

Art work by Ed Sandoval.

New Mexico Acequia Association  
**Acequia Governance Handbook**



New Mexico Acequia Association  
805 Early St, Suite 203B  
Santa Fe, NM 87505  
(505)995-9644  
[www.lasacequias.org](http://www.lasacequias.org)

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## ABOUT THE NEW MEXICO ACEQUIA ASSOCIATION

The New Mexico Acequia Association is a statewide, non-profit organization founded in 1990. Its mission is to protect water and our acequias, grow healthy food for our families and communities, and to honor our cultural heritage.

### VISION STATEMENT

In our vision, acequias flow with clean water, people work together to grow food, and communities celebrate cultural and spiritual traditions. People honor acequias as part of our heritage and express *querencia* through a strong connection to land and community. Knowledge and experience about growing food, sharing water, and saving seed are passed on from generation to generation.

Guided by our core values, the New Mexico Acequia Association grows a movement of people of all ages and walks of life to defend and protect our precious water by resisting its commodification and contamination. Through involvement in NMAA, families and youth are inspired to cultivate the land, care for our acequias, and heal past injustices. Communities have an abundance of healthy, locally-grown food because we recognize agriculture as a respected and dignified livelihood and way of life.

To become a member of the New Mexico Acequia Association please visit [www.lasacequias.org/membership](http://www.lasacequias.org/membership) or call (505) 995-9644.

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## Introduction to Water Rights

### New Mexico Acequia Association Fact Sheet

Every water right in New Mexico carries with it the right to use water from a specific water source to be used at a specific location and for a specific purpose of use. A water right for irrigation purposes is associated with a designated tract of land. When someone sells his or her land, the sale automatically includes any water rights unless the seller specifically states in the deed that he or she is retaining ownership of the water right. As long as the tract of land continues to be irrigated, without any long periods of non-use, the water right will remain valid.

Most irrigation water rights in New Mexico became established simply by historic irrigation of the land and continuous use to the present. Surface water rights originating prior to 1907 do not need any kind of permit or paperwork to be considered valid today, as long there is continued use. The land does not need to be plowed or planted with crops to have a water right; for example, land that is irrigated only for pasture or for a lawn can have a valid water right. The only requirements are a **man-made diversion** from a stream and **beneficial use** associated with the irrigation. People who wanted to obtain a new surface water right after 1907 had to get a permit from the State Engineer, and could only get one by proving that there was surplus water in the particular stream system. There is no longer surplus water in any stream system in New Mexico.

A “water right” differs from a “ditch right” (although many acequias use the term “water right” to mean “ditch right”). A water right has to do with the **state’s** rules and laws governing who can take water from a stream. A ditch right usually refers to the specific rules **a particular acequia** has about being in good standing with the acequia. A person can temporarily lose ditch rights, for example, by failing to pay dues, but can re-establish them by paying the back dues. None of this affects the validity of the water right under state law. But if a water right is lost according to state law, it is permanently lost, and so is the ditch right. The state can *only* take away an established water right if the requirements of forfeiture or abandonment are met (see the NMAA Fact Sheet entitled Forfeiture and Abandonment”). Usually it is a court that determines whether someone has lost his or her water right. The Office of the State Engineer (OSE) often has an opinion about whether a water right has been lost under state law, but if there is any disagreement about the OSE’s opinion, it must be resolved by a court. Likewise, an acequia cannot decide whether a water right is lost under state law.

Every water right is legally defined by a number of elements:

- Source of water (which stream)
- Place of use (which tract of land and how many acres)
- Purpose of use
- Point of diversion
- Priority date (date water was first put to use on the land)
- Amount of water (limit on the volume of water that can be used per acre)

## **Priority dates and the prior appropriation system**

New Mexico has a type of water law called the “**prior appropriation**” system, which is found in most Western states. This system gives preference in times of water shortage to those water rights with the oldest **priority dates**. The priority date of a water right is the date the water was first put to “beneficial use” on the land. For most acequia-based water rights, this is the date the acequia was first constructed. In many regions of New Mexico the most **senior** water rights (i.e., those with the oldest priority dates) are held Pueblos and by acequia parciantes, because those are the oldest communities in those regions with a continuous history of irrigated agriculture. The priority dates of most acequias are in the 1600s-1800s, which reflect the dates those communities were settled. The preference that is given to senior water rights is recognized by the laws and Constitution of New Mexico.

If there is a shortage of water on a stream, then the senior water right owners have the right to demand that junior water right owners reduce or stop their diversion of water so that the senior water users can get enough water. This is called a “**priority call**.” These senior rights can be enforced if necessary by a court. There is also a provision in New Mexico law for **priority administration**, in which the State Engineer or a **water master** appointed by the State Engineer is legally authorized in times of shortage to allocate water in accordance with the different priority dates, if necessary by curtailing the use of junior water users.

In many acequia communities, acequias on the same stream have avoided priority date issues because they have an established system for rationing or sharing water between different acequias regardless of priority dates. Such a system replaces priority calls. It may also help avoid outside priority administration, or may be incorporated into priority administration if it is implemented.

The laws regarding priority administration have rarely been used, and there is not a consistent record of the OSE or water masters actually curtailing junior users when senior users have asked the OSE for protection of their rights. The OSE has developed regulations for priority administration (called “Active Water Resource Management” regulations), but it is not clear whether this will result in honoring senior priority rights in the manner set forth in the state’s laws and Constitution.

# Adjudication of Water Rights

## New Mexico Acequia Association Fact Sheet

An “adjudication” is a lawsuit, usually filed by the State, for determining who owns what water rights in a river system. Each different stream system has its own separate lawsuit. When the Office of the State Engineer (OSE) files an adjudication suit, each water right owner becomes a defendant and must establish the amount and extent of his or her water rights. This includes not only acequia parciantes in the particular stream system, but also well owners, towns and municipalities, tribes, Pueblos, and the United States (if the adjudication involves federal water rights on federal lands).

Adjudications often take decades to complete. The adjudication of the Rio Nambé-Pojoaque-Tesuque stream system was filed in 1966 and has still not been completed. In any adjudication there can be hundreds or even thousands of defendants, and each water right owner has separate elements of his or her water right that must be defined. In addition, the judges or “special masters” are often involved in multiple adjudications, and so there can be long periods in which the court’s attention is focused on a different adjudication. The State Engineer, as the “plaintiff,” can strongly influence the amount of activity or inactivity in each adjudication. Also, if an adjudication deals with new or complicated legal issues, it can take years to conduct hearings, gather briefs from the different parties, and make a decision. For example, in the Rio de las Gallinas adjudication, the question of whether the City of Las Vegas has a unique water right based on Spanish and Mexican law has taken many years to litigate. In the Nambé-Pojoaque-Tesuque adjudication, determining the water rights of the Pueblos raised extremely complicated legal issues, and several decisions concerning the Pueblos’ water rights have been appealed over many decades. Further, courts often allow parties many years to try to reach a settlement on particular issues. Acequias should note that federal court settlement provisions can create new rules not found in state law, so that acequias located in an area in which a settlement is in effect may, for instance, have different rules governing water banking or water transfers.

For each water right, the adjudication court must determine (1) the source of water (i.e., which stream or tributary); (2) the place of use (i.e., which tract of land and how many acres); (3) the purpose of use; (4) the point of diversion; (5) the priority date (i.e., date water was first put to use on that particular land); (6) the amount of water (i.e., the limit on the volume of water that can be used per acre); and (7) any other defining features of the water right. Some of these elements are decided routinely (purpose of use, for example), while others are often contested.

Some of the contested issues that generally arise in an adjudication are:

- *Does the defendant have a water right? How much water rights?* Often the OSE indicates on its maps only a portion of a parciante’s water rights without including other portions. The parciante will have to prove that there is a history of irrigation on the omitted tract to show that he or she has a valid water right on it. Or the

State Engineer will claim that the entire water right has been forfeited or abandoned through a long period of non-use. The parciante will have to prove that the requirements of forfeiture and abandonment have not been met in order to maintain the water right.

- *What is the correct priority date?* The priority date of a water right is the date the water was first put to beneficial use on the land. This is a very important element of water rights in New Mexico, because the older (more senior) water rights on a stream system get preference in times of shortage. For water rights on acequias, the priority date is the date the acequia was constructed. When there are no written records of this, the court must estimate the priority date based on testimony and documentary evidence about when the community was settled. Acequias often hire historians to review these documents and testify in court, especially if the OSE is arguing a priority date that seems too late in time.
- *What is the correct amount of water?* There is a limit on the amount or volume of water that can be put on irrigated land (often called “duty of water”). Once that limit is established, any amount used over the limit will be considered “waste” and is considered unlawful. This limit is different for each region of the state, depending on the length of the growing season, elevation, and other factors in that region. In some adjudications involving acequias, there is a separate issue of how much water can be taken at the acequia’s point of diversion on the stream.
- *What are the water rights of town or municipalities in the stream system? Of the tribes or Pueblos in the stream system? On federal lands?* As indicated above, these questions can sometimes take years or decades to resolve.

Obviously it can be a challenge to make sure each element of your water right is adjudicated correctly, especially if you are arguing against the state and its experts. Because of this, the Acequia and Community Ditch Fund was established by the state legislature. If the majority of acequias in an adjudication join together, they can apply for funding for any adjudication expenses, such as their own lawyers, hydrologists, historians, etc. Some of these “regional acequia associations” also hire “field people” to help parciantes understand and respond to the legal papers they are served with.

## **Transfers of Water Rights**

### New Mexico Acequia Association Fact Sheet

Please note: Acequias that are subject to the terms of a federal court adjudication settlement like the Abeyta settlement in Taos County may need to comply with different laws and processes. Some of the information contained in this document may not apply.

A “transfer” of a water right is the shifting of an existing water right to a **new location** or a **new use** or a **new point of diversion**. When a water right simply changes *owners* but the water right is not *moved* from the land or changed in any way, that is *not* considered a “transfer” and no permission is required. For example, if a piece of irrigated land is sold to a new owner, and the water right remains in place with the land, this is not considered a “transfer.”

There is currently much interest and controversy around the subject of transferring water rights. There are no longer any “surplus waters” in our streams or reservoirs to apply for. This has created a demand for transferring water rights by those who do not own water rights and want to have water for use in a particular location. Growing cities and developers increasingly want to transfer water rights for new development. On the other hand, people living in rural communities, who have water rights, understand that their communities will not survive or have good options for their future if they allow water rights to be exported from their communities.

Under state law, a person may propose to transfer his or her water rights, but this requires a permit from the Office of the State Engineer (OSE), and a permit request must be rejected if there will be certain adverse effects. In this permit process, members of the public may object to a proposed transfer and argue there will be adverse effects.

However, there is an **important addition** to this process when an individual’s water right is on an acequia and the acequia has given itself the power to make decisions about water transfers. If the acequia has adopted a **transfer bylaw** giving itself authority over transfers, then state law requires any proposed transfer into or out of the acequia to go through a **local decision-making process** in which the acequia commission decides whether to approve or deny the request. If the acequia denies the request, the State Engineer is prohibited from considering it. If the acequia has not adopted a by-law provision giving itself authority over transfers, then the decision is made by the State Engineer, and the acequia only has the right to protest and litigate the matter before the State Engineer if it has objections to the transfer. This is explained in more depth below.

## **State Engineer Process**

Transfers that go through the State Engineer process are first required to be published in the legal notice section of a local newspaper. The notice gives a deadline for any member of the public to file a written objection with the OSE. If an objection is filed in time, there will then be a process of litigation. The State Engineer hearing examiner is required to *deny* the proposed transfer if there would be **impairment** of existing water



rights, or if it would be **contrary to conservation** of water within the state, or if it would be **detrimental to the public welfare** of the state. Any party dissatisfied with the decision can appeal to the district court and a new evidentiary trial is held there.

For many years, acequia leaders and advocates believed that the “public welfare” basis for denying a water right could protect acequias. They argued that water transfers were a way of destroying acequia systems, and that this would be detrimental to the public welfare. However, the State Engineer generally makes only a superficial analysis of public welfare issues in reaching a decision, and water transfers at the State Engineer level are often approved. The written decisions rarely show much thoughtful consideration of impacts to acequias or other important socio-economic or cultural impacts of water transfers.

### **Acequia Commission Process**

Under a law passed by the state legislature in 2003, an acequia can regulate proposed water right transfers relating to the acequia. The law only gives this authority to those acequias that **adopt it into their bylaws** or governing rules. If an acequia adopts it, decisions on proposed transfers are made by the acequia commission. A transfer may be denied by the commission if the commission finds that the transfer would be **detrimental to the acequia or its members**. The commission’s decision may be appealed to a district court. The New Mexico Acequia Association and New Mexico Legal Aid have developed a **sample bylaw** for acequias that wish to put this law into effect. Some of the features of the sample by-law amendment are:

- A **form** that a parciante would use in applying to the commission for a transfer.
- A provision that the commission call a **meeting** within 90 days of receiving the complete application and issue a **written decision** within 30 days of the meeting. (State law requires the acequia commission to make a decision within 120 days of the complete application.)
- Provisions to ensure that the applicant and the other parciantes who wish to participate in the meeting are accorded certain **due process** rights. (For example, parciantes are given adequate notice of the meeting, allowed to make statements, submit documents, have attorneys present, etc.)
- A provision that any denial of the transfer be based on **detriment to the acequia or its members**. This reflects the legal standard under state statute.

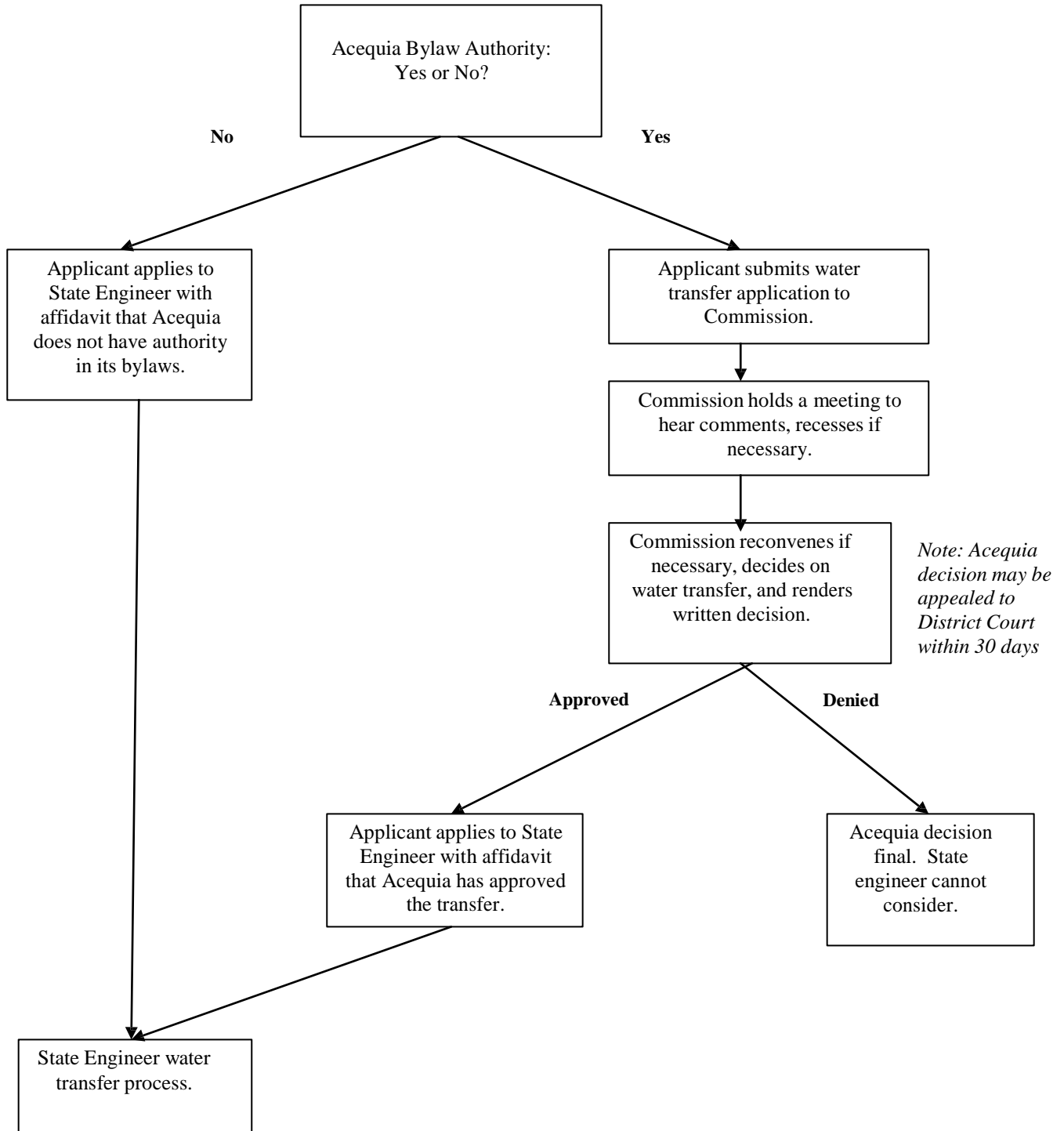
**We strongly encourage all acequias to adopt this authority into their by-laws.**

Adopting the bylaw allows critical decisions about water transfers to be made at the local level. It allows the community to decide whether the transfer would be detrimental to the acequia or its members based on local values and considerations. NMAA and NMLA are available to help acequias with this process.

For more information see the NMAA Fact Sheets entitled “Transfers 101” and “Flowchart of Water Transfer Application Process”, and Appendix A, Water Transfers, of the Acequia Bylaws Template.

