

APPENDIX A: WATER TRANSFERS

Section 1: General

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

Section 2: Process

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

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

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

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. 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.

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 _____