ACEQUIA DE LA COMUNIDAD
BYLAWS

Preamble: Water is the lifeblood of our communities. The parciantes of Acequia de la Comunidad believe that water should be protected as a community resource so that future generations can grow food and can have a healthy and secure source of water for needs within the community. We seek to promote agriculture by keeping water rights on historically irrigated land. If changes in historic uses of water become necessary, those decisions should be made through a cultural and spiritual connection to our community and through our own process of self-governance so that those decisions can be made for the common good. We honor the ancient customs and traditions embodied in our acequia and seek to govern our acequia to continue the connection between our land, water and culture in perpetuity.

Article 1. Purpose and Membership

Section 1: Purpose Statement
The purpose of Acequia de la Comunidad ("Acequia") is to 1) promote the agricultural uses of water on the lands served by the acequia, 2) promote the efficient and beneficial use of water, 3) sustain customs and traditions of providing water to parciantes in a manner that is fair and equitable, 4) protect and defend the rights and interests of the Acequia and the parciantes, 5) maintain the infrastructure and easements of the Acequia, and 6) maintain an adequate diversion right to ensure a sufficient water supply for parciantes.

Section 2: Compliance with New Mexico Law
The management and operation of Acequia de la Comunidad, a political subdivision of the State of New Mexico, shall be in compliance with the laws of the State of New Mexico and the customs of the Acequia.

Section 3: Description
[*Option 1:*] *If your Acequia is in an adjudicated stream basin, use the description from those files. Also indicate that the Acequia includes the mainstem and all laterals and drainages or desagues.*
[*Option 2:*] *If no adjudication description is available, then give a general description that includes your county, stream, and approximate point of diversion from the stream, along with any laterals and desagues.*

Section 4: Definition of Membership
The members or parciantes of Acequia de la Comunidad are those persons who own irrigable land with water rights from the Acequia.

Article 2. Officers

Section 1: Types of Officers
The officers of Acequia de la Comunidad shall consist of three Commissioners and one Mayordomo, each of whom shall be an Acequia member, as defined in Article 1, and in good standing. The Commissioners shall consist of a Chair, a Secretary, and a Treasurer.

Section 2: Duties of Officers

a. Chair: The Chair shall manage the affairs of the Acequia jointly with the other Commissioners and shall call and preside at all Acequia meetings. In the event the Chair is unable to preside at a meeting, he or she shall appoint one of the other Commissioners to preside at the meeting.

b. Secretary: The Secretary shall keep complete and accurate records of Acequia actions and proceedings, prepare agendas for meetings, prepare the minutes of meetings, read the minutes of the previous meetings, and receive and respond to requests for Acequia records.

c. Treasurer: The Treasurer shall manage the finances of the Acequia including the following:
   1. Send notices to parciantes for billing and collection of assessments and fines.
   2. Maintain accurate records for each parciante including assessments, hours worked, and

fines, in coordination with the Mayordomo.

3. Make payments for labor and materials as necessary, in coordination with the Mayordomo.
4. In coordination with the Mayordomo, prepare an annual financial report to be presented to the membership.

d. Mayordomo: The Mayordomo shall be the on-the-ground manager of the Acequia. His or her responsibilities shall include the following:

1. Coordinate and supervise all work on the Acequia including the annual Spring cleaning, day-to-day maintenance, and emergency repairs.
2. Distribute water to parciantes in a manner that is equitable and consistent with the customs of the Acequia.
3. Collect assessments and fines from parciantes, in coordination with the Treasurer.
4. Make payments for labor and materials as necessary, in coordination with the Treasurer.
5. Supervise the Acequia to ensure that only those parciantes whose dues and fees are current and are in good standing receive water. The Mayordomo has full authority to shut the individual headgate(s) along the banks of the Acequia of any parciante who is delinquent and to secure the headgate(s) by any available means.
6.

Section 3: Vacancy of Mayordomo
In the event of a vacancy in the office of Mayordomo following departure by an elected Mayordomo, the Commission shall appoint a Mayordomo to hold office for the remainder of the term until his/her successor is elected at a meeting of the membership.

Section 4: Vacancy of Commissioners
[Article 2 Counties:] In the event of one or more vacancies in the office of Commissioner, the remaining Commissioner or Commissioners shall appoint a Commissioner(s) to hold office for the remainder of the term until his/her successor is elected at a meeting of the membership.
[Article 3 Counties:] If there is one vacancy for Commissioner the two remaining Commissioners and the Mayordomo shall appoint a Commissioner to serve for the remainder of the term. If there are two vacancies for Commissioner, the remaining Commissioner shall convene a special meeting of the membership to fill the vacancies for the remainder of the terms of office.