# New Mexico Acequia Association Fact Sheet

## Flowchart of Water Transfer Application Process



## **New Mexico Acequia Association Fact Sheet**

### **WATER TRANSFERS 101: HOW TO PROCEED IF YOUR ACEQUIA RECEIVES A WATER TRANSFER APPLICATION**

Please note: Acequias subject to the terms of a federal court adjudication settlement like the Abeyta settlement in Taos County may need to comply with different laws and processes. The information contained in this document may not apply.

A transfer is a change in the point of diversion, place of use, or purpose of use of a water right. If your acequia commission receives a transfer application, check on whether your bylaws give the commission the authority to approve or deny transfer applications. (In the NMAA bylaw template, the language is located in Article 9 and Appendix A.) If your bylaws do give the commission that authority, then continue with this document. If they don't, see the State Engineer Process information in the NMAA Fact Sheet entitled "Transfers of Water Rights".

If you want to amend your bylaws to give your commission the authority to approve or deny transfer applications, you can adopt into your bylaws Article 9 and Appendix A of the NMAA bylaws template located in this Handbook, or contact the New Mexico Acequia Association at 505-995-9644 if you have questions.

#### **VERY IMPORTANT:**

The COMMISSION'S JOB is to provide a fair, unbiased process, beginning the moment you receive the transfer application. Commissioners should not talk to anyone, including the mayordomo, parciantes, or other commissioners about whether the transfer would be good or bad until they have gone through the process outlined here and are ready to deliberate or vote. Commissioners should initially only provide factual information to parciantes and the mayordomo about the application and the meeting process. At the conclusion of the transfer application meeting, Commissioners will decide whether to approve or deny the transfer based primarily on the information in the meeting record.

#### **VERY IMPORTANT:**

To have a successful transfer application process, the MAYORDOMO AND PARCIANTES MUST GET INVOLVED. It is up to the mayordomo and parciantes to develop opinions about the requested transfer and present those opinions and the FACTUAL REASONS FOR THEM to the commission at the meeting.

#### **VERY IMPORTANT:**

The commission will need to decide whether the transfer would be DETRIMENTAL to the acequia or its members. The commission's decision will be based primarily on the

information presented at the public meeting. The applicant should explain why the transfer would not be detrimental, and anyone opposed to the transfer should explain why it would be detrimental. People from outside the acequia, like experts or interested parties, can provide information at the meeting if they are invited by the applicant, the mayordomo, or a parciante.

### **VERY IMPORTANT:**

The commissioners have a DEADLINE of 120 DAYS from receiving the transfer application to provide a written decision. That means that the process needs to move forward smoothly, without major delays.

### **PROCESS:**

**(The Acequia should follow its own bylaws, and use all or part of this process only if it does not conflict with those bylaws.)**

1. The commission receives the application sent by certified mail.
2. The commission may want to send copies of the application to the mayordomo and parciantes, or notify them that copies are available upon request. This can be done by email or U.S. mail.
3. The commission can contact New Mexico Legal Aid, 505-982-9886, [davidb@nmlegalaid.org](mailto:davidb@nmlegalaid.org), for guidance in the process.
4. The mayordomo and parciantes can contact the New Mexico Acequia Association, 505-995-9644, [communications@lasacequias.org](mailto:communications@lasacequias.org), for guidance in the process.
5. The commission sets a date for a meeting on the transfer, choosing a date that is a maximum of 90 days after receiving the complete application. The earlier the date, the better.
6. The commission provides notice of the meeting, using the notice procedures required for an annual meeting. The commission also sends notice by mail to the applicant and posts notice at least 10 days before the hearing at a prominent public place near the site of origin of the requested transfer.
7. The applicant, mayordomo, parciantes, and invited parties prepare their comments. It is helpful if those comments concern the speaker's own experience with the acequia. The comments can be written or verbal, and exhibits or presentations can be used.
8. The commission holds the meeting on the transfer. At the beginning of the meeting, **the commission chair explains that the commission is acting as an impartial decision-making body, and will listen and ask questions, but will not be commenting until after the parciantes have all commented.** Details of the meeting process are described in the NMAA Acequia Bylaws Template at Appendix A: Water Transfers.
9. After the commission has received all of the information presented, the commission may vote on the proposed transfer and provide a written decision explaining the reasons for approval or denial.
10. The commission chair may recess and reconvene the meeting if the commissioners need additional time to individually consider the proposal before voting, or if the commission has deliberated or voted but needs additional time to draft a written

decision. Before the meeting is recessed, the chair must announce the date, time, and location at which the meeting will reconvene. Immediately after the meeting is recessed, the commission must post notice of the date, time and place for the reconvened meeting on or near the door of the original meeting location. It must also post that notice in at least one other location where it is likely that people interested in attending the meeting will see the notice.

11. To stay on schedule, the date of a reconvened meeting should be as soon as possible after the original meeting, because the written decision must be adopted within 120 days after receipt of the complete application.
12. During a recess, the commissioners should hold off on any further discussion of the matter with each other until they reconvene the meeting. During a recess to draft a written decision, only one commissioner should write the decision, working with an attorney if he or she wishes. Two or more commissioners should not be involved in drafting the decision or discussing the decision during a recess.
13. At a reconvened meeting after a recess to draft a written decision, the written decision is reviewed and any necessary changes are made. Each commissioner then casts a vote on the written decision. The meeting then closes.
14. The commissioners provide their written decision to the applicant.

## Forfeiture and Abandonment

### New Mexico Acequia Association Fact Sheet

There are two different ways in which water rights can be lost under New Mexico law: “forfeiture” and “abandonment.”

**Forfeiture** is non-use of a water right for **four consecutive years**, followed by a **written notice** from the Office of the State Engineer (OSE), and then followed by one **additional year** of non-use *after* the notice. Unless you receive a notice from the OSE regarding non-use of your water right, you are not in danger of forfeiture of your water right.<sup>1</sup> The OSE almost never issues notices of non-use, but if this occurs, you should make every effort to put your water right to use within one year. If you have defenses or legal excuses for non-use, you can raise them as arguments against forfeiture (see below).

Periods of non-use longer than four years can result in **abandonment**, even *without notice* from the OSE. New Mexico courts have not yet given a precise definition of abandonment in terms of the number of years of non-use. Courts find abandonment when they are convinced that someone has **intended** to give up their water right. For example, if someone **constructs a house on irrigated land**, a court would probably find that the water right holder *intended* not to use the water right on that land, and that the water right was abandoned for the area covered by the house. (You can abandon a portion of your water rights, but retain the water rights on that portion not affected by the construction or the non-use, as long as it is still irrigable and you continue to irrigate it.)

If there is no construction, and the land is simply left fallow for a period of time, New Mexico courts are developing a very complicated formula for determining whether this shows *intent* to abandon the water right. Part of the formula will allow a water user to come forward with any *defenses* or legal excuses for non-use, but the longer the period of non-use (for example, twenty-five consecutive years), the harder it will be for a water user to raise these defenses.

*Who determines whether there has been forfeiture or abandonment?*

Parciantes may not find out about any claim of forfeiture or abandonment of their water rights until their stream system is adjudicated. At that point, if the OSE has evidence of prior forfeiture or abandonment, it will ask the court to make a determination of “no water rights” on that tract. Outside of a court proceeding, the OSE may express an opinion about whether a water right has been lost, but that opinion usually is not determinative, and if there is disagreement about the opinion it *must be resolved by a court*.

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<sup>1</sup> However, it is possible for the State to claim forfeiture without giving written notice if the four years of non-use occurred before 1964. 1964 was the year the state forfeiture law was changed to first require written notice by the OSE to the water user. Prior to that, forfeiture occurred automatically after four consecutive years of non-use, with no notice required. So in some instances, where the OSE has sufficient evidence of non-use prior to 1964, people have lost their water rights, even though that evidence wasn’t brought forward until the present time.

Because of these risks and uncertainties, we offer this advice to acequias parciantes and acequia leaders:

- **IRRIGATE YOUR LAND!!!** There is no better way to avoid the problem of claims of forfeiture or abandonment on your acequia than to irrigate ALL your land on which you have water rights! If there has been a long period of non-use, irrigate your land right away to break the chain of years of non-use.
- **Defenses** and legal excuses for non-use: State law provides an excuse for non-use because of **military service** by the water right owner, **lack of water** reaching the land (in a dry year) or other **reasons beyond the control of the water user**. If any of these reasons apply, document them!
- If you have inactive parciantes on your acequias, or lands that you are not currently irrigating, **create a water bank** so that those water rights are not forfeited or abandoned. (This is described below.)
- Avoid constructing or placing any other obstructions on irrigated land. For construction that has already occurred, **create a water bank** and place any affected water rights in the water bank.

### **Acequia Water Banking**

The other major tool for avoiding forfeiture or abandonment of a water right, besides simply irrigating, is for your acequia to establish its own **water bank** and place water rights that are not being used in the water bank. Although the phrase “water bank” can mean a number of different things, we refer here to a 2003 **state law allowing individual acequias to set up water banks**. The key provision of this law is that any water rights placed in the water bank are not subject to loss for non-use while they are in the bank. (This law has nothing to do with marketing or selling water rights off the acequia, which many acequias are opposed to.)

It is *very easy* for an acequia to set up a water bank. No approval of any agency is required. The acequia can simply adopt a written policy or amend its bylaws. The New Mexico Acequia Association and New Mexico Legal Aid have drafted a **sample bylaw** for water banking. It is also easy for a parciante to place his or her water right into the water bank and then remove it when he or she is ready to use the water right again. Contact NMAA or NMLA for more information about this very important tool for protecting water rights.

## **Acequia Enforcement Procedures**

### New Mexico Acequia Association Fact Sheet

NMAA recommends that conflicts within acequias be resolved to the extent possible by reaching internal agreements. However, it may sometimes become necessary for acequia officials to take certain actions to enforce acequia bylaws, rules and regulations, in the interest of fairness or protecting the health and integrity of the acequia. Areas requiring enforcement might include unpaid assessments, easement violations, interference with the acequia, or illegal use of water. The following are some proposed guidelines for enforcement:

1. Whenever possible, attempt to resolve conflicts with violators by reaching an agreement through discussion. Keep a written record of those attempts.
2. If discussion fails, the Mayordomo should issue a first citation as an order to stop the violation.
3. If the violation has not ceased after the first citation, the Mayordomo should issue a second citation with a penalty that corresponds to the violation such as suspension of the right to vote, suspension of the right to use the ditch, or a monetary fine.
4. After two unsuccessful citations, the Commission or Mayordomo may take appropriate legal action. Depending on the violation, the Commission or Mayordomo may involve the District Attorney in prosecution. As described below, the Mayordomo has a statutory duty to enforce in certain situations.

The attached sample citation can be used for internal enforcement. The attached civil complaint can be used for civil enforcement in court. The attached criminal complaint can be used for criminal enforcement in court.

For more information, see the Civil Enforcement Powerpoint Presentation on the NMAA web site (go to Resources, then Educational Materials). See also the Enforcement PowerPoint Presentation prepared by the Eighth Judicial District Attorney.

### **VIOLATIONS, AUTHORITIES, AND PENALTIESS**

#### **Internal Enforcement:**

- 73-2-21
  - Mayordomo oversees distribution of water, collection of fines, and assessments
- 73-2-25, 73-3-6
  - Parciante who fails to work or pay assessment shall not use water
- 73-2-14, 73-3-3
  - Parciantes who fail to pay assessments shall not vote
- 73-3-5
  - Parciante who fails to provide labor shall be fined

#### **Failure to Pay Assessments:**

- 73-2-25
  - Parciante shall not use water



- Civil court action for using water after failure to work or pay assessment
- Penalty of \$100 to \$200
- Ditch officials pursue penalty in magistrate court
- 73-2-26
  - Parciante may also be sued to collect unpaid assessments
  - Mayordomo or ditch officials pursue unpaid assessment in magistrate or district court
  - Reasonable attorneys fees awarded if successful
  - Continued use of water and failure to pay after judgment: additional \$200 penalty

**Failure to contribute peones as required by the Mayordomo:**

- See 73-2-25 and 73-2-26 above
- 73-2-31
  - Civil penalty for failure to provide laborers required by the Mayordomo
  - Mayordomo pursues penalty in magistrate court
  - Penalty added to 73-2-25 and 73-2-26 amounts
- 73-3-5
  - Mandatory fines for failure to provide laborers required by the Mayordomo
  - Mayordomo pursues collection of unpaid fines in magistrate court
  - Must file within 15 days of default on payment

**Easement and Access Violations:**

- 73-2-5 (A)
  - It is unlawful to interfere with the easement or prevent access to the ditch by the acequia
  - The easement shall be adequate to allow for reasonable maintenance, use and improvements to the acequia
- 73-2-5 (B)
  - Criminal complaint
  - DA, mayordomo, or commission pursues in magistrate court
  - Misdemeanor - \$300-\$1,000 and/or up to 90 days imprisonment in county jail
- 73-2-5 (C)
  - Civil penalty complaint for knowing, intentional, or willful violation
  - DA, mayordomo, or commission pursues
  - Up to \$5,000 penalty
- 73-2-5 (D)
  - Damages and Injunction
  - Acequia may include damages in the civil or criminal complaint
  - DA, mayordomo, or commission may pursue injunction in district court to restrain any person from violating or continuing to violate 73-2-5(A)
- 72-8-3
  - It is unlawful to place or maintain any obstruction that shall interfere with the use of the acequia, or prevent convenient access to the acequia; violation is a misdemeanor

### **Interference with the Acequia and Illegal Use of Water:**

- 73-2-64 (A)
  - “A person shall not, contrary to the order of the mayordomo or commission, cut, break, stop up or otherwise interfere with any community ditch or dam in this state, or lateral acequia thereof, or use water from the same contrary to such orders.”
  - Violation is a misdemeanor
- 73-2-64 (B)
  - Criminal complaint
  - DA, mayordomo, or commission may pursue in magistrate court
  - Fine of \$300-\$1,000 upon conviction
  - 5-30 days in county jail for non-payment
- 73-2-64 (C)
  - Civil complaint for knowing, intentional, or willful violation
  - DA, mayordomo, or commission pursue
  - Penalty up to \$5,000
- 73-2-64 (D)
  - Damages and Injunction
  - Damages may be sought in the civil or criminal complaint
  - DA, mayordomo, or commission may pursue an injunction in district court
- 73-2-64 (E)
  - Duty of mayordomo to prosecute unless DA chooses to prosecute
  - Failure to prosecute is a misdemeanor
  - \$25-\$50 or 10-30 days in jail
- 72-8-3
  - It is unlawful to place or maintain any obstruction that shall interfere with the use of the acequia, or prevent convenient access to the acequia; violation is a misdemeanor

Note: that claims greater than \$10,000 cannot be heard in magistrate court. However, a district court may require the acequia to be represented by an attorney, so the acequia should check with the court clerk before filing a complaint in district court.

**CITATION FOR VIOLATION OF BYLAWS, RULES AND REGULATIONS OF  
(Acequia Name)\_\_\_\_\_**

Date of Citation:\_\_\_\_\_

Citation Issued To:\_\_\_\_\_

Type of Violation:

- Failure to contribute peones as required by the Mayordomo
- Failure to pay assessments as required by the Commissioners
- Interference with the easement of the acequia or access to the easement
- Interference with the acequia
- Illegal use of water from the acequia
- Other \_\_\_\_\_

Date of Violation\_\_\_\_\_

Description of Violation:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PENALTY PER ORDER OF THE COMMISSION:**

- This citation shall serve as an order to stop the violation and a written warning that additional violations are subject to certain penalties, fines and/or prosecution in accordance with law.
- The right to vote in acequia elections and right to use water from the acequia is suspended until assessments brought current.
- The officers of the acequia shall seek fines, penalties, or injunctive relief in Magistrate Court and/or District Court.
- Other \_\_\_\_\_

On behalf of the Commission of (Acequia Name)\_\_\_\_\_:

\_\_\_\_\_  
Signature of Mayordomo

\_\_\_\_\_  
Date

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, COURT  
\_\_\_\_\_, Plaintiff  
v. \_\_\_\_\_, Defendant  
\_\_\_\_\_, Address  
\_\_\_\_\_, City

No. \_\_\_\_\_

**CIVIL COMPLAINT**

- 1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.
- 2. Plaintiff claims from Defendant the amount of \$ \_\_\_\_\_ and also claims interest and court costs.

Plaintiff claims from Defendant personal property of the value of \$ \_\_\_\_\_, which is described as follows: \_\_\_\_\_  
\_\_\_\_\_

3. Plaintiff's claim arises from the following event or transaction: \_\_\_\_\_  
\_\_\_\_\_

4. Trial by jury is (not) demanded. *(If a jury is demanded, an additional cost must be paid upon filing.)*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name *(print)*

\_\_\_\_\_  
Address *(print)*

\_\_\_\_\_  
City, State and Zip Code *(print)*

\_\_\_\_\_  
Telephone Number

[As amended, effective January 1, 1995.]

STATE OF NEW MEXICO  
COUNTY OF Santa Fe  
Magistrate COURT  
La Puebla Ditch, Plaintiff  
v. [REDACTED], Defendant  
[REDACTED], Address  
Espanola, NM 87532, City

No. \_\_\_\_\_

**CIVIL COMPLAINT**

1. Plaintiff or defendant resides, or may be found in, or the cause of action arose in this county.

2. Plaintiff claims from Defendant the amount of \$ 1,234.56 and also claims interest and court costs.

Plaintiff claims from Defendant personal property of the value of \$ \_\_\_\_\_, which is described as follows: \_\_\_\_\_

3. Plaintiff's claim arises from the following event or transaction: [REDACTED] is a parciante on La Puebla Ditch and has failed to pay assessments.

