

## ACEQUIA DE LA PUEBLA BYLAWS, amended 2021

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- Preamble: Water is the lifeblood of our communities. The parciantes of Acequia de La Puebla 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 preventing the severance of water rights from 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.

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## Article 1 PURPOSE AND MEMBERSHIP

### Section 1.1 Purpose Statement

The purpose of Acequia de La Puebla 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 de La Puebla, and
6. maintain an adequate diversion right to ensure a sufficient water supply for parciantes.

### Section 1.2 Compliance with New Mexico Law

The management and operation of Acequia de La Puebla shall be in compliance with State of New Mexico Statutes (predominately Chapter 72 – Water Laws and Chapter 73 - Special Districts, Article 2 - Ditches or Acequias, Sections 73-2-1 through 73-2-68) and the customs of the Acequia de La Puebla.

Acequias are local governmental entities or “political” subdivisions under Section 73-2-28 NMSA 1978.

### Section 1.3 Description

Name of Ditch: ACEQUIA DE LA PUEBLA aka La Puebla Community Ditch aka Acequia de La Puebla Community Ditch Association

State Engineer File No.: 1659

Priority: Reserved for later determination by the Court.

Point of Diversion: Through a1nd by means of the Acequia de La Puebla located in the Santa Cruz Grant. The position of this diversion on the New Mexico Coordinate System, Central Zone, is:

X=583,855 and Y=1,819,880, Santa Fe County, New Mexico.

Duty of Water: Not to exceed 2.8 acre-feet on a total of 364.16 acres irrigated.

Amount of Water: Not to exceed a total of 1,019.65 acre-feet in anyone year, plus such reasonable conveyance loss from the point of diversion from the Rio de Santa Cruz to the individual farm headgates as may be determined hereafter by the Court.

### Section 1.4 Membership - Parciantes

The parciantes, or members, of Acequia de La Puebla are those persons who own irrigable land with water rights from the Acequia.

A membership in AdLP constitutes the parciantes or members within each household or co-tenancy arrangement (land co-owned by more than one person) regardless of the number of separate properties owned.

Each membership shall have one (1) vote regardless of acreage.

## Article 2 OFFICERS

### Section 2.1 Types of Officers

The officers of Acequia de La Puebla shall consist of three Commissioners and one Mayordomo, each of whom shall be a member of the Acequia, as defined in Article 1. Per Sections 73-2-12 and 73-3-1 NMSA 1978, the Commissioners shall consist of a Chairman, Secretary, and a Treasurer.

### Section 2.2 Duties of Officers

Per Sections 73-2-31 and 73-3-4 NMSA 1978:

**Chairman:** The Chairman is responsible for directing activities of the Acequia de La Puebla jointly with the other Commissioners, and for calling and presiding over all Acequia meetings. In the event the Chairman is unable to preside at a meeting, he will appoint one of the other Commissioners to preside over the meeting.

**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 de La Puebla.

**Treasurer:** The Treasurer is responsible for management of the finances of the Acequia de La Puebla 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.
5. Keep and protect all monies that will come into his/her possession from collections for work, delinquencies and fines or any other assessments. These monies shall be used for the benefit of the Acequia de La Puebla. They will not be spent without the consent of the Chairman and approval of the Secretary and Treasurer.

**Mayordomo:** The Mayordomo shall work under the direct supervision of the Commissioners. The Mayordomo shall be an executive official of the ditch and will assign the water among the parciantes. His or her responsibilities shall be as follows:

1. Coordinate and supervise all work on the Acequia de La Puebla including the annual Spring cleaning, day-to-day maintenance, and emergency repairs. This includes the cleaning of the ditch, side banks, diversion dam, valves and sluice ways to insure a smooth and efficient operation without loss of time and water.
2. Distribute water to parciantes in a manner that is equitable and is consistent with the customs of the Acequia de La Puebla. To assign, and keep record, of the water assigned to the parciantes.
3. Collect delinquencies from parciantes as reported to him by the Treasurer.
4. Supervise the Acequia de La Puebla 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 de La Puebla of those parciantes who are delinquent and to secure the headgates by any available means.
5. To patrol the acequia and keep it clear of obstructions and weeds.

