

**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 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 Santa Cruz (“Acequia”) is to 1) promote the agricultural uses of water on the lands served by the Acequia, 2) promote the efficient and beneficial use of water, 3) sustain customs and traditions of providing water to 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 Santa Cruz, a political subdivision of the State of New Mexico, shall be in compliance with the laws of the State of New Mexico, including the Open Meetings Act, the Inspection of Public Records Act, and the Audit Act, and the customs of the Acequia.

Section 3: Description

The Acequia diverts water from the north bank of the Rio de Santa Cruz in the Santa Cruz Grant, Rio Arriba County, New Mexico, at approximately X=570,585 and Y=1,814,340 NM Coordinate System. The Acequia’s State Engineer File No. is 1659. The Acequia serves approximately 537.41 acres of irrigable land. The farm delivery requirement (duty of water) is 2.8 acre-feet per acre per year. The amount of water (diversion demand) is approximately 1,504.75 acre-feet per year, plus such reasonable conveyance loss from the point of diversion from the Rio de Santa Cruz to the individual farm headgates. The Acequia is further described in the Upper Rio Grande Hydrographic Survey Report Vol. 1 (1964) and Maps (Nos. 5 -8) and in the Rio Santa Cruz and Rio de Truchas Adjudication, *State of New Mexico ex rel. State Engineer v. John Abbott, et al.*, United States District Court, 68cv07488 and 70cv08650, consolidated. The Acequia includes the mainstem and all laterals and drainages or desagues.

Approximately 1 ¼ miles below the point of diversion, a diversion box divides water between the Acequia del Llano and the Acequia de Santa Cruz. The Acequia de Santa Cruz is approximately 3.35 miles long from the diversion box.

Section 4: Definition of Membership

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

Article 2. Officers

Section 1: Types of Officers

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

Section 2: Duties of Officers

- a. Chair: The Chair shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall call and preside at all Acequia meetings. In the event the Chair is unable to preside at a meeting, he or she shall appoint one of the other Commissioners to preside at the meeting.
- b. Secretary: The Secretary shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall keep complete and accurate records of Acequia actions and proceedings, prepare agendas for meetings, prepare the minutes of meetings, read the minutes of the previous meetings, and receive and respond to requests for Acequia records.
- c. Treasurer: The Treasurer shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall manage the finances of the Acequia including the following:
 1. Send notices to parciantes for billing and collection of assessments and fines.
 2. Maintain accurate records for each parciante including assessments, hours worked, and fines, in coordination with the Mayordomo.
 3. Make payments for labor and materials as necessary, in coordination with the Mayordomo.
 4. In coordination with the Mayordomo, prepare an annual report to be presented to the Membership. The annual report shall include a financial report that contains, at a minimum, the revenue and expenditures for the previous year and expected revenue and expenditures for the coming year. The Mayordomo's report shall include violations of the Acequia's bylaws from the previous year, and in particular, violations concerning the Acequia's easement and ditch maintenance, and potential ways to address those violations.
 5. Make available for review at the annual meeting all completed audits, proof of financial reporting requirements, and bank statements.
 6. Comply with all future rules and regulations pertaining to water distribution or ditch maintenance.
- d. Mayordomo: The Mayordomo shall be the Executive Officer of the Acequia in accordance with law. His or her responsibilities shall include the following:
 1. Coordinate and supervise all work on the Acequia including the annual Spring cleaning, day-to-day maintenance, and emergency repairs.
 2. Distribute water to parciantes based on the general schedule established by the Commissioners and in a manner that is equitable and consistent with the customs of the Acequia.
 3. Keep an accurate record of water distribution including member requests to use water.
 4. Collect assessments and fines from parciantes, in coordination with the Treasurer.
 5. Make payments for labor and materials as necessary, in coordination with the Treasurer.
 6. Supervise the Acequia to ensure that delinquent parciantes do not take water. The Mayordomo has full authority to shut the individual headgate(s) along the banks of the Acequia of any parciante who is delinquent and to secure the headgate(s) by any available means.
 7. In coordination with the Treasurer, prepare an annual report to be presented to the membership.

Section 3: Vacancy of Mayordomo

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

Section 4: Vacancy of Commissioners

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

Section 5: Compensation of Mayordomo

Compensation of the Mayordomo shall be determined by a majority of the membership at the Acequia's annual meeting.

Section 6: Bonds

The Treasurer and Mayordomo shall be bonded in a sum to be fixed by the Commissioners.

Article 3. Meetings

Section 1: Date of Annual Membership Meeting

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

Section 2: Notice of Annual Membership Meeting

Notice shall be posted at the Santa Cruz Irrigation District office, the Fairview Post Office, and the Santa Cruz Post Office, and shall be provided by email to members who have provided email addresses to the Acequia, at least ten days in advance of the meeting. Notice of the meeting shall include the date, time, location, and the agenda or information about where to obtain a copy of the agenda. The Acequia may also provide other types of notice as appropriate.

