

ACEQUIA DE SANTA CRUZ BYLAWS

Preamble: Water is the lifeblood of our communities. The parciantes of Acequia de Santa Cruz 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.

Article 1. Purpose and Membership

Section 1: Purpose Statement

The purpose of Acequia de Santa Cruz 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 de Santa Cruz and the parciantes, and 5) maintain the infrastructure and easements of the acequia.

Section 2: Compliance with New Mexico Law

The management and operation of Acequia de Santa Cruz, 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 de Santa Cruz.

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

Section 3: Description

This ditch, in conjunction with the El Llano Ditch, diverts water from the Santa Cruz River. It continues as a single ditch from State Road 291 to Ranchitos.

Point of Diversion: Through and by means of the Acequia de Santa Cruz which diverts out of the North bank of the Santa Cruz River within the Santa Cruz Grant, New Mexico Coordinate System, Central Zone: X=570,585 and Y=1,814,340, Santa Fe County, New Mexico.

Duty of Water: Not to exceed 2.8 acre-feet on a total of 537.41 acres irrigated.

Amount of Water: Not to exceed a total of 1,504.75 acre-feet in any one 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 4: Membership - Parciantes

The members or parciantes of Acequia de Santa Cruz are those persons who own irrigated land with adjudicated water rights from the acequia. Their rights, privileges, and obligations shall be in proportion to their number of acres with water rights.

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.

Article 2. Officers

Section 1: Types of Officers

The officers of Acequia de Santa Cruz shall consist of three Commissioners and one Mayordomo, each of whom shall be a member of the Acequia de Santa Cruz, as defined in Article 1. The Commissioners shall consist of a Chairman, Secretary, and a Treasurer.

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

Section 2: Duties of Officers

a. **Chairman:** Responsibilities of the Chairman will be to direct the activities of the Acequia de Santa Cruz jointly with the other commissioners and call and preside at all Acequia de Santa Cruz 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.

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 de Santa Cruz.

c. **Treasurer:** The Treasurer shall be responsible for management of the finances of the Acequia de Santa Cruz 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 de Santa Cruz 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 de Santa Cruz.

3. Collect delinquencies from parciantes as reported to him by the Treasurer.

4. Supervise the Acequia de Santa Cruz 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 Santa Cruz 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 posted in a public place three (3) days prior to a meeting.

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.

Section 6: Compensation of Officers

Compensation of the Mayordomo shall be determined or altered only at a general meeting of the Association.

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

Section 7: Ineligibility of Officers

Any member or office holder removed from office for any reason thru Court judgement shall be ineligible to hold any office on the acequia for a period of three terms.

Article 3. Meetings of Membership

Section 1: Annual Membership Meeting

The Annual Membership Meeting shall be held at least every odd numbered year on the first Monday of December or as soon as practicable thereafter.

Special general meetings may be called by the Commissioners or upon written petition to the Commission Chairman signed by sufficient members to constitute a quorum. Special general meetings will be governed by the Rules of Parliamentary Procedure to be specified by the Commissioners at the opening of the meeting. Any member shall be permitted to place an item on the Agenda.

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.

Section 2: Notice of Annual Membership Meetings

Notice shall be posted in a public place ten days in advance of the meeting.

In addition to the notice provision in the acequia's bylaws, 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.

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 de Santa Cruz is located.

Section 5: Quorum of Membership

A quorum for conducting any business shall be members representing 15 different water rights or 10% of the total irrigable acres, either in person or by written proxy except as otherwise provided in this section. 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. Quorum requirements may be waived if proper legal notice of the meeting has been placed in the local newspaper prior to the meeting.

Section 6: Special Membership Meetings

Special meetings of the Acequia de Santa Cruz may be called by the Commissioners or upon written petition to the Commission Chairman signed by sufficient members to constitute. Notice for special meetings shall be the same as for annual meetings.

Article 4. Elections and Voting

Section 1: Election of Officers

The Commissioners and Mayordomo shall be nominated at the Biennial Meeting that shall be held at least one (1) week prior to the election. The Biennial meeting, nominations, and election shall be conducted by the outgoing Commissioners.

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

Section 2: Voting Rights of Parciantes

Only those members who are not delinquent in the payment of their assessments nor who have defaulted on their work assignments will be in good standing and shall be allowed to vote. Voting may be done by written proxy. A member's vote shall be in proportion to his/her amount of acreage having water right. In the case of joint or common ownership, members with an indivisible water right shall select from among themselves one member who shall cast the entire vote due that right.

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.

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.

Section 3: Nomination of Officers

Nomination of officers may be made by any parciante qualified to vote. Write-in candidates are also permitted at the time of election, but no nominees or write-in candidates shall be accepted who is not qualified to vote. The three Commissioners and a Mayordomo shall be elected on the first Monday in December. Persons receiving the plurality of the votes cast, will be considered officers for the coming year. In the event a Mayordomo is not elected, the Commissioners have the power to appoint one. 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. The Treasurer and the Mayordomo shall be bonded in a sum to be fixed by the Commissioners.