Section 5: Compensation of Mayordomo
Compensation of the Mayordomo or ditch rider shall be determined by a majority of the membership.

Article 3. Meetings

Section 1: Date of Annual Membership Meeting
The Annual Membership meeting shall be considered a Regular meeting and shall be held at least every odd numbered year on [*insert either Option 1 or 2 below*].

[*Option 1:*] the first Monday of December or as soon as practicable thereafter. [*for Article 2 Counties*]

[*Option 2:*] the first Monday of October or as soon as practicable thereafter. [*for Article 3 Counties*]

Section 2: Notice of Annual Membership Meeting
[*Insert either Option 1 or 2 below*]
[*Option 1:*] Notice shall be posted in a public place at least ten days in advance of the meeting. Notice of the meeting shall include the date, time, location, and the agenda or information about where to obtain a copy of the agenda. The Acequia may also provide other types of notice as appropriate.

[*Option 2:*] Notice shall be provided to each parciante by mail or e-mail to the addresses as recorded in the records of the Acequia and shall be posted in a public place at least ten days in advance of the meeting. Notice of the meeting shall include the date, time, location, and the agenda or information about where to obtain a copy of the agenda. The Acequia may also provide other types of notice as appropriate.

Section 3: Purpose of Annual Membership Meeting
At each Annual meeting, the Secretary shall present the minutes from the previous Annual meeting. The Mayordomo shall report on the management and operations of the Acequia and the Treasurer shall provide a financial report. The Acequia may adopt an Open Meetings Act Resolution.

Section 4: Location of Meetings
Each Membership or Commission meeting shall be held at a public place in the county in which the Acequia is located or a non-public place that is open and easily accessible to the public.

Section 5: Quorum
A quorum at a membership meeting shall be [*insert percentage*] of [*insert either*] the membership
[*or*] those members who are current on their dues,
[*or*] the total amount of irrigable land with water rights,
[*or*] the total amount of irrigable land with water rights current on their dues,
[*or*] the total number of [*insert whichever applies:*] derechos/peones/tiempos/shares/water rights,
[*or*] the total number of [*insert whichever applies:*] derechos/peones/tiempos/shares/water rights current on their dues,

except as otherwise provided in this section. [*You may choose the "water rights" option only if your acequia includes a definition of "water right" under Article 4, Voting and Elections, Sec. 2, Voting Rights of Parciantes.*]

[*Include the following if quorum is a percentage of the membership or members in good standing:*] For purposes of calculating a quorum, each household or co-tenancy arrangement (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned.

Valid proxy votes shall be counted toward a quorum. A quorum, once established for that particular meeting, shall remain in effect to transact all business set on the agenda even though members shall voluntarily leave the meeting.

[*Optional:*] In the event that the above quorum is not established at a meeting duly called, the meeting may be recessed and later reconvened at a date, time and place specified at the call of the recess and on a written notice immediately posted at the location of the original meeting. Efforts shall be made to contact members not in attendance and urge them to attend the reconvened meeting. All business listed on the original agenda shall be transacted by those present at the reconvened meeting, provided there are [*insert number*] or more persons present, who shall then constitute a quorum for conducting business.

Section 6: Special Membership Meetings
Special (non-annual) meetings of the Acequia members may be called by the Commissioners or upon written petition to the Commission Chair signed by [*insert percentage*] of the members. Notice for Special Membership meetings shall be the same as for Annual meetings, provided that if there are matters of urgency on the agenda, notice may be posted as little as 3 days prior to the meeting.

Section 7: Meetings of Commissioners
Meetings of the Commission may be called by the Chair. Two Commissioners shall constitute a quorum for such meetings. Notice shall be posted in a public place at least ten days prior to a meeting, provided that if there are matters of urgency on the agenda, notice may be posted as little as three days prior to the meeting.

Article 4. Voting and Elections

Section 1: Election of Officers
The Commissioners and Mayordomo shall be elected biannually by a vote of the membership at the Annual Membership Meeting held in [*Article 2 Counties*:] December [*or*] [*Article 3 Counties*:] October of odd numbered years or as soon as practicable thereafter. The elections shall be conducted by the outgoing Commissioners.

