



# Acequia Governance Handbook

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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.

A “water right” differs from a “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 ditch** 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. The state can *only* take away an established water right if the requirements of forfeiture or abandonment are met (see “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. Only the courts can make this determination.

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

- Source of water (i.e., which stream)
- Place of use (i.e., which tract of land and how many acres)
- Purpose of use
- Point of diversion
- Priority date (i.e., 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, and the water users do not have an established system for rationing or sharing the water, 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.

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 recently 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.

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## 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 Nambe-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 Nambe-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.

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.

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## Transfers of Water Rights

### New Mexico Acequia Association Fact Sheet

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 process, members of the public may object to a proposed transfer and argue there will be adverse effects.

However, there is an **important exception** 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 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 new law passed by the state legislature in 2003, an acequia can now regulate proposed water right transfers relating to the acequia. The new law only gives this authority to those acequias that **adopt it into their bylaws** or governing rules. In this case, decisions on proposed transfers are made by the acequia commission. A transfer may be denied by the commission if it finds that it will be **detrimental to the acequia or its members**. An individual may appeal this decision to a district court. The New Mexico Acequia Association and New Mexico Legal Aid have developed a **sample bylaw** that would allow each acequia to put this new 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 **membership meeting** within 90 days of receiving the 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 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.

## 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. *A court determination is the only official determination of whether someone has lost his or her water right.* Outside of a court proceeding, the OSE may express an opinion about whether a water right has been lost, but that opinion is not determinative, and if there is disagreement about their 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.

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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 new 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 policy or amend its bylaws. 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 DE LA COMUNIDAD 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 DE LA COMUNIDAD 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 Commissioner	<input type="checkbox"/>	<input type="checkbox"/>
*Meetings of Commissioners	<input type="checkbox"/>	<input type="checkbox"/>
*Compensation for Officers	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Meetings of Membership</u></b>		
*Date of Annual Meeting	<input type="checkbox"/>	<input type="checkbox"/>
*Notice of Membership Meetings	<input type="checkbox"/>	<input type="checkbox"/>
*Purpose of Annual Membership Meetings	<input type="checkbox"/>	<input type="checkbox"/>
*Location of Annual Membership Meetings	<input type="checkbox"/>	<input type="checkbox"/>
*Quorum of Membership	<input type="checkbox"/>	<input type="checkbox"/>
*Special Membership Meetings	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Elections and Voting</u></b>		
*Election of Officers	<input type="checkbox"/>	<input type="checkbox"/>
*Voting Rights of Parciantes	<input type="checkbox"/>	<input type="checkbox"/>
*Nomination of Officers	<input type="checkbox"/>	<input type="checkbox"/>
*Terms of Office	<input type="checkbox"/>	<input type="checkbox"/>

Management and Operations

- |   |                          |                          |
|---|--------------------------|--------------------------|
| *Allocation of Water Between Acequias   | <input type="checkbox"/> | <input type="checkbox"/> |
| *Spring Acequia Cleaning                | <input type="checkbox"/> | <input type="checkbox"/> |
| *Allocation of Water Between Parciantes | <input type="checkbox"/> | <input type="checkbox"/> |
| *Parciante Assessments                  | <input type="checkbox"/> | <input type="checkbox"/> |

Rights and Obligations of Parciantes

- |                                      |                          |                          |
|--------------------------------------|--------------------------|--------------------------|
| Maintenance of Headgates             | <input type="checkbox"/> | <input type="checkbox"/> |
| Assessments                          | <input type="checkbox"/> | <input type="checkbox"/> |
| Participation in Acequia Cleaning    | <input type="checkbox"/> | <input type="checkbox"/> |
| Compliance with Bylaws               | <input type="checkbox"/> | <input type="checkbox"/> |
| *Public Inspection of Records        | <input type="checkbox"/> | <input type="checkbox"/> |
| *Copy of Bylaws                      | <input type="checkbox"/> | <input type="checkbox"/> |
| Name and Address for Acequia Records | <input type="checkbox"/> | <input type="checkbox"/> |

Easements

- |                         |                          |                          |
|-------------------------|--------------------------|--------------------------|
| *Definition of Easement | <input type="checkbox"/> | <input type="checkbox"/> |
| Use of Easement         | <input type="checkbox"/> | <input type="checkbox"/> |
| *Access to Easement     | <input type="checkbox"/> | <input type="checkbox"/> |
| Changes to Acequia      | <input type="checkbox"/> | <input type="checkbox"/> |

Enforcement

- |  |                          |                          |
|--|--------------------------|--------------------------|
| *Delinquencies                               | <input type="checkbox"/> | <input type="checkbox"/> |
| *Illegal Use of Water / Acequia Interference | <input type="checkbox"/> | <input type="checkbox"/> |
| *Violation of Easement Rights                | <input type="checkbox"/> | <input type="checkbox"/> |

Water Transfers

- |                |                          |                          |
|----------------|--------------------------|--------------------------|
| See Appendix A | <input type="checkbox"/> | <input type="checkbox"/> |
|----------------|--------------------------|--------------------------|

Water Banking

- |                |                          |                          |
|----------------|--------------------------|--------------------------|
| See Appendix B | <input type="checkbox"/> | <input type="checkbox"/> |
|----------------|--------------------------|--------------------------|

Amendments to Bylaws

- |                            |                          |                          |
|----------------------------|--------------------------|--------------------------|
| *Amendments to Bylaws      | <input type="checkbox"/> | <input type="checkbox"/> |
| *Compliance with State Law | <input type="checkbox"/> | <input type="checkbox"/> |
| *Severability Clause       | <input type="checkbox"/> | <input type="checkbox"/> |

- |                                |                          |                          |
|--------------------------------|--------------------------|--------------------------|
| *Date of Adoption or Amendment | <input type="checkbox"/> | <input type="checkbox"/> |
| *Signature of Commissioners    | <input type="checkbox"/> | <input type="checkbox"/> |

## ACEQUIA DE LA COMUNIDAD BYLAWS

**Preamble:** Water is the lifeblood of our communities. The parciantes 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 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 parciantes in a manner that is fair and equitable, 4) protect and defend the rights and interests of the Acequia and the parciantes, 5) maintain the infrastructure and easements of the Acequia, and 6) maintain an adequate diversion right to ensure a sufficient water supply for parciantes.

#### \*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. Indicate that Acequia includes the mainstem and all laterals and drainages or desagues

*Option 2.* If no legal description is available, then give a general description that includes your point of diversion (where you divert from the river), along with any laterals and desagues.

#### \*Section 4: Membership – Parciantes

The members or parciantes of Acequia de la Comunidad are those persons who own irrigated 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 a member of the Acequia, as defined in Article 1. The Commissioners shall consist of a Chair, Secretary, and a Treasurer.