### Section 2.3 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 2.4 Vacancy of Commissioners

In the event of a vacancy in the office of Commissioner, the remaining Acequia de La Puebla 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 2.5 Compensation of Mayordomo

Per Sections 73-2-18 and 73-3-2 NMSA 1978, compensation of the Mayordomo shall be determined by a majority of the membership.

## Section 2.6 Compensation of Commissioners

Per Section 73-2-68 NMSA 1978, the members of the acequia commission shall be paid in accordance with the Per Diem and Mileage Act [ [10-8-1](#) to [10-8-8](#) NMSA 1978] and shall receive no other compensation, perquisite or allowance.

## Article 3 MEETINGS OF MEMBERSHIP

### Section 3.1 Annual Membership Meeting

The Annual Membership Meeting shall be considered a Regular Meeting per OMA and shall be held on the first Monday of December or as soon as practicable thereafter.

### Section 3.2 Notice of Annual Membership Meetings

All meetings of the AdLP shall be held in compliance with the "Open Meetings Act," NMSA 1978, Sections 10-15-1 to 10-15-4, and shall determine annually what constitutes "reasonable notice" for its meetings in an "Open Meetings Act Resolution."

Notice shall be provided to each parciante by mail and email to the address in the records of the Acequia de La Puebla, 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.

### Section 3.3 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 de La Puebla and the Treasurer shall provide a financial report.

### Section 3.4 Location of Meetings

Each Membership or Commission meeting shall be held at a public place in Rio Arriba or Santa Fe County.

### Section 3.5 Quorum of Membership

A quorum for conducting any business shall be 5% of the membership who are in good standing (i.e. who have paid all AdLP assessments and who are in compliance with AdLP Bylaws, 2021). A quorum, once established for that particular meeting, shall remain in effect to transact all business set on the agenda even though parciantes shall voluntarily leave the meeting.

In the event that a quorum is not established at a meeting duly called, those assembled shall recess for a period of not less than three (3) calendar days but not more than fourteen (14) calendar days, wherein the meeting shall resume at the time and place specified at the call of the recess. All business listed on the original agenda shall be transacted provided there is a quorum of eight (8) parciantes in good standing present at the meeting.

### Section 3.6 Special Membership Meetings

Special meetings of the Acequia de La Puebla may be called by the Commissioners or upon written petition to the Commission Chairman signed by 5% of the parciantes in good standing. Per OMA, Special Membership meetings shall be posted at least three days prior to the meeting and in compliance with the Annual OMA Resolution.

### Section 3.7 Special Commission Meetings

Special meetings of the Commission may be called by the Chairman. Two Commissioners shall constitute a quorum for such meetings. Per OMA, Special Commission meetings shall be posted at least three days prior to the meeting and in compliance with the Annual OMA Resolution.

## Article 4 ELECTIONS AND VOTING

### Section 4.1 Voting Rights of Parciantes

Per Sections 73-2-14 and 73-3-3 NMSA 1978, only those parciantes in good standing (i.e. who have paid all AdLP assessments and who are in compliance with AdLP Bylaws, 2021) shall be allowed to vote.

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

No proxy voting will be allowed.

### Section 4.2 Election of Officers

Per Sections 73-2-12, 73-2-15, and 73-3- 1 NMSA 1978, the Commissioners and Mayordomo shall be elected at the Annual Meeting of odd-numbered years by a vote of the membership in good standing. The elections shall be conducted by the outgoing Commissioners, and the new officers shall assume their responsibilities not later than the first Monday of the month following when they are elected.

### Section 4.3 Nomination of Officers

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 newly-elected or re-elected Commissioners shall elect from amongst themselves a Chairman, Secretary, and Treasurer, with each Commissioner holding one position.

### Section 4.4 Terms of Office

The term of office for each of the Commissioners and the Mayordomo is two years. There is no limit on the number of terms a duly-elected Commissioner or Mayordomo can have. The elected officers shall assume their office not later than the first Monday of the month following when they are elected.

## Article 5 MANAGEMENT AND OPERATIONS

### Section 5.1 Allocation Between Neighboring Acequias

As recognized in Sections 73-2-4 7 and 72-9-2, NMSA 1978, and as practiced traditionally, during times of emergency and/or drought, the Commission will represent the Acequia de La Puebla for the purpose of cooperating with the other acequias in the Santa Cruz Irrigation District, which draw water from the Santa Cruz River, in order to determine the most effective and equitable manner of allocating water in all of the acequias.