Section 2: Voting Rights of Parciantes
Only those members who are not delinquent in the payment of their assessments/fines or who proffer the amount owed at the time of the vote shall be deemed in good standing and allowed to vote in any election or other vote of the Acequia. Eligible parciantes who are unable to attend a meeting may vote by written proxy, a copy of which shall be submitted to the Secretary upon voting to maintain in the Acequia records. [*Option 1*:] The proxy shall

contain the member's name, the name of the person designated to proxy vote on behalf of the member, the effective period of the proxy, and the member's signature and date.
[*Option 2*:] The proxy shall contain the member's name, the particular issue or election to be voted on, how the member wishes to vote, the name of the person delivering the proxy vote on behalf of the member, the meeting date and the member's signature and date.

[*Insert the language that applies to your Acequia. Or, if none of the below methods applies, please describe your system of voting*:]

[*Option 1*:] Each member shall have one vote. For voting purposes, each household or co-tenancy arrangement (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned.
[*Option 2*:] A member's vote shall be in proportion to his/her acreage of irrigable land with water rights.
[*Option 3*:] Each derecho/peon/tiempo/share/water right shall have one vote.
[*If you choose water right:*] For purposes of these bylaws, "water right" in this context means _____.
[*You may choose the "water right" option only if your acequia uses "water right" to mean something other than legal water rights as defined by the State*.]
[*Option 4*:] Voting shall be done with each member having one vote, except that voting shall be in proportion to acreage with water rights for any votes concerning the financial obligations of the parciantes or the Acequia.

Section 3: Nomination and Assignment of Officers
[*Option 1*:] Nomination of officers may be made by any parciante in good standing. The nomination and voting for each office (Mayordomo, Chair, Secretary, Treasurer) shall be conducted separately. The person receiving the highest number of votes cast for that office shall be declared the officer elected.

[*Option 2*:] Nomination of officers may be made by any parciante in good standing. The three Commissioners shall be elected at-large. At the end of the Annual Membership Meeting in which the election is taking place, the three Commissioners shall elect, from among themselves, a Chair, Secretary, and Treasurer with each Commissioner holding one position.

Section 4: Terms of Office and Record Transfers
The elected officers shall assume their offices if possible at the conclusion of the Annual Meeting at which they were elected, but in any event not later than the first Monday following the month they are elected. The outgoing officers shall transfer all Acequia records and financial authority to the relevant elected officers by that date. The term of office for the Mayordomo and Commissioners is two years.

Article 5. Management and Operations

[*Optional – to be included if your acequia traditionally allocates water with neighboring acequias*] Section 1: Allocation Between Neighboring Acequias
As practiced traditionally, the Commission [Mayordomo] shall represent the Acequia for the purpose of cooperating with the other acequias in the _____[valley or community] which draw water from the _____ [stream system] in order to determine the most effective and equitable manner of allocating water between all of the acequias.

Section 2 [or 1]: Acequia Cleaning
A community cleaning of the Acequia's mainstem or *acequia madre* involving all parciantes shall take place during the Spring before the irrigation season on a date and according to requirements determined by the Mayordomo and Commissioners. Each parciante, regardless of whether his/her land is currently in irrigation, shall provide the required number of peones or pay the amount assessed in lieu of peones.

[*Option 1*:] Parciantes on laterals shall be responsible for cleaning their own laterals.
[*Option 2*:] The community Acequia cleaning shall include cleaning of all laterals.

Prior to the Spring cleaning, the Mayordomo or Commissioners shall discuss any tree that interferes with the Acequia or its easement with the applicable landowner, to arrange for possible removal and disposal.

[*Include Option 1 or 2, based on the tradition of your Acequia*:]

[*Option 1:*] During or immediately following Spring cleaning or normal maintenance activities throughout the irrigation season, debris generated by the cleaning or maintenance, including trash and organic matter such as soil, rocks and brush, shall be removed and disposed of by the Acequia.
[*Option 2*:] During or immediately following Spring cleaning or normal maintenance activities throughout the irrigation season, debris generated by the cleaning or maintenance, including trash and organic matter such as soil, rocks and brush, shall be removed and disposed of by the landowners.

Section 3 [or 2]: Distribution of Available Water
Water shall be distributed in a manner that is equitable and consistent with the customs of the acequia. [*Choose one or more of the four options below that describe the custom of your acequia.*]
[*Option 1a*:] The Mayordomo shall distribute the appropriate amount of available water to parciantes who make requests for water.
[*Option 1b*:] The Mayordomo shall oversee the distribution of the appropriate amounts of available water among parciantes in accordance with the Acequia's distribution schedule.
[*Option 2a*:] The available water in the Acequia shall be distributed as nearly as practicable in proportion to the acreage of land with water rights owned by each member of the acequia.
[*Option 2b*:] The available water in the Acequia shall be distributed according to the number of [*insert whichever applies:*] derechos/peones/tiempos/shares/water rights for each parciante. [*If you choose "water rights", you should define here how much water or how much time a "water right" on your acequia receives*.]
[*Optional: Describe your system if different from the options above*.]