#### Section 2: Duties of Officers (These may vary by acequia.)

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

*It is generally a good idea to list many purposes rather than just one.*

*Acequias are local governmental entities, or "political subdivisions," under New Mexico law. (Section 73-2-28)*

*This description need not be highly detailed. The county, stream and approximate point of diversion should be enough. Avoid using information like names of property owners, which will change. The priority date and number of acres is unnecessary, especially if not adjudicated.*

*State statutes do not define "member" or "parciante" but this language is consistent with state law (Sections 73-2-14 and 73-3-3) which provides that only those who own water rights and are not delinquent in payments are eligible to vote.*

*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.*

- a. Chair: Responsibilities of the Chair will be to direct the activities of the Acequia jointly with the other commissioners and call and preside at all Acequia meetings. In the event the Chair is unable to preside at a meeting, he or she will appoint one of the other Commissioners to preside over the meeting.
- b. Secretary: The Secretary is responsible for keeping complete and accurate records, minutes of meetings, reading the minutes of the previous meeting and assisting the other Commissioners in running the business affairs of the Acequia.
- c. Treasurer: The Treasurer shall be responsible for management of the finances of the Acequia including the following:
  1. Send notices to parciantes for billing of and collection of assessments and fines.
  2. Maintain accurate records for each parciante including assessments due, hours worked and fines due in coordination with the Mayordomo.
  3. Make payments for labor and materials as necessary.
  4. In coordination with the Mayordomo, prepare an annual financial report to be presented to the membership.
- d. Mayordomo: The Mayordomo shall work under the direct supervision of the Commissioners. His or her responsibilities shall be as follows:
  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 is consistent with the customs of the Acequia.
  3. Collect delinquencies from parciantes as reported to him by the Treasurer.
  4. Supervise the Acequia to ensure that delinquent parciantes do not take water illegally. The Mayordomo has full authority to shut the individual headgate along the banks of the Acequia of those parciantes who are delinquent and to secure the headgates by any available means.

*See Sections 73-2-31 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, the Commissioners shall appoint a Mayordomo to hold office for the remainder of the term or until his successor is elected at a meeting of the membership.

**\*Section 4: Vacancy of Commissioners**

In the event of a vacancy in the office of Commissioner, the remaining Commissioners shall appoint a Commissioner to hold office for the remainder of the term or until his successor is elected at a meeting of the membership. 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 term of office.

**\*Section 5: Meetings of Commissioners**

Special meetings of the Commission may be called by the Chairman. Two Commissioners shall constitute a quorum for such meetings. Notice shall be

*For most acequias, which don't have regular Commissioner meetings, the purpose of a Commissioner 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 Commissioners acting alone have less power than the membership (for example, they can't amend bylaws), the notice requirements for Commissioner meetings are less strict than those for membership meetings. See attached "Open Meetings Act Resolution" for more on meeting notice requirements.*

posted in a public place three (3) days prior to a meeting.

**\*Section 6: Compensation of Officers**

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

**Section 7: Bonding of Mayordomo and Treasurer**

The Commissioners shall determine an appropriate bond for the Mayordomo and Treasurer, and the Mayordomo and Treasurer shall be bonded for that amount, to the extent that these individuals handle acequia funds.

**Article 3. Meetings of Membership**

**\*Section 1: Annual Membership Meeting**

The Annual Membership Meeting 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" acequias.).

*Option 2:* the first Monday of October or as soon as practicable thereafter. (for "Article 3" acequias).

**\*Section 2: Notice of Annual Membership Meetings**

(Insert **either** Option 1 or 2 below)

**Option 1:** Notice shall be provided to each parciante by mail to the addresses as recorded in the records of the Acequia and posted in a public place 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 provide other types of notice as appropriate.

**Option 2:** Notice shall be posted in a public place 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 provide other types of notice as appropriate.

**\*Section 3: Purpose of Annual Membership Meetings**

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.

**Section 4: Location of Annual Membership Meeting**

The annual meeting shall be held at a public place in the county in which the Acequia is located.

**\*Section 5: Quorum**

A quorum for conducting any business shall be [**insert percentage**] of [**insert either** the membership **or** the total number of water rights] eligible to vote, except as otherwise provided in this section. [**include the following if quorum is a percentage of the membership**: For purposes of calculating a quorum, each household or "co-tenancy" (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties

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

*This is required by Section 73-2-12 and 73-3-1. The Commissioners may set this amount as low as they see fit, including an amount as low as zero if appropriate.*

*State law provides for the date of electing officers. (Sections 73-2-12, 73-2-15, and 73-3-1.) The statute provides that these meetings take place on odd numbered years but many acequias meet annually.*

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

*The Open Meetings Act requires an acequia to determine annually what constitutes "reasonable notice" for its meetings. (Section 10-15-1.) See attached "Open Meetings Act Resolution" for more on meeting notice requirements.*

*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.*

owned.”] 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 posted at the location of the original meeting, and all business listed on the original agenda shall be transacted by those present at the reconvened meeting, who shall then constitute a quorum for conducting business provided there are *[insert number]* or more persons present.

**\*Section 6: Special Membership Meetings**

Special meetings of the Acequia may be called by the Commissioners or upon written petition to the Commission Chairman signed by *[insert percentage figure]* of the members. Notice for special meetings shall be the same as for annual meetings.

**Article 4. Voting and Elections**

**\*Section 1: Election of Officers**

The Commissioners and Mayordomo shall be elected at the Annual Meeting on odd numbered years by a vote of membership. 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 and who have not defaulted on their work assignments will be in good standing and shall be allowed to vote in any election or other vote of the acequia. Eligible parciantes who are unable to attend a meeting may vote by written proxy.

**Optional:**

The proxy should 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, and the member’s signature.

***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” (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 amount of acreage with water rights.

**Option 3:** Each *[insert whichever applies: “derecho”/“peon”/“tiempo”]* has one vote.

**Option 4:** Each water right shall have one vote. For purpose of this provision, “water right” means \_\_\_\_\_. [Choose this option only if your acequia uses “water right” to mean something *other* than legal water rights as defined by the State. Otherwise, please choose Option 2.]

**Option 5:** 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

*Sections 73-2-12 and 73-3-1 provide the requirements for elections to be held on odd-numbered years.*

*Sections 73-2-14 and 73-3-3 allow votes to be cast by written proxy, although voting in acequia elections is often done by the members present. There is no legal requirement for proxy voting; however, it is advisable for acequias to have some system of accountability for proxy votes, in case those votes are challenged.*

*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.*

concerning the financial obligations of the parciantes or the acequia.

\*Section 3: Nomination of Officers

**Option 1:** Nomination of officers may be made by any parciante. The nomination and voting for each office (Mayordomo, Chairman, 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 Meeting in which the election is taking place, the three commissioners shall elect, from among themselves, a Chairman, Secretary, and Treasurer with each commissioner holding one position.

