



**Water and Natural Resources  
Legislative Interim Committee**  
November 8, 2019  
Presentation by Paula Garcia

**Background:**

- New Mexico is home to hundreds of acequias. The most recent inventory by NMAA includes 659 acequias in 23 counties.
- Acequias and community ditches were established between 1600s and 1800s. Their member parciantes (irrigators) have pre-1907 water rights.
- Acequias have maintained a relatively strong level of local autonomy in local water governance, allocation of water, and the maintenance of irrigation infrastructure. Acequias are political subdivisions of the state.
- Chapter 73, Articles 2 and 3 (NMSA 1978) are devoted to acequia governance. Acequia-based water rights are also subject to the laws of the state and the administration by the State Engineer according to Chapter 72, the Water Code.







## Implementation of Water Rights Settlements

The Acequia and Community Ditch Fund (ACDF) was established in 1988 to provide resources to acequias undergoing adjudication to obtain legal representation and experts for their legal defense. Some adjudications have resulted in negotiated settlements.

Because of the highly technical nature of settlement provisions, the need for legal representation continues during settlement implementation. NMAA's position is that it should be allowable to use the ACDF for settlement implementation. However, the committee allocating ACDF funding, based on an interpretation of the statute by the Office of the State Engineer, has determined that post-settlement acequias do not qualify for the ACDF.

- Recommendation: Amend the Acequia and Community Ditch Fund Act to include settlement implementation as part of the adjudication process thereby allowing regional acequia associations who are in the implementation phase to access resources for experts and attorneys regardless of whether a final decree has been entered.





## Infrastructure

Interstate Stream Commission (ISC) is the agency that administers acequia capital outlay funding and other state funds. In 2019, acequias received close to \$9 million in capital outlay including a \$2 million special appropriation. Also, the legislature created the Acequia and Community Ditch Irrigation Fund, which appropriates \$2.5 million annually from the Irrigation Works Construction Fund to the ISC to spend on acequia project design and construction.

- Recommendation: Provide additional staffing to the ISC so that acequia projects are administered in an effective and timely manner and so that acequia volunteers have access to technical expertise in managing their projects.
- Recommendation: Acequias should be able to apply to the new infrastructure fund for engineering design and then use the completed design to apply for construction funding.
- Recommendation: Protect long-term solvency of the Irrigation Works Construction Fund by restoring funding to the OSE-ISC from the General Fund for agency staff.





## Water Rights, Water Transfers, Water Leases

Online Notifications. SB 12 (Cisneros, Salazar) passed in the 2019 session changed statute to require that public notice of water applications be provided online on the State Engineer website. This improves due process for water right owners who may be affected by the application.

Acequia Authority over Water Transfers. In 2003, the legislation was enacted to allow acequias to approve or deny water transfers into our out of their respective acequias, provided appropriate language is included in their bylaws.

Water Leases. Water leases are temporary water transfers that are subject to the same due process protections as water transfers. In the 2019 session, HB 17 (Chandler, Wirth) made certain that the same process afforded to acequias from the 2003 law was also followed for water lease applications.

“Preliminary Approval” in Water Leases. There is an ongoing concern about a misapplication of the Water Leasing Act (Section 73-5-6) by the State Engineer in which permits are being granted without due process protections that are in state law. For example, a permit for a water lease was granted in the Upper Hondo and hundreds of protests were filed, but the permit was allowed to continue. The use of water was granted by permit without the administrative hearing process being completed. We have raised a concern that this is a misapplication of the water lease statute and is overreach by the executive branch.

- Recommendation: Hold a legislative hearing on water lease applications with a focus on the OSE approving permits without first completing the administrative hearing process on protested applications.





**Other Policy Issues of Importance:**

Watershed Health

Farmer Training and Apprenticeships

US Forest Service Management Plans, Traditional Uses

Water Quality Concerns – Terrero Mine, Municipal Wastewater

**Attachments:**

Map of Acequia Regions in New Mexico

Acequia and Community Ditch Fund Act. Section 73-2A-1 through 3.