### Section 5.2 Spring Acequia Cleaning

Annual acequia cleaning and normal repairs occur in the Spring before the irrigation season. The Mayordomo and Commissioners will coordinate the timing and extent of Spring cleaning and repair activities.

Each AdLP membership is assessed the Spring cleaning fee, regardless of acreage.

By definition, the Spring cleaning covers the AdLP mother ditch and its laterals, up to but not including, ditches on private property

### Section 5.3 Allocation of Water Between Parciantes

The water available in the acequia shall be allocated in approximate proportion to the acreage of land with water rights owned by each parciante of the Acequia. The Mayordomo shall be in charge of the distribution of the water to the parciantes, based on a general schedule established by the AdLP Commissioners, and in concert with the SCID. The schedule may be adjusted depending on the availability of water by the mayordomo, in consultation with the Commissioners.

As in Section 5.1, during times of emergency and/or drought, the mayordomo shall work with the Commissioners to determine the most effective and equitable manner of allocating water within the acequia.

## Section 5.4 Parciante Assessments

Annually, the Commissioners shall determine the amount of money necessary for the ensuing year's expenses of the acequia, including cleaning, operating, maintaining, repairing and improving the acequia, and compensating the mayordomo. The Commissioners shall then assess each parciante, in proportion to his/her acreage with water rights, based on that information.

NOTE: Annual Assessments include the current membership dues and acequia cleaning fees. Other assessments can also include past annual assessments, late fees, emergency assessments, fines assessed by citations, mediation agreements and/or court-ordered settlement agreements.

The approved annual assessment rate shall remain in effect until changed by the Commission.

## Section 5.5 AdLP Infrastructure

The AdLP is responsible for the operation and maintenance of the acequia infrastructure, which includes the main ditch and all desagues/sluices. No irrigation is allowed from any desague/sluice. Appendix C, not yet created, will provide a graphical representation of the AdLP infrastructure.

# Article 6 RIGHTS AND OBLIGATIONS OF PARCIANTES

## Section 6.1 Maintenance of Headgates

All parciantes shall maintain their individual headgates in good condition and keep their acequia 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.

The size of new headgates should be consistent with a Waterman 10" valve (~78 in<sup>2</sup>), positioned no lower than the bottom of the main ditch, and designed to not interfere with acequia easements and/or operations.

## Section 6.2 Payment of Assessments

All parciantes shall pay his/her total assessment, regardless of whether a parciante irrigates or does not irrigate. All assessments are due upon receipt of the Treasurer's statement and become delinquent 45 days following the date of the invoice. All delinquent accounts will pay a penalty of 10% per year. The AdLP Commissioners and the Mayordomo shall be exempt from acequia cleaning fees.

Section 73-2-26 NMSA 1978 gives the Mayordomo authority to file a court action to collect delinquent assessments.

## Section 6.3 Participation in Acequia Cleaning and/or Emergency Repairs

Each membership is assessed for the annual Spring cleaning, regardless of acreage, and/or for emergency repairs, as required by the Mayordomo.

## Section 6.4 Compliance with Bylaws

All parciantes shall abide by Acequia de La Puebla Bylaws, Rules and Regulations and shall comply with decisions adopted by the Commission for the common good.

## Section 6.5 Public Inspection of Acequia Records

All records of proceedings by Commissioners and financial records of the Acequia de La Puebla shall always remain public property and shall be open to public inspection, per Sections 73-2-21 and 73-3-4 NMSA 1978.



## Section 6.6 Copy of Bylaws

Each parciante shall be provided with a copy of the current bylaws of the Acequia de La Puebla and amendments thereafter adopted. Bylaws are also available on the AdLP website at <http://acequiadelapuebla.org>.

New parciantes will be briefed on the operation of the Acequia by one of the Commissioners or the Mayordomo.

## Section 6.7 Name and Address in Acequia Records

Each parciante shall keep current on the records of the Commission of the Acequia de La Puebla, to include the name(s) of the owner(s) of the property; the owner's mailing address, telephone number and email address, and the exact amount of irrigated acreage or water rights claimed by the parciante. The parciante shall also keep current the name, mailing address, telephone number and email address of any person who has leased the property.

It is the responsibility of each parciante to keep accurate records with the Office of the State Engineer and to provide a copy of the OSE documents to the AdLP Commission upon request.