\*Section 4: Terms of Office

The elected officers shall assume their office not later than the first Monday following the month they are elected. The term of office for the Mayordomo and Commissioners is two years.

**Article 5. Management and Operations**

Section 1: Allocation Between Neighboring Acequias

As practiced traditionally, during times of emergency and/or drought, the Commission will represent the Acequia for the purpose of cooperating with the other acequias in the \_\_\_\_\_ (name your valley or community) which draw water from the \_\_\_\_\_ (stream system) in order to determine the most effective and equitable manner of allocating water in all of the acequias.

Section 2: Acequia Cleaning

A community cleaning of the Ditch's mainstem or *acequia madre* involving all parciantes will take place during the Spring before the irrigation season on a date determined by the Mayordomo and Commissioners.

**Optional:** Parciantes on laterals shall be responsible for cleaning their own laterals.

Typically, the Mayordomo or commissioners will discuss with the individual landowner the potential removal of trees from the side banks and easement of the Acequia, if they interfere with the Acequia or its easement, in order to make arrangements for their removal and disposal.

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

**Option 1:**

During Spring cleaning and/or during the normal maintenance activities during the irrigation season, the removal and disposal of debris from the Acequia and side banks, including trash and organic matter such as soil, rocks and brush, is performed by the acequia or peones doing the work soon after the spring cleaning.

**Option 2:**

During Spring cleaning and/or during the normal maintenance activities during the irrigation season, the removal of debris from the Acequia, including trash and organic matter such as soil, rocks and brush, is performed by the acequia or peones doing the work; however, landowners are responsible for removing the

*Some acequias elect commissioners for three-year staggered terms rather than one-year or two-year terms.*

*Such customary practice by acequias is also recognized in state law. (See Sections 73-2-47 and 72-9-2.)*

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

*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 bylaws, other documents, or document them in minutes of the acequia's meetings.*

*The definition of water rights in terms of length of time for irrigation varies greatly by acequia. Many acequias have different terms and different meanings for words like peon, tiempo, or derecho. Contact NMAA for sample bylaws for more example language.*

*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 bylaws*

debris from their own property following the cleaning.

**Section 3: Allocation of Water Between Parciantes**

**Option 1:** The available water in the acequia shall be distributed in proportion to the lands with water rights owned by each member of the acequia. The Mayordomo shall be in charge of the distribution of the water to the members based on the general schedule established by the commissioners. The schedule may be adjusted depending on the availability of water by the mayordomo in consultation with the Commissioners.

**Option 2:** The available water in the acequia shall be distributed according to the [*insert peon/derecho*] system. The water allotment of one [*peon/derecho*] is determined by the size of irrigated land so that one allotment is based on [number of acres] per peon/derecho. *Example: One acequia may have one day of irrigation for every ten acres and that acequia may require one peon for every ten acres.*

**Section 4: Parciante Assessments**

**Option 1:** An annual assessment of [\$dollar amount] per acre will be assessed against all parciantes 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 member, in proportion to their acreage, the amount of labor and dues needed.

**Option 3:** The amount to be assessed per acre shall be determined by a vote of the membership after being presented the recommendation of the Commissioners and that amount will remain as the annual assessment 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 peones for the annual Spring cleaning or 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 adopted by the Commission for the common good.

*and can be changed by either the Commission (Option 2) or the membership (Option 3) without having to amend the acequia's bylaws.*

*Section 73-2-26 gives the Mayordomo authority to file a court action to collect delinquent assessments.*

*If a parciante fails to provide labor or workers as required by the mayordomo, the mayordomo, after notifying the parciante, can collect a civil penalty in magistrate court. (Sections 73-2-25, 73-2-31, 73-3-5.)*

*State law defines commission records as open to public inspection. (See Sections 73-2-21 and 73-3-4.)*

*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*

\*Section 5: Public Inspection of Acequia Records

All records of proceedings by Commissioners and financial records of the Acequia shall always remain public property and shall be subject to inspection by any concerned person.

Section 6: Copy of Bylaws

Each parciante shall be provided with a copy of the current by-laws of the Acequia and amendments thereafter adopted. **Optional:** New members will be briefed on the operation of the Acequia by one of the Commissioners or the Mayordomo.

Section 7: Name and Address in Acequia Records

Each parciante shall keep current on the records of the Commission of the Acequia the name(s) of the owner(s) of the property, the owner's mailing address and the telephone number, and the exact amount of irrigated acreage or water rights claimed by the parciante.

Section 8: Change of Ownership

It shall be the responsibility of a landowner who has purchased or leased land with Acequia water rights to report such transaction promptly to the Secretary for recording in the Acequia's records. Delinquencies, if any, are due from the past owner or lessee on said land, and must be paid before the new owner or lessor may be entitled to the use of the Acequia.

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

Water transfers, by changing the point of diversion, purpose of use, or place of use of water rights must comply with Article 9 of these Bylaws. If a water transfer has been approved by both the acequia and the State Engineer, it shall be the responsibility of the parciante to provide updated information about the water right to the Secretary for recording in the records of the Acequia.

**Article 7. Easements**\*Section 1: Definition of Easement

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. No parciante may build within the easement or otherwise obstruct or limit access to this easement. The easement is described 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 maintenance, use and improvements.

Section 2: Use of Easement

Each parciante agrees that it must be possible to walk the full length of the ditch along its banks. Therefore, if a fence or other obstruction crosses the ditch or the easement, there must be a gate or crossover.

Section 3: Access to Easement

Acequia de la Comunidad has the right to use the historic and customary points of access to the ditch across members' and non-members' property and other such points of access as may be necessary to afford convenient access to the ditch for maintenance, operations and improvements.

*passing on inheritance to an heir for example, without a water transfer. The issue of water transfers is covered in Article 9.*

*Acequia easements are described in 73-2-5. State law does not define a set number of feet but states that the easement is as wide as necessary for reasonable maintenance, use and improvements.*

*Easement rights and right of access to the easement are at Sections 72-8-3 and 73-2-5.*

*An acequia may deny water to a delinquent parciante, (Sections 73-2-25 and 73-3-6) In addition, the Mayordomo has authority under state law to bring a civil action in district or magistrate court to collect delinquent assessments. (Section 73-2-26.) If the acequia prevails in court, the offending party must pay the acequia's attorney fees. Anyone who continues to take water without paying assessments and attorney fees is required to pay a civil penalty of up to \$200.*

*Acequias have several remedies for these infractions, including criminal misdemeanor prosecution, obtaining an injunction, and a*

**Section 4: Changes to Acequia**

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

**Article 8. Enforcement****\*Section 1: Delinquencies**

The Mayordomo has the authority to suspend the right to use the acequia and the water therein of a parciante who is delinquent in the payment of his or her assessment or fails to perform required work. This shall remain in effect until the assessments and fines are paid. The Mayordomo has the authority to collect delinquent assessments through appropriate legal action. Officers of the Acequia may file a civil action for the collection of any assessment, fine or penalty, which, after due notice to the member, the member has failed to pay.