NMAA 2019 Resolutions on ACDF and Acequia Infrastructure Fund

List of Funding Sources for Acequia Projects

**Available Upon Request:**

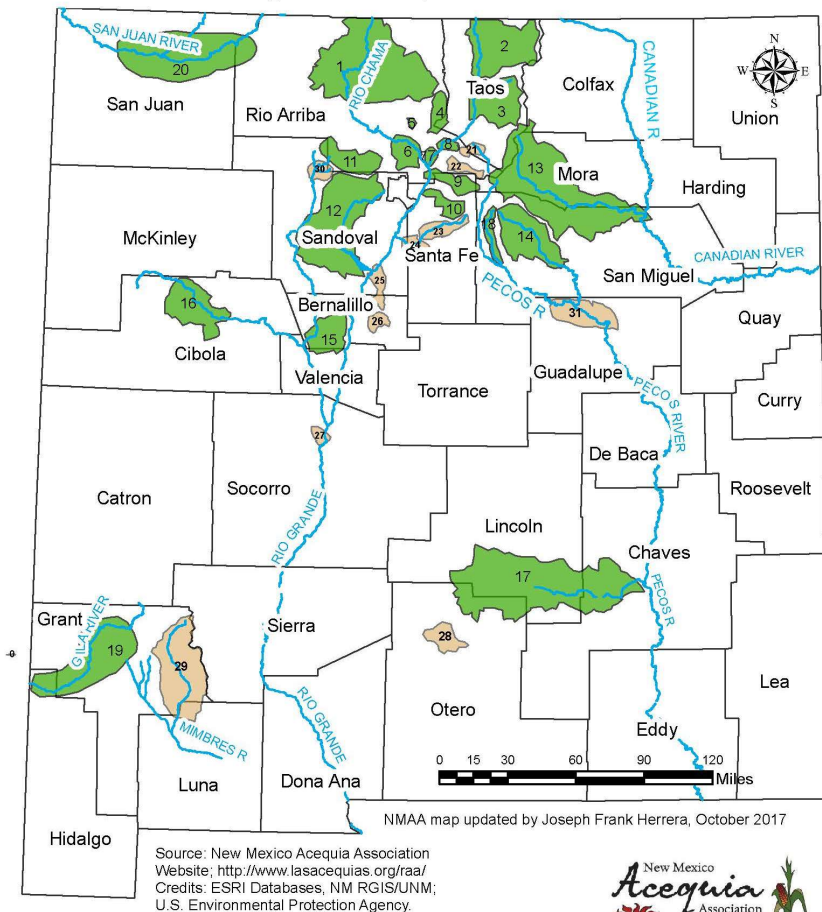
Acequias by County

US Forest Service Acequia Guidance Document





## 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.

## **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.

B. Money in the acequia and community ditch fund may be used to enter into agreements for grants-in-aid to satisfy costs and expenses incurred by acequias and community ditch associations. The amount of funding provided to acequia and ditch associations in any given year shall be determined by a simple majority of a committee consisting of the director of the New Mexico department of agriculture, the chairman of the interstate stream commission and a third person who will be elected from within the New Mexico acequia commission. The committee shall consider financial need, progress of the adjudication and the trial schedule; however, the committee is not limited to these factors in awarding grant agreements. No more than one-fourth of the money allocated from the acequia and community ditch fund shall be allocated to one acequia association provided, however, that at least the eight most qualified applicant associations may be considered to receive money that is in the fund and available for any given fiscal year. The committee shall consider the state engineer's report on the eligibility and priority of applicants for funds. Disbursement of the fund shall be made upon a warrant drawn by the secretary of finance and administration transferring money in the fund to the New Mexico department of agriculture for expenditure pursuant to vouchers signed by the director or his representative. Balances in the fund at the end of any fiscal year shall not revert to the general fund and may be expended to carry out the purposes of the Acequia and Community Ditch Fund Act [73-2A-1 NMSA 1978].

**History:** Laws 1988, ch. 157, § 3; 1989, ch. 324, § 34; 1991, ch. 76, § 1; 1993, ch. 99, § 1; 1994, ch. 30, § 1.



### **Interstate Stream Commission**

90-10 Program: \$1.9 million for acequia projects

*Starting in 2020: \$2.5 million available per year*

Acequia Loan Program: 2% Loans

- Contact: Jonathan Martinez
- 505-827-6160, JonathanC.Martinez@state.nm.us



### **NM State Legislature**

Capital Outlay: Amount available varies.

- Contact: Your State Legislator, List is at [www.nmlegis.gov](http://www.nmlegis.gov)

### **Water Trust Board**

- Contact: NM Finance Authority 505-984-1454, [www.nmfa.net](http://www.nmfa.net)



### **NRCS Regional Conservation Partnership Program (RCPP)**

NM Association of Soil and Water Conservation Districts

- Contact: Your NRCS District Conservationist
- Contact: Norman Vigil 575-684-0042, norman.vigilsr@outlook.com
- NMAA can provide a list of names and phone numbers



### **USACE Acequia Program**

- Funding for larger projects greater than \$500k
- Contact: Jonathan Martinez from ISC



**US Army Corps of Engineers**