

**ACEQUIA DE SANTA CRUZ
P.O. BOX 1656
SANTA CRUZ, NM 87567**

**Ron Gallegos, Chairman
Lonnie Sanchez, Treasurer
Ernie Velarde, Secretary**

September 10, 2019

Hand Delivered

Mr. Jonathan Martinez
Interstate Stream Commission
Office of the New Mexico Engineer

Dear Mr. Martinez:

Please allow this letter to serve as our proposed resolution to the on-going issue regarding the findings of the Independent Account's Report on Applying Agreed-Upon Procedures (tier 3) for the year ending 2011. In that report, the independent Auditor found that a total of \$19,128.66 remained unspent in regards to Capital Outlay Project 07-4802 GF (2011).

The Independent Auditor found that this unspent amount may have been spent on Acequia related improvements and repairs. However, payment for these improvements and repairs do not match invoices or dates submitted with requests for reimbursement by the funding source.

As previously discussed, the commission reviewed and isolated all expenditures made for improvements to the Acequia for those periods of time that were in close proximity to payments received by the Acequia in regards to the above-referenced Capital Outlay Project.

The task of isolating these expenditures was compounded by the fact that capital outlay funds were co-mingled with the Acequia's general funds in one checking account. Because of this, we found that there simply is no way to determine with certainty if capital outlay or general fund monies were used to pay for these expenditures.

As such, the Commission's review was entirely dependent on our educated belief that expenditures for Acequia improvements could have been paid for with capital outlay funds because of the fact that certain expenditures were made close to the arrival time of capital outlay monies. The review was our best effort to reconstruct matters given that the current Commission was not in office at the time and did not have historical experience with the previous Commission's actions. Although we have conferred with the previous Commission, we were unable to obtain any substantial help in this regard.

In "Sheet1" of the attached spreadsheets we identify what we believe were capital outlay monies that were spent on the ditch. The spreadsheet identifies a check number, a date, the recipient, the

purpose and the amount paid. Note: these were additional expenditures not identified by the audit.

The total amount of Capital Outlay Monies awarded for grant 07-4802 GF was \$65,000. The actual amount requested/received was \$64,741.17. The actual amount expended and verified by the auditor was \$45,612.51. Thus, leaving a balance of \$19,128.66. If your agency accepts our reasoning that an additional amount of \$7,660.67 of Capital Outlay monies were also spent on the ditch as required, then a balance of \$11,467.99 remains.

As you know, the present Commission of the Acequia De Santa Cruz has diligently engaged and addressed the mistakes made by the prior administration in this matter. We have worked countless hours to place the acequia in good standing with all entities who have financial and legal oversight of our agency. We are prepared at this point to resolve this matter once and for all and would like to make the following offer to your office in regards to restitution of monies not expended as per the above-mentioned audit.

Our first preference would be that the Acequia be forgiven entirely of any restitution. We realize that this is bold request but we make it nonetheless because we believe that although the monies in question we not adequately requisitioned, we believe they were expended on acequia needs.

In the alternative, our second preference would be that in lieu of paying back the above mentioned \$11,467.99 we be allowed to redirect those monies to needed repairs of our acequia. We would naturally be willing to provide proof of costs for designated design and repairs.

Should either of these options not be available to us, we would return these monies in this fashion:

- a. \$5,734 will paid at the conclusion of the 2020 water season. The date of this payment will be on or before November 1, 2020.
- b. The final payment of \$5,734.99 will be paid at the conclusion of our 2021 watering season. The date of this payment will be on or before November 1, 2021.

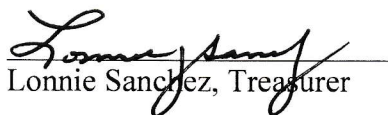
Attached is this Commission's work product in regards to our review. We remain available to answer any questions or concerns you may have regarding our findings and proposals.

Sincerely yours,



Ron Gallegos, Chairman

Date: 10 Jun 2020



Lonnie Sanchez, Treasurer

Date: 10 Jun 2020



Ernie Velarde, Secretary

Date: 1/10/2020

In "Sheet1" of the attached spreadsheets we identify what we believe were capital outlay monies that were spent on the ditch. The spreadsheet identifies a check number, a date, the recipient, the purpose and the amount paid.

The total amount of Capital Outlay Monies awarded for grant 12-1397 STB was \$30,000. The actual amount requested/received was \$29,970.57. The actual amount expended and verified by the auditor was \$20,256.53. Thus, leaving a balance of \$9,714.04. If your agency accepts our reasoning that an additional amount of \$4,867.95 of Capital Outlay monies were also spent on the ditch as required, then a balance of \$4,846.09 remains.

As you know, the present Commission of the Acequia De Santa Cruz has diligently engaged and addressed the mistakes made by the prior administration in this matter. We have worked countless hours to place the acequia in good standing with all entities who have financial and legal oversight of our agency. We are prepared at this point to resolve this matter once and for all and would like to make the following offer to your office in regards to restitution of monies not expended as per the above-mentioned audit.

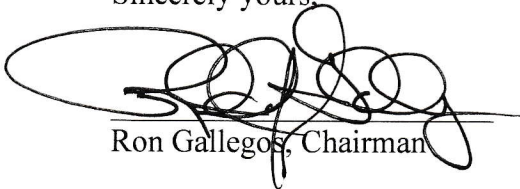
Our first preference would be that the Acequia be forgiven entirely of any restitution. We realize that this is bold request but we make it nonetheless because we believe that although the monies in question were not adequately requisitioned, we believe they were expended on acequia needs.

In the alternative, our second preference would be that in lieu of paying back the above mentioned \$4,846.09 we be allowed to redirect those monies to needed repairs of our acequia. We would naturally be willing to provide proof of costs for designated design and repairs.