**\*Section 2: Illegal Use of Water or Acequia Interference**

Any person who interferes with the acequia in any manner, takes water without permission of the Mayordomo or Commission commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico.

**\*Section 3: Violation of Easement Rights**

Any person who interferes with the acequia easement or access to the easement commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico.

**Article 9. Water Transfers**

The members of Acequia de la Comunidad declare that a transfer of a water right off the Acequia, or a transfer of a water right into the area served by the Acequia, may be detrimental to both the Acequia and its members. Therefore, any such proposed transfer by any person or entity must be formally approved by the Commissioners, using the procedure in Appendix A, prior to application for the transfer to the Office of the State Engineer. This Article is adopted under Section 73-2-21(E) NMSA 1978 and/or Section 73-3-4.1 NMSA 1978.

**Article 10. Water Banking**

Acequia de la Comunidad hereby forms a Water Bank under its powers as a political subdivision of the State of New Mexico, and under Section 73-2-55.1 NMSA 1978 (2003). 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. See Appendix B.

**Article 11. Miscellaneous Provisions****\*Section 1: Amendments to Bylaws**

These bylaws may be enacted, amended, or modified by a [*insert simple majority vote of the membership or simple majority vote of water rights*] *or* [*insert 3/4 majority vote of the membership or 3/4 majority vote of water rights or specify percentage*] of the [*insert total membership or members present and voting*] at any duly called meeting.

*civil penalty of up to \$5000. (Section 73-2-64). The district attorney may assist the acequia.*

*The penalties for violation of easement rights are the same as those described in the previous paragraph. (Section 73-2-5)*

*See Appendix A for procedure on water transfers.*

*See 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.*

\*Section 2: Applicability of State Law

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

\*Section 3: Severability Clause

If any part or application of these bylaws is held invalid, the remainder of 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

## APPENDIX A: WATER TRANSFERS

### General

1. 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 into the area served by the Acequia, may be detrimental to both the Acequia and its members. Therefore, any such proposed transfer by any person or entity must be formally approved by the Commissioners, using the procedure set forth below, prior to application for the transfer to the Office of the State Engineer. As used in this document, “transfer” means a change in point of diversion, and/or place of use and/or purpose of use of a water right, including temporary transfers and water use leases.
2. Without formal consent of the Commissioners to such a transfer, any attempt to obtain approval of the transfer from the State Engineer, or any other effort to implement the transfer, is unlawful and void.
3. These policies and procedures are adopted under Section 73-2-21(E) NMSA 1978 and/or Section 73-3-4.1 NMSA 1978.

### Approval Procedure

1. A request for approval of a transfer of a water right served by the Acequia or a transfer of a water right into the area served by the Acequia must be made by the owner of the water right in writing, delivered by certified mail to each Commissioner. It must be on a written form prepared by the Commissioners requiring information about the proposed transfer. The 120-day timeline in NMSA 1978, Section 72-5-24.1(D) (2003) shall not begin to run until the applicant submits a completed application form with all of the required information.
2. Within 90 days of receipt of the written request, the Commissioners will hold a public meeting to allow members who support and oppose the request to be heard or submit additional information.

*Notice of the meeting will be given in the same manner required for the Acequia’s annual meeting. In addition, notice will be given 1) by mail to the applicant at the address on the request 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.*

The conduct of the meeting, such as its location, length, and other matters will be decided by the Commissioners. The Commissioners will accept and consider any documents, written or oral statements, or arguments offered by the applicant or any Acequia member, as well as any information from individuals who may be presented by the applicant or any Acequia member. The applicant or any Acequia member may have an attorney or other representative present his or her information to the Commission in his or her place. The applicant or any Acequia member, or their representative, may respond to comments, questions or

*NOTE: This sidebar contains explanatory notes. If these bylaws are adopted by your acequia, we advise you remove this column from your official 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 transfer has first been approved by the acequia. (Section 72-5-24.1)*

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

*The statute requires a written 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 should be held in accordance with the Open Meetings Act. A sample Open Meetings Act Resolution is included in the NMAA Acequia Governance Handbook.*

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

*The meeting can be run by the Commission in the same manner as a regular meeting of the acequia. It is not intended to be a trial-type proceeding.*

arguments offered at the meeting, directing such response to the Commission. The rules of civil procedure and the rules of evidence shall not apply to the meeting.

The Commissioners may ask any questions they believe may help in their decision. The Commission is not required, prior to recessing the meeting, to make any decisions or answer any questions on issues raised, before the final decision is announced publicly. The Commission may be represented by an attorney or other representative, and may be assisted in the conduct of the meeting by other such persons as it may designate. Except as provided in this section, only the applicant, other Acequia members and the Commissioners may speak at the meeting.

3. The request may be denied, in whole or in part, if the Commissioners find it would be detrimental to the Acequia or its members. The Commission will base its decision on the presentations, documents and arguments made at the meeting; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation. Approval requires a majority vote of the Commissioners.
4. Following the presentations and comments regarding the application, the Commissioners will recess the meeting. The Commissioners will reconvene the meeting at a date, time, and location announced prior to recessing, provided that the last of any reconvened meetings shall be within 120 days of receipt of the written application. The Commissioners shall approve or deny the request, in whole or in part, at an open meeting, and shall render their decision in writing explaining the reasons for their decision. This will constitute a decision of the Acequia in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D) NMSA 1978.

#### 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.

#### Arbitration (Optional)

1. Instead of an appeal to court, the applicant or a member of the Acequia aggrieved by the Commission's decision may submit the Commission's decision 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 for the arbitration to proceed. The Commission shall notify the person requesting arbitration whether it agrees to the request within 15 days of receipt of the request.
2. The arbitrator must be a person experienced in acequia organization, governance and procedure and must be mutually agreed upon by the Commission and the aggrieved party. If agreement cannot be reached,

*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.*

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

*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 rendering of the written decision must take place at the meeting when it is reconvened.*

*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 with law."*

*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 in every case 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*

the arbitration will not proceed.

3. The issue presented to the arbitrator will be solely whether the Commissioners' decision was fraudulent, arbitrary, capricious, or otherwise not in accordance with law. The arbitration will be conducted in a manner directed by the arbitrator, and must include a) the right of any party to be represented by an attorney, b) the right to present testimony 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 will not apply. Fees will be paid equally by the Commission and the person or persons requesting arbitration. The arbitrator must provide a written explanation of the reasons for the decision. The result of the arbitration shall be final and binding.

