



Acequia Water Rights: Adjudication, Administration, and Water Sharing

Presentation to the Land Grant Legislative Interim Committee

Thursday, August 13, 2020

Background: Land grant-mercedes and acequias

- Acequia and land grants have a shared history. Most acequias, but not all, were established in the settlement of the community land grant-mercedes.
- Although they have this shared history, their legal definition and status as local governments have evolved differently. Land grants and acequias are governed by different statutes.

Territorial Period and 1907 Water Code

- Acequias remained intact and expanded significantly during the New Mexico Territorial period. The 1907 territorial water code was a comprehensive code that defined governance of water.

Statehood, Constitution, and Acequia Statutes

- The Constitution recognized all pre-1907 water rights, including those that were acequia-based. Water rights are governed by the water code and acequias are governed by Chapter 72 Articles 2 and 3 as “Special Districts” and were defined as political subdivisions of the state in 1965.

Prior Appropriation v. Water Sharing

- Before statehood, acequias had ancient customary practices, referred to as the **repartimiento**, to share water. Conflicts were addressed internally among acequias or through the courts.
- With the 1907 water code, the NM Constitution, and subsequent statutes, New Mexico adopted the **prior appropriation doctrine** and established the State Engineer as the state's water administrator.
- Acequias have continued to practice **water sharing traditions** informally as a way to equitably distribute water within acequias and between acequias. Agreements may be verbal or written and they may or may not involve the State Engineer.
- The State Engineer has the power to administer water by **strict priority** or may use "**alternative administration**," which can include locally adapted water sharing agreements.
- Water sharing agreements can occur with or without adjudication. Some are developed as part of negotiated settlements or as part of post-settlement water administration.

Adjudication: Decades-Long Legal Proceedings

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.,
S. E. Reynolds, State Engineer,

Plaintiff,

vs.

United States of America, Pueblo de
San Ildefonso; Pueblo de Pojoaque;
Pueblo de Nambe; Pueblo de Tesuque;
Lee R. Aamodt; Procopio Acuna; Simon
and Eddie Acuna; E. H. Alexander; Ted
Amsden; Thomas Anderson; Albert Aragon;
Joseph M. Aragon; Ernesto Arch
Armando Archuleta; Eduardo Arch
Esteban Archuleta; Leo P. Arch
Virgin Archuleta; Kelly Arma

6639

Civil Action

FILED
AT ALBUQUERQUE

APR 20 1966

WM. D. BRYARS
CLERK

Filed in 1966
Settled in 2013

Parciantes
named as
DEFENDANTS



Adjudication and Acequias

Determining elements of a water right such as ownership and quantity. The following are **elements of a water right**:

- Priority date
- Duty of water
- Point of diversion
- Purpose and place of use
- Owner
- Acreage

Acequia parciantes are named as **defendants** and must defend their water rights in court proceedings.

Water rights adjudication court proceedings are **very complex** and differences between parties are often resolved through years-long negotiated settlements.

It is vitally important for acequias to have competent **legal representation and access to experts** for hydrological and historical research.

Acequia and Community Ditch Fund

- 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 through regional acequia associations.
- The ACDF is allocated through a grant process to **regional acequia associations** who represent multiple acequias. The distribution committee is comprised of representatives of the NM Department of Agriculture, Interstate Stream Commission, and the NM Acequia Commission.



Policy Concern: Use of the ACDF for implementation of negotiated water right settlements

- Negotiated settlements that are reached to resolve adjudication suits are highly **technical and complicated**.
- Acequias who are parties to settlements need legal representation and technical experts to advise on their role in implementation and compliance with settlements.
- The NM Acequia Association and NM Acequia Commission have taken the position that acequias that are involved in activities related to the adjudication process, including **settlement implementation**, are eligible for the ACDF.
- The ACDF distribution committee recently reviewed applications including one from the Pojoaque Valley Regional Acequia Association, which is subject to the Aamodt settlement.
- The committee voted to allocate funding from the ACDF to PVRAA contingent on an **Attorney General opinion** regarding their eligibility.

ARTICLE 2A

Acequia and Community Ditch Fund

73-2A-1. Short title.

This act [73-2A-1 through [73-2A-3](#) NMSA 1978] may be cited as the "Acequia and Community Ditch Fund Act".

History: Laws 1988, ch. 157, § 1.

73-2A-2. Purpose of act.