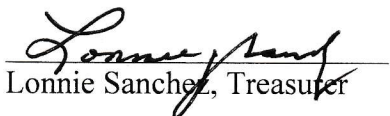
Should either of these options not be available to us, we are prepared to immediately pay the entire amount of \$4,846.09.

Attached is this Commission's work product in regards to our review. We remain available to answer any questions or concerns you may have regarding our findings and proposals.

Sincerely yours,


Ron Gallegos, Chairman

Date: 10 Jan 2020


Lonnie Sanchez, Treasurer

Date: 10 Jan 2020


Ernie Velarde, Secretary

Date: 01/16/2020

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

MARK SANCHEZ, Chair
TANYA TRUJILLO, Vice-Chair
JOHN R. D'ANTONIO JR., P.E., Secretary
ARON BALOK, Commissioner
BIDTAH BECKER, Commissioner
GREGORY CARRASCO, Commissioner
PAULA GARCIA, Commissioner
MIKE HAMMAN, Commissioner
STACY TIMMONS, Commissioner



BATAAN MEMORIAL BUILDING, ROOM 101
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6160
FAX: (505) 827-6188

June 10, 2020

Acequia de Santa Cruz
PO Box 1656
Santa Cruz, NM 87567

RE: Acequia de Santa Cruz – AUP Findings and 2019 Grant Agreement for Appropriation ID:
D2782

Dear Acequia Commissioners:

I, Director of the New Mexico Interstate Stream Commission, am sending this letter for the New Mexico Interstate Stream Commission (“NMISC”) and its Acequia Program in response to your two letters dated January 10, 2020 regarding the findings of the Acequia de Santa Cruz (“Grantee”) in their Independent Accountants’ Report on Applying Agreed-Upon Procedures (Tier 3) (“AUP”) for Year Ended December 31, 2011 and for Year Ended December 31, 2016 regarding Capital Outlay Appropriation balances not yet reverted. These AUPs were conducted on 2007 Capital Outlay funds (Appropriation ID: 07-4802) and 2012 Capital Outlay funds (Appropriation ID: 12-1397). The Acequia de Santa Cruz received a new appropriation in 2019 (Appropriation ID: D2782) for \$90,000 to plan, design and construct improvements to the Acequia de Santa Cruz in Santa Fe County. The current Commissioners of the Acequia brought the findings to the attention of NMISC staff during the drafting process for a 2019 Capital Outlay Agreement between the NMISC and the Acequia de Santa Cruz on the new appropriation.

In response, NMISC staff carried out a review of our files on the 2007 and 2012 projects. Each of the two project files was reviewed by staff to determine if the reimbursement requests submitted by the Acequia to the NMISC were complete with back-up invoices/documentation to support the requests. Field checks were also conducted on a few occasions during the expenditure of the funds to verify that the work was being completed as intended. The field checks confirmed that work was done on the ditch to replace broken sections of concrete ditch lining and make other repairs. The review indicated that the documentation on file appears to be in order, the field checks verified work occurring at the time of the visits was appropriate, staff believes these projects were completed as intended. Therefore, at this time, the NMISC is not aware of any action that the NMISC or the

Grantee would need to take related to the 2007 and 2012 projects, and therefore we have no further requirements of the Grantee regarding those projects.

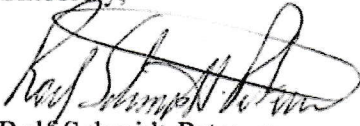
Pursuant to DFA's Capital Outlay Bureau MAPS Document FIN MAPS 9.2.D.1.c.2, if an entity's most recent audit contains an unresolved finding, the grantor agency may either refuse to enter into the grant until the entity has resolved the finding or can proceed to the benefit of the entity by either drafting conditional language into the entity's Capital Outlay Agreements to allow that entity to continue to access Capital Outlay funds that were appropriated to them or, in more serious cases, utilize a qualified fiscal agent to manage the project on behalf of the entity. The NMISC, after considering the circumstances, intends to adopt this approach for the Acequia's 2019 project grant for Appropriation ID: D2782 (2019 Grant Agreement). The 2019 Grant Agreement will comply with the DFA requirements referenced above and will include the following conditional language addressing the past findings:

"The Grantee agrees to notify NMISC if any further action by NMISC is deemed necessary by the Independent Public Accountant or any of the state control agencies regarding resolution of the findings of their 2011 and 2016 Agreed Upon Procedures."

The NMISC is aware of no further requirements of the Grantee on the 2007 and 2012 projects and based on the above, the NMISC stands ready to: facilitate completion of the 2019 Grant Agreement; to assist the Acequia de Santa Cruz should the state control agencies express concerns, if any, with this approach; and to assist in the Acequia's engagement with their IPA. Further, given our understanding of the nature of the Independent Public Auditor findings for those two projects and current, more stringent, Department of Finance and Administration contracting, invoicing, and documenting requirements for the Grantee (DFA requirements) for the 2019 Capital Appropriation should minimize, if not eliminate, future similar audit findings.

Please feel free to contact Jonathan Martinez at (505) 827-6134 or jonathanc.martinez@state.nm.us or myself at rolf.schmidt@state.nm.us if you have any further questions or concerns regarding this matter.

Sincerely,



Rolf Schmidt-Petersen
NMISC Director

CC: Brian Colón, NM State Auditor, Office of the State Auditor (OSA)
Wesley Billingsley, Bureau Chief, Capital Outlay Bureau (COB)
Jeff Primm, NMOSE/NMISC Program Support Administrator
Arianne Singer, NMISC General Counsel
Marcos Mendiola, NMISC Administrative Manager
Jonathan Martinez, NMISC Acequia Program Manager

File