*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 should 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: \_\_\_\_\_

Number of acre-feet per year: \_\_\_\_\_

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 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

This Appendix contains the Water Banking Bylaw and the Water Banking Deposit Form.

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

### 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.

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

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

### Section 3: Water Bank Procedures

#### a) Water Bank Record Keeping

The Commissioners may delegate to the Mayordomo or any officer of the Acequia the responsibility to maintain records on all Water Bank deposits, contact logs, and other information required to achieve the purposes of the Water Bank. These records shall be maintained permanently in the records of the Acequia.

#### b) Depositing Water Rights

Any person or entity owning a water right on the Acequia may submit a water right deposit to the Water Bank. A deposit is made by completing a deposit form prepared by the Acequia, and giving the form to the Water Bank's designated record keeper. The record keeper may require proof of ownership and extent of the water right being deposited. The record keeper will 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 correctly identify the right being deposited. The deposit shall become effective upon signing of the deposit form by a Commissioner or by the Mayordomo.

A deposit will be for one year, renewable annually. At the end of

*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, etc.*

*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 acequia can show the water right was in the bank during that period of time, there is a good possibility that the water right would remain valid. This is why it is essential that all water bank records be kept permanently in the records of the acequia.*

the deposit period, the Acequia shall notify each depositor by written notice or otherwise that the depositor must contact the Acequia if the depositor desires to withdraw his or her water right from the Water Bank, and that if the depositor does not contact the Acequia to withdraw the water right from the Water Bank, the deposit will be deemed to be renewed for another year. Non-response by the depositor to the notice will be deemed to be consent to renewal of the deposit for another year, if the depositor does not otherwise communicate his or her intentions to the Acequia.

c) Water Right Reallocation

All water rights placed in the 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 at the remaining places of use served by the Acequia. The reallocation must be done without change of purpose of use or point of diversion of the water rights. The banked rights shall be used to augment shortfalls of available water for other existing places of use on the Acequia. After placement of a water right in the water bank, it shall be presumed that the water right will be put to beneficial use at such new place(s) of use beginning at the next water distribution by the mayordomo, for the duration of the term authorized above. Such temporary transfers do not require Commission action or approval.

The water rights may also be temporarily transferred to new place(s) of use 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 transfer of water rights that have been placed in the water bank in any particular year must occur in that year and may not accumulate or carry over to be reallocated in future years. Temporary transfers of banked water rights, as described in this section, are not subject to Article IX of these bylaws (regulating water rights transfers).

Section 4: Ditch Dues and Fees

Ditch dues or fees owed the Acequia by a water right owner who has deposited water rights in the Water Bank will continue to be paid by the water right owner.

**WATER BANK DEPOSIT FORM**

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

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

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

*The parciante can "withdraw" the water right back to his or her own exclusive use any year by simply indicating so to the Commission.*

*In order to keep a complete paper trail, it is critical that the acequia maintain a log of all contact with the depositor of the water right and keep this information on file permanently in the acequia's records.*

*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.*

*If the Commission wishes to allow the banked water right to benefit a water user not on the acequia, it would be necessary to get a permit from the State Engineer, a much more costly and involved process.*

*Just as a parciante remains liable for acequia dues even if he or she does not irrigate for a year, a parciante with banked water rights is ordinarily responsible for acequia dues as the owner of the water right and a continuing member of the acequia. This is not legally required, however, so an acequia may choose to waive such fees or omit this section from its bylaws.*

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:

\_\_\_\_\_

Deposited for the year: \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Commissioner or Mayordomo

\_\_\_\_\_  
Date

**FOR ACEQUIA USE ONLY  
CONTACT LOG**

For the Year \_\_\_\_\_

Contacted by: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_ Letter \_\_\_ Phone

**WATER BANKING CONTACT LOG CONTINUED...**

Page \_\_\_\_\_

For the Year \_\_\_\_\_

Contacted by: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_ Letter \_\_\_ Phone

Renewed \_\_\_\_\_ Not Renewed \_\_\_\_\_

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For the Year \_\_\_\_\_

Contacted by: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_ Letter \_\_\_ Phone

Renewed \_\_\_\_\_ Not Renewed \_\_\_\_\_

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For the Year \_\_\_\_\_

Contacted by: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_ Letter \_\_\_ Phone

Renewed \_\_\_\_\_ Not Renewed \_\_\_\_\_

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For the Year \_\_\_\_\_

Contacted by: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_ Letter \_\_\_ Phone

Renewed \_\_\_\_\_ Not Renewed \_\_\_\_\_

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For the Year \_\_\_\_\_

Contacted by: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_ Letter \_\_\_ Phone

Renewed \_\_\_\_\_ Not Renewed \_\_\_\_\_

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For the Year \_\_\_\_\_

Contacted by: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_ Letter \_\_\_ Phone

Renewed \_\_\_\_\_ Not Renewed \_\_\_\_\_

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For the Year \_\_\_\_\_

## Open Meetings Act Compliance

### New Mexico Acequia Association Fact Sheet

Community acequias are political subdivision of the state and are required to comply with the Open Meetings Act. This generally has not been enforced in the past. However, when some community acequias have been involved in litigation, their opponents have raised questions about whether that acequia operates in compliance with state law, including the Open Meetings Act.

The following are provisions of the Open Meetings Act:

- Meetings shall be held only after there is reasonable notice.
- The acequia shall determine at least annually what is reasonable notice. A sample Open Meetings Act Resolution is included in this Appendix. This Resolution must be approved by a vote of the parciales at each annual meeting.
- Notice must be provided by public posting at least 10 days prior notice for regular meetings, 3 days prior for special meetings, and 24 hours prior for emergency meetings.
- There must be a written agenda and it should be available 24 hours prior to the meeting.
- The community acequia may close part of a meeting for Executive Session in matters pertaining to threatened or pending litigation.

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

- Annual and special meetings of the membership require 10 days written and/or posted notice. This part of your resolution should be consistent with Article 3, Section 2 of the Bylaws Template. Most acequias provide notice of their membership meetings by mailing notice. To comply with the Open Meetings Act, notice should also be posted publicly.
- Special meetings of the Commission require 3 days posted notice. This is consistent with Article 2, Section 5 of the Bylaws Template. For most acequias, which don't have regular Commissioner meetings, the purpose of a Commissioner 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 Commissioners acting alone have less power than the membership (for example, they can't amend bylaws), the notice requirements for Commissioner meetings are less strict than those for membership meetings.
- Emergency meetings can be called with 24 hours posted notice. This is not in the Bylaws Template but it is allowed by the Open Meetings Act for unforeseen circumstances that demand immediate action to protect the acequia.