4. Trial by jury is  (not) demanded. (If a jury is demanded, an additional cost must be paid upon filing.)

5/1/14  
Date

Clark Kent  
Signed  
Clark Kent, La Puebla Ditch Mayordomo  
Name (print)  
123 Sunny Lane  
Address (print)  
Chimayo, NM 87522  
City, State and Zip Code (print)  
505-351-1234  
Telephone Number

[As amended, effective January 1, 1995.]

\_\_\_\_\_  
COURT  
\_\_\_\_\_  
COUNTY  
\_\_\_\_\_, Plaintiff

v.  
\_\_\_\_\_, Defendant

No. \_\_\_\_\_  
Judge Assigned: \_\_\_\_\_

**CIVIL SUMMONS**

TO: \_\_\_\_\_, Defendant<sup>1</sup>

ADDRESS: \_\_\_\_\_

**GREETINGS:**

This summons notifies you that a complaint has been filed against you. A copy of the complaint and an answer form<sup>2</sup> are attached to this summons. You are required to serve and file an answer to the complaint, or a responsive pleading, within TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file the answer or responsive pleading with the clerk of the (Magistrate) (Metropolitan) Court and you must serve a copy of the answer or responsive pleading on the opposing party.

**IF YOU DO NOT FILE AND SERVE AN ANSWER OR RESPONSIVE PLEADING WITHIN THE TWENTY (20) DAY PERIOD, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER RELIEF DEMANDED IN THE COMPLAINT.**

*(The following paragraph is for use only if summons issued by the Metropolitan Court.)*

**IF YOU WANT A TAPE RECORDING OF ANY PROCEEDING, YOU MUST REQUEST IT PRIOR TO THE BEGINNING OF THE PROCEEDING. IF YOU DO NOT ASK FOR A TAPE RECORDING, YOU WILL NOT HAVE A RECORD OF THE PROCEEDINGS TO TAKE TO THE DISTRICT COURT FOR ANY APPEAL.**

Your answer must be filed with the court which is located at:

\_\_\_\_\_ *(street address of court)*

A copy of your answer or responsive pleading must be mailed to: *(name and address of plaintiff or plaintiff's attorney)*

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Clerk

RETURN

STATE OF NEW MEXICO )
) ss
COUNTY OF \_\_\_\_\_ )

(complete the following, unless service by sheriff or deputy)3

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of this summons, a copy of the complaint and an answer (indicate below how served):

(complete if service by sheriff or deputy)3

I certify that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of this summons, a copy of the complaint and an answer form in the following manner:

(person serving summons must check one box and fill in appropriate blanks)

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to the defendant, \_\_\_\_\_ (used when defendant receives copy of summons or refuses to receive summons).

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of the defendant, \_\_\_\_\_, located at \_\_\_\_\_ (address). (used when defendant is not presently at the abode.)

[ ] by posting a copy of the summons, complaint and an answer form in the most public part of the usual place of abode of \_\_\_\_\_ (name of defendant) located at \_\_\_\_\_ (address) (used if no person found at dwelling house or usual place of abode).

(If service is by posting a copy of the summons, complaint and an answer form must also be mailed to the person served. The person serving by posting and the person serving by mail must each sign a return. The person mailing must check and complete the certificate of mailing at the end of this summons.)

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to \_\_\_\_\_, an agent authorized to receive service of process for defendant.

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to \_\_\_\_\_,(parent) (guardian) (custodian) of defendant (used when defendant is a minor or an incompetent person).

[ ] by delivering a copy of this summons, a copy of the complaint and an answer form to \_\_\_\_\_(name of person), \_\_\_\_\_, (title of person authorized to receive service) (used when defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

[ ] by service by mail.

Fees: \_\_\_\_\_

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title (if any)

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by posting)<sup>4</sup>*

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit,  
and that I served a copy of this summons on the \_\_\_\_\_ day of \_\_\_\_\_,  
by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint,  
and an answer form to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*(name of person served)*  
*(address where mailed)*  
*(county)*  
*(city, state and zip code)*

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title (if any)

\_\_\_\_\_  
Place of mailing

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths<sup>3</sup>

\_\_\_\_\_  
Official title

*(To be completed if service is made by mail.)<sup>5</sup>*



I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served a copy of this summons on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by mailing first class mail, postage prepaid, a copy of this summons, a copy of the complaint, an answer form and two copies of the notice and acknowledgement and a return envelope, postage prepaid, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(name of person served)  
(address where mailed)  
(county)  
(city, state and zip code)

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title (if any)

\_\_\_\_\_  
Place of mailing

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title<sup>3</sup>

USE NOTE

1. A separate summons must be used for each defendant.
2. An answer form must be attached to the summons at the time of service. For answer forms, see Rules [4-301](#) and [4-302](#)NMRA.
3. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
4. For use when service is by posting.
5. If service is by mail, Civil Form [4-208](#) must be completed and mailed with this summons.

[As amended, effective January 1, 1987; January 1, 1990; July 1, 1990; October 1, 1991; January 1, 1993; May 1, 1994; September 2, 1997.]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**ANSWER TO CIVIL COMPLAINT<sup>1</sup>**

1. The Plaintiff is not entitled to the amount claimed because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Or

1. The personal property claimed by Plaintiff should not be turned over to Plaintiff because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. *(If applicable)* Defendant asserts the following counterclaim or set-off against Plaintiff:

\_\_\_\_\_  
\_\_\_\_\_

3. Trial by jury is (not) demanded. *(If Plaintiff has already demanded trial by jury, as indicated in the complaint, a jury will be provided automatically and you need not fill in this item. If Plaintiff has not demanded trial by jury, you may do so here, but if you do you must pay an additional cost upon filing this answer.)*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name *(print)*

\_\_\_\_\_  
Address *(print)*

\_\_\_\_\_  
City, state and zip code *(print)*

\_\_\_\_\_  
Telephone number

**CERTIFICATE OF SERVICE<sup>2</sup>**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ this \_\_\_\_\_  
(insert paper served, such as "answer" or "notice") was

[mailed by United States first class mail, postage prepaid, and addressed to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State \_\_\_\_\_

and zip code: \_\_\_\_\_]

[faxed by \_\_\_\_\_ (name of person who faxed document) to  
\_\_\_\_\_ (name of recipient) at \_\_\_\_\_ (telephone number).

The transmission was reported as complete. The time and date of the transmission was  
\_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date).]

[e-mailed to \_\_\_\_\_ (name of party or attorney) at \_\_\_\_\_  
(electronic mail address of recipient) upon agreement of the party to accept electronic service.

The transmission was reported as complete. The time and date of the transmission was  
\_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_ (date).]

[delivered to \_\_\_\_\_ (Specify how service by delivery was made. See  
Use Note 1 for the methods service may be made using this alternative)  
\_\_\_\_\_:]

\_\_\_\_\_  
Signature of person sending paper

\_\_\_\_\_  
Date of signature

USE NOTE

1. This Answer must be filed with the court on or before the date set in the Summons.
  2. This request must be served on all other parties pursuant to Rule [2-203](#) NMRA or Rule [3-203](#) NMRA. See also Rule [2-307](#) NMRA for how motions are presented to the court.
- [As amended, effective January 1, 1995; as amended by Supreme Court Order 05-8300-0]

STATE OF NEW MEXICO  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
\_\_\_\_\_ COURT

No. \_\_\_\_\_

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]  
v.

\_\_\_\_\_, Defendant

### CRIMINAL COMPLAINT

CRIME: \_\_\_\_\_  
*(common name of offense or offenses)*

The undersigned, under penalty of perjury, complains and says that on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the County of \_\_\_\_\_, State of New Mexico, the above-named defendant(s) did: *(here state the essential facts)*

\_\_\_\_\_  
\_\_\_\_\_

contrary to Section(s) \_\_\_\_\_ NMSA 1978.

**I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.**

\_\_\_\_\_  
Complainant

\_\_\_\_\_  
Title *(if any)*

Approved:  
\_\_\_\_\_

\_\_\_\_\_  
Title

*Note: This complaint may not be filed without the prior payment of a filing fee unless approved by the district attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the district attorney or a law enforcement officer is not otherwise required. [As amended, effective September 1, 1990; April 1, 1991; November 1, 1991.]*

## **Acequia Easements**

### New Mexico Acequia Association Fact Sheet

#### **What is an easement?**

An easement is a right to cross or otherwise use another person's land for a specified purpose. Some examples of easements are those that are acquired by utility companies to place utility lines or to access a certain location. Acequias have a type of easement that is well-established in law and custom and often centuries-old.

#### **What is an acequia easement?**

An acequia easement runs along both sides of the main ditch and its laterals. The "bordo" of the acequia is generally within the easement of that acequia. State law says that the width of the easement must be adequate to allow for reasonable maintenance, use, and improvements to the ditch. The easement carries with it the right to access the entire length of the ditch, to maintain and use the ditch in a reasonable manner, and to make reasonable improvements. This right includes the use of heavy equipment or machinery like Bobcats if reasonably needed to do maintenance or make improvements. The acequia easement also includes the right to gain access to the ditch through traditional points of access, even when that access is across a person's property. There must be legitimate acequia business to be conducted each time there is entry onto someone's property.

#### **What kind of legal documentation is needed for an acequia easement?**

According to state law, an acequia has a legal easement after it has been continuously used for irrigation for five years. Once an easement is established, it remains intact. Acequias generally have easements that date back several hundred years. ***No legal documents are required.*** The easement exists because of historic use regardless of whether the acequia has documented this easement.

However, many acequias have documented their easement to educate parciantes and others and make it easier to protect this important right. Two ways to document an easement are as follows:

- **Bylaws**  
Include a section in the bylaws that defines the acequia easement and traditional points of access. Ensure that all parciantes receive a copy of the bylaws. The NMAA Bylaws Template contains sample language.
- **Recording**  
File a map of the acequia that includes the easement, including all laterals, points of diversion, points of access, and desagues, with the county clerk. You can use an available map or draw one of your own. Ask your county clerk where the map will be filed, so that you can advise people how to access it. The information will likely not appear on title searches unless current parcel and owner information for each piece of property is also provided.

#### **What are some examples of violations of acequia easement laws?**

In addition to informing parciantes about the easement, acequia officials should also monitor any actions by landowners that may be violations of the acequia easement laws. Examples of violations include the following:

- Building a fence across the acequia that prevents walking or using equipment along the length of the ditch.
- Building a structure like a house, deck, or corral within the easement or across the acequia.
- Blocking a traditional access route to the acequia. A landowner, particularly a new one, may attempt to prevent acequia officials or cleaning crews from crossing his or her property to get to the acequia. It may be a good idea to educate a new property owner if there is a traditional access route across his or her property.

In the cases of fences or structures, some acequias will allow or “grandfather in” these structures under certain conditions.

**What if there is a dispute with a landowner over an acequia easement?**

If a landowner is violating an acequia easement law, the first thing an acequia should do is communicate with that landowner. This communication should be initiated by an acequia official, and can be verbal or written. Keep a written record of any verbal communication. In many cases, a suitable understanding can be reached with the landowner through simple communication and negotiation. However, in some cases such an understanding is not reached and the acequia must pursue other legal remedies. See the NMAA Fact Sheet entitled Acequia Enforcement Procedures for details, in particular the section that covers Easement and Access Violations.

## How can our acequia avoid disputes with landowners over acequia easements?

- Inform Parciantes and Landowners before Spring Cleaning  
Many disputes over easements reach a critical point during spring cleaning. If possible, an acequia should use any means available to inform each landowner of the specific cleaning day(s), and the type of property access and work that will occur. See also the documents entitled “Sample Letter for New Property Owner who is a Parciante” and “Sample Letter for New Property Owner who is not a Parciante”.
- During Spring Cleaning, Work as a Crew  
Some disputes arise due to confusion about the official duties of the cleaning crew. Generally, during the spring cleaning, the cleaning crew should remain together. Individual peones should be discouraged from walking along the acequia unless on official acequia business.

## What if a violent incident occurs as a result of a dispute over an easement?

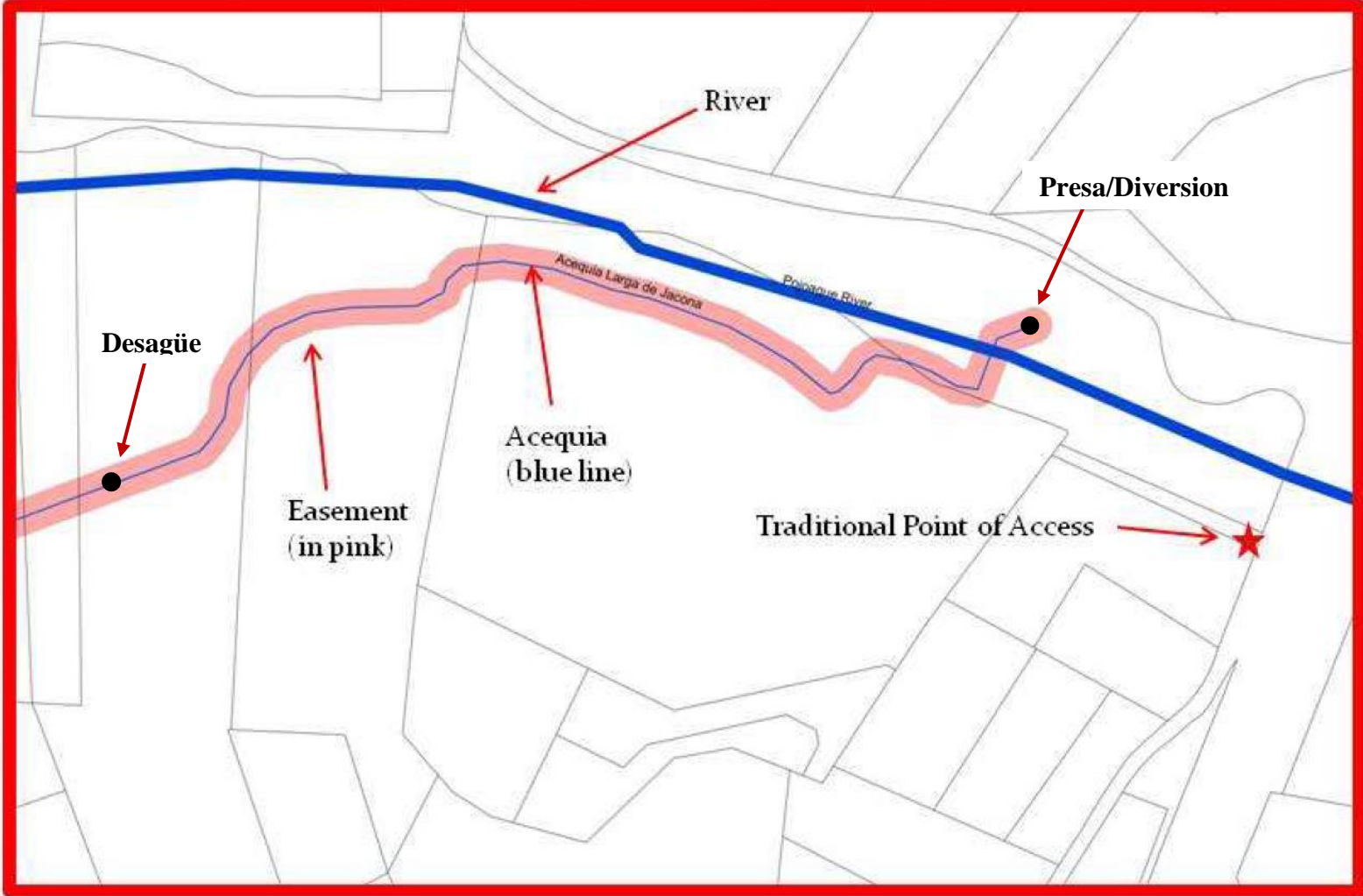
If a landowner does not recognize or understand the acequia easement, he or she may take drastic measures to prevent a cleaning crew from crossing or working on his or her “private property.” Some landowners may resort to verbal or physical threats. Some acequia crews have been threatened with gunfire. If a confrontation occurs, the acequia crew should withdraw from the area immediately and the acequia officials should file a police report documenting the incident. Acequia officials can also contact the District Attorney to request assistance. If the landowner continues to be unapproachable, it may be necessary to take civil and/or criminal legal action against him or her, whether or not the DA takes action.

## What if my acequia runs across federal land?

Federal law protects easements on federal land that were in place in the 1800s or earlier, which includes almost all acequia easements. So whether your acequia is partially or completely on federal land, you do not need a permit from the federal government to operate and maintain your existing acequia, as long as it serves valid water rights. As long as the acequia does not significantly change its *point of diversion, course, or size*, any of which would require a special use permit, acequia members and officials can legally enter federal land by traditional access routes for normal operation and maintenance activities without interference by a federal agency.

With an easement, the acequia has the *right* to be on federal land, so a special use permit is unnecessary. This is an advantage, because a permit usually can be revoked or limited without the agreement of the permittee, whereas an easement is a protected property right that cannot be diminished. **If a governmental agency is requiring you to get a special-use permit for your acequia, you should probably get legal advice. Do not sign anything until you do.** If you have already signed a special-use permit, you may still be able to establish valid easement rights, and should get legal assistance.

Example of Acequia Easement



Parcel data source: Santa Fe County



## **State Open Meetings Act Compliance**

### **New Mexico Acequia Association Fact Sheet**

Community acequias are political subdivisions of the state and are therefore required to comply with the Open Meetings Act (OMA), Sections 10-5-1 to 10-5-4, NMSA 1978. Compliance is important in order to ensure that acequia decisions can withstand challenges. For instance, a decision to elect a commissioner, adopt bylaws, or approve or deny a water transfer may be deemed invalid if the acequia violated the OMA in making that decision. For additional information on complying with the OMA, you can access the New Mexico Attorney General's Open Meetings Act Compliance Guide at <http://www.nmag.gov/consumer/publications/openmeetingsactcomplianceguide>.

