



BYLAWS

OF

THE

JEMEZ SPRINGS

COMMUNITY DITCH

ASSOCIATION

2009

**JEMEZ SPRINGS COMMUNITY
DITCH ASSOCIATION
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**JEMEZ SPRINGS
COMMUNITY DITCH ASSOCIATION
BYLAWS**

These Bylaws, Rules and Regulations supercede any existing or previously adopted Bylaws for the Jemez Springs Community Ditch Association.

Preamble: Water is the lifeblood of our communities. The members of Jemez Springs Community Ditch Association 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 Association and seek to govern our Association to continue the connection between our land, water and culture in perpetuity.

Article 1. Name, Purpose and Membership

Section 1: Name of Association

The name of this association shall be the Jemez Springs Community Ditch Association.

Section 2: Purpose Statement

The purpose of the Jemez Springs Community Ditch Association is to 1) promote the agricultural uses of water on the lands served by the Ditch, 2) promote the efficient and beneficial use of water, 3) sustain customs and traditions of providing water to members in a manner that is fair and equitable, 4) protect and defend the rights and interests of the Ditch and the members, 5) maintain and improve the infrastructure of the dam and Ditch and easements of the Ditch, and 6) maintain an adequate diversion right to ensure a sufficient water supply for members as adjudicated by the Courts and/or as otherwise provided by law.

Section 3: Compliance with New Mexico Law

The management and operation of the Jemez Springs Community Ditch Association, a political subdivision of the State of New Mexico, shall be in compliance with the laws of the State of New Mexico, the provisions of these bylaws, and the customs of the Jemez Springs Community Ditch Association.

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

Section 4: Description

Point of Diversion: The Jemez Springs Community Ditch diverts from the diversion dam at the east bank of the Rio Jemez at the property of the Handmaids of the Precious Blood, continues in a southerly direction until it dumps back into the Rio Jemez.

Acreage: Mother Ditch, 100 acres approximately.

Priority Date: 1865

Section 5: Membership - Members (Parciantes)

The members of Jemez Springs Community Ditch Association are those persons who own land entitled to irrigation water from said Ditch. The rights, privileges and obligations of all members shall be in proportion to the number of acres with water rights owned by each member.

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 affairs and operation of the Jemez Springs Community Ditch Association are under the general control and supervision of three (3) commissioners and one (1) mayordomo. The officers of the Jemez Springs Community Ditch Association shall be a member

of the Ditch, as defined in Article 1. The Commissioners shall consist of a President, Secretary/Treasurer and a Commissioner-at-Large. The Secretary/Treasurer and Mayordomo ~~CQA~~ be bonded in a sum to be fixed by the Commissioners.

The officer titles appear in Sections 73-2-12 and 73-3-1. Even for ditches 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 Jemez Springs Community Ditch Association jointly with the other commissioners and call and preside at all Ditch 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/Treasurer:** The Secretary/Treasurer 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 Jemez Springs Community Ditch Association.

The Secretary/Treasurer shall also be responsible for management of the finances of the Jemez Springs Community Ditch Association including the following:

1. Send notices to members for billing of and collection of assessments and fines.
2. Maintain accurate records for each member 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.

c. **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 Ditch including the annual Spring cleaning, day-to-day maintenance, and emergency repairs.
2. Distribute water to members in a manner that is equitable and is consistent with the customs of the Ditch.
3. Collect delinquencies from members as reported to him by the Treasurer.
4. Supervise the Ditch to ensure that delinquent members do not take water illegally. The Mayordomo has full authority to shut the individual headgate along the banks of the Ditch of those members 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.

Section 6: Compensation of Officers

Compensation of the Commissioners and the Mayordomo shall be determined by the members at the annual membership meeting.

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

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 October or as soon as practicable thereafter.

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 provided to each member by mail to the addresses as recorded in the records of the Ditch and posted at Village Office and Post Office 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 Jemez Springs Community Ditch Association may provide other types of notice as appropriate.

In addition to the notice provision in the Jemez Springs Community Ditch Association's bylaws, the Open Meetings Act requires a Ditch 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 ditch 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 Jemez Springs Community Ditch Association is located.

Section 5: Quorum of Membership

A quorum for conducting any business shall be 10% of the membership, represented by the owners thereof 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.