Section 4 [or 3]: Parciante Assessments
[*Option 1*:] An annual assessment of *[$ dollar amount]* per acre will be assessed against each parciante to help defray the cost of operating the Acequia.
[*Option 2:*] The Commissioners, immediately upon assuming office or as soon as practicable thereafter, shall determine the amount of money necessary for the ensuing year for the operation, maintenance, repair and improvement of the Acequia and for payment of the expenses of the Acequia, including compensation of the officers, if any. The Commissioners shall then assess each parciante, in proportion to his/her acreage, based upon that information. The approved amount shall remain as the annual assessment per acre until changed by the Commission.
[*Option 3:*] The amount to be assessed per acre shall be determined by a vote of the membership following a recommendation by the Commissioners. The Commissioners shall base their recommendation on the amount of money necessary for the ensuing year for the operation, maintenance, repair and improvement of the Acequia and for payment of the expenses of the Acequia, including compensation of the officers, if any. The approved amount will remain as the annual assessment per acre until changed by a vote of the membership.

Article 6. Rights and Obligations of Parciantes

Section 1: Maintenance of Headgates
All members shall maintain their individual headgates in good condition and keep their ditch sections free of trash and other obstructions. Repairs and construction of headgates and other works should be completed before the start of the irrigation season.

Section 2: Assessments
All members shall pay assessments as required by the Commission. All monies assessed by the Acequia de la Comunidad are due upon receipt of the Treasurer's statement. These assessments become delinquent thirty (30) days following the date of receipt of the billing.

Section 3: Participation in Acequia Cleaning
All members shall contribute the required number of peones, or the required assessment in lieu of peones, for the annual Spring cleaning and for emergency repairs as required by the Mayordomo.

Section 4: Compliance with Bylaws
All members shall abide by Acequia Bylaws, Rules and Regulations and shall comply with decisions duly adopted by the Commission.

Section 5: Inspection of Acequia Records
All records of proceedings by Commissioners, financial records, and other reports and records of the Acequia shall

always remain public property and shall be subject to inspection by any person pursuant to state law.

Section 6: Copy of Bylaws
Each new parciante shall be provided with a copy of the current bylaws of the Acequia and amendments thereafter adopted. [*Optional:*] New members shall be briefed on the operation of the Acequia by one of the Commissioners or the Mayordomo.

Section 7: Acequia Records
Each parciante shall keep current in the records of the Commission of the Acequia the name(s) of the owner(s) of the property with Acequia water rights, the owner mailing address(es) and telephone number(s), and the amount of irrigated acreage or peon/tiempo/derecho/water rights claimed by the owner(s). The parciante shall also keep current the name, mailing address, and telephone number of any person who has leased the property.

Section 8: Change of Ownership
A person who has purchased or leased land with Acequia water rights shall report such transaction promptly to the Secretary for recording in the Acequia's records. Delinquencies, if any, are due from the past owner or lessor, unless the new owner or lessee has agreed to pay them, and in any case must be paid before the new owner or lessee is entitled to the use of the Acequia.

Section 9: Change in Point of Diversion, Purpose of Use, or Place of Use
Water transfers are governed by Appendix A of these Bylaws. A more detailed definition of water transfers and the required process is set forth in Appendix A. If a water transfer has been approved by all necessary authorities, including the State Engineer, the transferring parciante shall provide updated information about the water right to the Secretary for recording in the records of the Acequia.

Article 7. Easements

Section 1: Description of Easement and Prohibitions
Each parciante recognizes that the Acequia, including all of its laterals and drainages or desagues, possesses a historical permanent easement for purposes of maintenance, operations, and improvements. The scope of the easement is defined as follows:
[*Option 1*:] From the inner edge of each bank, a distance of [*insert number*] feet to each side of the acequia.
[*Option 2*:] The easement is as wide as necessary for reasonable maintenance, use and improvements.

No person may obstruct, interfere with, or prevent access to, the easement. Prohibited activities include, but are not limited to, erecting a building within the easement, locking a gate to or along the easement, allowing a dog to create a potential threat within the easement, or restricting in any way a customary or historical access route or point to the easement.

