

## New Mexico Acequia Association and New Mexico Acequia Commission

Legislative Priorities for 2022 Session

November 12, 2021

### Summary of Budget Requests

Purpose	Agency	Budget Recommendation
Acequia and Community Ditch Fund (ACDF)	NM Department of Agriculture	Increase annual appropriation from \$602,000 to \$1 million
Long-Term Solvency of Irrigation Works Construction Fund (IWCF), funding source for Acequia and Community Ditch Infrastructure Fund (ACDIF)	Interstate Stream Commission	Support OSE/ISC agency request to replace \$9 million of trust fund in their budget with general fund.
Regional Acequia Infrastructure Planning Pilot Projects	Interstate Stream Commission	Support \$500,000 from <u>IWCF</u> for pilot projects
Capital Outlay Projects	Interstate Stream Commission	27 acequias completed ICIPs for requests totaling \$4.4 million. Acequia waiting list for NRCS funds is approx. \$14 million for 80 acequias.
Staff to administer ACDIF and Capital Outlay	Interstate Stream Commission	2.0 FTE \$160,000
Policy Analyst for New Mexico Acequia Commission	DFA - NM Acequia Commission	1.0 FTE \$80,000
Expansion of Acequia and Community Ditch Education Program	DFA - Local Government Division	Increase from \$398,000 to \$500,000 for education, technical assistance, and outreach
Acequia Land Grant Education Project	NM Highlands University	\$50,000 appropriation to develop educational materials and conduct teacher training

### #1 Acequia and Community Ditch Fund (ACDF): Increase Recurring Appropriation

- The Acequia and Community Ditch Fund (ACDF) was created in statute in 1988 to ensure that acequias would have a **fair and equitable defense** in adjudication proceedings.
- The ACDF is used for **attorneys and experts** for acequias to advocate for common elements of water rights such as priority dates, duty of water, etc. For over 30 years, the ACDF has benefitted **hundreds of acequias** and thousands of families with legal representation
- The ACDF is administered by the NM Department of Agriculture (NMDA). Regional acequia associations apply through an **annual grant cycle** and a committee comprised of NMDA, ISC, and NMAC decides funding allocations.
- A recent opinion by the Attorney General affirmed our position that the ACDF can be used for **settlement implementation**, which could increase the need for funding.
- The requests for funding in recent years have been between \$900,000 and \$1 million per year, resulting in hundreds of thousands of **unmet need**.

	FY21	FY22
Legislative Appropriation	\$ 628,039.00	\$ 602,289.00
Available Funds	\$ 573,010.82	\$ 573,609.00
Funding Requests	\$ 999,000.00	\$ 926,000.00
Difference	\$ (425,989.18)	\$ (352,391.00)

Table 1. Unmet Need for ACDIF Funding

**Legislative Recommendation:** Increase annual recurring appropriation as part of the NMDA base budget for the ACDIF from **\$602,289 to \$1 million** per year.

## **#2 Multi-Year Investments in Acequia Infrastructure: Planning, Design, and Construction**

- New Mexico rural communities need **infrastructure equity**, which can be better achieved with multi-year investments in infrastructure. A focus on “shovel-ready” projects will leave rural communities behind due to lack of resources for planning and design.
- For acequias, a priority is to ensure continued recurring funding for the newly created **Acequia and Community Ditch Infrastructure Fund (ACDIF)**. This was created by an act of the Legislature in 2019 and is just starting to fund projects now for FY22. It receives \$2.5 million from the Irrigation Works Construction Fund (IWCF) each year.
- The ACDIF annual appropriation to the ISC supports planning (by ISC staff and contractors), engineering design (cost covered 100%, contracted by acequia), and construction. Acequias can apply for up to \$50,000 to cover 100% of the cost of an engineering design and up to \$250,000 toward the cost of construction.
- However, many acequias will continue to obtain funding through Capital Outlay in which the vast majority of projects have not completed the planning and design phases. Resources for planning and design are necessary for Capital Outlay funding to be spent effectively. Additionally, the large number of CO projects exceeds the capacity of existing ISC staff to administer the projects.