Section 6: Special Membership Meetings

Special meetings of the Jemez Springs Community Ditch Association may be called by the Commissioners or upon written petition to the Commission President signed by 20% of the members. Notice for special meetings shall be the same as for annual meetings.

Article 4. Elections

Section 1: Election of Officers

The Commissioners and Mayordomo shall be elected at the Annual Meeting by a vote of membership. Each officer must be a member of the Association as defined in Article 1 of these bylaws. The elections 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 amount of water rights in the ditch. Due to small parcels of land, one acre or less ownership equals one vote.

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 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 (3 Commissioners, 1 Mayordomo) may be made by any Association member. The three Commissioners shall be elected at-large. 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/Treasurer, and Commissioner-at-Large (Section Manager) with each commissioner holding one position.

Section 4: Terms of Office

The elected officers shall assume their office not later than the first Monday of the following November after their election. 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, during times of emergency and/or drought, the Commission will represent the Jemez Springs Community Ditch Association for the purpose of cooperating with the other ditches in the Jemez Valley which draw water from the Rio Jemez in order to determine the most effective and equitable manner of allocating water in all of the acequias.

(Sections 73-2-47 and 72-9-2.)

Section 2: Spring Acequia Cleaning

A community ditch cleaning involving all members will take place during the Spring before the irrigation season on a date determined by the Mayordomo and Commissioners.

Section 3: Allocation of Water Between Members

The available water in the ditch shall be distributed in approximate proportion to the lands with water rights owned by each member of the ditch. 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.

Section 4: Membership 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 Ditch system and for payment of the expenses of the Jemez Springs Community Ditch Association, including compensation of the officers, if any. The Commissioners shall then assess each member the amount of labor and dues needed. Approval of a majority of the members must be obtained before ditch commissioners may commit the Association for major improvement work.

Article 6. Rights and Obligations of Members

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.

Section 2: Assessments

All members shall pay assessments as required by the Commission. All monies assessed by the Jemez Springs Community Ditch Association 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 73-2-26 gives the Mayordomo authority to file a court action to collect delinquent assessments.

Section 3: Participation in Acequia Cleaning

All members shall contribute peones for the annual Spring cleaning or for emergency repairs as required by the Mayordomo. Any member who fails to maintain his part of the ditch shall, in addition to other penalties herein provided, be required to pay an amount determined by the commission for maintenance work performed. The mayordomo shall select those parts of the ditch to be maintained by those who do not have land adjoining the community ditch.

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 the Jemez Springs Community Ditch Association 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 Jemez Springs Community Ditch Association 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 member shall be provided with a copy of the current by-laws of the Jemez Springs Community Ditch Association 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 member shall keep current on the records of the Commission of the Jemez Springs Community Ditch Association 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 member.

Section 8: Change of Ownership

It shall be the responsibility of a landowner who has purchased or leased land with Jemez Springs Community Ditch Association water rights to report such transaction promptly to the Secretary for recording in the Jemez Springs Community Ditch Association'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 Ditch system.

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 Jemez Springs Community Ditch Association Commission and the State Engineer, it shall be the responsibility of the member to provide updated information about the water right to the Secretary for recording in the records of the Jemez Springs Community Ditch Association.

Article 7. Easements

Section 1: Definition of Easement

Each member recognizes that the Acequia possesses a historical permanent easement for purposes of maintenance, operations, and improvements. No member may build within the easement or otherwise obstruct or limit access to this easement. The easement is described as follows:

The easement is as wide as necessary for maintenance, use and improvements.

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 member 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

Jemez Springs Community Ditch Association has the right to use the historic and customary points of access to the ditch across members' and non-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 Ditch

Any material changes to the Ditch, including any crossings, shall be approved in advance by the Jemez Springs Community Ditch Association Commission.

Article 8. Enforcement

Section 1: Delinquencies

The Mayordomo has the authority to suspend the right to use the Ditch and the water therein of a member 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. An additional 10% will be charged on all delinquent dues (payments), thirty days delinquent, and 20%, sixty days delinquent and thereafter. The Mayordomo has the authority to collect delinquent assessments through appropriate legal action. Officers of the Jemez Springs Community Ditch Association 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 member, (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 Ditch Interference

Any person who interferes with the ditch in any manner, takes water without permission of the Mayordomo or Commission commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico.