## Section 6.8 Change of Ownership

It shall be the responsibility of a landowner who has purchased or leased land with Acequia de La Puebla 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 6.9 Change in Point of Diversion, Purpose of Use, or Place of Use

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

# Article 7 EASEMENTS

## Section 7.1 Definition of Easement

Each parciante and non-parciante recognizes that the Acequia de La Puebla, including all of its laterals and sluices/desagues and the sluice/desague drainage channels possess a historical permanent easement for the purpose of inspection, maintenance, operations and improvements.

Acequia easements are described in Section 73-2-5 NMSA 1978. State law does not define a set number of feet but states that the easement is as wide as necessary for maintenance, use and improvements.

No one may obstruct, interfere with, or prevent access to, the easement. Prohibited activities include, but are not limited to, erecting a building within the easement, locking a gate to the easement, allowing a dog to create a potential threat within the easement, or restricting in any way a customary or historical access route or point to the easement.

## Section 7.2 Maintenance of Easement

Each Acequia de La Puebla parciante and non-parciante shall ensure that it must be possible to freely and safely walk the full length of the acequia easement within his or her property. For instance, if a fence or other barrier crosses the acequia or the easement, the parciante or non-parciante shall provide an accessible gate, crossover, or the barrier shall be removed.

## Section 7.3 Access to Easement

Acequia de La Puebla has the right to use the historic and customary routes or points of access to the acequia within parciantes' and non-parciantes' property and other such routes or points of access as may be necessary to afford safe and convenient access to the acequia for inspection, maintenance, operations and improvements.

## Section 7.4 Changes to Acequia

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

## Article 8 ENFORCEMENT

### Section 8.1 Assessment Delinquencies

A parciante who is delinquent in the payment of his or her assessment(s)-shall not be entitled to use water from the Acequia and shall also not be entitled to vote in any Acequia election. These prohibitions shall remain in effect until all assessment(s) are paid. Acequia officials have the authority granted by Section 73-2-26, NMSA 1978 to collect penalties and delinquent assessments through appropriate civil legal action.

### Section 8.2 Illegal Use of Water or Acequia Interference

Any person who, contrary to an order of the Mayordomo or Commission, interferes with the Acequia de La Puebla historical easements, its laterals, sluices/desagues, and the sluice/desague drainage channels, in any manner, or takes or uses acequia water without permission of the Mayordomo or Commission commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico. A civil and/or criminal action may also be pursued against the violator per Section 73-2-64 & 73-2-5 NMSA 1978

### Section 8.3 Violation of Easement Rights

Any person who interferes with the Acequia de La Puebla historical easement, its laterals, sluices/desagues, and the sluice/desague drainage channels, or prevents access to the easement commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico. A civil and/or criminal action may also be pursued against the violator per NMSA 1978, Sections 73-2-64 & 73-2-5.

## Article 9 WATER TRANSFERS

The members of Acequia de La Puebla 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 parciantes. Therefore, any such proposed transfer by any person or entity must be formally approved by the Acequia de La Puebla Commissioners, using the procedure in Appendix A, prior to application for the transfer to the Office of the State Engineer. This Article and Appendix A are adopted under Section 73-2-21 (E) NMSA 1978.

## Article 10 WATER BANKING

Water Bank shall be managed according to the provisions of Appendix B: Water Banking.

Nothing in the formation of the Water Bank or its operation shall affect the traditional and recognized lawful authority of the Acequia Commissioners and Mayordomo. Issues of daily water use, periodic allocation, water

issues between members, and all other matters normally managed by the Acequia officers will continue without change. Use of the Water Bank shall not affect existing vested water rights, priority dates or any existing lawful use of water by members. No action connected to the Water Bank shall be considered an adjudication of any person's water rights.

## Article 11 MISCELLANEOUS PROVISIONS

### Section 11.1 Amendments to Bylaws

These bylaws may be enacted, amended, or modified by a majority vote of at least 5% of the total membership in good standing and present at any duly called meeting.

### Section 11.2 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 NM State law.

### Section 11.3 Severability Clause

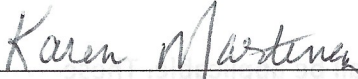
If any part or application of these bylaws is held invalid, the remainder of its application to other situations or persons shall not be affected.