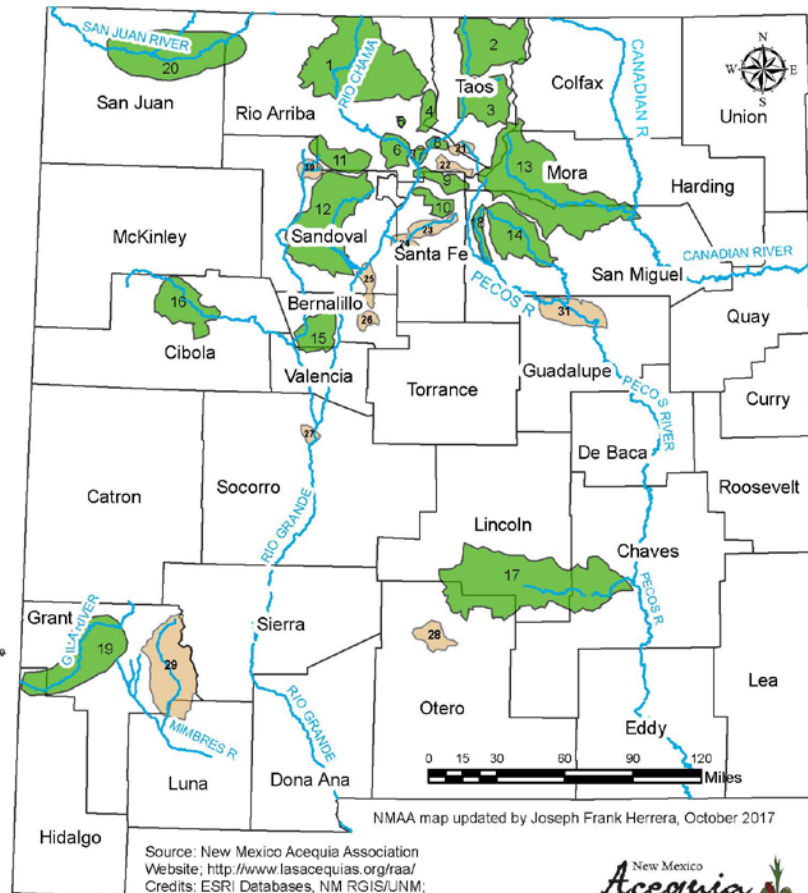
The purpose of the Acequia and Community Ditch Fund Act [[73-2A-1](#) NMSA 1978] is to provide financial assistance to acequias and community ditch systems to develop hydrological studies, acquire technical and legal research and other information and services necessary to conserve and protect water for New Mexico's future through the adjudication of water rights.

History: Laws 1988, ch. 157, § 2.

73-2A-3. Fund created.

A. An "acequia and community ditch fund" is created in the state treasury, to be expended upon order of the director of the New Mexico department of agriculture to carry out the purposes of contracting with acequia and ditch associations constituting a majority of acequias or ditches within an adjudication suit or a separately administered portion of an adjudication suit to provide assistance to acequias and community ditch associations in the adjudication process, including historical studies, economic impact reports, expert witness fees, legal fees and other technical services related to the adjudication process.

Congreso de las Acequias Regional Acequia Associations



NM Acequia Regions

- Type 1 Region
- Type 2 Region



The Congreso de las Acequias is the governing body of the New Mexico Acequia Association, a federation of regional acequias. The delegates to the Congreso can come from two types of regions.

Type 1 Regions:

- 1) La Asociación de las Acequias Norteñas del Rio Arriba
- 2) Northern New Mexico Water Protection Association
- 3) Taos Valley Acequia Association
- 4) Rio Vallecitos, Rio Tusas, Ojo Caliente Acequia Association
- 5) El Rito Acequia Association
- 6) Rio de Chama Acequia Association
- 7) Las Nueve Acequias del Rio Grande
- 8) Embudo Valley Acequia Association
- 9) Rio Quemado, Rio en Medio, Rio Frijoles, Rio Santa Cruz Acequia Association
- 10) Pojoaque Valley Regional Acequia Association
- 11) Gallina/Capulin Acequia Association
- 12) Jemez River Valley Coalition of Acequias
- 13) La Asociación de las Acequias de Mora
- 14) Rio de las Gallinas Acequia Association
- 15) South Valley Regional Acequia Association
- 16) Association of Community Ditches of the Rio San Jose
- 17) Upper Hondo Water Users Association
- 18) Cow Creek Basin Regional Acequia Association
- 19) Gila Basin Irrigation Commission
- 20) San Juan Agricultural Water Users Association
- 21) Rio Santa Barbara Unified Acequia Association

Type 2 Regions:

- | | |
|---------------------------------|-------------------------|
| 22) Las Trampas | 34) Tesuque |
| 23) Santa Fe | 35) North Valley |
| 24) La Cienega | 36) Rio Costilla |
| 25) Las Huertas | 37) Rio Pueblo |
| 26) Carnuel/Tijeras/San Antonio | 38) El Valle/ Ojo Sarco |
| 27) La Joya | 39) Rio Sapello |
| 28) Tularosa | 40) Upper Rio Pecos |
| 29) Rio Mimbres | 41) Tecolote |
| 30) Nacimiento | 42) Santa Teresita |
| 31) Puerto de Luna | 43) San Francisco |
| 32) Chamisal y Ojito | 44) Truchas |
| 33) Estancia Valley | 45) Dilia/Anton Chico |

NMAA map updated by Joseph Frank Herrera, October 2017

Source: New Mexico Acequia Association Website, <http://www.lasacequias.org/raa/>
Credits: ESRI Databases, NM RGIS/UNM; U.S. Environmental Protection Agency.

*Please note: This map is a work in progress and is not a comprehensive representation of acequia associations across the state.

Areas of the state affected, including acequias within land grant-mercedes, where there are ongoing adjudications:

Taos Valley Acequia Association
Including Talpa, Valdez, Cañon,

La Asociacion de las Acequias Nortenias de Rio Arriba
Including Tierra Amarilla, Los Ojos (Parkview).

Gallina/Capulin
Including Gallina, Youngsville.

Association of Community Ditches of the Rio San Jose
Including Ceboyeta, San Mateo.

Rio Chama Acequia Association
Including Abiquiu, Medenales, Chamita, Chili, etc.

Questions?