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 ditch easement or access to the easement commits a criminal 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

The members of Jemez Springs Community Ditch Association 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 members. Therefore, any such proposed transfer by any person or entity must be formally approved by the 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

Jemez Springs Community Ditch Association hereby forms a Water Bank under its powers as a political subdivision of the State of New Mexico, and under Section 73-2-55.1 NMSA 1978 (2003). The purpose of the Water Bank is to promote conservation and beneficial use of Ditch water through a locally managed system of temporarily reallocating water for beneficial use within the area served by the Jemez Springs Community Ditch Association. The operation of the Water Bank is set forth in Appendix B.

Article 11. Miscellaneous Provisions

Section 1: Amendments to Bylaws

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

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

THE FORGOING BYLAWS WERE ADOPTED BY THE PARCIANTES OF THE JEMEZ SPRINGS COMMUNITY DITCH ASSOCIATION AT A MEETING DULY CALLED AND HELD ON JUNE 13, 2009.



Emmet Cart-President- Jemez Springs Community Ditch Association

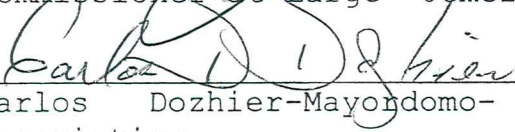


Roger Sweet-Secretary/Treasurer- Jemez Springs Community Ditch Association

GERALD JANECKA



Commissioner-at-Large- Jemez Springs Community Ditch Association



Carlos Dozhier-Mayondomo- Jemez Springs Community Ditch Association

APPENDIX A: WATER TRANSFERS

General

1. The members of the Jemez Springs Community Ditch Association 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 members. Therefore, any such proposed transfer by any person or entity must be formally approved by Jemez Springs Community Ditch Association Commissioners, using the procedure set forth below, prior to application for the transfer to the Office of the State Engineer. As used in this document, "transfer" means a change in point of diversion, and/or place of use and/or purpose of use of a water right, including temporary transfers and water use leases.
2. Without formal consent of Jemez Springs Community Ditch Association Commissioners to such a transfer, any attempt to obtain approval of the transfer from the State Engineer, or any other effort to implement the transfer, is unlawful and void.
3. These policies and procedures are adopted under Section 73-2-21(E) NMSA 1978.

Approval Procedure

1. A request for approval of a transfer of a water right served by Jemez Springs Community Ditch Association or a transfer of a water right into the area served by Jemez Springs Community Ditch Association must be made by the owner of the water right in writing, delivered by certified mail to each Commissioner. It must be on a written form prepared by the Commissioners requiring any information about the proposed transfer.
2. Within 90 days of receipt of the written request, Jemez Springs Community Ditch Association Commissioners will hold a public meeting to allow members who support and oppose the request to be heard or submit additional information.

Notice of the meeting will be given in the same manner required for Jemez Springs Community Ditch Association's annual meeting. In addition, notice will 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.

The conduct of the meeting, such as its location, length, and other matters will be decided by Jemez Springs Community Ditch Association Commissioners. The Commissioners will accept and consider any documents, written or oral statements, or arguments offered by the applicant or any Acequia member, as well as any information from individuals who may be presented by the applicant or any Acequia member. The applicant or any Acequia member may have an attorney or other representative present his or her information to the Commission in his or her place. The applicant or any Acequia member, or their representative, may respond to evidence or arguments offered at the

NOTE: This sidebar contains explanatory notes. If these bylaws are adopted by your acequia, we advise you remove this column from your official bylaws.

N.M. law allows acequias to safeguard against harm that may result from a proposed water transfer. An acequia must adopt a bylaw such as this one in order to have this power.

"Transfer" is defined here in accordance with state law. A simple change in ownership of a water right is not a "transfer" and does not require approval.

Once an acequia adopts a bylaw, the State Engineer is prohibited from considering a transfer into or out of the acequia unless the transfer has first been approved by the acequia. (Section 72-5-24.1)

An application form is included in these materials or is available from NMAA.

The statute requires a written decision within 120 days of the written request. (Section 72-5-24.1(D)) We suggest that the acequia hold a special membership meeting within 90 days.

The meeting should be held in accordance with the Open Meetings Act. A sample Open Meetings Act Resolution is included in the NMAA Acequia Governance Handbook.

