



**Water and Natural Resources Legislative Interim Committee**  
 Report from the New Mexico Acequia Association  
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 August 26, 2016

**Outline**

1. Background and Overview of Acequias	1
2. Policy Issues	
a. Infrastructure Funding	3
b. Water Rights	4
c. Legal Training	4
d. Concerns with State and Federal Regulations	4
3. Statewide Acequia Needs Assessment	5
4. Outreach and Technical Assistance: Acequia and Community Ditch Education Program	6



*NMAA held six audit and budget workshops with 234 participants, attended 14 acequia meetings with 480 participants, and provided 474 technical assistance services in FY16. Last fiscal year, NMAA completed 30 bylaws and 50 ICIPs. There are an estimated 700 community acequias in New Mexico. NMAA provides monthly written reports and presentations to the Governor-appointed NM Acequia Commission. Photo - Membership meeting of Association of Community Ditches of the Rio San Jose in Grants, NM.*

**1. Background and Overview**

- a. Acequias and community ditches are historic, community-based institutions that have managed water at the local level for centuries in New Mexico. Chapter 73 of the New Mexico Statutes, entitled Special Districts, contains two articles that govern acequias, Articles 2 and 3. Acequias have members, or parciantes, who have agricultural land and water rights served by the acequia. State statute defines acequias and community ditches as political subdivisions of the state. In their role as local governments, acequia elected officials manage the allocation of water, maintain and improve irrigation infrastructure, and govern the acequia.

- i. Acequias and community ditches were generally established between the early 1600s and the 1800s and typically have pre-1907 water rights.
- ii. Acequias have maintained a relatively strong level of local autonomy in local water governance, particularly in the day-to-day allocation of water and the regular maintenance of irrigation works.
- iii. New Mexico is unique in the United States as having two articles in state law, Chapter 72, Articles 2 and 3, devoted to acequia governance. Acequia-based water rights are also subject to the laws of the state and the administration of New Mexico's water by the State Engineer, Chapter 72, known as the "Water Code."
- iv. While acequias have continued centuries-old customs and traditions, they have also been integrated into New Mexico's modern framework of government in their definition as "political subdivisions of the state" according to Section 73-2-28, NMSA 1978.
- v. There are an estimated **700 acequias** in New Mexico that continue their vital role as local democratic institutions that manage water for the benefit of their member irrigators, known as "parciantes." The attached MAP and LIST BY COUNTY shows the general locations of acequias.



*Acequia de las Jollas in Nambe, NM, used a combination of USDA RCPP funds and ISC 90-10 funds to replace aging acequia infrastructure. NMAA completed an ICIP and assisted assembling a funding package aligned with the design and construction phases.*

## 2. Policy Issues

### a. Infrastructure Funding

i. Acequias and community ditches have unique infrastructure needs and construction projects require good planning and technical assistance. Like other governmental entities, they also need a reliable and transparent method to fund projects.

### ii. Sources of Funding

1. State Funds include the ISC 90-10 program, appropriations to ISC, Capital Outlay, Water Trust Board.
2. Federal Funds include the NRCS RCPP Program, the NRCS Acequia Initiative, and the Army Corp of Engineers Acequia Program.
3. Local Funds include Soil and Water Conservation Districts and Acequia assessments.

Different types of funding are suitable for specific projects with some sources lending themselves better to small or medium projects (90-10, RCPP, Capital Outlay, Local) while others are more suitable for larger projects (Water Trust Board or Army Corp of Engineers). Some sources are more accessible than others depending on eligibility requirements and the rigor of the application process.

### iii. Concerns with Acequia Infrastructure Funding

1. The ISC 90-10 program is at risk because of depletion of the Irrigation Works Construction Fund (IWCF).
2. All acequia Capital Outlay projects were vetoed after the 2016 legislative session. Acequias, like all other local governments, should have access to Capital Outlay for well-planned projects, especially those that utilize a variety of funding sources.