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

WHEREAS, the \_\_\_\_\_ met for its annual membership meeting on \_\_\_\_\_ at \_\_\_\_\_; and

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

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs 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 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 \_\_\_\_\_.
2. Annual and special meetings of the Membership shall be held in accordance with the Bylaws of the Acequia and notice will be given ten (10) days in advance of the meeting date. *(When you acequia adopts this resolution, you should select and insert **either** of the following options. Note: This should be consistent with Article 2, Section 3 of 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 should be available no fewer than 24 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 should be available no fewer than 24 hours before the meeting.
3. Special meetings of the Commission shall be held in accordance with the Bylaws of the Acequia. Notice will be given by public posting three (3) days in advance of the meeting date. Notice shall include the date, time and location of the meeting and shall indicate how to obtain a copy of the agenda. The agenda should be available no less than 24 hours before the meeting.
4. Emergency meetings of the Commission shall be called by the Chairman only for purposes that demand immediate attention to safeguard public safety and welfare. Notice shall include the date, time, location, and agenda of the meeting and notice shall be provided 24 hours in advance of the meeting by public posting.

- 
5. An Acequia meeting may be closed to discuss matters such as litigation or personnel, as listed in Section 10-15-1(H) of the Open Meetings Act. If a meeting is closed during an open meeting, the Acequia shall comply with the specific requirements of Section 10-15-1(I) of the Open Meetings Act. The motion calling for a closed meeting shall state the subject to be discussed. Only that subject may be discussed in the closed meeting. The minutes of the Acequia meeting shall make record of the motion and the approval for a closed meeting and shall state whether the discussion in the closed meeting remained limited to the subject mentioned 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

## **Acequia Enforcement Procedures**

### New Mexico Acequia Association Fact Sheet

NMAA recommends that conflicts within acequias be resolved to the extent possible by reaching agreements at the local level. However, it may sometimes become necessary for acequia officials to take certain enforcement actions for the common good and to protect the integrity of the acequia. To do so, acequias should clarify their procedures for enforcement of acequia bylaws, rules and regulations. The following are some proposed guidelines for enforcement:

1. When possible, attempt to resolve conflicts with violators by reaching an agreement through discussion. Keep a record of attempts to reach a resolution.
2. The Mayordomo should issue the 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 citations, the Mayordomo should inform the Commission of the ongoing problem. The Commission may take appropriate legal action or direct the Mayordomo to do so. Depending on the violation, the Commissioners and Mayordomo may involve the District Attorney in prosecution.

The attached sample citation can be used for purposes of enforcement.

### DESCRIPTION OF PENALTIES

- Failure to contribute peones as required by the Mayordomo. Section 73-2-31 NMSA. If the parciante fails to provide peones, the acequia may assess the parciante a certain amount to cover the cost of labor. The right of the violator to vote in elections may be suspended until assessments are brought current. Section 73-3-3 states that only those who are not delinquent in the payment of assessments are eligible to vote. Section 73-2-21 provides that the Mayordomo can collect a civil penalty in Magistrate Court from parciantes who fail to provide workers as required by the Mayordomo.
- Failure to pay assessments as required by the Commissioners. Section 73-2-26 NMSA. The right of the violator to vote in elections may be suspended until assessments are brought current. Section 73-3-3 states that only those who are not delinquent in the payment of assessments are eligible to vote. Section 73-2-21 provides that the Mayordomo can collect a civil penalty in Magistrate Court.
- Interference with the easement of the acequia or access to the easement. Section 73-2-5 NMSA. Section 73-2-5 defines the acequia easement is defined as being adequate for reasonable use, maintenance and improvements. It provides that interference with an acequia easement or access to the easement is a criminal misdemeanor that can be prosecuted in Magistrate Court by acequia officials or the District Attorney. The acequia officials or District Attorney can also seek injunctive relief in District Court.

- Interference with the acequia. Section 73-2-64 NMSA.  
Section 73-2-64 defines cutting, breaking, stopping, or otherwise interfering with the ditch as a criminal misdemeanor that can be prosecuted in Magistrate Court by acequia officials or the District Attorney. The acequia officials or District Attorney can also seek injunctive relief in District Court.
- Illegal use of water from the acequia. Section 73-2-64 NMSA.  
Section 73-2-64 defines taking water contrary to order of the Mayordomo or Commissioners as a criminal misdemeanor that can be prosecuted in Magistrate Court by acequia officials or the District Attorney. The acequia officials or District Attorney can also seek injunctive relief 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

## Acequia Easements

### New Mexico Acequia Association Fact Sheet

#### What is an easement?

An easement is a legal right-of-way onto another person's land. Some examples of easements are those that are acquired by utility companies to place utility lines or to have access to a certain location. Acequias have a type of easement that is well-established and often centuries-old.

#### What is an acequia easement?

An acequia easement runs along the 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 should be adequate for reasonable maintenance, use, and improvements. The easement carries with it the right to access (maintain, use, or improve) the entire length of the ditch. The acequia easement includes the right to make reasonable improvements. This includes the use of certain machinery as long as its use is for "reasonable maintenance, use or improvements." The acequia easement also includes the right to gain access to the ditch through traditional points of access, even when that includes crossing a person's property. There must be legitimate acequia business to be done each time there is entry onto someone's property.

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

According to state law, an acequia has a legal easement as long as it has been used historically, since its establishment, for at least five continuous 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, some acequias have documented their easements for purposes of informing parciantes of the acequia easement. Good documentation of your easements also helps you protect this important right of your acequia. Some ways to document your easement are as follows:

- Inform your Parciantes  
Include a section in your bylaws that defines your acequia easement and traditional points of access. Ensure that all parciantes on your acequia have a copy of your bylaws. The NMAA has sample language to include in acequia bylaws.
- Document your Easement  
File a map of your acequia that includes your easement and points of access with the county clerk so that it is on record for title searches.

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

Access to the acequia is very important. In addition to informing your parciantes about your easement, acequia officials should also carefully monitor any actions by landowners that may be violations of the acequia easement. Some of these violations include the following:

- Building fences across the acequia which block the ability to walk or use equipment along the length of the ditch.
- Building structures like houses, decks, or corrals within the easement or across the acequia.
- Blocking access to the acequia through a traditional point of access. Landowners, particularly new ones, attempt to block acequia officials or cleaning crews from crossing their property to get to the acequia.

In the cases of fences or structures, some acequias will allow them or “grandfather in” these structures in some cases under certain conditions. It may be a good idea to inform new property owners if there is a traditional point of access that crosses their property.

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

If a landowner is violating an acequia easement, the first thing an acequia should do is communicate with that landowner. This communication may be initiated by an acequia official, the Mayordomo or a Commissioner, and it can be verbal or written. 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.

An acequia has several legal remedies in dealing with a landowner that does not recognize the acequia easement.