Many of the requirements of this paragraph are to ensure that the applicant and the other parciantes are afforded constitutional "due process" before a decision is made affecting their interests.

The meeting can be run by the Commission in the same manner as a regular meeting of the acequia. It is not intended to be a trial-type proceeding.

Although the meeting is open to the public, the Commission has the right to

meeting, directing such response to the Commission. The rules of civil procedure and the rules of evidence shall not apply to the meeting.

The Commissioners may ask any questions they believe may help in their decision. The Commission is not required, prior to recessing the meeting, to make any decisions or answer any questions on issues raised, before the final decision is announced publicly. 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. Except as provided in this section, only the applicant, other Jemez Springs Community Ditch Association members and the Commissioners may speak at the meeting.

3. The request may be denied, in whole or in part, if Jemez Springs Community Ditch Association Commissioners find it would be detrimental to Jemez Springs Community Ditch Association or its members. The Commission will base its decision on the presentations, documents and arguments made at the meeting; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation. Approval requires a unanimous vote of Jemez Springs Community Ditch Association Commissioners.
4. Following the presentation of the evidence or arguments at the meeting, the Commissioners will recess for a period of no longer than 30 days. Within 30 days of the recessed meeting, the Commissioners will reconvene at the date, time, and location announced prior to recessing. At the reconvened meeting, the Commissioners will approve or deny the request, in whole or in part, and render their decision in writing explaining the reasons for their decision. This will constitute a decision of Jemez Springs Community Ditch Association in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D) NMSA 1978.

Appeal to District Court

If the applicant or a member of Jemez Springs Community Ditch Association 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) NMSA 1978.

The appeal must be filed within 30 days of the Commissioners' written decision.

Arbitration (Optional)

1. Instead of an appeal to court, the applicant or a member of Jemez Springs Community Ditch Association aggrieved by the Commission's decision may submit the Commission's decision 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 for the arbitration to proceed. The Commission must notify the person requesting arbitration whether it agrees to the request within 20 days of receipt of the request.
2. The arbitrator must be a person experienced in acequia organization, governance and procedure and must be mutually agreed upon by the

limit who may present information and who may participate in the discussion.

If the proposed transfer is denied, the written decision should clearly indicate how the transfer would be detrimental to the acequia and/or its parciantes. (Sections 72-2-21(E) and 73-3-4.1).

The Open Meetings Act allows a public body to "recess" a meeting and then "reconvene" the meeting at a later date. The date, time, and location for reconvening must be set and announced publicly prior to recessing the meeting. The decision to approve or disapprove the water right transfer and the rendering of the written decision must take place at the meeting when it is reconvened.

The law provides for a limited right to appeal. An appeal does not involve a new hearing on the proposed transfer, but only whether the commissioners in making their decision acted "fraudulently, arbitrarily, or capriciously, or...not in accordance with law."

Arbitration is an informal trial-type proceeding in which the correctness of the commission's decision is judged by an individual chosen by both sides. Arbitration can be less expensive for both the acequia and the dissatisfied party than an appeal to court. However, the acequia is not required to agree to arbitration in every case nor is it required to accept the person suggested by the dissatisfied party as the arbitrator. Only if agreement is reached on these matters does the arbitration go forward.

Just as with an appeal to court, the commission's decision can only be overturned in arbitration if it was

Commission and the aggrieved party. If agreement cannot be reached, the arbitration will not proceed.

“fraudulent, arbitrary, capricious, or not in accordance with law.”

3. The issue presented to the arbitrator will be solely whether the Commissioners’ decision was fraudulent, arbitrary, capricious, or otherwise not in accordance with law. The arbitration will be conducted in a manner directed by the arbitrator, and must include a) the right of any party to be represented by an attorney, b) the right to present testimony 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 will not apply. Fees will be paid equally by the Commission and the person or persons requesting arbitration. The arbitrator must 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 should be delivered by certified mail to each of the three commissioners of Jemez Springs Community Ditch Association.

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: _____

Number of acre-feet per year: _____

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: _____

Signature of Applicant

Date

FOR ACEQUIA USE ONLY

Received by _____

Date _____

APPENDIX B: WATER BANKING

This Appendix contains the Water Banking Bylaw and the Water Banking Deposit Form. An acequia can approve an Acequia Water Bank as a regulation of the Commissioners or as a bylaw amendment by a vote of the membership.