### iv. Challenges in Funding and Managing Acequia Projects

1. Governance Capacity. Acequia projects carry significant responsibilities and time commitments for volunteers. Technical assistance to strengthen governance is an ongoing need.
2. Planning and Engineering Design. More resources are needed to fund the engineering design phase. Existing funds can be realigned to meet this need.
3. Funding for Construction Completion. Entities that fund acequias should ensure funds can complete a phase of the project.

### v. Strategies that are Working

1. Partnerships. NMAA, NMACD, ISC and local SWCD are partnering to improve technical assistance, planning, design, and funding. The attached FLOW CHART illustrates the process used by partners.
2. Phased Design and Construction. Acequias should complete a design before asking for construction funding.
3. Infrastructure Capital Improvement Plans. ICIPs are good tools to outline priorities, funding sources, and timelines.

## b. Water Rights

- i. NMAA supported SB 493 (Wirth-Nunez) which would have protected due process and added clarity to existing law that water leases are effective after publication and protests (if any) are completed. The bill did not pass nor did SB 665 (Griggs) which would have provided exceptions to the existing lease process. NMAA is in discussions with the State Engineer on this matter.
- ii. Water Masters and Metering. The OSE is developing Basin Specific Regulations for certain basins and NMAA plans to provide comment. NMAA also assists acequias in interpreting metering agreements. Additional work is needed in some areas to clarify the role of the water master in relation to mayordomos. In some areas, acequias are concerned that the OSE defined Project Delivery Requirement does not provide adequate pressure head for irrigation.
- iii. Other water issues. NMAA continues to assist acequias with implementation of water transfers statutes authorizing acequias to approve or deny water transfers. In some areas, acequias are involved in protests against applications for new appropriations or transfers. An acequia in Mora County is protesting the ISC application to appropriate water for an instream flow water right on the Canadian Basin.

## c. Legal Training

- i. NMAA supported SB 38 (Ortiz y Pino) which would create a program at UNM Law School to expand the number of attorneys with expertise in land grants, acequias, and colonias.

## d. Concerns with State and Federal Agencies

- i. Permitting requirements through the EPA Waters of the US regulations are overly burdensome for acequias. The EPA guidelines for “Waters of the US” require that activities on “navigable waters,” or those waters with a “significant nexus” require Section 404 permits from the Army Corp of Engineers. These regulations are causing excessive project costs and disruption of irrigation on acequias with long-standing water rights and irrigation infrastructure.
- ii. Wilderness Designations. Acequias continue to be concerned about the proposed Pecos Wilderness expansion. Wilderness designations restrict access for watershed restoration as well as acequia repairs and improvements.
- iii. Acequias in areas with Critical Habitat designations for Endangered Species are concerned about the impact on agriculture. Additional environmental reviews increase the costs of acequia projects and a designation could halt projects.
- iv. The State Historic Preservation Office (SHPO) recently began requiring archeological clearances for acequia projects, increasing projects costs and extending critical timelines for completing projects.

### 3. Acequia Statewide Needs Assessment

In 2015, NMAA inventoried 533, most of them through direct contact by subcontractors between January and June 2015. **Out of 533 acequias, 375 were surveyed for a total response rate of 70.4%.**

