

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR  
SENATE BILL 123

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO WATER; PROVIDING FOR COMPLIANCE WITH AN ACEQUIA OR  
COMMUNITY DITCH REQUIREMENT FOR A CHANGE IN POINT OF DIVERSION  
OR PLACE OR PURPOSE OF USE OF A WATER RIGHT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 72, Article 5 NMSA  
1978 is enacted to read:

"[NEW MATERIAL] ACEQUIAS AND COMMUNITY DITCHES-- CHANGES IN  
POINT OF DIVERSION OR PLACE OR PURPOSE OF USE. --

A. The state engineer shall not approve an  
application for a change, including an emergency change, in  
point of diversion or place or purpose of use of a water right  
into or out of an acequia or community ditch if the applicant  
has not complied with the applicable requirement adopted by an  
acequia or community ditch pursuant to Subsection E of Section

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1 73-2-21 or Section 73-3-4.1 NMSA 1978.

2 B. The applicant for a change described in  
3 Subsection A of this section shall submit with the application  
4 to the state engineer documentary evidence provided by the  
5 commissioners of the acequia or community ditch of the  
6 applicant's compliance with any applicable requirement for the  
7 change adopted by the acequia or community ditch pursuant to  
8 Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

9 C. If an acequia or community ditch has not adopted  
10 an applicable requirement, the applicant shall submit to the  
11 state engineer along with the application an affidavit provided  
12 by the commissioners of the acequia or community ditch stating  
13 this fact.

14 D. If an acequia fails to make a decision within  
15 one hundred twenty days in response to an applicant's request  
16 for approval pursuant to a applicable requirement, the acequia  
17 or community ditch shall be deemed to have approved the  
18 applicant's request for approval and the state engineer shall  
19 proceed on the application as if the applicant had complied  
20 with any applicable acequia or community ditch requirement.  
21 The applicant's request shall be in writing and delivered by  
22 certified mail to the commissioners of the acequia or community  
23 ditch.

24 E. The provisions of this section do not apply to  
25 water rights or lands owned by or reserved for an Indian

1 pueblo. "

2 Section 2. Section 73-2-21 NMSA 1978 (being Laws 1895,  
3 Chapter 1, Section 4, as amended) is amended to read:

4 "73-2-21. COMMISSIONERS' POWERS AND DUTIES--MAYORDOMO'S  
5 DUTIES. --

6 A. The commissioners shall:

7 (1) assess fatigue work or tasks of all  
8 parties owning water rights in [~~said~~] such community ditches or  
9 acequias [~~and shall~~];

10 (2) have power to contract and be contracted  
11 with [~~and also to~~];

12 (3) make all necessary assessments to provide  
13 funds for the payment of the salary of the mayordomo and other  
14 legitimate expenses incident to the proper conduct and  
15 maintenance of the acequias under their charge [~~and also to~~];

16 (4) make contracts for obtaining water for  
17 irrigation purposes in connection with their ditches, such  
18 contracts to be ratified by a vote of a majority of the owners  
19 of water rights in [~~said~~] the ditches [~~and shall~~];

20 (5) have general charge and control of all  
21 affairs pertaining to the same, together with the power to  
22 receive money in lieu of [~~said~~] such fatigue or task work at a  
23 price to be fixed by them; and [~~shall~~]

24 (6) immediately upon taking office, provide  
25 bylaws, rules and regulations not in conflict with the laws of

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1 the state for the government of [~~said~~] the ditch or acequia,  
2 [~~and~~] a printed copy [~~thereof~~] of which shall be furnished to  
3 each owner of a water right in [~~said~~] such ditch.