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

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.

Section 2: Protection from Loss for Non-Use

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

Section 3: Water Bank Procedures

a) Water Bank Record Keeping

The Commissioners may delegate to the Mayordomo or any officer of the Acequia the responsibility to maintain records on all Water Bank deposits, contact logs, and other information required to achieve the purposes of the Water Bank. These records shall be maintained permanently in the records of the Acequia.

b) Depositing Water Rights

Any person or entity owning a water right on the Acequia may submit a water right deposit to the Water Bank. A deposit is made by completing a deposit form prepared by the Acequia, and giving 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 will 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 correctly identify the right being deposited. The deposit shall become effective upon signing of the deposit form by a Commissioner or by the Mayordomo.

NOTE: This sidebar contains explanatory notes. If these bylaws are adopted by your acequia, we advise you remove this column from your official bylaws.

In 2003, the N.M. Legislature passed a law allowing acequias to do a very limited and very specific type of water banking.

Under this new law, an acequia water bank is a tool for holding water rights that are owned by parciantes of the acequia and are temporarily not in use. Placing water rights in the water bank does not affect the legal status of the water right in terms of its ownership, etc.

Protection against loss of water rights for non-use is the key benefit of the water bank. If an adjudication (or a re-adjudication) occurs many years from now, the State may claim that a particular water right was lost because it was not in use for a period of time in the past. However, if the acequia can show the water right was in the bank during that period of time, there is a good possibility that the water right would remain valid. This is why it is essential that all water bank records be kept permanently in the records of the acequia.

A deposit will be for one year, renewable annually. At the end of the deposit period, the Acequia shall notify each depositor by written notice or otherwise that the depositor must contact the Acequia if the depositor desires to withdraw his or her water right from the Water Bank, and that if the depositor does not contact the Acequia to withdraw the water right from the Water Bank, the deposit will be deemed to be renewed for another year. Non-response by the depositor to the notice will be deemed to be consent to renewal of the deposit for another year, if the depositor does not otherwise communicate his or her intentions to the Acequia.

c) Water Right Reallocation

Temporary reallocation of water rights from the bank shall be done by the Mayordomo, provided that the Mayordomo will apply traditional, accepted methods of managing the reallocation and provided further that the reallocation must be done without change of purpose of use or point of diversion of the water rights, to augment shortfalls of available water for the existing places of use served by the Acequia. Such reallocations do not require Commission approval.

The water rights may also be reallocated in any other lawful manner which, in the judgment of the Commissioners, will benefit the Acequia, subject to all applicable procedures, rules and laws.

Reallocation of water rights on deposit in any particular year must occur in that year and may not accumulate or carry over to be reallocated in future years.

Section 4: Ditch Dues and Fees

Ditch dues or fees owed the Acequia by a water right owner who has deposited water rights in the Water Bank will continue to be paid by the water right owner.

The parciante can "withdraw" the water right back to his or her own exclusive use any year by simply indicating so to the Commission.

In order to keep a complete paper trail, it is critical that the acequia maintain a log of all contact with the depositor of the water right and keep this information on file permanently in the acequia's records.

This provision allows water rights in the water bank to simply be absorbed into the acequia's regular rotation, as is the traditional method for reallocating water rights temporarily not in use. This is the most simple and recommended way to manage banked water rights.

If the Commission wishes to allow the banked water right to benefit a water user not on the acequia, it would be necessary to get a permit from the State Engineer, a much more costly and involved process.

Just as a parciante remains liable for acequia dues even if he or she does not irrigate for a year, a parciante with banked water rights is ordinarily responsible for acequia dues as the owner of the water right and a continuing member of the acequia. This is not legally required, however, so an acequia may choose to waive such fees or omit this section from its bylaws.

JEMEZ SPRINGS COMMUNITY DITCH ASSOCIATION 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:

Deposited for the year: _____

Signature of Depositor

Date

Signature of Commissioner or Mayordomo

Date

**FOR ACEQUIA USE ONLY
CONTACT LOG**

For the Year _____

Contacted by: _____ Date: _____ By: ___ Letter ___ Phone

Renewed _____ Not Renewed _____

WATER BANKING CONTACT LOG CONTINUED...