The following are requirements of the Open Meetings Act:

- Meetings shall be held only after the acequia provides reasonable notice.
- The acequia shall determine at least annually in a public meeting what notice is reasonable, and approve a notice resolution by a vote of the parciantes. A sample Open Meetings Act Resolution is included with this document. The Office of the Attorney General (OAG) has determined that minimum reasonable notice is public posting at least 10 days prior for regular meetings, at least 3 days prior for special meetings, and at least 24 hours (1 day) prior for emergency meetings. For each meeting, there must be a written agenda and it must be available to the public and posted on the acequia's web site, if any, at least 72 hours (3 days) prior to the meeting. The meeting notice must include the agenda or information on how the agenda can be obtained. Except for emergency matters, the acequia may take action at the meeting only on items listed on the agenda.
- Emergency meetings can only be held where unforeseen circumstances will result in injury or damage to persons or property or substantial financial loss to the acequia if not addressed immediately by the acequia. Within 10 days of taking emergency action, the acequia must report the action taken and the circumstances creating the emergency to the OAG, unless a state or national emergency has been declared.
- The acequia may close part of a meeting for executive session in certain limited situations. The most common would be to discuss with its attorney matters pertaining to threatened or pending litigation.
- The acequia may recess and reconvene a meeting if, before recessing, the commission specifies the date, time, and place for continuation of the meeting, and immediately after the original meeting posts notice of the date, time, and place on or near the door of the original meeting location and at least one other public notice location. Only matters appearing on the original agenda may be discussed at the reconvened meeting.
- The acequia must keep written minutes of all meetings, which include at a minimum the date, time, and place of the meeting, the names of commissioners in attendance and those absent, the substance of the proposals considered, and a record of any decisions and votes taken that show how each commissioner voted. Draft minutes must be prepared within 10 working days after the meeting and approved, amended or disapproved at the next meeting where a quorum is present. They are official only after they are approved. All minutes are open to public inspection.

The attached sample Open Meetings Act Resolution contains the following provisions:

- Annual membership meetings (annual or biennial meetings, which are considered regular meetings), special membership meetings, and regular commission meetings require ten (10) days written and/or posted notice. (Most acequias don't hold regular commission meetings.) This part of your resolution should be consistent with Article 3, Sections 2 and 6 of the Bylaws Template. Most acequias provide notice of their membership meetings by mail. To comply with the Open Meetings Act, notice should also be posted publicly.

Special meetings of the commission require three (3) days posted notice. This is consistent with Article 3, Section 7 of the Bylaws Template. For most acequias, which don't have regular commission meetings, the purpose of a special commission meeting might be to approve a contract or to respond to a disaster. Because of the need to respond quickly to these types of situations, and because the commission acting alone has less power than the membership as a whole (for example, it can't amend bylaws), the notice requirements for commission meetings are less strict than those for membership meetings. Emergency meetings of the membership or commission can be called with 24 hours posted notice. This is not in the Bylaws Template but it is allowed by the Open Meetings Act as described above, in limited circumstances and with reporting requirements.

Note on special commission meetings: It is important for commissioners to know that if one commissioner talks to another for the purpose of formulating acequia policy, discussing acequia business, or taking any action that the commission has authority to take, that conversation is considered a special commission meeting with a quorum of commissioners present and proper notice must be provided. Of course, not all conversations will concern those topics, but commissioners should be aware of the requirement.

(Acequia Name) \_\_\_\_\_  
RESOLUTION NO. \_\_\_\_

WHEREAS, the \_\_\_\_\_ met for its Regular Membership meeting on \_\_\_\_\_ at \_\_\_\_\_; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (Sections 10-15-1 to 10-15-4, NMSA 1978) states that, except as may be otherwise provided in the New Mexico Constitution or the Open Meetings Act, all meetings of the Membership or Commission of the \_\_\_\_\_ are declared to be public meetings open to the public;

WHEREAS, the Open Meetings Act requires that any meeting that includes formulation of Acequia policy, discussion of Acequia business, or the taking of any action within the authority of the Commission or Membership shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the Acequia to determine at least annually in a public meeting what constitutes reasonable notice of its public meetings;

THEREFORE BE IT RESOLVED, by the \_\_\_\_\_ that:

1. All meetings shall be held in a public place in [county, town, valley, etc.]\_\_\_\_\_.
2. Regular and Special meetings of the Membership and Regular meetings of the Commission shall be held in accordance with the Bylaws of the Acequia and notice shall be provided at least ten (10) days in advance of the meeting date.  
*[When your acequia adopts this resolution, you should select and insert **either** of the following options. Note: This should be consistent with Article 3, Sections 2 and 6 of the Bylaws Template.]*  
**[Option 1.]** The Acequia shall provide notice by posting at one or more public locations within the county where the meeting will take place. Notice shall include the date, time, and location of the meeting. Notice shall also indicate how to obtain a copy of the agenda. The agenda shall be available at least 72 hours (3 days) hours before the meeting.  
**[Option 2.]** The Acequia shall provide notice by posting at one or more public locations within the county where the meeting will take place. The Acequia shall also provide written notice by mail to all parciantes listed in official Acequia records. Notice shall include the date, time, and location of the meeting. Notice shall also indicate how to obtain a copy of the agenda. The agenda shall be available at least 72 hours (3 days) before the meeting.
3. Special meetings of the Commission shall be held in accordance with the Bylaws of the Acequia and notice shall be provided at least three (3) days in advance of

the meeting date. The Commission shall provide notice by posting at one or more public locations within the county where the meeting will take place. Notice shall include the date, time and location of the meeting. Notice shall also indicate how to obtain a copy of the agenda. The agenda shall be available at least 72 hours (3 days) before the meeting. *[Note: This should be consistent with Article 3, Section 7 of the Bylaws Template.]* Emergency meetings of the Membership or Commission shall be called by the Chairman only to address unforeseen circumstances that, if not addressed immediately by the Acequia, will likely result in injury or damage to persons or property or substantial financial loss to the Acequia.. Notice shall include the date, time, location, and agenda of the meeting and shall be provided at least 24 hours in advance of the meeting by posting at one or more public locations. Except where a state or national emergency has been declared, within ten days of taking action on an emergency matter, the Acequia shall report to the Attorney General's office the action taken and the circumstances creating the emergency.

4. An Acequia meeting may be closed to discuss matters such as litigation or personnel, as stated in the list of exclusions in Section 10-15-1(H) of the Open Meetings Act. If an open meeting is closed for one of the listed purposes , the Acequia shall comply with the specific requirements of Sections 10-15-1(I) and (J) of the Open Meetings Act. For instance, the motion calling for a closed meeting shall state the authority for the closure and the subject to be discussed. Only that subject may be discussed in the closed meeting. The minutes of the Acequia meeting shall record the motion for the closed meeting and the vote of each individual member and shall state whether the discussion in the closed meeting remained limited to the subject specified in the motion for closure.

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President

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Secretary

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Treasurer

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Mayordomo

## State Inspection of Public Records Act Compliance

### New Mexico Acequia Association Fact Sheet

Community acequias are political subdivisions of the state and must therefore comply with the Inspection of Public Records Act (IPRA), Sections 14-2-1 to 14-2-12, NMSA 1978. Compliance with the IPRA is important in order to avoid legal challenges. For additional information, you can contact NMAA or access the New Mexico Attorney General's *Inspection of Public Records Act Compliance Guide* at

<http://www.nmag.gov/consumer/publications/inspectionofpublicrecordsactcomplianceguide2009>

The IPRA ensures that citizens have access to public records, including acequia records and documents. *However, personal contact information (telephone number, e-mail address, home address) may be protected unless it relates to public business. Other information such as social security numbers or financial account numbers is always protected. (See p. 26-27 of the AG Compliance Guide.) To redact such information, make a copy of the requested document and black out the information or delete it from the electronic file before inspection or copying.*

Your acequia must designate a custodian of public records. This might be your President or Secretary (the NMAA Bylaws Template designates the Secretary). This person is responsible for receiving and responding to requests.

The IPRA contains deadlines, so you need to take certain actions within certain time frames after receiving a request. *Please note that you do not need to create any new records in response to a request. For example, if someone requests a water rotation schedule, and you do not maintain a written schedule, you do not need to create one. You also do not need to transfer paper records into electronic format. For example, if someone requests an electronic spreadsheet of parciantes dues, but you keep a paper ledger, the paper ledger is sufficient.*

#### **Basic Process:**

- Your custodian receives a written records request.
- The request must include the name, address, and telephone number of the requestor, and identify the records sought with enough specificity to allow the custodian to identify and find them. No reason for inspection is necessary.
- The custodian must respond to the request in the same medium it is made. If the request is mailed, respond by mail. If the request is e-mailed, respond by e-mail.
- Within 3 days of receiving the request, the custodian must permit inspection or explain in writing when the records will be available for inspection or when the acequia will respond.
- Within 15 days of receiving the request, the custodian must permit inspection or provide written notification that additional time is needed to respond. Additional time is only allowed if the request is "excessively burdensome or broad". Otherwise, a request not granted within 15 days will be deemed denied. The requestor can then pursue remedies authorized by IPRA, including damages.
- To grant the request, redact protected information from the document(s). Allow on-site inspection if requested. Provide electronic documents if requested and they already exist. Provide paper copies if requested. You can charge up to \$1.00 per page of paper copying and the actual costs of downloading and/or transmitting electronic or paper copies by mail, e-mail, or fax. You can require advance payment before making copies and must provide a receipt upon request.

## **Overview of State Audit and Budget/Reporting Requirements**

### New Mexico Acequia Association Fact Sheet

#### **Please note:**

- Each acequia must comply with the Office of the State Auditor (OSA) requirements. The OSA has created a system of tiers, and many acequias fall within Tier 1 or 2, which require minimal reporting. Most of the rest fall within Tier 3, which has some additional requirements.
- An acequia with revenues of less than \$10,000 per year, not including capital outlay funds and federal and private grants, is exempt from the Department of Finance and Administration (DFA) Budget/Reporting Requirements. All other acequias must comply.

#### **Audit Requirements:**

As political subdivisions of the State of New Mexico, acequia associations must comply with the state annual audit requirements. Those requirements arise from the Audit Act, Sections 12-6-1 through 12-6-14, NMSA 1978, and the Audit Rule, 2.2.2 NMAC. Section 2.2.2.16 of the Audit Rule addresses small political subdivisions like acequias. The Audit Rule is issued by the OSA and is available at [http://www.saonm.org/media/uploads/Audit\\_Rule\\_2014.pdf](http://www.saonm.org/media/uploads/Audit_Rule_2014.pdf).

Application of the audit requirements to acequias was emphasized in 2013, when Governor Susana Martinez issued Executive Order 2013-006. The Order required a recipient of capital outlay funds to comply with the annual audit requirements before severance tax bonds are issued for its project. Some acequias had to quickly come into compliance in order to receive capital outlay funding authorized in the 2013 legislative session.

The state audit requirements for local public bodies create different categories, known as tiers. The tiers are explained in the NMAA Fact Sheet entitled “OSA Tier Requirements”, which also contains links to necessary documents and information. See also the OSA 2014 Notification Letter for Local Public Bodies that is available at [http://osanm.org/procuring\\_contracts](http://osanm.org/procuring_contracts) and updated each year.

#### **Budget and Reporting Requirements:**

Many acequias must also comply with the state budget and reporting requirements, which arise primarily from the Local Government Finances statute, Sections 6-6-1 through 6-6-19, NMSA 1978, and the Budget Certification Rule, 2.2.3 NMAC. The Budget Certification Rule is issued by DFA and is available at <http://www.nmcpr.state.nm.us/NMAC/parts/title02/02.002.0003.htm>. Acequias with annual revenues of less than \$10,000 per year are exempt from the state budget and reporting requirements.

The state budget and reporting requirements are explained further in the NMAA fact sheet entitled “DFA Budget and Reporting Requirements”. For general financial management information, see also the NMAA fact sheet entitled “Basics of Financial Management for Acequias”.

## OSA Tier Requirements

### New Mexico Acequia Association Fact Sheet

The Office of the State Auditor (OSA) has created a system of six tiers for local public bodies that have revenues of less than \$500,000 per year. The tiers identify the requirements for financial reporting and contracting with an Independent Public Accountant (IPA). The revenue amounts stated do not include capital outlay funds or federal or private grants. Most acequias will belong to one of the first three tiers, which are:

#### **Tier 1:**

**Revenue is less than \$10,000 and your local public body did not directly expend at least 50% of, or the remainder of, a single capital outlay award.** A local public body under Tier 1 is exempt from submitting a financial report to the State Auditor and is not required to procure the services of an IPA. However, the local public body shall certify to the Office and the Local Government Division (LGD) of the Department of Finance and Administration (DFA) that it meets the revenue threshold of Tier 1.

#### **Tier 2:**

**Revenue is \$10,000 or more but less than \$50,000.**

A local public body under Tier 2 is exempt from submitting a financial report to the State Auditor and is not required to procure the services of an IPA. However, the local public body is required to comply with quarterly and final budget reporting requirements to LGD of DFA pursuant to Sec. 6-6-3 NMSA 1978. The local public body shall also certify to the Office and the LGD of DFA that it meets the revenue threshold of Tier 2.

#### **Tier 3:**

**Revenue is less than \$50,000 and your local public body expended at least 50% of, or the remainder of a capital outlay award.**

A local public body under Tier 3 is required to procure the services of an IPA for the performance of a Tier 3 agreed-upon procedures engagement in accordance with the Tier 3 agreed-upon procedures checklist on the State Auditor's website.

The certification form that Tier 1 and 2 acequias must submit is available at [http://www.saonm.org/tiered\\_system\\_reporting](http://www.saonm.org/tiered_system_reporting). The agreed-upon procedures that an IPA must follow after contracting with an acequia in Tier 3 or higher are available at [http://www.saonm.org/tiered\\_system\\_reporting](http://www.saonm.org/tiered_system_reporting). A list of approved IPAs is available at [http://osanm.org/approved\\_audit\\_firms](http://osanm.org/approved_audit_firms). The required IPA Recommendation Forms and Contracts for Tier 3 and higher are available at [http://www.saonm.org/procuring\\_contracts](http://www.saonm.org/procuring_contracts).

## **DFA Budget and Reporting Requirements**

### New Mexico Acequia Association Fact Sheet

#### **Please note:**

Your acequia is exempt from these requirements if it has revenue of less than \$10,000 per year, not including capital outlay funds and federal or private grants.

#### **Annual Budget:**

If your acequia operates on the calendar year basis (January 1 to December 31), DFA must receive your interim annual budget by December 1 of each year. If your acequia operates on the state fiscal year basis (July 1 to June 30), DFA must receive your interim annual budget by June 1 of each year. There is no required form, but the budget must show at least beginning cash balance, proposed revenues, and proposed expenditures. The budget must not have any projected deficits.

A signed resolution or signed minutes establishing adoption of your budget, with any final adjustments, is due by January 31 (if calendar year) or July 31 (if state fiscal year). Also submit a December (if calendar year) or June (if state fiscal year) bank statement. If you use financial software like Quickbooks, submit a reconciliation of the bank statement to your software. DFA also suggests that you submit an end-of-year balance sheet generated by your software.

#### **Quarterly Reports:**

Quarterly financial reports are due by the end of the month following the end of each quarter. For instance, the report for the quarter ending March 31 is due by April 30. There is no required form, but the report must show how actual revenues and expenditures compare to the budget. If you use Quickbooks, the "Net Profit & Loss Statement" provides the information. DFA also suggests that you submit an end-of-quarter balance sheet generated by your software. The year-end quarterly report cash balance must reconcile to the beginning balance on the new final budget, after adjustments.

#### **Budget Adjustments:**

If your acequia increases or decreases revenues or expenditures from the final budget, a signed budget adjustment resolution must be submitted to DFA. The resolution must include each line item affected with the dollar amount of the adjustment. An end-of-year budget adjustment must be submitted to DFA by January 31 (if calendar year) or July 31 (if state fiscal year), the same date that the final budget and resolution for the upcoming year are due, as well as the quarterly report for the quarter ending June 30.

For more information, including contact information for budget and finance analysts, see [http://www.nmdfa.state.nm.us/Budget\\_Finance\\_Bureau.aspx](http://www.nmdfa.state.nm.us/Budget_Finance_Bureau.aspx).



## Basics of Financial Management for Acequias

### New Mexico Acequia Association Fact Sheet

- **Recordkeeping.** Save all financial documents and other acequia records. They are public records and may be important years from now.
- Use a **filing method.** Choose a binder or multiple file folders.
  - Depending on the circumstances of your acequia you may have one section/folder for **expenses** and another for **income**. All receipts for repairs or other general expenses should be placed in chronological order in one section/folder, while income to the acequia such as mayordomo fees or dues should be in another. Each year start a new section/folder for each category.
  - When a debt is owed, you may also have an **accounts payable** folder.
- Use a **membership spread sheet** to keep track of member contact information and membership dues and assessment fees. Each year start a new spread sheet and carry over the back dues/fees.
  - Always write a receipt for dues/fees received and keep a copy on file as noted above. (Receipt books can be purchased at office supply stores.)
  - Keep copies of invoices for dues or fees with the membership list.
- Keep a **general ledger.** This can be hand written or electronic, such as an Excel spreadsheet or Quickbooks, where all expenses and income are recorded in chronological order. This can be used to reconcile your bank account and to generally keep track of the acequia finances. It will also be useful if you need an audit.
- Obtain and keep receipts or invoices for every **expense** transaction. If an acequia member is being reimbursed for travel, it is important to carefully document mileage, dates and purpose.
- Keep a list of **assets**. Include what you own and where it is (e.g., compuerta, diversions) and maintain documentation for the purchase of each asset.
- Open a **bank account.**
  - All acequia finances should be directed through a bank account in the acequia's name.
  - When you open a bank account you do NOT need to file with the NM Secretary of State or Public Regulation Commission as a corporation or association. The acequia is a local government, a political subdivision of the state. Take the blue NM Water Laws book with you to the bank and, if necessary, refer to Section 73-2-28, Acequia and community ditch association. Also take a copy of your bylaws and the minutes of the meeting where the bank account action was approved.
  - A bank statement **reconciliation** is a methodical process completed monthly comparing your check register/ ledger to the actual bank statement. (If you have Quickbooks there is a function for this).
  - Use an **internal control** for bank statements. Have a person not connected to bank reconciliations or finances open the bank statement envelope every few months and confirm that the balance matches the balance on the acequia's general ledger. Have that person sign off on that assurance on the bank statement. This procedure should be documented in policies and procedures of the acequia.