4 B. The mayordomo or superintendent shall, under the  
5 direction of [~~said~~] the commissioners, be the executive officer  
6 of [~~said~~] the ditch and shall:

7 (1) have the superintendence of all work  
8 thereon [~~and~~], the distribution of the waters thereof [~~with~~]  
9 and the collection of fines, if any, and of amounts to be paid  
10 in lieu of fatigue or task work [~~and shall~~];

11 (2) perform such other duties in connection  
12 with [~~said~~] the ditch as may be prescribed by the rules and  
13 regulations of the same or as may be directed by the  
14 commissioners [~~said mayordomo shall~~]; and

15 (3) make full written reports of all money  
16 received, expended and how expended, and of all [~~his doings~~]  
17 activities performed as such officer to the commissioners of  
18 [~~said~~] the ditch, semiannually, on the first Monday in June and  
19 the last Monday [~~of~~] in September; provided, further, that the  
20 mayordomo shall make such further reports as may be required by  
21 [~~said~~] the ditch commissioners.

22 C. The treasurer of [~~said~~] the ditch commissioners  
23 shall make [~~such~~] reports to the ditch commissioners of the  
24 money received, expended and how expended, and kept in [~~his~~]  
25 the custody of [~~such~~] the treasurer, and of all [~~his doings~~]

1 activities performed as such officer as are herein required of  
2 the mayordomo.

3 D. The commissioners shall receive and pass upon  
4 the reports of the mayordomo and the treasurer [~~herein~~]  
5 provided for in this section before their term of office  
6 expires [~~and~~]. If the [~~same~~] reports are found to be true and  
7 correct, they shall approve them; otherwise they shall reject  
8 them, respectively. All proceedings of the commissioners  
9 relating to all subjects whatsoever shall be reduced to writing  
10 in a book or books kept for that purpose, and all books and  
11 papers so kept by [~~said~~] the commissioners and all reports  
12 made, filed or kept as herein required shall always be and  
13 remain public property, and shall be subject to the inspection  
14 of all persons therein concerned.

15 E. Pursuant to the rules or bylaws duly adopted by  
16 its members, an acequia or community ditch may require that a  
17 change in point of diversion or place or purpose of use of a  
18 water right served by the acequia or community ditch, or a  
19 change in a water right so that it is moved into and then  
20 served by the acequia or community ditch, shall be subject to  
21 approval by the commissioners of the acequia or community  
22 ditch. The change may be denied only if the commissioners  
23 determine that it would be detrimental to the acequia or  
24 community ditch or its members. The commissioners shall render  
25 a written decision explaining the reasons for the decision. If

. 146850. 1

1 the person proposing the change or a member of the acequia or  
2 community ditch is aggrieved by the decision of the  
3 commissioners, he may appeal the decision in the district court  
4 of the county in which the acequia or community ditch is  
5 located within thirty days of the date of the decision. The  
6 court may set aside, reverse or remand the decision if it  
7 determines that the commissioners acted fraudulently,  
8 arbitrarily or capriciously, or that they did not act in  
9 accordance with law. "

10 Section 3. A new Section 73-3-4.1 NMSA 1978 is enacted to  
11 read:

12 "73-3-4.1. [~~NEW MATERIAL~~] COMMISSIONERS-- ADDITIONAL  
13 DUTIES-- APPROVAL OF CHANGES IN PLACE OR PURPOSE OF USE OF  
14 WATER-- APPEALS. --Pursuant to rules or bylaws duly adopted by  
15 its members, an acequia or community ditch may require that a  
16 change in the point of diversion or place or purpose of use of  
17 a water right served by the acequia or community ditch, or a  
18 change in a water right so that it is moved into and then  
19 served by the acequia or community ditch shall be subject to  
20 the approval by the commissioners. The change may be denied  
21 only if the commissioners determine that it would be  
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4 date of the decision. The court may set aside, reverse or  
5 remand the decision if it determines that the commissioners  
6 acted fraudulently, arbitrarily or capriciously or that they  
7 did not act in accordance with law. "

8 Section 4. EFFECTIVE DATE. --The effective date of the  
9 provisions of this act is March 1, 2004.

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