Page _____

For the Year _____

Contacted by: _____ Date: _____ By: ___ Letter ___ Phone

Renewed _____ Not Renewed _____

For the Year _____

Contacted by: _____ Date: _____ By: ___ Letter ___ Phone

Renewed _____ Not Renewed _____

For the Year _____

Contacted by: _____ Date: _____ By: ___ Letter ___ Phone

Renewed _____ Not Renewed _____

For the Year _____

Contacted by: _____ Date: _____ By: ___ Letter ___ Phone

Renewed _____ Not Renewed _____

For the Year _____

Contacted by: _____ Date: _____ By: ___ Letter ___ Phone

Renewed _____ Not Renewed _____

For the Year _____

Contacted by: _____ Date: _____ By: ___ Letter ___ Phone

Renewed _____ Not Renewed _____

APPENDIX C: Guidelines for Compliance with the Open Meetings Act

Community acequias are political subdivision of the state and are required to comply with the Open Meetings Act. This generally has not been enforced in the past. However, when some community acequias have been involved in litigation, their opponents have raised questions about whether that acequia operates in compliance with state law, including the Open Meetings Act.

The following are provisions of the Open Meetings Act:

- Meetings shall be held only after there is reasonable notice.
- The acequia shall determine at least annually what is reasonable notice. A sample Open Meetings Act resolution is included in this Appendix.
- Notice must be provided by public posting at least 10 days prior notice for regular (i.e. annual) meetings, 3 days prior for special meetings, and 24 hours prior for emergency meetings.
- There must be a written agenda and it should be available 24 hours prior to the meeting.
- The community acequia may close part of a meeting for Executive Session in matters pertaining to threatened or pending litigation.

The attached sample Open Meetings Act Resolution contains the following provisions:

- Annual and special meetings of the membership require 10 days written and posted notice. This is consistent with Article 3, Section 2 of the Bylaws Template. Most acequias provide notice of their membership meetings by mailing notice. To comply with the Open Meetings Act, notice should also be posted publicly.
- Special meetings of the Commission require 3 days posted notice. This is consistent with Article 2, Section 5 of the Bylaws Template. 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.
- Emergency meetings can be called with 24 hours posted notice. This is not in the Bylaws Template but it is allowed by the Open Meetings Act for unforeseen circumstances that demand immediate action to protect the acequia.
- Please note that the sample Open Meetings Act Resolution provided here is consistent with notice provisions in Jemez Springs Community Ditch Association Bylaws Document.

Jemez Springs Community Ditch Association,
RESOLUTION NO. _____

WHEREAS, the _____ met for its annual membership meeting on _____ at _____; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 10-15-1 to 10-15-4) states that, except as may be otherwise provided in the Constitution or the provision of the Open Meetings Act, all meetings of the _____ are declared to be public meetings and open to the public;

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the Acequia to determine at least annually what constitutes reasonable notice of its public meetings;

THEREFORE BE IT RESOLVED, by the _____ that:

1. All meetings shall be held in a public place in _____.
2. Annual and special meetings of the Membership shall be held in accordance with the Bylaws of the Acequia and notice will be given ten (10) days in advance of the meeting date. Notice shall include *both* public posting *and* notice to parciantes by mail to the addresses as recorded in the records of the Acequia. Notice shall include the date, time, and location of the meeting. Notice shall also indicate how to obtain a copy of the agenda. The agenda should be available no less than 24 hours before the meeting.
3. Special meetings of the Commission shall be held in accordance with the Bylaws of the Acequia. Notice will be given by public posting three (3) days in advance of the meeting date. Notice shall include the date, time and location of the meeting and shall indicate how to obtain a copy of the agenda. The agenda should be available no less than 24 hours before the meeting.
4. Emergency meetings of the Commission shall be called by the Chairman only for purposes that demand immediate attention. Notice shall include the date, time, location, and agenda of the meeting and notice shall be provided 24 hours in advance of the meeting by public posting.
5. An Acequia meeting may be closed to discuss matters such as litigation or personnel, as listed in Section 10-15-1(H) of the Open Meetings Act. If a meeting is closed during an open meeting, the Acequia shall comply with the specific requirements of Section 10-15-1(I) of the Open Meetings Act. The motion calling for a closed meeting shall state the subject to be discussed. Only that subject may be discussed in the closed meeting. The minutes of the Acequia meeting shall make record of the motion and the approval for a closed meeting and shall state whether the discussion in the closed meeting remained limited to the subject mentioned in the motion for closure.