## New Mexico Acequia Association Fact Sheet

### Article 2 and Article 3 Counties

The laws governing New Mexico acequias vary depending on the county in which the acequia is located. Chapter 73 of the New Mexico Statutes, entitled Special Districts, contains two articles that govern acequias. The first is Article 2, Ditches or Acequias, which contains Sections 73-2-1 through 73-2-68 and applies to 16 counties. The second is Article 3, Ditches or Acequias; Special Provisions Governing Certain Counties, which contains Sections 73-3-1 through 73-3-11 and applies to 17 counties. Each county is therefore considered either an Article 2 or Article 3 county.

Article 3 does not cover as many topics as Article 2, so Article 2 applies to all acequias unless it is contradicted by Article 3. An acequia in an Article 2 county can ignore Article 3. An acequia in an Article 3 county should check Article 3 first for the law on a particular topic. If Article 3 does not cover that topic, then the acequia should check Article 2.

Following is a list of the Article 2 and Article 3 counties:

#### Article 2 Counties

Chaves  
Colfax  
Dona Ana  
Eddy  
Grant  
Guadalupe  
Lincoln  
Luna  
McKinley  
Otero  
Quay  
Rio Arriba  
Roosevelt  
San Juan  
Santa Fe  
Union

#### Article 3 Counties

Bernalillo  
Catron  
Cibola  
Curry  
De Baca  
Harding  
Hidalgo  
Lee  
Los Alamos  
Mora  
Sandoval  
San Miguel  
Sierra  
Socorro  
Taos  
Torrance  
Valencia

## ACEQUIA BYLAWS CHECKLIST

This checklist can be used for developing new bylaws or amending existing bylaws. The list contains the most essential provisions, marked with an asterisk (\*), that are needed to be consistent with the acequia statutes, Chapter 73 Articles 2 and 3 NMSA 1978. The list also contains other sample provisions that are important but can be modified to fit the unique situation of each acequia. Sample language for each provision listed is provided in the ACEQUIA BYLAWS TEMPLATE.

Please check the appropriate box:

<b><u>Description</u></b>	<b><u>Existing Bylaws</u></b>	<b><u>Needed Amendment</u></b>
Preamble	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Purpose and Membership</u></b>		
*Purpose Statement	<input type="checkbox"/>	<input type="checkbox"/>
*Compliance with NM Law	<input type="checkbox"/>	<input type="checkbox"/>
Description	<input type="checkbox"/>	<input type="checkbox"/>
*Definition of Membership	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Officers</u></b>		
*Types of Officers	<input type="checkbox"/>	<input type="checkbox"/>
*Duties of Officers	<input type="checkbox"/>	<input type="checkbox"/>
*Vacancy of Mayordomo	<input type="checkbox"/>	<input type="checkbox"/>
*Vacancy of Commissioners	<input type="checkbox"/>	<input type="checkbox"/>
*Compensation of Mayordomo	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Meetings</u></b>		
*Date of Annual Membership Meeting	<input type="checkbox"/>	<input type="checkbox"/>
*Notice of Annual Membership Meeting	<input type="checkbox"/>	<input type="checkbox"/>
*Purpose of Annual Membership Meeting	<input type="checkbox"/>	<input type="checkbox"/>
*Location of Meetings	<input type="checkbox"/>	<input type="checkbox"/>
*Membership Quorum	<input type="checkbox"/>	<input type="checkbox"/>
*Special Membership Meetings	<input type="checkbox"/>	<input type="checkbox"/>
*Special Commission Meetings	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Voting and Elections</u></b>		
*Election of Officers	<input type="checkbox"/>	<input type="checkbox"/>
*Voting Rights of Parciantes	<input type="checkbox"/>	<input type="checkbox"/>
*Nomination and Assignment of Officers	<input type="checkbox"/>	<input type="checkbox"/>
*Terms of Office and Record Transfers	<input type="checkbox"/>	<input type="checkbox"/>

Management and Operations

- \*Allocation Between Neighboring Acequias
- \*Acequia Cleaning
- \*Distribution of Available Water
- \*Amount of Water Distributed
- \*Parciante Assessments

Rights and Obligations of Parciantes

- Maintenance of Headgates
- \*Assessments
- \*Participation in Acequia Cleaning
- Compliance with Bylaws
- \*Inspection of Acequia Records
- Copy of Bylaws
- Acequia Records
- Change of Ownership
- Change in Point of Diversion,  
Purpose of Use, or Place of Use

Easements

- \*Description of Easement and Prohibitions
- Maintenance of Easement
- \*Access to Easement
- Changes to Easement

Enforcement

- \*Delinquencies
- \*Illegal Use of Water or  
Acequia Interference
- \*Violation of Easement Rights

Water Transfers

- See Appendix A

Water Banking

- See Appendix B

Miscellaneous Provisions

- \*Amendments to Bylaws
- \*Applicability of State Law
- \*Severability Clause

- \*Date of Adoption or Amendment
- \*Signature of Commissioners

# Acequia Bylaws Template: Acequia De La Comunidad

## ByLaws

**Preamble:** Water is the lifeblood of our communities. The parcientes of Acequia de la Comunidad believe that water should be protected as a community resource so that future generations can grow food and can have a healthy and secure source of water for needs within the community. We seek to promote agriculture by keeping water rights on historically irrigated land. If changes in historic uses of water become necessary, those decisions should be made through a cultural and spiritual connection to our community and through our own process of self-governance so that those decisions can be made for the common good. We honor the ancient customs and traditions embodied in our acequia and seek to govern our acequia to continue the connection between our land, water and culture in perpetuity.

### Article 1. Purpose and Membership

#### Section 1: Purpose Statement

The purpose of Acequia de la Comunidad (“Acequia”) is to 1) promote the agricultural uses of water on the lands served by the acequia, 2) promote the efficient and beneficial use of water, 3) sustain customs and traditions of providing water to parcientes in a manner that is fair and equitable, 4) protect and defend the rights and interests of the Acequia and the parcientes, 5) maintain the infrastructure and easements of the Acequia, and 6) maintain an adequate diversion right to ensure a sufficient water supply for parcientes.

#### Section 2: Compliance with New Mexico Law

The management and operation of Acequia de la Comunidad, a political subdivision of the State of New Mexico, shall be in compliance with the laws of the State of New Mexico and the customs of the Acequia.

#### Section 3: Description

[*Option 1:*] If your Acequia is in an adjudicated stream basin, use the description from those files. Also indicate that the Acequia includes the mainstem and all laterals and drainages or desagues.

[*Option 2:*] If no adjudication description is available, then give a general description that includes your county, stream, and approximate point of diversion from the stream, along with any laterals and desagues.

#### Section 4: Definition of Membership

The members or parcientes of Acequia de la Comunidad are those persons who own irrigable land with water rights from the Acequia.

### Article 2. Officers

#### \*Section 1: Types of Officers

The officers of Acequia de la Comunidad shall consist of three Commissioners and one Mayordomo, each of whom shall be an Acequia member, as defined in Article 1.

The Commissioners shall consist of a Chair, a Secretary, and a Treasurer

*NOTE: This column contains explanatory notes in italics. **This column should not be included in your adopted bylaws.** Bracketed language in the bylaw text should also not be included. Optional language should be included as appropriate. Be sure to replace “Acequia de la Comunidad” with the name of your acequia.*

*New Mexico Statutes are cited as “Section x”. See the NMAA Fact Sheet entitled “Article 2 and Article 3 Counties”, for information on which laws govern your acequia. Citations from both articles are provided in this template where appropriate.*

*It is generally a good idea to list many purposes rather than just one, to help members and commissioners make decisions in the best interest of the Acequia and to support those decisions in the event of challenges.*

*Acequias are local governmental entities, or “political subdivisions of the state,” under Section 73-2-28.*

*This description need not be highly detailed. Avoid using information that could change, like member names. If you are not adjudicated, including the priority date and number of acres is not encouraged; if you do include them, add the phrases “or earlier” after priority date and “at least” before number of acres.*

*State statutes do not define “member” or “parciente” but this language is consistent with Sections 73-2-14 and 73-3-3, which provide that water rights owners who are not delinquent in payments are eligible to vote for officers.*

*The officer titles appear in Sections 73-2-12 and 73-3-1. Even for acequias with few members, it is recommended that each position be filled by a different individual, if possible.*

\*Section 2: Duties of Officers

- a. Chair: The Chair shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall call and preside at all Acequia meetings. In the event the Chair is unable to preside at a meeting, he or she shall appoint one of the other Commissioners to preside at the meeting.
  
- b. Secretary: The Secretary shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall keep complete and accurate records of Acequia actions and proceedings, prepare agendas for meetings, prepare the minutes of meetings, read the minutes of the previous meetings, and receive and respond to requests for Acequia records.
  
- c. Treasurer: The Treasurer shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall manage the finances of the Acequia including the following:
  1. Send notices to parciantes for billing and collection of assessments and fines.
  2. Maintain accurate records for each parciante including assessments, hours worked, and fines, in coordination with the Mayordomo.
  3. Make payments for labor and materials as necessary, in coordination with the Mayordomo.
  4. In coordination with the Mayordomo, prepare an annual report to be presented to the membership.
  
- d. Mayordomo: The Mayordomo shall be the Executive Officer of the Acequia in accordance with law. His or her responsibilities shall include the following:
  1. Coordinate and supervise all work on the Acequia including the annual Spring cleaning, day-to-day maintenance, and emergency repairs.
  2. Distribute water to parciantes in a manner that is equitable and consistent with the customs of the Acequia.
  3. Collect assessments and fines from parciantes, in coordination with the Treasurer.
  4. Make payments for labor and materials as necessary, in coordination with the Treasurer.
  5. Supervise the Acequia to ensure that delinquent parciantes do not take water. The Mayordomo has full authority to shut the individual headgate(s) along the banks of the Acequia of any parciante who is delinquent and to secure the headgate(s) by any available means.
  6. In coordination with the Treasurer, prepare an annual report to be presented to the membership.

*Officer duties may vary but should not contradict state law. See Sections 73- 2-21 and 73-3-4 for duties of officers under state law.*

Section 3: Vacancy of Mayordomo

In the event of a vacancy in the office of Mayordomo following departure by an elected Mayordomo, the Commission shall appoint a Mayordomo to hold office for the remainder of the term until his/her successor is elected at a meeting of the membership.

Section 4: Vacancy of Commissioners

[Article 2 Counties:] In the event of one or more vacancies in the office of Commissioner, the remaining Commissioner or Commissioners shall appoint a Commissioner(s) to hold office for the remainder of the term until his/her successor is elected at a meeting of the membership.

[Article 3 Counties:] If there is one vacancy for Commissioner the two remaining Commissioners and the Mayordomo shall appoint a Commissioner to serve for the remainder of the term. If there are two vacancies for Commissioner, the remaining Commissioner shall convene a special meeting of the membership to fill the vacancies for the remainder of the terms of office.

Section 5: Compensation of Mayordomo

Compensation of the Mayordomo or ditch rider shall be determined by a majority of the membership.

**Article 3. Meetings**

Section 1: Date of Annual Membership Meeting

The Annual Membership meeting shall be considered a Regular meeting and shall be held at least every odd numbered year on [insert either Option 1 or 2 below]

[Option 1:] the first Monday of December or as soon as practicable thereafter. [for Article 2 Counties]

[Option 2:] the first Monday of October or as soon as practicable thereafter. [for Article 3 Counties]

\*Section 2: Notice of Annual Membership Meeting

[Insert either Option 1 or 2 below]

[Option 1:] Notice shall be posted in a public place at least ten days in advance of the meeting. Notice of the meeting shall include the date, time, location, and the agenda or information about where to obtain a copy of the agenda. The Acequia may also provide other types of notice as appropriate.

[Option 2:] Notice shall be provided to each parciante by mail or e-mail to the address recorded in the records of the Acequia and shall be posted in a public place at least ten days in advance of the meeting. Notice of the meeting shall include the date, time, location, and the agenda or information about where to obtain a copy of the agenda. The Acequia may also provide other types of notice as appropriate.

Section 3: Purpose of Annual Membership Meeting

At each Annual meeting, the Secretary shall present the minutes from the previous Annual meeting. The Mayordomo shall report on the management and operations of the Acequia and the Treasurer shall provide a financial report. The Acequia may adopt an Open Meetings Act Resolution.

Section 4: Location of Meetings

Each Membership or Commission meeting shall be held at a public place in the county in which the Acequia is located or a non-public place that is open and easily accessible to the public and the members.

*Sections 73-2-18 and 73-3-2 provide that Mayordomo compensation is determined by a majority of the membership.*

*Sections 73-2-12, 73-2-15, and 73-3-1 specify the dates to elect officers. The statutes provide that these elections take place once every two years but most acequias meet annually.*

*Many acequias provide mailed or e-mailed notice of meetings. The Open Meetings Act requires public posting but does not require mailed or e-mailed notice.*

### Section 5: Membership Quorum

A Membership quorum shall be *[insert percentage]* of *[insert either]* the membership *[or]* those members who are current on their dues *[or]* the total amount of irrigable land with water rights *[or]* the total number of *[insert whichever applies:]* derechos/peones/tiempos/shares/water rights eligible to vote, except as otherwise provided in this section. *[You may choose the “water rights” option only if your acequia includes a definition of “water right” under Article 4, Voting and Elections, Sec. 2, Voting Rights of Parciantes.]*

*[Include the following if quorum is a percentage of the membership:]* For purposes of calculating a quorum, each household or co-tenancy arrangement (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned.

Valid proxy votes shall be counted toward a quorum. A quorum, once established for that particular meeting, shall remain in effect to transact all business set on the agenda even though members shall voluntarily leave the meeting.

*[Optional:]* In the event that the above quorum is not established at a meeting duly called, the meeting may be recessed and later reconvened at a date, time and place specified at the call of the recess and on a written notice immediately posted at the location of the original meeting. All business listed on the original agenda shall be transacted by those present at the reconvened meeting, provided there are *[insert number]* or more persons present, who shall then constitute a quorum for conducting business.

### Section 6: Special Membership Meetings

Special (non-annual) meetings of the Acequia members may be called by the Commissioners or upon written petition to the Commission Chairman signed by *[insert percentage]* of the members. Notice for Special Membership meetings shall be the same as for Annual meetings, except that the timing of the posting of notice shall be at least 3 days prior to the meeting.

### Section 7: Special Commission Meetings

Special meetings of the Commission may be called by the Chairman. Two Commissioners shall constitute a quorum for such meetings. Notice for Special meetings shall be posted in a public place at least three days prior to a meeting.

## **Article 4. Voting and Elections**

### Section 1: Election of Officers

The Commissioners and Mayordomo shall be elected by a vote of the membership at the Annual Membership Meeting held in *[Article 2 Counties:]* December *[or]* *[Article 3 Counties:]* October of odd numbered years or as soon as practicable thereafter. The elections shall be conducted by the outgoing Commissioners.

### Section 2: Voting Rights of Parciantes

Only those members who are not delinquent in the payment of their assessments shall be deemed in good standing and allowed to vote

*If the acequia has a web site, the agenda must also be posted there at least three days in advance of the meeting in order to comply with the Open Meetings Act.*

*The Open Meetings Act requires an acequia to determine annually what constitutes “reasonable notice” for its meetings. See the “Open Meetings Act Compliance” fact sheet for a sample resolution and more on meeting notice requirements.*

*No membership quorum amount is specified by law, so the quorum percentage is up to each acequia. It is a good idea to set the percentage based on your experience with meeting attendance. An acequia may want to consider the benefits of being able to conduct business with a smaller percentage of the membership present versus the benefits of making decisions with a greater number of members present.*

*A “water right” in the context of derechos/peones/tiempos/shares/water rights is actually a ditch right as discussed in the NMAA Fact Sheet entitled “Introduction to Water Rights”. It is not a water right as recognized by the state. The term “water right” is used in these sample bylaws because many acequias use it to mean ditch right. The same language is used in Article 4, Sec. 2, “Voting Rights of Parciantes” and Article 5, the section entitled “Amount of Water Distributed”.*

*A special meeting of the Membership might be called to amend bylaws or take other action that requires a vote of the membership.*

*A special meeting of the Commission might be called to approve a contract, adopt a notice resolution, or take other action that*



in any election or other vote of the Acequia. Eligible parciantes who are unable to attend a meeting may vote by written proxy, a copy of which shall be submitted to the Secretary upon voting to maintain in the Acequia records.

[Option 1:] The proxy shall contain the member's name, the name of the person delivering the proxy vote on behalf of the member, the effective period of the proxy, and the member's signature and date.

[Option 2:] The proxy shall contain the member's name, the particular issue or election to be voted on, how the member wishes to vote, the name of the person delivering the proxy vote on behalf of the member, the meeting date and the member's signature and date

[Insert the language that applies to your Acequia. Or, if none of the below methods applies, please describe your system of voting:]

[Option 1:] Each member shall have one vote. For voting purposes, each household or co-tenancy arrangement (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned.