Section 3: Purpose of Annual Membership Meeting

At each Annual meeting, the Secretary shall present the minutes from the previous Annual meeting. The Mayordomo shall report on the management and operations of the Acequia, and the Treasurer shall provide a financial report and other financial documents for review by the membership. The Acequia may adopt an Open Meetings Act Resolution. At a minimum, the agenda for the annual meeting shall include the following items:

- I. Meeting Called to Order
- II. Roll Call of Members and Determination of Quorum
- III. Approval of Agenda
- IV. Approval of Minutes from Previous Annual Meeting
- V. Treasurer's Report
- VI. Mayordomo's Report
- VII. Election of Officers (Biennial Meeting Only)
- VIII. Adjournment

Section 4: Location of Meetings

Each Membership or Commission meeting shall be held at a public place in Rio Arriba County or a non-public place in Rio Arriba County that is open and easily accessible to the public and the members.

Section 5: Membership Quorum

A Membership quorum shall be 5% of the total amount of irrigable land with water rights current on their dues, except as otherwise provided in this section.

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

In the event that the above quorum is not established at a meeting duly called, the meeting may be recessed and later reconvened at a date, time and place specified at the call of the recess and on a written notice immediately posted at the location of the original meeting. All business listed on the original agenda shall be transacted by those present at the reconvened meeting, provided there are 5 or more members present, who shall then constitute a quorum for conducting business.

Section 6: Special Membership Meetings

Special (non-annual) meetings of the Acequia members may be called by the Commissioners or upon written petition to the Commission Chairman signed by members representing at least 5% of the irrigable acreage served by the Acequia. Notice for Special Membership meetings shall be the same as for Annual meetings except that written notice for special membership meetings called by written petition shall also be provided by mail to each Commissioner.

Section 7: Special Commission Meetings

Special meetings of the Commission may be called by the Chairman. Two Commissioners shall constitute a quorum for such meetings. Notice for special Commission meetings shall be posted at the Santa Cruz Irrigation District office at least three days prior to a meeting.

Article 4. Voting and Elections

Section 1: Election of Officers

The Commissioners and Mayordomo shall be elected by a vote of the membership at the Annual Membership Meeting held in December odd numbered years or as soon as practicable thereafter. The elections shall be conducted by the outgoing Commissioners.

Section 2: Voting Rights of Parciantes

Only those members who are not delinquent in the payment of their assessments shall be deemed in good standing and allowed to vote in any election or other vote of the Acequia. Eligible parciantes who are unable to attend a meeting may vote by written proxy, a copy of which shall be submitted to the Secretary upon voting to maintain in the Acequia records. The proxy shall contain the member's name, the name of the person delivering the proxy vote on behalf of the member, the effective period of the proxy, and the member's signature and date.

A member's vote shall be in proportion to his/her acreage of irrigable land with water rights. One acre equals one vote. Fractions of an acre shall be rounded up to the nearest quarter acre for the purposes of voting, except that parcels of less than one acre shall have one vote.

Section 3: Nomination and Assignment of Officers

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

Section 4: Terms of Office and Record Transfers

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

Article 5. Management and Operations

Section 1: Allocation Between Neighboring Acequias

As practiced traditionally, the Commission shall represent the Acequia for the purpose of cooperating with the other acequias in the Santa Cruz Irrigation District which draw water from the Rio de Santa Cruz in order to determine the most effective and equitable manner of allocating water between all of the acequias.

Section 2: Acequia Cleaning

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

Parciantes on laterals shall be responsible for cleaning their own laterals.

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

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

Section 3: Distribution of Available Water

Water shall be distributed in a manner that is equitable and consistent with the customs of the Acequia. The Mayordomo shall oversee the distribution of the appropriate amounts of available water among parciantes in accordance with the Acequia's distribution schedule established by the Commission. The schedule may be adjusted depending on the availability of the water by the Mayordomo in consultation with the Commission. The available water in the Acequia shall be distributed as nearly as practicable in proportion to the acreage of land with water rights owned by each member of the Acequia.

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 ensuing year for the operation, maintenance, repair and improvement of the Acequia and for payment of the expenses of the Acequia, including compensation of the officers, if any. The Commissioners shall then assess each parciante, in proportion to his/her acreage, based upon that information, except that parcel of less than one acre shall be assessed for one acre. The approved amount shall remain as the annual assessment per acre until changed by the Commission.

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 seal the headgate or maintain it at the expense of the member(s) that utilize it. Any change in the location or type of a particular headgate shall be approved in advance by the Commission.

