

Resolution 2019-02

Supporting the Use of the Acequia and Community Ditch Fund for Implementation of Water Right Adjudication Settlements

WHEREAS, the Acequia and Community Ditch Fund (“ACDF”) was established in state law in 1988 and codified as Sections 73-2A-1 through 3 (NMSA 1978) for the purpose of providing financial support to acequias in need of legal, hydrological, historical and other technical services related to the water right adjudication process;

WHEREAS, the New Mexico Department of Agriculture (“NMDA”) administers the fund as a grant program with an annual funding cycle in which regional acequia associations constituting a majority of acequias within an adjudication suit can submit applications for funding;

WHEREAS, the text of the law explicitly states that funds can be used for any services “related to the adjudication process” and the NMDA’s guidelines in administering the ACDF state that the “New Mexico Legislature intended the ACDF to be used to provide the greatest benefit to aid acequia and community ditch associations in defending [their] water rights”;

WHEREAS, many regional acequia associations organized themselves in several basins involved in various adjudication lawsuits including the *Aamodt* (Nambe, Pojoaque, Tesuque), *Abouseman* (Jemez), *Aragon* (Rio Chama, El Rito, Gallina-Capulin, Ojo Caliente), *Abeyta* (Taos), and *Abbott* (Santa Cruz, Truchas) adjudications for the purpose of defending acequia water rights and have qualified for the ACDF;

WHEREAS, many of these adjudication lawsuits involved or are likely to involve complex settlement agreements that may bring to a close decades of costly and contentious litigation and may occur prior to or post entry of a final decree of water rights;

WHEREAS, settlement agreements bind all the parties to the agreement into perpetuity and often are complex, involving a number of concessions from the water right owners, and therefore have long-term impacts on acequias;

WHEREAS, it has been over thirty years since the ACDF law was enacted and during that time the fund has successfully enabled regional associations of acequias to secure the services of attorneys and experts to provide legal defense for the common elements of water rights of their parciantes;

WHEREAS, the ACDF has played a vital role in the legal representation of acequias ensuring that the process was more fair and equitable and was critically important so that acequias could ably participate in negotiation of water right settlements involving Indian water rights;

WHEREAS, in recent years, Indian Water Rights Settlements directly impacting acequias were reached and signed in the *Aamodt* and *Abeyta* lawsuits and implementation of the settlements is underway, requiring local acequias and regional associations of acequias to be engaged with other parties to the settlement and in the administration of water rights by the Office of the State Engineer;

WHEREAS, this engagement requires time and effort of acequia officials at the local and regional level and often requires consultation with attorneys or other experts;

WHEREAS, to date, at least one regional acequia association has sought resources through the ACDF application process to cover the cost of its activities related to post-final decree implementation of a water rights settlement;

WHEREAS, the Office of the State Engineer does not support the request based on an interpretation that the ACDF is available only to acequias in adjudications that have not gone to final decree;

Whereas, this has raised more awareness about the need for resources to be made available to acequias for settlement implementation regardless of when the implementation occurs, namely whether it occurs before or after entry of a final decree;

THEREFORE, BE IT RESOLVED, that the New Mexico Acequia Association supports the eligibility of regional acequia associations for the ACDF for the purposes of implementation of water rights settlements regardless of when settlement implementation is set to occur;

BE IT FURTHER RESOLVED, that the NMAA supports efforts to (1) change the State Engineer's interpretation of the ACDF statute, (2) urge the NMDA to interpret the ACDF statute broadly in order to effectuate the intent of the legislature to provide the greatest benefit to acequias in the adjudication process, and/or (3) advocate for a change to the statute governing the ACDF to allow for eligibility of regional acequia associations for administration and implementation of water rights settlements and decrees resulting from the water right adjudication process;

BE IT FURTHER RESOLVED, that copies of this Resolution will be forwarded to the Governor, State Legislative leadership, New Mexico Acequia Commission, Secretary of the New Mexico Department of Agriculture, State Engineer, and Interstate Stream Commission.