# SIGNATURE PAGE

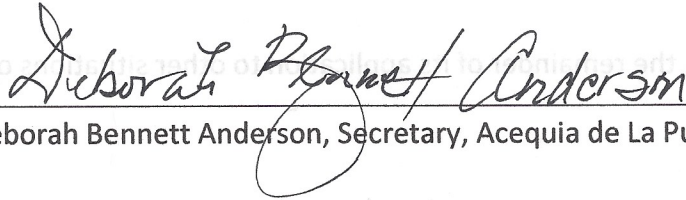
The foregoing by-laws were amended and adopted by the parciantes of the Acequia de La Puebla at the duly-called 2021 Annual Meeting, December 18, 2021, Boys and Girls Club, Arroyo Seco, New Mexico.



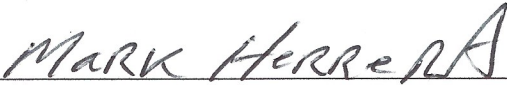
Tim Martinez, Chairman, Acequia de La Puebla



Karen Martinez, Treasurer, Acequia de La Puebla



Deborah Bennett Anderson, Secretary, Acequia de La Puebla



Mark Herrera, Mayordomo, Acequia de La Puebla

## APPENDIX A WATER TRANSFERS

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

### Section1: General

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

### Section2: Process

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

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

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

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

**Meeting Procedure.** The management of the meeting, such as date, location, length, and other related matters shall be decided by the Commission. Only the entities mentioned in this section shall be allowed to speak at the meeting. The rules of civil procedure and the rules of evidence shall not apply to the meeting. The Commission may be represented by an attorney or other representative, and may be assisted in the conduct of the meeting by other such persons as it may designate. During the presentations, the Commission shall accept and consider any documents or other exhibits, written or oral statements, or arguments offered by the applicant or any non-commissioner Acequia member, or by any individual who is presented by the applicant or any non-commissioner Acequia member. The Commissioners may ask any questions they believe may help in their decision. The Commissioners may defer any questions posed to them until after all comments have been received and deliberations have taken place.

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

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

The transfer application may be denied, in whole or in part, if the Commission finds that the transfer would be detrimental to the Acequia and/or its members. The application may also be conditionally approved, with conditions which address potential detriments to the Acequia or its members. The Commission shall base its decision on the record; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation.

A decision requires a majority vote of the Commissioners and shall be made within 120 days upon receipt of the complete, written application. The Commission's decision shall be in writing, explaining the reasons for its decision, and the vote on the written decision shall be made at an open meeting. This shall constitute a decision of the Acequia in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D), NMSA 1978.

### Section 3: Appeal to District Court

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

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

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

### [Optional] Section 5: Arbitration

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

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

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

**WATER RIGHT TRANSFER APPLICATION FORM**

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

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

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

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

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

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

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

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

\_\_\_\_\_

Number of acre-feet per year to transfer:

\_\_\_\_\_

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

**FOR ACEQUIA USE ONLY**

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



## APPENDIX B WATER BANKING

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

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

### Section 1: Purpose

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

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

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

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

### Section 3: Water Bank Procedures

#### a) Water Bank Record Keeping

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

#### b) Depositing Water Rights

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

(1) Deposit form. Any person or entity owning a water right on the Acequia may submit a water right deposit to the Water Bank. The owner shall complete a deposit form provided by the Acequia, and submit the form to the 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 shall use the Map and Tract Number of the most recent Hydrographic Survey or, in the absence of that, the Acequia's traditional identification system to identify the right being deposited. The deposit shall become effective upon receipt of all necessary information by the record keeper. The record keeper shall inform the Mayordomo of the deposit as soon as possible.

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

#### c) Renewing Deposits; Withdrawing Water Rights

Each deposit shall have a term of one year, renewable annually, except that a deposit made after January 1 shall have an initial term of less than one year. A water right may be withdrawn from the Water Bank at any

time including during the initial term as described in paragraphs (1) and (2) below. Each deposit shall renew automatically on January 1 unless the owner has withdrawn the water right.

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

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

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

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

#### d) Water Right Reallocation

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

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

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

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

#### Section 4: Acequia Dues and Fees

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

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

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

**WATER BANK DEPOSIT FORM**

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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Page \_\_\_\_\_

**BANKING LOG – OWNER DEPOSITS AND WITHDRAWALS**

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

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

\_\_\_ Initial Owner Deposit

\_\_\_ Owner Withdrawal – Owner Deposit

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

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