- a. **Bylaws:** Bylaws are vital to acequia governance because they provide a common framework for the management and operations of the acequia and they are required by state law, Section 73-2-21(6), NMSA 1978. The vast majority of the acequias surveyed, 90%, responded that they have bylaws. Of the acequias surveyed, it appears that more than half of those acequias (57%) have bylaws that are relatively up-to-date.
- b. **Financial Compliance:** The Audit Act requires special districts, including acequias and community ditches, to comply with annual audits or the tiered reporting system. DFA administrative rules require annual budget approvals and quarterly reports. With regard to compliance with the OSA Tiered Reporting System, 25% of acequias responding to the survey indicated that they were in compliance. With regard to compliance with DFA budget and financial reporting requirements, 13% of acequias responding to the survey indicated that they had complied. NMAA is cross-referencing this data with the respective agencies. More education and outreach is needed in this area.
- c. **Infrastructure Planning and Funding:** Gaining an understanding of acequia infrastructure needs and priorities is essential to planning. Both state and federal funding is available for acequias and an assessment of infrastructure needs and overall cost estimates is needed for agencies to plan accordingly.
  - i. The data from the survey indicate that nearly two-thirds (64%) of New Mexico's acequias are dealing with impending infrastructure problems including significant failures that are imminent. Changing weather patterns have exacerbated infrastructure issues, particularly when flooding alters the course of rivers and affects the effectiveness of their historic diversions. Other flooding issues include damage to diversion dams, breaking of ditch banks, and excessive silting.
  - ii. According to the survey data, the top infrastructure priority was diversion dams/main headgates at 40% of responses. So, almost half of acequias surveyed indicated that their top priority is to repair or replace their primary irrigation structures. It is important to note that this infrastructure is also the most expensive and requires the highest level of technical assistance.
  - iii. According to survey data, 22% of acequias responding to the survey had completed an Infrastructure Capital Improvement Plan (ICIP). The ICIP is a useful planning tool for the acequia to outline projects over a five-year timeframe and to prioritize those projects on an annual basis. The ICIP is also a tool to identify cost estimates for projects as well as funding sources that are secured or pending.
- d. **Open Meetings Act (OMA) and Inspection of Public Records Act (IPRA).** As political subdivisions of the state, acequias are required to follow OMA and IPRA. Acequias often have questions about compliance. According to survey data, 43% had an OMA resolution. More outreach and education is needed in this area.

**4. Acequia Outreach and Technical Assistance: Acequia and Community Ditch Education Program**

NMAA engages leaders in outreach and organizing to support leadership development, community-based organizing, and capacity building. A major part of this work is the Acequia and Community Ditch Education Program, which was established by the State Legislature in 2007 as a program in the Local Government Division of the Department of Finance and Administration. The intent of the program is to build capacity of acequias as local units of government through education and outreach to acequias. The objective of the program continues to be to strengthen acequia governance through updated bylaws, infrastructure planning, and other technical assistance as it relates to local governance. The following is a summary of the program accomplishments for FY 2016:

<b>Activity</b>	<b>Number</b>	<b>Number of Participants</b>
Bylaws Completed		30 acequias
ICIPs Completed		50 acequias
Technical Assistance Services	474 services	
Local Acequia Meetings	14 Meetings	480 individuals
Statewide Conferences Albuquerque Santa Fe	2 Conferences	375 individuals
Quarterly Newsletter	4 Newsletters	6,037 each quarter
Bi-Monthly Online Newsletter	24 Online Newsletters	2,000 twice monthly
Regional Association Workshops: South Valley (Bernalillo County) Alcalde (Rio Arriba County) Cow Creek (San Miguel County)	3 Regions	
USDA Funding Workshops Nambe (Santa Fe County) and Taos (Taos County)	2 Workshops	145 individuals
Audit and Budget Workshops: Blanco (San Juan County), Mimbres (Grant County), Ribera (San Miguel County), Mora (Mora County), Penasco (Taos County), Nambe (Santa Fe County)	6 Workshops	234 individuals

**Attachments**

1. Acequias by County
2. Acequia Statewide Map of Regions
3. Infrastructure Flowchart

**Available Upon Request**

1. Acequia and Community Ditch Statewide Needs Assessment Report, 18 pages, November 2015
2. Acequia Statewide Acequia Li, November 2015
3. Acequia Infrastructure White Paper, April 2016
4. Monthly Reports from the NMAA to the NM Acequia Commission
5. List of Acequia Capital Outlay Appropriations
6. List of ISC 90-10 List for FY 2017