

High Country News

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A tiny tribe wins big on clean water

Jason Lenderman | Feb. 2, 1998 | *From the print edition*

ISLETA, N.M. - A recent Supreme Court decision reaffirms a 2,500-member tribe's right to tell the city of Albuquerque what it can and cannot dump into the Rio Grande River.

The Isleta Pueblo sits six miles downstream from where Albuquerque dumps 55 million gallons of wastewater each day. Sewage from the city's 450,000 residents makes the river water unhealthy for farming and religious ceremonies, Isleta residents say.

Of particular concern are ammonia, a byproduct of human waste, and arsenic, which comes out of the ground in city wells. Arsenic magnifies itself as it works its way up the food chain, says tribal councilwoman Verna Teller, poisoning fish and Isleta's centuries-old fields of squash and corn.

The tribe had little legal clout with Albuquerque until 1987, when Congress amended the Clean Water Act, granting 129 tribes around the country equal standing with states on water-quality issues. Suddenly, Native Americans had the right to dictate upstream water quality in rivers that flow through tribal lands.

Isleta was the first tribe to establish a water-quality standards program allowed under the act. "We jumped at it right away," says Teller, former tribal governor, "because it was the only opportunity we had to do something about the pollution legally."

Isleta set a strict arsenic limit of 17 parts per trillion, many times cleaner than the federal drinking water standard of 50 parts per billion. Teller explained setting the standards extra high was intentional, a bargaining wedge to negotiate "a happy medium" with the city.

At first, Albuquerque seemed cooperative, says Teller, and Isleta gave the city a three-year grace period to analyze its discharges into the Rio Grande and upgrade its sewage treatment.

But in 1992, shortly after the agreement was reached, the city sued the federal Environmental Protection Agency, which oversees water-quality programs. Albuquerque shouldn't have to pay to clean up pollution, said former Albuquerque mayor Martin Chavez, when some of it came from industries polluting upstream or from naturally occurring arsenic.

"We wanted to have a ruling on the ultimate authority to set those standards," said Chavez in a recent interview. "What if they (the tribe) decide to change their mind tomorrow?"

The city's change of heart surprised Isleta. "When we left the meeting we were in cahoots," said Teller. "Next thing we knew, we had a lawsuit."

Over five years, Albuquerque tried to convince two federal courts that Isleta's request had no scientific basis, and that a clause in the Clean Water Act directs the EPA to mediate disputes over water quality standards.

In October 1996, the 10th Federal Court of Appeals in Denver ruled against the city, saying the tribe had legal authority to enforce water quality. The city appealed the case to the Supreme Court, and when the court declined to hear the case last November, it upheld Isleta's right to dictate Albuquerque's water quality.

Isleta residents were ecstatic. "This reaffirms our conviction as a tribe to protecting our environment," said Teller.

"This case is huge," said Brian Shields of the river conservation group Amigos

Bravos. "It has ramifications all over the country. And it's the only way we can get that high (degree) of protection for the Rio Grande."

Albuquerque officials were not so happy. Now, if the EPA upholds Isleta's standards, the city will have to spend more than \$300 million to upgrade its sewage plant, says city attorney Greg Smith. The plant could cost \$20 million a year to operate. "We're going to come nowhere near 17 parts per trillion," Smith said of the arsenic standard. "The river itself has substantially higher arsenic than that."

In retrospect, said Lou Colombo, deputy staff director of the Albuquerque city council, a softer approach to negotiations might have been better for both sides. "We would have gone much further trying to address and understand their concerns rather than taking this to court."

Currently, tribal water quality standards are being challenged in two states - the Mole Lake Chippewa in Wisconsin, and the Confederated Salish and Kootenai Tribes and Fort Peck Assiniboine and Sioux tribes in Montana.

In New Mexico, seven other tribes, many of which sit along major rivers, have developed water quality standard programs.

The writer is a former High Country News intern.

You can ...

* Contact Isleta councilwoman Verna Teller at 505/869-2823, or,

* Contact Albuquerque city attorney Greg Smith at 505/768-4500.