Section 2: Maintenance of Easement
Each Acequia parciante shall ensure that it is possible for Acequia officers and others conducting Acequia business to freely and safely use the Acequia easement within his or her property, including being able to walk along the ditch banks in an unobstructed manner. For instance, if a fence or other barrier crosses the ditch or the easement, the barrier shall provide an unlocked accessible gate or crossover.

Section 3: Access to Easement
Acequia de la Comunidad has the right to use the historic and customary routes or points of access to the Acequia within members' and non-members' property and other such routes or points of access as may be necessary to afford convenient access to the Acequia for inspection, maintenance, operations and improvements.

Section 4: Changes to Easement
Any material changes to the Acequia easement, including any crossings, shall be approved in advance by the Commission.

Article 8. Enforcement

Section 1: Delinquencies
A parciante who is delinquent in the payment of his or her assessment or fails to perform required work shall not be

entitled to use water from the Acequia. He or she shall also not be entitled to vote in any Acequia election or other vote. These prohibitions shall remain in effect until the assessment(s) and any fines are paid. Acequia officials have the authority granted by statute to collect penalties and delinquent assessments through appropriate civil legal action from any parciante who, after due notice, has failed to pay them.

Section 2: Illegal Use of Water or Acequia Interference
Any person who, contrary to an order of the Mayordomo or Commission, interferes with the Acequia in any manner, or who takes or uses Acequia water contrary to such orders, commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico or subject toa civil action.

Section 3: Violation of Easement Rights
Any person who interferes with the acequia easement or prevents the Acequia's convenient access to the easement commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico or subject toa civil action.

Article 10. Water Banking

Acequia de la Comunidad hereby forms a Water Bank under Section 73-2-55.1, NMSA 1978 (2003). The Water Bank shall be managed according to the provisions of Appendix B: Water Banking.

Article 11. Miscellaneous Provisions

Section 1: Amendments to Bylaws
These bylaws may be enacted, amended, or modified at any duly called membership meeting by a [*Options:*] simple majority [*or*] ¾ majority [*or*] [*specify a percentage greater than 50%*] vote of the [*Options:*] members present and voting [*or*] members in good standing [*or*] total Acequia membership, with each member having one vote [*or*] total ownership of Acequia acreage with water rights.

Section 2: Applicability of State Law
Where not otherwise covered by these bylaws, the requirements of New Mexico state law shall be applicable. These bylaws are supplemental to any applicable provisions of New Mexico state law.

Section 3: Severability Clause
If any part or application of these bylaws is held invalid, the remainder of the document and its application to other situations or persons shall not be affected.

THE FORGOING BYLAWS WERE ADOPTED BY THE PARCIANTES OF THE ACEQUIA DE LA COMUNIDAD AT A MEETING DULY CALLED AND HELD ON [*insert date*].

_____
Chairperson

_____
Secretary

_____
Treasurer

APPENDIX A: WATER TRANSFERS

[*Please note: Acequias subject to the terms of a federal court adjudication settlement like the Abeyta settlement in Taos County may be subject to different laws and processes. In those cases the language contained in this Appendix may need to be modified.*] [Delete after taking note of this]

Section 1: General

The members of Acequia de la Comunidad declare that a transfer of a water right served by the Acequia, or a transfer of a water right so that it is moved into and then served by the Acequia, may be detrimental to the Acequia and/or its members. Therefore, any such proposed transfer by any person or entity must be formally considered by the Commission using the procedure set forth below.Application to the Office of the State Engineer is prohibited unless the proposal is approved by the Commission as provided herein. As used in this document, "transfer" means any type of change or modification whatsoever to the point of diversion, and/or place of use, and/or purpose of use of a water right, including but not limited to any type of temporary transfer, partial transfer, transfer to a supplemental supply of water, emergency transfer, or water-use lease. Cases where there is uncertainty as to whether a change is a "transfer" as defined herein are addressed in Section 4 of this Appendix. This Appendix is adopted under authority set forth in state law.

Section 2: Process

An application to transfer a water right served by the Acequia or to transfer a water right into the area served by the Acequia shall be made by the owner of the water right using the application form adopted by the Acequia, which shall be delivered by certified mail to each Commissioner. The 120-day timeline in Section 72-5-24.1(D), NMSA 1978 (2003) shall not begin to run until the applicant submits a complete application form with all required information. Submittal of an application that the Acequia deems incomplete shall not cause the timeline to begin to run.