Section 2: Assessments

All members shall pay assessments as required by the Commission. 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. A late penalty may be added to delinquent accounts and interest may accrue and be added on the first of every month the account is past due. Accounts delinquent after October 1 of each year may be subject to a civil action for the collection of the assessments, legal fees and court costs. Assessments shall be paid regardless of whether land is currently irrigated.

Section 3: Participation in Acequia Cleaning

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

Section 4: Compliance with Bylaws

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

Section 5: Inspection of Acequia Records

All records of proceedings by Commissioners, financial records, and other reports and records of the Acequia shall always remain public property and shall be subject to inspection by any person pursuant to state law.

Section 6: Copy of Bylaws

Upon request, each parciante shall be provided with a copy of the current bylaws of the Acequia and amendments thereafter adopted. New members may be briefed on the operation of the Acequia by one of the Commissioners or the Mayordomo.

Section 7: Acequia Records

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

Section 8: Change of Ownership

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

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

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

Article 7. Easements

Section 1: Description of Easement and Prohibitions

Each parciante recognizes that the Acequia, including all of its laterals and drainages or desagues, possesses a historical permanent easement for purposes of maintenance, operations, and improvements. No development, construction may occur, or structures erected, whether temporary or permanent, within fifteen (15) feet from the inner edge of each bank, to each side of the acequia. The scope of the Acequia's easement is as wide as necessary for reasonable maintenance, use and improvements. Therefore, any development or construction even outside of the fifteen feet described above is subject to approval or removal by the Acequia in the event the Acequia requires additional footage to conduct reasonable maintenance, use and improvements.

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

Section 2: Maintenance of Easement

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

Section 3: Access to Easement

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

Section 4: Changes to Easement

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

Section 5: Acequia Laterals

No member or non-member shall deny access to acequia laterals, deny the use of irrigation water from acequia laterals, or interfere in any way with any lateral ditch located on his or her property. Acequia laterals are part of the Acequia's easement and violations may be enforced under Article 8, Section 9 of these bylaws and New Mexico law.

Article 8. Enforcement

Section 1: Delinquencies

A parciante who is delinquent in the payment of his or her assessment or fails to perform required work shall not be entitled to use water from the Acequia. He or she shall also not be entitled to vote in any Acequia election. These prohibitions shall remain in effect until the assessment(s) and any fines are paid. Acequia officials have the

authority granted by statute to collect penalties and delinquent assessments through appropriate civil legal action.

Section 2: Illegal Use of Water or Acequia Interference

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

Interference includes knowingly polluting the Acequia with debris, organic or inorganic materials, including oil, waste, gray/black water from household waste or any toxic materials. The Acequia may pursue civil and criminal remedies including reporting these types of interference to local and federal environmental agencies.

Section 3: Violation of Easement Rights

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

Article 9. Water Transfers

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

Article 10. Water Banking

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

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

Article 11. Miscellaneous Provisions

Section 1: Amendments to Bylaws

These bylaws shall be enacted, amended, or modified at any lawfully noticed meeting by members representing a simple majority of the Acequia acreage with water rights, present and voting.

Section 2: Applicability of State Law

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

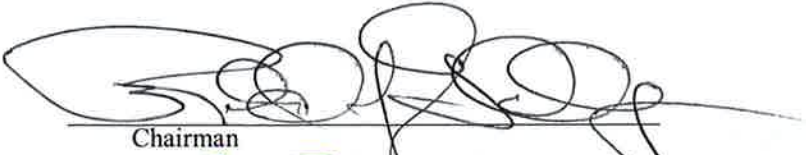
Section 3: Severability Clause

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

Section 4: Robert's Rules

Meetings of the Acequia shall be conducted in substantial compliance with Robert's Rules of Order.

THE FORGOING BYLAWS WERE ADOPTED BY THE PARCIANTES OF THE ACEQUIA DE SANTA CRUZ AT A MEETING DULY CALLED AND HELD ON June 4, 2018.



Chairman



Secretary

Absent

Treasurer

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 _____

APPENDIX B: WATER BANKING

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 Santa Cruz 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 deposits 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.

(1) A parciante who has used a deposit form to make a deposit shall make a brief written request for non-

renewal or withdrawal of the water right, specifying the date that the withdrawal shall take effect, and submit it to the Water Bank's designated record keeper. If the written request is instead submitted to an Acequia officer who is not the designated record keeper, the officer shall forward it to the designated record keeper. Any initial term or automatic renewal will end as of the specified date of withdrawal.

- (2) 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. 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. 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

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

Page _____

Depositor Name: _____

Date: _____

____ Initial Owner Deposit
____ Owner Withdrawal – Owner Deposit

Owner Withdrawal Effective Date (if different than above): _____

Name of Water Bank Record Keeper _____