[Option 2:] A member's vote shall be in proportion to his/her acreage of irrigable land with water rights.

[Option 3:] Each derecho/peon/tiempo/share/water right shall have one vote.

[If you choose water right:] For purposes of these bylaws, "water right" in this context means \_\_\_\_\_.

[You may choose the "water right" option only if your acequia uses "water right" to mean something other than legal water rights as defined by the State.]

[Option 4:] Voting shall be done with each member having one vote, except that voting shall be in proportion to acreage with water rights for any votes concerning the financial obligations of the parciantes or the Acequia.

### Section 3: Nomination and Assignment of Officers

[Option 1:] Nomination of officers may be made by any parciante. The nomination and voting for each office (Mayordomo, Chair, Secretary, Treasurer) shall be conducted separately. The person receiving the highest number of votes cast for that office shall be declared the officer elected.

[Option 2:] Nomination of officers may be made by any parciante. The three Commissioners shall be elected at-large. At the end of the Annual Membership Meeting in which the election is taking place, the three Commissioners shall elect, from among themselves, a Chair, Secretary, and Treasurer with each Commissioner holding one position.

### Section 4: Terms of Office and Record Transfers

The elected officers shall assume their offices not later than the first Monday following the month they are elected. The outgoing officers shall transfer all Acequia records to the elected officers by that date. The term of office for the Mayordomo and Commissioners is two years.

## **Article 5. Management and Operations**

[Optional – to be included if your acequia traditionally allocates

requires a vote of the Commission. See the "Open Meetings Act Compliance" fact sheet for more on special Commission meetings.

Sections 73-2-12 and 73-3-1 provide the requirements for elections to be held once every two years on odd-numbered years. Sections 73-2-14 and 73-3-3 allow votes to be cast by written proxy. Acequias should keep the proxy votes in the acequia records and note them in the meeting minutes, in case those votes are challenged. See the "Voting for Acequias" fact sheet for sample proxy forms.

In 1998, the N.M. Supreme Court held in *Wilson v. Denver* that the various methods of acequia voting, such as those described here in Options 1-4, are all equally valid. You should choose the option that best describes your customary method of voting.

water with neighboring acequias]

Section 1: Allocation Between Neighboring Acequias

As practiced traditionally, the Commission [Mayordomo] shall represent the Acequia for the purpose of cooperating with the other acequias in the \_\_\_\_\_ [ valley or community] which draw water from the \_\_\_\_\_ [stream system] in order to determine the most effective and equitable manner of allocating water between all of the acequias.

Section 2 [or 1]: Acequia Cleaning

A community cleaning of the Acequia's mainstem or *acequia madre* involving all parciantes shall take place during the Spring before the irrigation season on a date and according to requirements determined by the Mayordomo and Commissioners. Each parciante, regardless of whether his/her land is currently in irrigation, shall provide the required number of peones or pay the amount assessed in lieu of peones.

[Option 1:] Parciantes on laterals shall be responsible for cleaning their own laterals.

[Option 2:] The community Acequia cleaning shall include cleaning of all laterals.

Prior to the Spring cleaning, the Mayordomo or Commissioners shall discuss any tree that interferes with the Acequia or its easement with the applicable landowner, to arrange for possible removal and disposal.

[Include Option 1 or 2, based on the tradition of your Acequia]

[Option 1:] During or immediately following Spring cleaning or normal maintenance activities throughout the irrigation season, debris generated by the cleaning or maintenance, including trash and organic matter such as soil, rocks and brush, shall be removed and disposed of by the Acequia.

[Option 2:] During or immediately following Spring cleaning or normal maintenance activities throughout the irrigation season, debris generated by the cleaning or maintenance, including trash and organic matter such as soil, rocks and brush, shall be removed and disposed of by the landowners.

Section 3 [or 2]: Distribution of Available Water

Water shall be distributed in a manner that is equitable and consistent with the customs of the Acequia. [Choose one or more of the four options below that describe the custom of your acequia.]

[Option 1a:] The Mayordomo shall distribute the appropriate amount of available water to parciantes who make requests for water.

[Option 1b:] The Mayordomo shall oversee the distribution of the appropriate amounts of available water among parciantes in accordance with the Acequia's distribution schedule.

[Option 2a:] The available water in the Acequia shall be distributed as nearly as practicable in proportion to the acreage of land with water rights owned by each member of the acequia.

[Option 2b:] The available water in the Acequia shall be distributed according to the number of [insert whichever applies:] derechos/peones/tiempos/shares/water rights for each parciante. [If

*Penalties for failing to contribute peones for the annual cleaning are discussed below in Article 6.*

*Acequias that require parciantes on laterals to clean the laterals are still responsible for distributing the allotted amounts of water to those parciantes provided the laterals are cleaned.*

*Under Sec. 73-2-10, a plant growing on an Acequia bank belongs to the owners of the land.*

*Approaches to water distribution vary greatly by acequia. Some acequias give different priority to different types of uses, such as prioritizing vegetable gardens over pasture in times of drought. It is a good idea to describe practices such as these in your*

*you choose “water rights”, you should define here how much water or how much time a “water right” on your acequia receives.]*  
[Optional: Describe your system if different from the options above.]

**Section 4[or 3]: Parciante Assessments**

[Option 1:] An annual assessment of [\$ dollar amount] per acre will be assessed against each parciante to help defray the cost of operating the Acequia.

[Option 2:] The Commissioners, immediately upon assuming office or as soon as practicable thereafter, shall determine the amount of money necessary for the ensuing year for the operation, maintenance, repair and improvement of the Acequia and for payment of the expenses of the Acequia, including compensation of the officers, if any. The Commissioners shall then assess each parciante, in proportion to his/her acreage, based upon that information. The approved amount shall remain as the annual assessment per acre until changed by the Commission.

[Option 3:] The amount to be assessed per acre shall be determined by a vote of the membership following a recommendation by the Commissioners. The Commissioners shall base their recommendation on the amount of money necessary for the ensuing year for the operation, maintenance, repair and improvement of the Acequia and for payment of the expenses of the Acequia, including compensation of the officers, if any. The approved amount will remain as the annual assessment per acre until changed by a vote of the membership.

**Article 6. Rights and Obligations of Parciantes**

**Section 1: Maintenance of Headgates**

All members shall maintain their individual headgates in good condition and keep their ditch sections free of trash and other obstructions. Repairs and construction of headgates and other works should be completed before the start of the irrigation season.

**Section 2: Assessments**

All members shall pay assessments as required by the Commission. All monies assessed by the Acequia de la Comunidad are due upon receipt of the Treasurer’s statement. These assessments become delinquent thirty (30) days following the date of receipt of the billing.

**\*Section 3: Participation in Acequia Cleaning**

All members shall contribute the required number of peones, or the required assessment in lieu of peones, for the annual Spring cleaning and for emergency repairs as required by the Mayordomo.

**Section 4: Compliance with Bylaws**

All members shall abide by Acequia Bylaws, Rules and Regulations and shall comply with decisions duly adopted by the Commission.

**Section 5: Inspection of Acequia Records**

All records of proceedings by Commissioners, financial records, and other reports and records of the Acequia shall always remain

*bylaws, other documents, and in minutes of the acequia’s meetings.*

*Many acequias have different terms or different meanings for words like derecho, peon, tiempo, share, or water right in this context. It is a good idea to describe your system in this section, unless you chose “water right” and defined it in Art. 4.*

*In Option 1, the dollar amount of the assessment is adopted into the bylaws and remains the same until the bylaws are amended.*

*With Options 2 and 3, the dollar amount of the assessment is not specified in the acequia bylaws and can be changed by either the Commission (Option 2) or the membership (Option 3) without having to amend the bylaws.*

*Section 73-2-26 gives the Mayordomo authority to file a court action to collect delinquent assessments. See the “Acequia Enforcement Procedures” fact sheet for more information on enforcement*

*If a parciante fails to provide labor or workers as required by the mayordomo, the mayordomo, after notifying the parciante, can pursue an action to collect a civil penalty*

public property and shall be subject to inspection by any person pursuant to state law.

Section 6: Copy of Bylaws

Each new parciante shall be provided with a copy of the current bylaws of the Acequia and amendments thereafter adopted. [Optional:] New members shall be briefed on the operation of the Acequia by one of the Commissioners or the Mayordomo.

Section 7: Acequia Records

Each parciante shall keep current in the records of the Commission of the Acequia the name(s) of the owner(s) of the property with Acequia water rights, the owner mailing address(es) and telephone number(s), and the amount of irrigated acreage or peon/ tiempo/derecho/water rights claimed by the owner(s). The parciante shall also keep current the name, mailing address, and telephone number of any person who has leased the property.

Section 8: Change of Ownership

A person who has purchased land with Acequia water rights shall report such transaction promptly to the Secretary for recording in the Acequia's records. Delinquencies, if any, are due from the past owner unless the new owner has agreed to pay them, and shall be paid before the new owner is entitled to the use of the Acequia.

Section 9: Change in Point of Diversion, Purpose of Use, or Place of Use

Any type of change or modification whatsoever to the point of diversion, purpose of use, or place of use of a water right served by the Acequia, including but not limited to any type of partial or temporary or supplemental or emergency change or water-use lease, is a water transfer and must comply with Article 9 and Appendix A of these Bylaws. Any type of change or modification to a water right so that it is moved into and then served by the Acequia, including but not limited to any type of partial or temporary or supplemental or emergency change or water-use lease, is a water transfer and must comply with Article 9 and Appendix A of these Bylaws. Appendix A also addresses any uncertainty whether a particular change is a "transfer" reviewable by the Commission under these bylaws. If a water transfer has been approved by all necessary authorities, the transferring parciante shall provide updated information about the water right to the Secretary for recording in the records of the Acequia.

**Article 7. Easements**

Section 1: Description of Easement and Prohibitions

Each parciante recognizes that the Acequia, including all of its laterals and drainages or desagues, possesses a historical permanent easement for purposes of maintenance, operations, and improvements. The scope of the easement is defined as follows: [Option 1:] From the inner edge of each bank, a distance of [insert number] feet to each side of the acequia. [Option 2:] The easement is as wide as necessary for reasonable maintenance, use and improvements.

No person may obstruct, interfere with, or prevent access to, the easement. Prohibited activities include, but are not limited to, erecting a building within the easement, locking a gate to the

in magistrate court. (Sections 73-2-25, 73-2-31, 73-3-5.)

*Change of ownership of a water right is different from a water right transfer that involves a change in point of diversion, purpose of use, or place of use. A parciante might change ownership of a water right by leaving land with water rights to an heir for example, without a water transfer.*

*Acequia easement creation and access are described in Sections 73-2-5 and 72-8-3.*

easement, allowing a dog to create a potential threat within the easement, or restricting in any way a customary or historical access route or point to the easement.

#### Section 2: Maintenance of Easement

Each Acequia parciante shall ensure that it is possible for Acequia officers and others conducting Acequia business to freely and safely use the Acequia easement within his or her property. For instance, if a fence or other barrier crosses the ditch or the easement, the barrier shall provide an unlocked accessible gate or crossover.

#### Section 3: Access to Easement

Acequia de la Comunidad has the right to use the historic and customary routes or points of access to the Acequia within members’

and non-members’ property and other such routes or points of access as may be necessary to afford convenient access to the Acequia for inspection, maintenance, operations and improvements.

#### Section 4: Changes to Easement

Any material changes to the Acequia easement, including any crossings, shall be approved in advance by the Commission.

### **Article 8. Enforcement**

#### Section 1: Delinquencies

A parciante who is delinquent in the payment of his or her assessment or fails to perform required work shall not be entitled to use water from the Acequia. He or she shall also not be entitled to vote in any Acequia election. These prohibitions shall remain in effect until the assessment(s) and any fines are paid. Acequia officials have the authority granted by statute to collect penalties and delinquent assessments through appropriate civil legal action.

#### Section 2: Illegal Use of Water or Acequia Interference

Any person who, contrary to an order of the Mayordomo or Commission, interferes with the Acequia in any manner, or who takes or uses Acequia water contrary to such orders, commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico. A civil action may also be pursued against the violator.

#### Section 3: Violation of Easement Rights

Any person who interferes with the acequia easement or prevents the Acequia’s convenient access to the easement commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico. A civil action may also be pursued against the violator.

### **Article 9. Water Transfers**

Water transfers shall be governed by Appendix A: Water Transfers, which is adopted under Section 73-2-21(E), NMSA 1978 (2003) [or] Section 73-3-4.1, NMSA 1978 (2003).

### **Article 10. Water Banking**

*Acequia Bylaws Template. Revised July 2015. This template is provided for educational purposes. For technical or legal assistance, please contact the New Mexico Acequia Association at 505-995-9644 or New Mexico Legal Aid at 1-866-416-1934*

*State law does not specify a set number of feet but states that the easement is as wide as necessary for reasonable maintenance, use and improvements.*

*See the “Acequia Enforcement Procedures” fact sheet for more information on enforcement.*

Acequia de la Comunidad hereby forms a Water Bank under Section 73-2-55.1 NMSA 1978 (2003). The Water Bank shall be managed according to the provisions of Appendix B: Water Banking.

Nothing in the formation of the Water Bank or its operation shall affect the traditional and recognized lawful authority of the Acequia Commissioners and Mayordomo. Issues of daily water use, periodic allocation, water issues between members, and all other matters normally managed by the Acequia officers will continue without change. Use of the Water Bank shall not affect existing vested water rights, priority dates or any existing lawful use of water by members. No action connected to the Water Bank shall be considered an adjudication of any person's water rights.

**Article 11. Miscellaneous Provisions**

Section 1: Amendments to Bylaws

These bylaws may be enacted, amended, or modified at any lawfully noticed meeting by a [*Options:*] simple majority [*or*] ¾ majority [*or*] [specify a percentage greater than 50%] vote of the [*Options:*] members present and voting [*or*] members in good standing [*or*] total Acequia membership, with each member having one vote [*or*] total ownership of Acequia acreage with water rights.

Section 2: Applicability of State Law

Where not otherwise covered by these bylaws, the requirements of New Mexico state law shall be applicable. These bylaws are supplemental to any applicable provisions of New Mexico state law.

Section 3: Severability Clause

If any part or application of these bylaws is held invalid, the remainder of the document and its application to other situations or persons shall not be affected.

THE FORGOING BYLAWS WERE ADOPTED BY THE PARCIANTES OF THE ACEQUIA DE LA COMUNIDAD AT A MEETING DULY CALLED AND HELD ON [*insert date*].

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Treasurer

*See Bylaws Appendix A for procedure on water transfers.*

*See Bylaws Appendix B for procedure on water banking.*

*The appropriate number or percentage for modifying bylaws is up to each acequia. Some factors might be (1) its own experience with attendance, (2) what level of participation it feels there should be to amend the bylaws, and (3) how easy or difficult it feels it should be to change the bylaws.*

## APPENDIX A: WATER TRANSFERS

*[Please note: Acequias subject to the terms of a federal court adjudication settlement like the Abeyta settlement in Taos County may be subject to different laws and processes. In those cases, the language contained in this Appendix may need to be modified.]*

### Section 1: General

The members of Acequia de la Comunidad declare that a transfer of a water right served by the Acequia, or a transfer of a water right so that it is moved into and then served by the Acequia, may be detrimental to the Acequia and/or its members. Therefore, any such proposed transfer by any person or entity must be formally considered by the Commission using the procedure set forth below, and must be approved prior to application for the transfer to the Office of the State Engineer. As used in this document, “transfer” means any type of change or modification whatsoever to the point of diversion, and/or place of use, and/or purpose of use of a water right, including but not limited to any type of temporary transfer, partial transfer, transfer to a supplemental supply of water, emergency transfer, or water-use lease.

### Section 2: Process

**Application Submittal.** An application to transfer a water right served by the Acequia or transfer of a water right into the area served by the Acequia shall be made by the owner of the water right using the application form adopted with this bylaw, which shall be delivered by certified mail to each Commissioner. The 120-day timeline in Section 72-5-24.1(D), NMSA 1978 (2003) shall not begin to run until the applicant submits a complete application form with all required information. Submittal of an application that the Acequia deems incomplete shall not cause the timeline to begin to run.

**Meeting.** Within 90 days of receipt of the complete written request, the Commissioners shall hold a meeting to allow the applicant and members who support or oppose the request to be heard and/or submit information.

**Meeting Notice.** Notice of the meeting shall be given in the same manner required for the Acequia’s annual meeting. In addition, notice shall be given 1) by mail to the applicant at the address on the application form, and 2) by posting a notice of the request and meeting date, at least 10 days before the meeting, at a prominent public place near the site of the proposed change.

**Meeting Agenda.** The meeting agenda shall include at least the following information: date, time, location, and an item entitled “Consideration by Commission of Application by [name of applicant] to Transfer Water Rights”.

**Meeting Procedure.** The management of the meeting, such as date, location, length, and other related matters shall be decided by the Commission. Only the entities mentioned in this section shall be allowed to speak at the meeting. The rules of civil procedure and the rules of evidence shall not apply to the meeting.