Within 90 days of receipt of the complete written application, the Commissioners shall hold a meeting to allow the applicant and members who support or oppose the application to be heard and/or submit information.

Notice of the meeting shall be given in the same manner required for the Acequia's annual meeting. In addition, notice shall be given 1) by mail to the applicant at the address on the application, and 2) by posting a notice of the application and meeting date, at least 10 days before the meeting, at a prominent public place near the site of the proposed change.

The meeting agenda shall include at least the following information: date, time, location, and an item entitled "Consideration by Commission of Application by [name of applicant] to Transfer Water Rights".

The management of the meeting, such as date, location, length, and other related matters shall be decided by the Commission. Only the entities mentioned in this section shall be allowed to speak at the meeting. The rules of civil procedure and the rules of evidence shall not apply to the meeting.

The Commission may be represented by an attorney or other representative, and may be assisted in the conduct of the meeting by other such persons as it may designate. During the presentations, the Commission shall accept and consider any documents or other exhibits, written or oral statements, or arguments offered by the applicant or any non-commissioner Acequia member, or by any individual who is presented by the applicant or any non-commissioner Acequia member. The Commissioners may ask any questions they believe may help in their decision. The Commissioners may defer any questions posed to them until after all comments have been received and deliberations have taken place.

The applicant or any non-commissioner Acequia member may be represented by an attorney or other representative. The applicant or any non-commissioner Acequia member may respond, personally or through a representative, to exhibits, statements, arguments, or questions offered at the meeting, directing such response to the Commission.

Following the presentations, the Commission shall deliberate, prepare a written decision, and vote. The Commission may choose to recess the meeting prior to doing or completing any of these activities. If it chooses to recess, the Chair shall announce the date, time, and location of the reconvened meeting prior to recessing, provided that the last of any reconvened meetings shall be within 120 days of receipt of the complete written

application. The Commission shall also immediately post notice of the date, time, and location on or near the door of the original meeting location and at least one other public notice location. Only matters appearing on the original agenda may be discussed at the reconvened meeting.

The transfer application shall be denied, in whole or in part, if the Commission finds that the transfer would be detrimental to the Acequia and/or its members; provided, however, that the application may be conditionally approved or denied, with conditions that would mitigate potential detriments to the Acequia or its members. Such conditions shall run with the land and the water rights and be binding on the water rights and all successors in interest unless indicated otherwise. The written decision may provide that a failure to comply with the conditions results in the application being deemed to be denied or any conditional approval being deemed to have expired or been cancelled or nullified. The Commission shall base its decision on the record; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation. A decision requires a majority vote of the Commissioners and shall be made within 120 days of receipt of the complete, written application. The Commission's decision shall be in writing, explaining the reasons for its decision. The vote on the written decision shall be made at an open meeting. This shall constitute a decision of the Acequia in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D), NMSA 1978.

Section 3: Appeal to District Court

If the applicant or a member of the Acequia is aggrieved by the Commission's decision, he or she may appeal to the State District Court under the provisions of *(choose one)* Section 73-2-21(E) or Section 73-3-4.1, NMSA 1978. The appeal must be filed within 30 days of the Commissioners' written decision.

Section 4: Prior Application to State Engineer Prohibited; Commissioner Protest

A person or entity desiring a water right transfer is required to seek and obtain approval from the Acequia Commission in accordance with this Appendix prior to seeking approval from the Office of the State Engineer. If a person or entity fails to do so and files an application for the change with the State Engineer, an Acequia Commissioner shall timely file a protest to the application with the State Engineer on behalf of the Acequia, objecting to the failure of the applicant to first bring the request, or the question of the bylaws applicability, before the Acequia. Any Commissioner is authorized to file the protest. Any uncertainty whether a particular change is a "transfer" reviewable by the Commission under these bylaws shall be decided by the Commission in an open meeting prior to any application for the change to the Office of the State Engineer, and the Commission's decision shall be communicated to the Office of the State Engineer. Absent such a meeting and decision, no Commissioner shall sign any affidavit, nor make any statement, written or otherwise, stating that the Acequia does not have an applicable bylaw, or that the Acequia has any position on the merits of the application.

[*Optional*] Section 5: Arbitration

Instead of an appeal to court, the applicant or a member of the Acequia aggrieved by the Commission's decision may request that the Commission's decision be submitted to binding arbitration. The request must be in writing, sent to each Commissioner by certified mail within 30 days of the Commission's decision. The Commission must agree to the request in order for the arbitration to proceed. The Commission shall send notice to the person requesting arbitration of whether it agrees to the request within 15 days of receipt of the request.