### **Legislative Recommendations:**

- **Restore or Maintain Solvency of the Irrigation Works Construction Fund (IWCF).** The IWCF is the source of recurring funding for the ACDIF. LFC projects from Vol. III FY22 showed the IWCF balance near zero for FY23. However, LFC staff have informed NMAA that the updated projections will show a higher balance. In any case, the IWCF balance should support the ACDIF plus other potential infrastructure projects in coming years. To reduce depletion of the IWCF, NMAA supports the OSE/ISC agency recommendation to replace **\$9 million** in trust fund monies in the agency budget with General Fund.
- **Regional Infrastructure Plans.** These would be a precursor to engineering designs for individual acequias. A regional infrastructure plan would include developing an asset inventory with an assessment of the condition of acequia infrastructure. This can enable better planning for securing resources for the engineering design phase and eventually construction. By working regionally, acequias can leverage resources. NMAA will request **\$500,000** from the IWCF for regional pilot projects.
- **Incentivize ICIPs with actual Capital Outlay Funds.** Some acequias go through a planning process to identify priorities and funding sources. However, there is no correlation between an ICIP and CO

funding. In preparation for the 2022 session, 27 acequias completed ICIPs with requests totaling **\$4.4 million**. Additional demand can be estimated from the waiting list for the NRCS RCPP program in which 80 acequias have requested assistance for design and construction. The construction need is estimated at **\$14 million**.

- **Funding for Staff and Contractors at ISC.** Two factors will increase the need for more staff: 1) Implementation of the new ACDIF which includes assistance to acequias during the PLANNING PHASE and 2) a projected surge in Capital Outlay due to the significant amounts of STB and GF available for capital projects. NMAA will request **\$160,000 for 2.0 FTE** for the ISC acequia program.

**Table 2. Acequia Infrastructure Capital Improvement Plans**

Prepared by the New Mexico Acequia Association

Acequia Name	County	ICIP
Pleasanton Eastside Ditch Association	Catron	\$750,000.00
Acequia Madre de San Mateo	Cibola	\$670,000.00
Anton Chico, Acequia de Tecolotito, Los Ranchitos	Guadalupe	\$262,000.00
Avent-Bracken Ditch Users Association	Lincoln	\$20,000.00
Maxwell Acequia Association	Lincoln	\$50,000.00
Ambrosio Chavez #1	Lincoln	\$100,000.00
Cleveland Mill Ditch	Mora	\$41,000.00
Cassidy Ditch	Mora	\$225,000.00
Los Salazares Community Ditch	Rio Arriba	\$96,840.00
La Cueva Ditch Association	Rio Arriba	\$20,000.00
Acequia de los Herreras	Rio Arriba	\$74,000.00
Polvadera Acequia #1	Rio Arriba	\$275,000.00
Acequia Del Medio	Rio Arriba	\$125,000.00
Acequia Mesa del Medio	Rio Arriba	\$430,000.00
Acequia de la Canada Ancha	Rio Arriba	\$62,920.00
Acequia de la Plaza de Dixon	Rio Arriba	\$200,000.00
Vallecitos West Ditch Association	Rio Arriba	\$60,000.00
Eledge Ditch	San Juan	\$160,000.00
North Farmington Ditch	San Juan	\$95,000.00
Acequia de la Agua Caliente	San Miguel	\$75,000.00
Acequia de los Vecinos de Los Vallecitos West	San Miguel	\$55,000.00
Ancon del Gato	San Miguel	\$91,000.00
Acequia de los Indios	Santa Fe	\$75,570.00
Las Acequias de Chupaderos	Santa Fe	\$100,000.00
Acequia de la Capilla	Santa Fe	\$136,500.00
Acequia Del Rancho	Santa Fe	\$55,000.00
Monticello Community Ditch	Sierra	\$68,456.00

**\$4,373,286.00**

**Table 3. IWCF Fund Balances from LFC Vol. III Supplemental Tables and Charts FY22.**

(NOTE: LFC has informed NMAA that these balances need to be updated and will be available in the LFC Vol. III for FY23.)

