because they have been under constant assault by American social, political and economic forces for the past one hundred and fifty years.

14. 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.

15. Acequias are gravity-driven irrigation ditches that are managed by democratic organizations within Hispano communities.

16. A "fourteener" is a mountain peak that rises 14,000 feet or more above sea level.

17. For a discussion of the notion of the Hispano sense of place see Martinez, 2002.

18. See for instance Sunol, et al. v. Hepburn, et al (1 Cal. 254); United States v. Sandoval; Morton v. United States (167 U.S. 278); Sena v. United States (189 U.S. 233); United States v. Martinez (184 U.S. 441); Chaves v. United States (168 U.S. 177); Bond v. Unknown Heirs of Barela (229 U.S. 488); Chavez v. Bergere (231 U.S. 482) and Montoya and Unknown Heirs of Vigil v. Gonzales (232 U.S. 375).

19. The Apaches at the close of the nineteenth Century were exhausted by their continued struggles against European encroachers. First came the Spanish, then the Mexicans, and then the Americans. Pushed southward from as far north as the plains of Colorado, they ended up trapped in the borderlands between Mexico and the United States, weakened by protracted struggles that depleted their resources and their energies; ultimately forced to surrender. Similarly, but in a different context, Hispanos are trapped between the demands of capitalism, governmental bureaucracies, and environmentalists, and each depletes their resources and energies. Many times they have conceded their rights and portions of their lands because they were simply too tired to continue the struggle.

20. Relations were especially tense in the mid 1990s, when thousands of members of the Rainbow Family celebrated the Fourth of July in the Carson National Forest near Tres Piedras. Locals were upset that the Family members would stay free of charge while they, who own the land by birthright, have to pay fees to hunt and fish. Also, in 1996, the Espanola Ranger District office was bombed. No group took responsibility.

21. 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).

22. 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.

23. Hassell was familiar with George I. Sanchez' work The Forgotten People, and probably held views congruent with the assimilationist emphasis that characterized Sanchez' work (See Martinez, 1988 for a critical view of Sanchez' perspective). He was also familiar with the works of other scholars conducting research on land grants and the public domain in New Mexico. And, while he does not mention the work of Clark Knowlton, who at the time had "close" relations with Tijerina, he was probably familiar with his work but may have wanted to stay at arms length from it due to the political climate at the time. As such, he makes no reference to Knowlton's work.

24. Memorandum by WM. D. Hurst, Regional Forester to Assistant Regional Foresters and Forest Supervisors, Carson and Santa Fe National Forests dated April 10, 1969.

25. In his memorandum of March 6, 1972, Hurst refers to the Region III Policy as the "Southwestern Region Policy on Managing National Forest Lands in the Northern Part of New Mexico."

26. In the late 1980s, the author was involved in the "Gallina Road Dispute" in Valdez, New Mexico, where a small group of Americans who had moved onto a section of common lands as a result of a quit claim to a section of land by some local Hispanos demanded that the county maintain the road on the commons. In a community meeting, an American female demanded to know why the county had "given the road to the locals," completely unable to grasp the notion that land ownership predated the establishment of counties by the American government. These Americans also confused the notion of "public," with common lands open to the "Hispano public," and not the "American public," a notion that irritated them to no end. How can it be possible that Brown people can keep White people from realizing their every desire—there must surely be something wrong with the world?

27. Interestingly, the Court stated that in this regard, the Pueblos resembled the Shakers and "other communistic societies in this country, and cannot for that reason be classed with the Indian tribes . . . " (94 U.S. 614, at 618).

28. Consistency in treatment is obviously problematic, as Pueblos were treated as non-Indians for over 60 years, which made it easier to separate them from their lands. On the other hand, the Government was more uniform in other modes of domination during that period, ultimately ruling that it could restrict liquor at the Pueblo.

29. The limited rights imposed on Indians by the Federal Government in the nineteenth 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.

228.