If the Commission agrees upon arbitration, the arbitrator shall be a person experienced in acequia organization, governance and procedure and shall be mutually agreed upon by the Commission and the aggrieved party. If agreement on the arbitrator cannot be reached within 30 days of the date of the Commission's agreement to the request, the arbitration shall not proceed.

The issue presented to the arbitrator shall be solely whether the Commissioners' decision was fraudulent, arbitrary, capricious, or otherwise not in accordance with law. The arbitration shall be conducted in a manner directed by the arbitrator, and shall include a) the right of any party to be represented by an attorney, b) the right to present testimony and/or other evidence, c) the right to cross-examine witnesses and d) the opportunity to present written briefs or summaries at the end of the hearing. No formal record need be made and the formal rules of civil procedure and evidence shall not apply. Fees shall be paid equally by the Commission and the aggrieved party. The arbitrator shall provide a written explanation of the reasons for the decision. The result of the arbitration shall be final and binding.

WATER RIGHT TRANSFER APPLICATION FORM

A copy of this form must be delivered by certified mail to each of the three commissioners of the acequia.

Name of Applicant: _____

Address: _____

_____

Phone No.: _____

Current point of diversion of water right: _____

Current place of use of water right: (If a Hydrographic Survey is available, provide map name, map number, and tract number. Otherwise, provide a legal description of the tract of land. Attach map.)

_____

_____

Number of acres to transfer: (Please specify or designate on attached map where rights would transfer from if part of a larger tract.)

_____

Number of acre-feet per year to transfer: _____

Current purpose of use of water right: _____

Proposed new point of diversion of water right: _____

Proposed new place of use of water right: _____

Proposed new purpose of use of water right: _____

Please attach documentation demonstrating you are the true owner of the water right.

If the proposed new place of use is on land already served by the Acequia, explain how the proposed transfer would not exceed the maximum amount of water rights allowed on that land.

_____ _____

Signature of Applicant Date

FOR ACEQUIA USE ONLY

Received by_____Date_____

APPENDIX B: WATER BANKING

[Please note: Acequias that are subject to the terms of a federal court adjudication settlement like the Aamodt settlement in Santa Fe County may be subject to different laws and processes. In those cases the language contained in this Appendix may need to be modified.]

This Appendix contains the Water Banking provisions referenced in Article 9, Water Banking, and the Water Banking Deposit Form.

Nothing in the formation of the Water Bank or its operation will affect the traditional and recognized lawful authority of the Acequia's Commissioners and Mayordomos. Issues of daily water use, periodic allocation, water issues between parciantes, and all other matters normally managed by the Acequia's officers will continue without change. Use of the Water Bank will not affect existing vested water rights, priority dates or any existing lawful use of water by parciantes. No action of the Water Bank will be considered an adjudication of any person's water rights.

Section 1: Purpose
The purpose of the Water Bank is to promote conservation and beneficial use of Acequia water through a locally managed system of temporarily reallocating water for beneficial use within the area served by the Acequia. The Water Bank will also allow water right owners who are temporarily not using some or all of their water rights to benefit by protecting those rights from loss for non-use.

In adopting this Appendix, the parciantes of Acequia de la Comunidad agree that a banked water right may be exercised on lands not otherwise associated with the water right so as to further the purpose of the Water Bank, and further agree that a parciante who owns a banked water right may remove the water right from the Water Bank at any time, and shall therefore not be deprived of the water right, lose ownership of the water right either permanently or temporarily, or experience any reduction in the economic value of his or her property as a result of the Water Bank.

Section 2: Protection from Loss for Non-Use
As provided in Section 73-2-55.1, NMSA 1978 (2003), water rights deposited in the Water Bank are not subject to loss for non-use during the time they are in the bank.

Section 3: Water Bank Procedures

a) Water Bank Record Keeping
The Commissioners may delegate to the Mayordomo or any member of the Acequia the responsibility to maintain records on all Water Bank deposits forms submitted, contact logs, and other information required to achieve the purposes of the Water Bank, not including, however, automatic deposits and withdrawals. These records shall be maintained permanently in the records of the Acequia.

b) Depositing Water Rights
Water rights may be deposited in the Water Bank in one of two ways, either by (1) a parciante depositing his or her own water right in the Water Bank by submitting a deposit form, or (2) a water right being automatically deposited in the Water Bank after two full consecutive calendar years of non-use. In both cases the parciante has the right to withdraw the water right from the Water Bank at any time, as described below.