## Office of the State Engineer Fund Balances

IRRIGATION WORKS CONSTRUCTION FUND (326)					
	Actual	Pre-Audit	Projected		
	FY19	FY20	FY21	FY22	FY23
<b>BEGINNING BALANCE</b>	<b>\$15,496,439</b>	<b>\$16,248,298</b>	<b>\$13,438,596</b>	<b>\$3,990,896</b>	<b>\$2,044,196</b>
<b>REVENUE</b>					
Permanent Fund	\$6,968,489	\$6,968,762	\$6,700,000	\$6,700,000	\$6,700,000
Interest/Loans	\$19,059	\$17,469	\$15,000	\$15,000	\$15,000
Lease Income	\$988,106	\$808,139	\$750,000	\$750,000	\$750,000
Investment Income (Loss)	\$1,798,600	\$3,250	\$0	\$0	\$0
Miscellaneous	\$128,709	\$5,500	\$25,000	\$25,000	\$25,000
Adjustments					
<b>TOTAL REVENUE</b>	<b>\$9,902,963</b>	<b>\$7,803,120</b>	<b>\$7,490,000</b>	<b>\$7,490,000</b>	<b>\$7,490,000</b>
<b>EXPENDITURES</b>					
Specials & BAR Authority			\$1,850,000		
Operating Budget	\$9,151,104	\$9,612,822	\$11,587,700	\$5,936,700	\$11,587,700
Forestry Fund		\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Acequia Fund			\$2,500,000	\$2,500,000	\$2,500,000
<b>TOTAL EXPENDITURES</b>	<b>\$9,151,104</b>	<b>\$10,612,822</b>	<b>\$16,937,700</b>	<b>\$9,436,700</b>	<b>\$15,087,700</b>
<b>ADJUSTED BALANCE</b>	<b>\$16,248,298</b>	<b>\$13,438,596</b>	<b>\$3,990,896</b>	<b>\$2,044,196</b>	<b>(\$5,553,504)</b>

### #3 Capacity Building for Acequias Statewide

- The **New Mexico Acequia Commission (NMAC)** is a governor-appointed advisory body that advises the State Legislature and Governor on policies affecting acequias. However, the NMAC has a minimal budget to achieve its statutory purpose of advising on policy as well as on infrastructure needs of acequias. Additional staff will enable NMAC to do FIRs during the legislative session and to serve as a liaison with ISC on acequia infrastructure needs. NMAA and NMAC are recommending **\$80,000 for 1.0 FTE** for a policy analyst.
- The **New Mexico Acequia Association (NMAA)** works to implement the Acequia and Community Ditch Education Program (ACDEP), which is funded through a Professional Services Contract with DFA. The program supports community education for acequias, stakeholders, and youth. NMAA is proposing to increase outreach in FY23 to address drought, climate change, governance, and infrastructure as well as to increase resources for youth education, including development of an acequia curriculum. NMAA and NMAC are recommending an increase in the program from **\$398,000 to \$500,000** for additional attorney staff, education and outreach, and development of educational materials.

- Continue support for the **Acequia and Land Grant Education Project (ALGE)**, which is a partnership between NMAA, UNM Land Grant Studies, and the Center for the Education and Study of Diverse Populations (CESDP) and NM Highlands University. This program has received \$50,000 per year of non-recurring funds for two years. We recommend this continue for FY23.

#### **#4 Conservation Funding**

- **Climate and Conservation Fund.** A bill may be introduced to create a new trust fund dedicated to conservation funding. An expendable trust fund would add new revenue streams to existing conservation programs in various agencies including EMNRD, NMED, and ISC (including the Acequia and Community Ditch Infrastructure Fund). NMAA supports the concept. It is uncertain whether this bill is germane.
- **Natural Heritage Conservation Act** (HB 265 from 2021 session). More work is needed to ensure that acequias and land grants can equitably participate in this program, the purpose of which is to support conservation, working lands, watersheds, wildlife, etc. through acquisitions by political subdivisions. It is uncertain whether changes will be made or whether this legislation would be germane.

#### **#5 Other Policy Concerns: Water Leasing and Preliminary Approvals by OSE**

- A District Court Judge (Romero) ruled that the **OSE is not authorized to grant preliminary approvals** in water use leases. Until this works its way through the courts, the OSE should discontinue the practice.
- Since 2015, NMAA and other advocates have sought to strengthen due process protections in the Water Use Lease Act and affirm existing protections in law. Legislation has failed.
- Any future legislation that seeks to change the Water Use Lease Act (WULA) should be developed in a manner that upholds the long-standing protections in New Mexico law for existing water rights.
- The process for developing future legislation should engage diverse stakeholders including acequias and community land grant-mercedes.
- Because the positions differ so widely between industry and acequias/conservation organizations/community groups, this **legislation would not be appropriate for a 30-day session**. If any changes to WULA are contemplated, the soonest legislation could be proposed would be 2023 and only after a robust and inclusive stakeholder process.