- Acequia officials or the District Attorney may file a criminal complaint against the landowner in Magistrate Court. If convicted, the landowner will be guilty of a misdemeanor and fined \$300-\$1,000 and/or sentenced up to 90 days in county jail.
- If the landowner “knowingly, intentionally or willfully” violated the above provisions, acequia officials or the District Attorney may file a civil (non-criminal) complaint for a penalty of up to \$5,000.
- Acequia officials or the District Attorney may also seek injunctive relief (a court order to stop the activity) in District Court.
- If the behavior caused financial injury to the acequia, then acequia officials may also seek damages to compensate the acequia for its losses.

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

In addition to the above strategies of documenting easements and informing parciantes, an acequia can take additional measures:

- **Inform Parciantes and Landowners before Spring Cleaning**  
Many of the disputes over easements reach a critical point during spring cleaning. If possible, an acequia should use any means available to inform landowners of the cleaning day(s). If a landowner has land through which the cleaning crew must cross, it is a good idea to inform the landowner that you will be crossing the property on cleaning day(s).
- **During Spring Cleaning, Work as a Crew**  
Some disputes arise when there is confusion with regard to the official duties of the cleaning crew. Generally, during the spring cleaning, the cleaning crew should remain together. Individual peones should be discouraged from traversing the acequia unless it is part of official business of the acequia or delegated by the Mayordomo.

## 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, that landowner may take drastic measures to prevent a cleaning crew from crossing his or her “private property.” Some landowners may resort to verbal or physical threats. Some acequia crews have been threatened with gunfire.

If such a confrontation occurs, the acequia crew should withdraw from the area immediately and the acequia officials should file a police report documenting the verbal or physical attack. At this point, the incident has a criminal dimension that is beyond the scope of the acequia easement.

If such a disagreement over an easement exists, the officials of that acequia may need to take several steps, including legal action, to clarify the nature and extent of the acequia easement for future use. The acequia may seek support in their efforts. For example, for serious threatening behavior, the District Attorney can be asked to let the violator know of his or her intent to file criminal charges or to seek injunctive relief.

## What if my acequia runs across federal land?

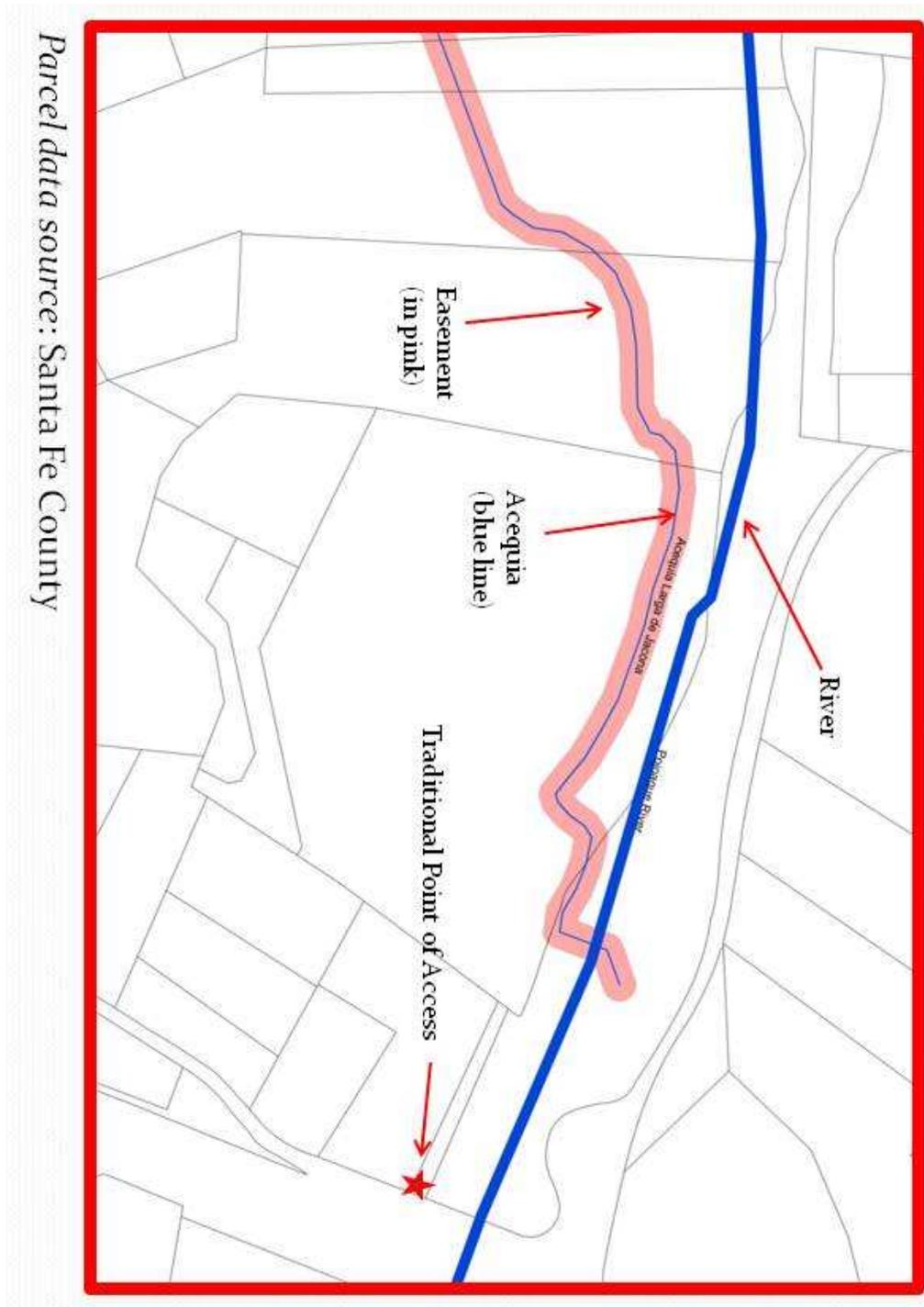
Whether your acequia is partially or completely on federal land, you do not need a permit from the federal government to operate and maintain your acequia, so long as the acequia serves valid water rights. Federal law protects easements that were in place in the 1800s or earlier, so almost all acequias have protected easement rights across federal land.

There is a significant advantage to having easement rights on federal land, rather than simply having a special-use permit. If you have an easement, the acequia has the *right* to be on federal land, so a permit is unnecessary. 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. As long as the acequia does not significantly change its *point of diversion, course, or size*, acequia members and

officials can legally enter federal land by traditional access routes for normal operation and maintenance activities, without interference by any federal agency.

If a governmental agency is requiring you to get a special-use permit for your acequia, you should probably get further legal advice. Do not sign anything until you do so. If you have already signed a special-use permit, you may still be able to establish valid easement rights, and you should get legal assistance.