The Commission may be represented by an attorney or other

*NOTE: This column contains explanatory notes in italics. **This column should not be included in your adopted bylaws.***

*N.M. law allows acequias to safeguard against harm that may result from a proposed water transfer. An acequia must adopt a bylaw such as this one in order to have this power.*

*“Transfer” is defined here in accordance with state law. A simple change in ownership of a water right is not a “transfer” and does not require approval.*

*Once an acequia adopts a bylaw, the State Engineer is prohibited from considering a transfer into or out of the acequia unless the applicant has complied with these requirements. (Section 72-5-24.1)*

*An application form is included in these materials or is available from NMAA.*

*The statute requires a decision within 120 days of the written request. (Section 72-5-24.1(D)) We suggest that the acequia hold a special membership meeting within 90 days.*

*The meeting must be held in accordance with the Open Meetings Act.*

*Many of the requirements of this section are to ensure that the applicant and the other parciantes are afforded constitutional “due process” before a decision is made affecting their interests.*

*Although the meeting is open to the public, the Commission has the right to limit who may present information and who may participate in the discussion.*

representative, and may be assisted in the conduct of the meeting by other such persons as it may designate. During the

presentations, the Commission shall accept and consider any documents or other exhibits, written or oral statements, or arguments offered by the applicant or any non-commissioner Acequia member, or by any individual who is presented by the applicant or any non-commissioner Acequia member. The Commissioners may ask any questions they believe may help in their decision. The Commissioners may defer any questions posed to them until after all comments have been received and deliberations have taken place.

The applicant or any non-commissioner Acequia member may be represented by an attorney or other representative. The applicant or any non-commissioner Acequia member may respond, personally or through a representative, to exhibits, statements, arguments, or questions offered at the meeting, directing such response to the Commission.

Following the presentations, the Commission shall deliberate, prepare a written decision, and vote. The Commission may choose to recess the meeting prior to doing or completing any of these activities. If it chooses to recess, the Chair shall announce the date, time, and location of the reconvened meeting prior to recessing. The last of any reconvened meetings shall be within 120 days of receipt of the complete written application. The Commission shall also immediately post notice of the date, time, and location on or near the door of the original meeting location and at least one other public notice location. Only matters appearing on the original agenda may be discussed at the reconvened meeting.

The transfer application may be denied, in whole or in part, if the Commission finds that the transfer would be detrimental to the Acequia and/or its members. The application may also be conditionally approved, with conditions which address potential detriments to the Acequia or its members. The Commission shall base its decision on the record; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation. A decision requires a majority vote of the Commissioners and shall be made within 120 days upon receipt of the complete, written application. The Commission's decision shall be in writing, explaining the reasons for its decision, and the vote on the written decision shall be made at an open meeting. This shall constitute a decision of the Acequia in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D), NMSA 1978.

### Section 3: Appeal to District Court

If the applicant or a member of the Acequia is aggrieved by the Commission's decision, he or she may appeal to the State District Court under the provisions of Section 73-2-21(E) or Section 73-3-4.1, NMSA 1978, whichever is applicable. The appeal must be filed within 30 days of the Commissioners' written decision.

### Section 4: Prior Application to State Engineer Prohibited; Commissioner protest

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*The Open Meetings Act allows a public body to "recess" a meeting and then "reconvene" the meeting at a later date. The date, time, and location for reconvening must be set and announced publicly prior to recessing the meeting. The decision to approve or disapprove the water right transfer and the approval of the written decision must both take place at open meetings.*

*If the proposed transfer is denied, the written decision should clearly indicate how the transfer would be detrimental to the acequia and/or its parciantes. (Sections 72-2-21(E) and 73-3-4.1).*

*The law provides for a limited right to appeal. An appeal does not involve a new hearing on the proposed transfer, but only whether the commissioners in making their decision acted "fraudulently, arbitrarily, or capriciously, or...not in accordance*



A person or entity desiring a water right transfer is required to seek approval from the Acequia Commission prior to seeking approval from the Office of the State Engineer. If a person or entity fails to do so and files an application for the change with the State Engineer, an Acequia Commissioner shall timely file a protest to the application with the State Engineer on behalf of the Acequia, objecting to the failure of the applicant to first bring the request, or the question of the bylaws applicability, before the Acequia. Any Commissioner is authorized to file the protest. Any uncertainty whether a particular change is a “transfer” reviewable by the Commission under these bylaws shall be decided by the Commission in an open meeting prior to any application for the change to the Office of the State Engineer, and the Commission’s decision shall be communicated to the Office of the State Engineer. Absent such a meeting and decision, no Commissioner shall sign any affidavit, nor make any statement, written or otherwise, stating that the Acequia does not have an applicable bylaw.

[Optional] Section 5: Arbitration

Instead of an appeal to court, the applicant or a member of the Acequia aggrieved by the Commission’s decision may request that the Commission’s decision be submitted to binding arbitration. The request must be in writing, sent to each Commissioner by certified mail within 30 days of the Commission’s decision. The Commission must agree to the request in order for the arbitration to proceed. The Commission shall send notice to the person requesting arbitration of whether it agrees to the request within 15 days of receipt of the request.

If the Commission agrees upon arbitration, the arbitrator shall be a person experienced in acequia organization, governance and procedure and shall be mutually agreed upon by the Commission and the aggrieved party. If agreement on the arbitrator cannot be reached within 30 days of the date of the Commission’s agreement to the request, the arbitration shall not proceed.

The issue presented to the arbitrator shall be solely whether the Commissioners’ decision was fraudulent, arbitrary, capricious, or otherwise not in accordance with law. The arbitration shall be conducted in a manner directed by the arbitrator, and shall include a) the right of any party to be represented by an attorney, b) the right to present testimony and/or other evidence, c) the right to cross-examine witnesses and d) the opportunity to present written briefs or summaries at the end of the hearing. No formal record need be made and the formal rules of civil procedure and evidence shall not apply. Fees shall be paid equally by the Commission and the aggrieved party. The arbitrator shall provide a written explanation of the reasons for the decision. The result of the arbitration shall be final and binding

*Arbitration is an informal trial-type proceeding in which the correctness of the commission’s decision is judged by an individual chosen by both sides. Arbitration can be less expensive for both the acequia and the dissatisfied party than an appeal to court. However, the acequia is not required to agree to arbitration nor is it required to accept the person suggested by the dissatisfied party as the arbitrator. Only if agreement is reached on these matters does the arbitration go forward.*

*Just as with an appeal to court, the commission’s decision can only be overturned in arbitration if it was “fraudulent, arbitrary, capricious, or ... not in accordance with law.”*

**WATER RIGHT TRANSFER APPLICATION FORM**

*A copy of this form must be delivered by certified mail to each of the three commissioners of the acequia.*

Name of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Current point of diversion of water right: \_\_\_\_\_

Current place of use of water right: (If a Hydrographic Survey is available, provide map name, map number, and tract number. Otherwise, provide a legal description of the tract of land. Attach map.)

\_\_\_\_\_

\_\_\_\_\_

Number of acres to transfer: (Please specify or designate on attached map where rights would transfer from if part of a larger tract.)

\_\_\_\_\_

Number of acre-feet per year to transfer:

\_\_\_\_\_

Current purpose of use of water right: \_\_\_\_\_

Proposed new point of diversion of water right: \_\_\_\_\_

Proposed new place of use of water right: \_\_\_\_\_

Proposed new purpose of use of water right: \_\_\_\_\_

Please attach documentation demonstrating you are the true owner of the water right.

If the proposed new place of use is on land already served by the Acequia, explain how the proposed transfer would not exceed the maximum amount of water rights allowed on that land.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

---

**FOR ACEQUIA USE ONLY**

Received by \_\_\_\_\_ Date \_\_\_\_\_

## APPENDIX B: WATER BANKING

*Please note: Acequias that are subject to the terms of a federal court adjudication settlement like the Aamodt settlement in Santa Fe County may be subject to different laws and processes. In those cases, the language contained in this Appendix may need to be modified.*

This Appendix contains the Water Banking provisions referenced in Article 10, Water Banking, and the Water Banking Deposit Form.

### Section 1: Purpose

The purpose of the Water Bank is to promote conservation and beneficial use of Acequia water through a locally managed system of temporarily reallocating water for beneficial use within the area served by the Acequia. The Water Bank will also allow water right owners who are temporarily not using some or all of their water rights to benefit by protecting those rights from loss for non-use.

In adopting this section, the parciantes of Acequia Comunidad agree that a banked water right may be exercised on lands not otherwise associated with the water right so as to further the purpose of the Water Bank, and further agree that a parciante who owns a banked water right may remove the water right from the Water Bank at any time, and shall therefore not be deprived of the water right, lose ownership of the water right either permanently or temporarily, or experience any reduction in the economic value of his or her property as a result of the Water Bank.

### Section 2: Protection from Loss for Non-Use

As provided in Section 73-2-55.1, NMSA 1978 (2003), water rights deposited in the Water Bank are not subject to loss for non-use during the time they are in the bank.

### Section 3: Water Bank Procedures

#### a) Water Bank Record Keeping

The Commissioners may delegate to the Mayordomo or any member of the Acequia the responsibility to maintain records on all Water Bank deposit forms submitted, contact logs, and other information required to achieve the purposes of the Water Bank, not including, however, automatic deposits and withdrawals. These records shall be maintained permanently in the records of the Acequia.

#### b) Depositing Water Rights

Water rights may be deposited in the Water Bank in one of two ways, either by (1) a parciante depositing his or her own water right in the Water Bank by submitting a deposit form, or (2) a water right being automatically deposited in the Water Bank after two full consecutive calendar years of non-use. In both cases the parciante has the right to withdraw the water right from the Water Bank at any time, as described below.

#### (1) Deposit form. Any person or entity owning a water right

*NOTE: This sidebar contains explanatory notes. If these bylaws are adopted by your acequia, we advise you **remove this column from your official bylaws.***

*In 2003, the N.M. Legislature passed a law allowing acequias to do a very limited and very specific type of water banking.*

*Under this new law, an acequia water bank is a tool for holding water rights that are owned by parciantes of the acequia and are temporarily not in use. Placing water rights in the water bank does not affect the legal status of the water right in terms of its ownership.*

*Protection against loss of water rights for non-use is the key benefit of the water bank. If an adjudication (or a re-adjudication) occurs many years from now, the State may claim that a particular water right was lost because it was not in use for a period of time in the past. However, if the water right was in the bank during that period of time, there is a good possibility that the water right would remain valid.*

*It is important that all written water bank records be kept permanently in the records of the acequia.*

*Once the Acequia adopts the automatic deposit provisions, any water rights not in use should be presumed to be deposited after two calendar years.*

on the Acequia may submit a water right deposit to the Water Bank. The owner shall complete a deposit form provided by the Acequia, and submit the form to the Wa-

ter Bank's designated record keeper. The record keeper may require proof of ownership and extent of the water right being deposited. The record keeper shall use the Map and Tract Number of the most recent Hydrographic Survey or, in the absence of that, the Acequia's traditional identification system to identify the right being deposited. The deposit shall become effective upon receipt of all necessary information by the record keeper. The record keeper shall inform the Mayordomo of the deposit as soon as possible.

- (2) Automatic deposit. A water right that is not used for two full and consecutive calendar years (January through December) shall, on January 1 of the following year, be deemed to be deposited in the Water Bank.

c) Renewing Deposits; Withdrawing Water Rights

Each deposit shall have a term of one year, renewable annually, except that a deposit made after January 1 shall have an initial term of less than one year. A water right may be withdrawn from the Water Bank at any time including during the initial term as described in paragraphs (1) and (2) below. Each deposit shall renew automatically on January 1 unless the owner has withdrawn the water right.

A parciante who has used a deposit form to make a deposit shall make a brief written request for non-renewal or withdrawal of the water right, specifying the date that the withdrawal shall take effect, and submit it to the Water Bank's designated record keeper. If the written request is instead submitted to an Acequia officer who is not the designated record keeper, the officer shall forward it to the designated record keeper. Any initial term or automatic renewal will end as of the specified date of withdrawal.

A water right that is automatically deposited may be withdrawn in the manner described in the above paragraph or by verbal request of the parciante to use the water. If the parciante requests to use the water, the water right will be deemed to be withdrawn after such request followed by actual beneficial use of the water. Any initial term or automatic renewal will end when the withdrawal becomes effective.

Use of a water right following non-renewal or withdrawal from the Water Bank shall be subject to all Acequia requirements, including the requirement that the owner be in good financial standing with the Acequia prior to receiving water.

Water rights deposited in the Water Bank that are sold or otherwise conveyed to a new owner shall be deemed to remain in the Bank until the new owner withdraws the water right as provided above.

d) Water Right Reallocation

All water rights deposited in the Water Bank shall be temporarily transferred by the Mayordomo by absorbing them into the Acequia's regular rotation so that the rights are put to use to augment shortfalls at the remaining places of use served by the Acequia. The temporary transfer shall not include any change of purpose of use or point of diversion of the water rights. A water right deposited in the Water Bank shall be presumed to be put to beneficial use beginning at the next water distribution by the Mayordomo, for the duration of the term authorized above. Such temporary transfer does not require Commission action or approval.

Water rights deposited in the Water Bank may also be temporarily transferred to a specific place(s) of use already served by the Acequia, by action of the Commission in any other lawful manner which, in the judgment of the Commissioners, will benefit the Acequia, subject to all applicable procedures, rules and laws. The temporary transfer shall not include any change of purpose of use or point of diversion of the water rights.

The temporary transfer of water rights deposited in the Water Bank, done in accordance with this section, shall occur in the year in which the rights were deposited, initially or through renewal. Such water rights shall not accumulate or carry over to be reallocated in future years.

Temporary transfers of banked water rights done in accordance with this section are not subject to Article 9 or Appendix A of these bylaws (regulating water rights transfers).

Section 4: Acequia Dues and Fees

Water rights may be deposited in the Water Bank regardless of whether the owner is in good financial standing with the Acequia.

[Option 1] However, ditch dues or fees owed the Acequia by a water right owner who has deposited water rights in the Water Bank will continue to accrue and be owed by the water right owner.

[Option 2] All Acequia dues and fees are waived for each full year in which the water rights are in the Bank. An owner who deposits water rights after January 1 shall pay dues and fees for that year, and dues and fees must be paid for the year in which the water rights are withdrawn. An owner who was not in good standing when his or her rights were deposited shall pay the outstanding dues and fees prior to receiving water after withdrawal of the rights from the Bank.

*This provision allows water rights in the water bank to simply be absorbed into the acequia's regular rotation, as is the traditional method for reallocating water rights temporarily not being used by the owner. This is the most simple and recommended way to manage banked water rights.*

**WATER BANK DEPOSIT FORM**

Water Right Owner: \_\_\_\_\_

Contact Person (If Different):  
\_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Acreage of water hereby deposited:  
\_\_\_\_\_

If a hydrographic survey is available, provide the map name, map number, and tract number:  
\_\_\_\_\_

Otherwise, please provide a description of the tract of land and a map if available:  
\_\_\_\_\_

Initial Deposit Year: \_\_\_\_\_

\_\_\_\_\_  
Signature of Depositor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Water Bank Record Keeper

\_\_\_\_\_  
Date

**FOR ACEQUIA USE ONLY  
BANKING LOG – OWNER DEPOSITS AND WITHDRAWALS**

Page \_\_\_\_\_

Depositor Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_ Initial Owner Deposit  
\_\_\_\_ Owner Withdrawal – Owner Deposit

Owner Withdrawal Effective Date (if different than above): \_\_\_\_\_

Name of Water Bank Record Keeper \_\_\_\_\_

## **VOTING FOR ACEQUIAS**

### New Mexico Acequia Association Fact Sheet

**Some acequias vote by “one member, one vote” and others vote in proportion to irrigable acreage owned or according to “derecho”, “peon”, “tiempo”, or “water right” (which usually means ditch right). Which is the legally correct way to vote?**

Acequias may choose however they wish to vote, so long as it’s specified in the bylaws. Most acequias have a long-established method of voting, and no one method is more legally valid than another. Although it’s less common, an Acequia may choose to vote one way for certain issues and another way for others. For example, the bylaws could specify that you vote according to acreage on financial matters, and by “one member, one vote” for all other issues, such as elections. If an Acequia wishes to change its method of voting, it must do so using the voting method specified in the existing bylaws.

**What does it mean to vote by “one member, one vote”?**

“One member, one vote” means each family (or collective landowner) on the Acequia gets one vote, so that everyone has an equal voice, as opposed to some families having more votes based on the amount of land they own or the amount of irrigation time in the rotation.

**Who is considered a member for purposes of voting?**

Many Acequia bylaws define a member or parciante as a person who owns irrigable land with water rights from the Acequia, or something similar. If multiple people own a particular piece of property, most Acequias traditionally consider each landowner group (often a family) to be a single member, and allow only one representative to vote. Landowner groups only have separate votes if the individuals separately own other pieces of property. However, Acequias have broad discretion in how they vote, so if your Acequia has traditionally allowed each landowner in the household to vote, that system might also be found to be lawful.

**What does it mean to vote in proportion to irrigable acreage owned?**

This means that each member that owns a piece of irrigable land with water rights from the Acequia is entitled to vote in proportion to the size of that land. This could mean that the Acequia allows one vote for every acre or fraction of an acre that has water rights (not counting land without water rights). Whatever your system is, it should be set out clearly in your bylaws.

**What does it mean to vote according to “derecho, peon, tiempo, or water right”?**

These are methods for allocating a vote to each member in proportion to the amount of water or irrigation time that member’s land is entitled to. A “water right” in this context can also be described as a “ditch right”, and does not necessarily align with the legal definition of “water right” used by the state. Whatever your system is, it should be set out clearly in your bylaws, and you should define the term “derecho”, “tiempo”, “share”, etc.

**Can parciantes cast proxy votes if they are unable to attend a meeting? How?**

Yes, and we suggest using one of the sample proxy forms provided on the next page. The Secretary should note the proxy votes in the meeting minutes and obtain the proxy forms from the persons voting and keep them in the Acequia records. The acequia should adopt whichever proxy voting form is the method of proxy voting it has historically practiced.

**PROXY VOTING FORM – UNDESIGNATED VOTES**

(Note: The acequia should use this form if your method of proxy voting is to simply designate a person to cast votes for the absent member on all matters that may come up in the meeting, using the proxy voter’s own judgment.)