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

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 de Santa Cruz 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.

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

Section 2: Allocation of Water Between Parciantes

The available water in the acequia shall be distributed as nearly as practicable 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.

Water from Acequia de Santa Cruz is to be used for irrigation purposes only, not for storage or ponds.

Acequia de Santa Cruz gives a different priority to different types of uses, such as prioritizing home vegetable gardens over pasture in times of drought.

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.

Section 4: Parciante Assessments

The Commissioners, immediately upon assuming office or as soon as practicable thereafter, shall determine the amount of money necessary for the ensuring 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.

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. If after a request by the Mayordomo, a headgate is not brought into acceptable repair, the Commissioners may permanently seal the gate or maintain it at the expense of the members who utilize it. Any change in the location or type of a particular headgate or any other alteration of the ditch must be approved by the Commissioners.

Section 2: Assessments

All members shall pay assessments as required by the Commission. The Commissioners, as soon as practical after assuming office, shall determine the amount necessary for the operation of the Association for the ensuing year and shall assess each member according to his/her water rights. The method and amount of payment shall be figured on the same basis for all members with a minimum charge of one (1) acre. In accordance with a decision made at the general meeting of the Association if the assessment is not made within thirty (30) days of the due date a penalty is to be added, also, interest is to be added on the first of every month thereafter until the bill is paid provided the rate as presented at the time of assessment. Responsibility for payment of assessments and penalties lies with the landowner or Lessee whether or not he receives a statement of his account. Assessments must be made whether or not water is used from the Acequia. Members in default of the payment of ditch assessments on October 1 of each year will be subject to a civil action brought by the Commissioners in Magistrate Court or District Court for the collection of the assessment plus collection costs. Credit for work performed on the Santa Cruz Ditch must be authorized, approved and receipted by the Mayordomo. All monies assessed by the Acequia de Santa Cruz 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, or pay a fee, for the annual Spring cleaning or for emergency repairs as required by the Mayordomo.

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.)

Section 4: Compliance with Bylaws

All members shall abide by Acequia de Santa Cruz Bylaws, Rules and Regulations and shall comply with decisions adopted by the Commission for the common good.

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.

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

Section 6: Copy of Bylaws

Each parciante shall be provided with a copy of the current bylaws 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 de Santa Cruz 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.

~~books. Delinquencies must be fully paid before the new owner may be entitled to the use of the water. It is also the responsibility of any member who has transferred, sold, or changed place or method of use of water rights to report such transactions promptly to the Acequia Treasurer. This does not relieve the owner of responsibility of legally recording such changes with the State Engineer.~~

Article 7. Easements

Section 1: Definition of Easement

Each parciante recognizes that the Acequia de Santa Cruz 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. No person may have or construct any permanent fences or structures on the Acequia's 30-foot right-of-way that limit access along the ditch for the purpose of maintenance, except with the explicit permission of the Commissioners.

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

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, there must be a gate or crossover.

Section 3: Access to Easement

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

Section 4: Changes to Acequia

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

Section 5: Acequia Laterals

Each landowner or water user is responsible to clean and maintain their respective laterals. No land owner or persons (having water rights) can deny the use of water or interfere with any lateral ditch having an easement that is located in their property.

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 de Santa Cruz 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.

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.

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 shall be guilty of a misdemeanor and may be prosecuted in accordance with the laws of New Mexico. Any member found by the Mayordomo or Commissioners to be willfully wasting water shall be subject to

warning or loss of delivery of water for the remainder of the year. Any member who fails to pay his assessments and used water without permission of the Mayordomo or Commissioners will result in a headgate being locked or lateral gates being sealed to insure that no water will be diverted and a fine being imposed in accordance with New Mexico State Law 73-2-25.

Acequias have several remedies for these infractions, including criminal misdemeanor prosecution, obtaining an injunction, and a civil penalty of up to \$5000. (Section 73-2-64). The district attorney may assist the acequia.

Section 3: Violation of Easement Rights

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

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

Article 9. Water Transfers

See Appendix A: Water Transfers

Article 10. Amendments to Bylaws

Section 1: Amendments to Bylaws

These bylaws may be enacted, amended, or modified by a simple majority vote of the members present and voting at any duly called meeting.

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 or its application to other situations or persons shall not be affected.

THE FORGOING BYLAWS WERE ADOPTED BY THE PARCIANTES OF THE ACEQUIA DE SANTA CRUZ AT A MEETING DULY CALLED AND HELD ON

Sunday DEZ. 10, 2006.

Joseph Merhege
Chairman, Joseph Merhege

Lonnie Montoya
Secretary, Lonnie Montoya

Mel Martinez
Treasurer, Mel Martinez

Emilio Randal
Mayordomo, Emilio Randal