## Example of Acequia Easement



## **Water Transfer Bylaw**

### New Mexico Acequia Association Fact Sheet

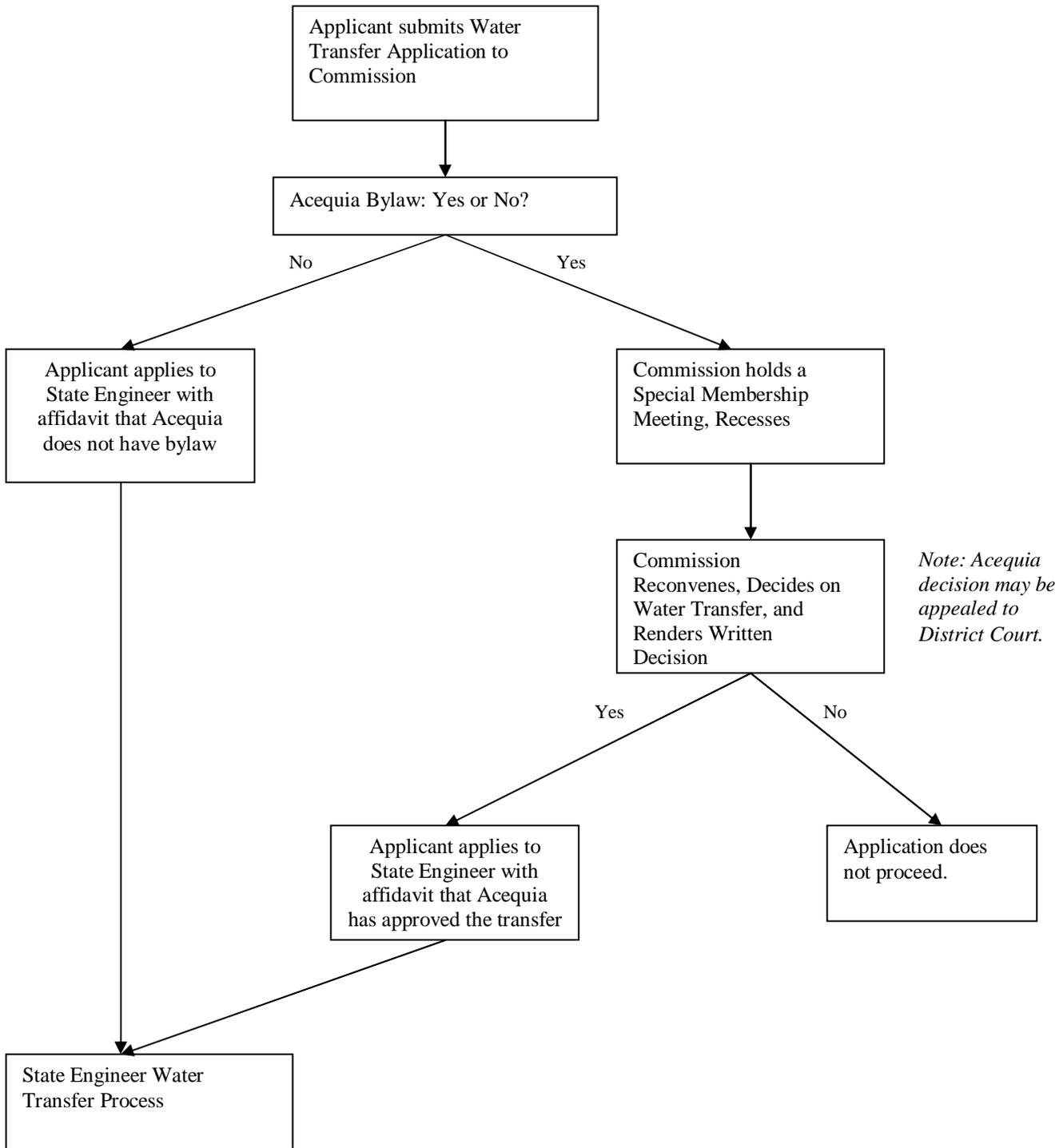
This fact sheet contains guidelines for implementing *Article 9: Water Transfers* of the Acequia de la Comunidad Bylaws Template.

### **Water Transfer Application Process**

Processing an application for a water right transfer should take place as follows:

1. Applicant submits a Water Right Transfer Application to each of the Commissioners of the Acequia by certified mail. See attached application form.
2. The Commission calls a special meeting within 90 days of receiving the application and provides notice in accordance with Article 9 (Water Transfers).
3. The agenda of the meeting should include the following items:
  - Call to Order
  - Presentation of Arguments in Favor of the Transfer
  - Presentation of Arguments Opposed to the Transfer
  - Vote by the Commission to Approve or Deny the Transfer (Note that this should be on the agenda even if the Commission intends to recess the meeting and vote on the transfer at the reconvened meeting.)
4. Before taking a vote on the Water Transfer Application, the Commissioners will recess for a period of no more than 30 days. At the reconvened meeting, the Commissioners will vote on the proposed water transfer and render a decision in writing explaining their decision. The written decision must be rendered within 120 days of the date of the submission of the Water Right Transfer Application by the applicant to the Commission.
5. The Commissioners of the Acequia will deliver their written decision to the applicant and to the State Engineer.

## Flowchart of Water Transfer Application Process



**NM ACEQUIA ASSOCIATION  
FACT SHEET ON ACEQUIA TORT LIABILITY AND INSURANCE**

**What is a tort claim?**

A “tort” is a civil wrong for which there is some sort of legal remedy, usually money damages. An example of a tort is doing something negligent which results in damage to someone’s property or injury to another person. Under state law, acequias are immune from most “tort” claims.

**When can acequias be sued in a tort action?**

The Tort Claims Act protects acequias and their officers from being sued for almost any kind of tort. NMSA § 41-4-13. The only exception is that acequias and their officers/volunteers may be subject to suit for torts arising from the use of a motor vehicle, provided the individual acted lawfully and within the scope of his/her acequia-related duty.

For example, a landowner cannot sue the acequia, mayordomo, or commissioners for damage to a fence during a spring cleaning, or for damage done 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.

**Should an acequia buy insurance to defend against these claims?**

If a landowner sues the acequia, commissioners, or mayordomo for damage done by the negligent use of a motor vehicle while acting within the scope of his/her duty, under state law the acequia must defend that lawsuit and pay any damages awarded. NMSA § 41-4-4. To cover this potential liability, acequias should consider purchasing insurance. Most acequias cannot afford to insure themselves against these risks on the private market. However, acequias may purchase insurance through the state’s Risk Management Division, and the Division is required to make its insurance available under NMSA § 73-2-28.1. To do so, call the Risk Management Division at (505) 827-0442 and ask for an estimate of what it would cost. Be prepared to state the scope of coverage you would like (e.g., in addition to tort coverage, an acequia might also want to insure itself against civil rights claims).