Name of parciante/member\_\_\_\_\_

Name of person delivering proxy vote(s)\_\_\_\_\_

Effective period of proxy\_\_\_\_\_

Member’s signature\_\_\_\_\_

Date of signature\_\_\_\_\_

Member’s address of record\_\_\_\_\_

-----

**PROXY VOTING FORM – DESIGNATED VOTE**

(Note: The acequia should use this form if your method of proxy voting is to have the absent member direct the proxy voter to vote a certain way.)

Name of parciante/member\_\_\_\_\_

Name of person delivering proxy vote\_\_\_\_\_

Meeting date\_\_\_\_\_

Purpose of vote (issue or election)\_\_\_\_\_

Vote that should be cast\_\_\_\_\_

Member’s signature\_\_\_\_\_

Date of signature\_\_\_\_\_

Member’s address of record\_\_\_\_\_



## **Acequia Tort Liability and Insurance**

### New Mexico Acequia Association Fact Sheet

#### **What is a tort claim?**

A “tort” is a type of civil wrong resulting in injury to a person, property, or reputation for which the remedy is usually money damages. A tort claim is a lawsuit alleging commission of a tort. An example of a tort is a grocery store negligently allowing a floor to remain wet and soapy while open for business, which causes a customer to slip and injure himself. Under state law, acequias are immune from liability for most torts.

#### **When are acequias liable?**

The Tort Claims Act grants **immunity** from most tort liability to acequias and their officers, employees, and volunteers, meaning the law declares that they cannot be held liable. NMSA §§ 41-4-4 and 73-2-28.1. The only exception is the “motor vehicle exception” in which there can be liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of acequia officers, employees, or volunteers while acting within the scope of their duties in the operation or maintenance of any motor vehicle. NMSA §§ 41-4-5 and 41-4-13.

For example, the acequia and its agents are not liable in tort for damage done to a fence during a spring cleaning, or for damage resulting from leaving the water running for too long and flooding someone’s property, unless the injury somehow resulted from the negligent use of a motor vehicle.

#### **Can an acequia be sued in tort even if no liability exists?**

Yes, the Tort Claims Act does not prohibit someone from **filing** a tort claim against an acequia; the Act simply says that the acequia is not liable in most instances. However, the acequia would still need to defend itself in the lawsuit, and raise the immunity defense, and should therefore obtain legal representation.

#### **Should an acequia buy insurance?**

If a person sues under the “motor vehicle exception” (see above), the acequia must defend that lawsuit and pay any damages awarded if it loses. NMSA § 41-4-4. To cover this potential liability, acequias should consider purchasing insurance either in the private market or through the state’s Risk Management Division. (State law provides that the Risk Management Division make liability insurance available to acequias. NMSA § 73-2-28.1.) To inquire, call the Risk Management Division at (505) 827-2036 and ask for a cost estimate. Be prepared to discuss the scope of coverage you would like. Information on the possible types of coverage (e.g. general liability, civil rights) is available at [http://www.generalservices.state.nm.us/riskmanagement/PAC\\_Overview.aspx](http://www.generalservices.state.nm.us/riskmanagement/PAC_Overview.aspx) .

Certain types of non-tort claims, like claims for breach of contract, inverse condemnation, unlawful taking, and violation of acequia laws would typically not be covered by the Risk Management Division. Acequias may want to consider purchasing insurance through a private company to obtain the full range of protection. Funding entities like the Water Trust Board of the New Mexico Finance Authority may also require insurance as a condition of funding.

## **Infrastructure Planning**

Replacing, repairing, and building new infrastructure for an acequia can provide major benefits to the system and its users. Planning for infrastructure projects can ensure that they are completed properly. The NMAA recommends following these steps when planning for infrastructure projects on an acequia.

### **1. Gain broad support from the membership**

In general, members should be informed of the needs of the acequia and encouraged to participate in setting goals. Potential projects should be addressed at the annual meeting or other meeting as necessary, and the acequia should take an official action to pursue the chosen infrastructure goals. The acequia should designate an officer or parciante to lead the process.

### **2. Planning**

An assessment should be done for any project regardless of size. The Natural Resources Conservation Service (NRCS) or your local Soil and Water Conservation District (SWCD) have resources to assist with assessments. Acequias in Taos County can contact the Taos Soil and Water Conservation District first for assistance. Private firms with certified engineers or licensed contractors can also be utilized. The assessment should establish the nature and scope of the necessary work and provide preliminary cost estimates.

### **3. Infrastructure Capital Improvement Plan (ICIP)**

Once an assessment is complete, the acequia is ready to do an ICIP. An ICIP is a one-to-five year plan for the project or projects the acequia wishes to complete. It also covers seeking funding from various sources. NMAA recommends completing an ICIP before seeking funding from the New Mexico State Legislature. NMAA can assist with the development of an ICIP as well as the online data entry required by the State Department of Finance and Administration.

### **4. Funding Sources**

NMAA recommends that all sources of funding be explored. One possible source is the Interstate Stream Commission (ISC). ISC has a 90/10 Program in which the ISC will cover 90% of the costs of a project and the acequia is responsible for 10%. The 10% can be paid out of the acequia's funds, capital outlay, or an ISC loan. ISC loans are low interest loans that are typically paid in ten years. Please contact ISC for more information on these funding mechanisms. Another source of funding is the United States Department of Agriculture (USDA). The USDA through the NRCS offers a cost share program called the Environmental Quality Incentive Program (EQIP). The EQIP program pays for part of the costs of a project and the acequia is responsible for the rest. The balance the acequia is responsible for can be paid with the ISC 90/10 Program funds,

an ISC loan, acequia finances, capital outlay, or a Farm Service Agency (FSA) loan. USDA also offers low interest loans through the FSA. For more information on USDA programs, please contact your local NRCS or FSA offices.

## **5. If the acequia is applying for Capital Outlay Funds...**

An assessment by a licensed contractor or certified engineer should be obtained. This will inform the acequia of the size of a project, the costs associated with it, and whether or not a design is necessary. NRCS offers free design and engineering work. If the NRCS is not available, ISC has engineering firms on contract that have experience working with acequias. Private firms are another option. The acequia may consider applying for planning and design money in its Capital Outlay request, which typically is about 15% of the total costs of the project. This request should be made during the first year of the project. Phasing projects may also be necessary. Projects should be phased so that one phase is completed before seeking funding for the next phase. Phased projects can be planned for in the ICIP.

## **6. Capital Outlay Request**

A Capital Outlay request is the actual request for funding from the legislature. It is due by a certain date during the legislative session. To find the deadline and obtain a request form, visit the New Mexico State Legislature's website at [www.nmlegis.gov](http://www.nmlegis.gov) and search for Capital Outlay Request Form. The deadline is on the form. The form must be filled out, signed by your legislator, and turned into Legislative Council Service, which is located on the 4<sup>th</sup> floor of the State Capitol building. The form will ask for a budget. The basis of the budget should be the cost estimates obtained from the assessment and reflected on the ICIP. Make at least three copies of the signed request; one for your acequia records, one for your legislator, and one for NMAA. It is important to continue to contact your legislator about the request. If the request passes, thank your legislator.

## **7. Governor**

All projects approved by the legislature are compiled into a Capital Outlay bill. Once the bill passes, it is sent to the Governor's office for his or her signature. The Governor has the options to pass the entire bill, veto the entire bill, or line item veto parts of the bill including individual projects or parts of projects. It is therefore important that the acequia contact the Governor's office and request that he or she support the project.

## **8. Financial Reporting Requirements**

Acequias must be in compliance with all financial reporting requirements in order to be eligible to receive Capital Outlay funds. See the NMAA Fact Sheets entitled "Overview of State Audit and Budget Reporting Requirements", "OSA Tier Requirements", and "DFA Budget and Reporting Requirements". DFA also requires the acequia to fill out an online-only questionnaire in order to receive Capital Outlay funding. NMAA can provide free assistance with meeting financial reporting requirements.

## **9. Bond Sale**

Once an acequia is compliant with financial reporting requirements, its project is eligible for a sale of Severance Tax Bonds which fund the project. Bond sales take place in June and December. A project that is eligible in February or March can be eligible for a bond sale in June of that same year.

## **10. Interstate Stream Commission**

After the bonds are sold, ISC will contact the acequia to sign a contract to complete the work. ISC also requires that all Capital Outlay projects follow the state procurement code. ISC will reimburse contractors directly after receipt of invoices.

Please contact NMAA at (505) 995-9644 if you have any questions.

New Property Owner Letter - Parciante  
Please change as necessary

[Date]

Dear New Property Owner,

Welcome to the [name of acequia] . This letter explains how the acequia works and your rights and responsibilities as an acequia member, known as a parciante.

As you may know, an acequia is both a traditional irrigation ditch and a political subdivision of the State of New Mexico. The elected officials of the [name of acequia] consist of three Commissioners and a Mayordomo, who manage the affairs of the acequia. The Commissioners [include if Mayordomo is volunteer: and Mayordomo] are volunteers. [Include if Mayordomo is paid: The Mayordomo is paid a stipend using dues and fees]. The Mayordomo is in charge of distributing any available water to parciantes according to a schedule.

Following is a list of things you should know as a parciante:

- You should register your water right change of ownership with the State Engineer. See [http://www.ose.state.nm.us/water\\_info\\_rights\\_apps\\_forms.html](http://www.ose.state.nm.us/water_info_rights_apps_forms.html) and use the form entitled Change of Ownership of Water Right (Non-72-12-1).
- You are entitled to receive a copy of the acequia bylaws from the acequia officials. If you do not receive a copy, please contact the acequia Secretary, [name of Secretary], at [phone number/e-mail].
- In order to be eligible to use acequia water, you must be in good standing with the acequia, meaning all dues/fees/assessments for your property must be paid up to date, including back dues/fees/assessments if owed by the previous owner. Contact the acequia Treasurer, [name of Treasurer] at [phone number/e-mail] to check on your status.
- The current annual dues are \$\_\_\_\_\_ and the current annual cleaning fee/assessment is \$\_\_\_\_\_[or insert requirement to furnish a specific number of laborers for the Spring cleaning]. Payments are due on [date]. There may be additional fees/assessments as necessary.
- Under the [name of acequia] bylaws and state law, the acequia has an easement/right-of-way wherever water runs in any part of acequia system, whether it is the main ditch or a lateral (see lateral description below). The [name of acequia] has an easement that is [size of easement, or “as large as adequate to allow for reasonable maintenance, use and improvements to the ditch”] on each side. Each property owner is required to keep the easement on his or her property clear of debris and obstructions. Acequia officials and other parciantes may access the easement for maintenance, use and improvements, and so will need to walk through your property. If your property contains a historic access route to the acequia easement, acequia officials and parciantes are entitled to use that as well.
- A lateral is a ditch that delivers water from the main ditch to property or fields not located on the main ditch. Each parciante is responsible for maintaining any lateral on his or her property. The acequia easement and other acequia laws apply to the laterals as well as the main ditch.
- If you are in good standing with the acequia and would like to get onto the schedule for water delivery, please contact the acequia Mayordomo, [name of Mayordomo] at [phone number/e-mail].
- If you need help with irrigation, there may be a community member for hire. You can inquire with the acequia Mayordomo, [name of Mayordomo] at [phone number/e-mail].
- [Include if current water banking language is adopted; otherwise modify as needed: If you are not able to use your allotted water, you can protect your water rights and assist other parciantes by

temporarily depositing the rights into the acequia water bank. If your water is not used for an entire calendar year, the rights will automatically be deposited into the bank at the beginning of the new calendar year. You may withdraw your water rights from the bank at any time. Your water rights are protected while temporarily deposited in the bank because under state law they will not be considered abandoned or forfeited due to non-use. Please contact [name of appropriate person] for information. ]

- All acequia parciantes are encouraged to attend the acequia's annual meeting, which is usually held [standard meeting date]. It will be announced [when and where/how]. The meeting is an opportunity to review the acequia's business and participate in Commissioner and Mayordomo elections.
- As a parciante during a time of drought it is important to understand that no amount of water is guaranteed to anyone at any time. The Mayordomo will do his or her best to divide any available water as equitably as possible. This is how the acequia system and its life-giving ribbons of green have been maintained in our high desert environment for centuries. [Optional and modify as needed: It is also important to note that livestock, kitchen gardens, and orchards will receive priority over large forage and alfalfa fields.]
- If you have any questions or concerns please contact the acequia President, [name of President], at [phone number/e-mail].

Sincerely,

President, [acequia name]

New Property Owner Letter – Non-Parciante  
Please change as necessary

[Date]

Dear New Property Owner,

Welcome to [name of the area]. As you probably know, a portion of the [name of acequia] runs through your property, although you do not own water rights associated with it. This letter is intended to explain how the acequia works and your responsibilities as the owner of property containing an acequia.

An acequia is both a traditional irrigation ditch and a political subdivision of the State of New Mexico. The elected officials of the [name of acequia] consist of three Commissioners and a Mayordomo, who manage the affairs of the acequia. The Mayordomo is in charge of distributing any available water to the members, known as parciantes, according to a schedule.

The [name of acequia] has an easement that is [size of easement, or “as large as adequate to allow for reasonable maintenance, use and improvements to the ditch”] on each side. The easement applies to the main ditch and to all ditches that carry water from the main ditch, known as laterals. Property owners are required to keep the easement clear of debris and obstructions, including fences, locked gates, and aggressive animals. Acequia officials and other parciantes may access the easement at any time for reasonable inspection, maintenance, use and improvements, and so will periodically need to walk onto your property. They may also need to use heavy equipment like a Bobcat on your property. If your property contains a historic access route to the acequia easement, acequia officials and parciantes are entitled to use that as well.

The [name of acequia] has an annual cleaning each Spring, at which time a large group of parciantes or hired workers will clean the entire acequia. They may spend up to a few hours on your property. Please contact the acequia Mayordomo, [name of Mayordomo], at [phone number/e-mail] in [month] if you would like the tentative Spring cleaning date.

Although you are not eligible to use water from the acequia, we hope that you enjoy its presence on your land. By maintaining the easement and working with the acequia officials and parciantes you are helping to continue our centuries-old tradition of local sustainable agriculture and maintain the beautiful life-giving ribbons of green that grace our high desert environment.

If you have any questions or concerns please contact the acequia President, [name of President], at [phone number/e-mail].

Sincerely,

President, [acequia name]

Delinquent Acequia Dues/Fees/Assessments Letter

[Date]

Dear [name of parciante]:

This letter provides notice that you are delinquent in making payment(s) to the [name of acequia]. At this time, you owe a total of [dollar amount], for the following: [explain – for instance, 3 years of unpaid annual dues].

We encourage you to make full payment as soon as possible. By doing so, you help to maintain our centuries-old acequia tradition of community-based, sustainable agriculture. You also help to maintain the beautiful life-giving ribbons of green that the acequias create in our high desert environment.

[Name of acequia] hopes that you will remain a participating member by paying the amount owed. Until full payment is made, neither you nor any future owner of your property is entitled to use the acequia water or vote in acequia elections. If necessary, the acequia may pursue civil actions in magistrate or district court to assess penalties for non-payment and recover the unpaid fees. If the acequia prevails regarding unpaid fees, you may be required to pay the fees plus costs and attorney fees. Failure to comply with the court's order could incur additional civil penalties. In addition to such court actions, the acequia may take steps to put a lien on your property in the amount of any unpaid fees with interest. The acequia hopes, however, to avoid pursuing these measures and appreciates your compliance with this payment request.

If you are unable to pay the entire amount at this time, the acequia is willing to consider a payment plan. Another option is for you to temporarily deposit your water rights in the acequia water bank until you can make payment. [Optional: (Water rights that are not used for a full calendar year are automatically deposited in the water bank on January 1 of each year.)] Water rights in the water bank are protected under state law from loss due to non-use (forfeiture or abandonment). You are therefore maintaining the value of your property by depositing your rights in the bank. You may withdraw your water rights from the water bank at any time, but in order to use the water must pay the amount currently owed. [Optional: While the water rights are in the water bank you will not accrue additional annual acequia fees.]

We appreciate your attention to this matter. If you have any questions regarding [name of acequia], please feel free to contact me.

Sincerely,

Acequia [President or Treasurer]



# SAMPLE ACEQUIA MEETING AGENDA

## **AGENDA** **ACEQUIA DE LA COMUNIDAD**

### **ANNUAL MEETING OF THE MEMBERS/PARCIANTES TO BE HELD**

**[Date], [Time] [Location], La  
Comunidad, NM**

AGENDA ITEM NO. 1: Meeting Called to Order

AGENDA ITEM NO. 2: Roll Call of Members/Parciantes

AGENDA ITEM NO. 3: Approval of Agenda

- a. Motion to approve agenda.

AGENDA ITEM NO. 4: Open Meetings Act Resolution

- a. Motion to approve resolution.

AGENDA ITEM NO. 5: Approval of Minutes ([Date of Previous Meeting])

- a. Motion to approve minutes.

AGENDA ITEM NO. 6: Treasurer's Report

- a. Motion to approve financial report.

AGENDA ITEM NO. 7: Mayordomo's Report

AGENDA ITEM NO. 8: Comisionados' Report

AGENDA ITEM NO. 9: Election of Officers

- a. Nominations and voting for Acequia Officers.

AGENDA ITEM NO. 10: Old Business

- a. Infrastructure Capital Improvement Plan (ICIP) and Capital Outlay.

AGENDA ITEM NO. 11: New Business

- a. Discuss upcoming Spring Acequia cleaning.
- b. Motion to increase annual assessment per derecho.

AGENDA ITEM NO. 12: Next Meeting Agenda Discussion

AGENDA ITEM NO. 13: Adjourn Meeting