President

Secretary/Treasurer

Commissioner-at-Large

Mayordomo

APPENDIX D: Procedures for Acequia Enforcement

NMAA recommends that conflicts within acequias be resolved to the extent possible by reaching agreements at the local level. However, it may sometimes become necessary for acequia officials to take certain enforcement actions for the common good and to protect the integrity of the acequia. To do so, acequias should clarify their procedures for enforcement of acequia bylaws, rules and regulations. The following are some proposed guidelines for enforcement:

1. When possible, attempt to resolve conflicts with violators by reaching an agreement through discussion. Keep a record of attempts to reach a resolution.
2. The Mayordomo should issue the first citation as an order to stop the violation.
3. If the violation has not ceased after the first citation, the Mayordomo should issue a second citation with a penalty that corresponds to the violation such as suspension of the right to vote, suspension of the right to use the ditch or a monetary fine.
4. After two citations, the Mayordomo should inform the Commission of the ongoing problem. The Commission may take appropriate legal action or direct the Mayordomo to do so. Depending on the violation, the Commissioners and Mayordomo may involve the District Attorney in prosecution.

The attached sample citation can be used for purposes of enforcement.

DESCRIPTION OF PENALTIES

- Failure to contribute peones as required by the Mayordomo. Section 73-2-31 NMSA.
If the parciante fails to provide peones, the acequia may assess the parciante a certain amount to cover the cost of labor. The right of the violator to vote in elections may be suspended until assessments are brought current. Section 73-3-3 states that only those who are not delinquent in the payment of assessments are eligible to vote. Section 73-2-21 provides that the Mayordomo can collect a civil penalty in Magistrate Court from parciantes who fail to provide workers as required by the Mayordomo.
- Failure to pay assessments as required by the Commissioners. Section 73-2-26 NMSA.
The right of the violator to vote in elections may be suspended until assessments are brought current. Section 73-3-3 states that only those who are not delinquent in the payment of assessments are eligible to vote. Section 73-2-21 provides that the Mayordomo can collect a civil penalty in Magistrate Court.
- Interference with the easement of the acequia or access to the easement. Section 73-2-5 NMSA.
Section 73-2-5 defines the acequia easement is defined as being adequate for reasonable use, maintenance and improvements. It provides that interference with an acequia easement or access to the easement is a criminal misdemeanor that can be prosecuted in Magistrate Court by acequia officials or the District Attorney. The acequia officials or District Attorney can also seek injunctive relief in District Court.
- Interference with the acequia. Section 73-2-64 NMSA.
Section 73-2-64 defines cutting, breaking, stopping, or otherwise interfering with the ditch as a criminal misdemeanor that can be prosecuted in Magistrate Court by acequia officials or the District Attorney. The acequia officials or District Attorney can also seek injunctive relief in District Court.
- Illegal use of water from the acequia. Section 73-2-64 NMSA.
Section 73-2-64 defines taking water contrary to order of the Mayordomo or Commissioners as a criminal misdemeanor that can be prosecuted in Magistrate Court by acequia officials or the District Attorney. The acequia officials or District Attorney can also seek injunctive relief in District Court.

CITATION FOR VIOLATION OF BYLAWS, RULES AND REGULATIONS OF JEMEZ SPRINGS COMMUNITY DITCH ASSOCIATION

Date of Citation: _____

Citation Issued To: _____

Type of Violation:

- Failure to contribute peones as required by the Mayordomo
- Failure to pay assessments as required by the Commissioners
- Interference with the easement of the acequia or access to the easement
- Interference with the acequia
- Illegal use of water from the acequia
- Other _____

Date of Violation _____

Description of Violation: _____

PENALTY PER ORDER OF THE COMMISSION:

- This citation shall serve as an order to stop the violation and a written warning that additional violations are subject to certain penalties, fines and/or prosecution in accordance with law.
- The right to vote in acequia elections and right to use water from the acequia is suspended until assessments brought current.
- The violator shall pay a fine of \$ _____ to the acequia for the above described violation.
- The officers of the acequia shall seek fines, penalties, or injunctive relief in Magistrate Court and/or District Court.
- Other _____

On behalf of Jemez Springs Community Ditch Association:

Signature of Mayordomo

Date