(1) Deposit form. Any person or entity owning a water right on the Acequia may submit a water right deposit to the Water Bank. The owner shall complete a deposit form provided by the Acequia, and submit the form to the Water Bank's designated record keeper. The record keeper may require proof of ownership and extent of the water right being deposited. The record keeper shall use the Map and Tract Number of the most recent Hydrographic Survey or, in the absence of that, the Acequia's traditional identification system to identify the right being deposited. The deposit shall become effective upon receipt of all necessary information by the record keeper. The record keeper shall inform the Mayordomo of the deposit as soon as possible.

(2) Automatic deposit. A water right that is not used for two full and consecutive calendar years (January through December) shall, on January 1 of the following year, be deemed to be deposited in the Water

Bank.

c) Renewing Deposits; Withdrawing Water Rights

Each deposit shall have a term of one year, renewable annually, except that a deposit made after January 1 shall have an initial term of less than one year. A water right may be withdrawn from the Water Bank at any time including during the initial term as described in paragraphs (1) and (2) below. Each deposit shall renew automatically on January 1 unless the owner has withdrawn the water right.

(1) A parciante who has used a deposit form to make a deposit shall make a brief written request for non-renewal or withdrawal of the water right, specifying the date that the withdrawal shall take effect, and submit it to the Water Bank's designated record keeper. If the written request is instead submitted to an Acequia officer who is not the designated record keeper, the officer shall forward it to the designated record keeper. Any initial term or automatic renewal will end as of the specified date of withdrawal.

(2) A water right that is automatically deposited may be withdrawn in the manner described in the above paragraph or by verbal request of the parciante to use the water. If the parciante requests to use the water, the water right will be deemed to be withdrawn after such request followed by actual beneficial use of the water. Any initial term or automatic renewal will end when the withdrawal becomes effective.

Use of a water right following non-renewal or withdrawal from the Water Bank shall be subject to all Acequia requirements, including the requirement that the owner be in good financial standing with the Acequia prior to receiving water.

Water rights deposited in the Water Bank that are sold or otherwise conveyed to a new owner shall be deemed to remain in the Bank until the new owner withdraws the water right as provided above.

d) Water Right Reallocation

All water rights deposited in the Water Bank shall be temporarily transferred by the Mayordomo by absorbing them into the Acequia's regular rotation so that the rights are put to use to augment shortfalls at the remaining places of use served by the Acequia. The temporary transfer shall not include any change of purpose of use or point of diversion of the water rights. A water right deposited in the Water Bank shall be presumed to be put to beneficial use beginning at the next water distribution by the Mayordomo, for the duration of the term authorized. Such temporary transfer does not require Commission action or approval.

Water rights deposited in the Water Bank may also be temporarily transferred to a specific place(s) of use already served by the Acequia, by action of the Commission if, in the judgment of the Commissioners, it will benefit the Acequia, subject to all applicable procedures, rules and laws. The temporary transfer shall not include any change of purpose of use or point of diversion of the water rights.

The temporary transfer of water rights deposited in the Water Bank, done in accordance with this subsection, shall occur in the year in which the rights were deposited, initially or through renewal. Such water rights shall not accumulate or carry over to be reallocated in future years.

Temporary transfers of banked water rights done in accordance with this subsection are not subject to Appendix A of these bylaws (regulating water rights transfers).

Section 4: Acequia Dues and Fees

Water rights may be deposited in the Water Bank regardless of whether the owner is in good financial standing with the Acequia. [*Option 1*] However, ditch dues or fees owed the Acequia by a water right owner who has deposited water rights in the Water Bank will continue to accrue and be owed by the water right owner. [*Option 2*] All Acequia dues and fees are waived for each full year in which the water rights are in the Bank. An owner who deposits water rights after January 1 shall pay dues and fees for that year, and dues and fees must be paid for the year in which the water rights are withdrawn. An owner who was not in good standing when his or her rights were deposited shall pay the outstanding dues and fees prior to receiving water after withdrawal of the rights from the Bank.

WATER BANK DEPOSIT FORM (not for use when water right deposited automatically)

Water Right Owner:_____

Contact Person (If Different):

_____

Mailing Address:_____

_____

Phone Number:_____

Acreage of water hereby deposited:

_____

If a hydrographic survey is available, provide the map name, map number, and tract number:

_____

Otherwise, please provide a description of the tract of land and a map if available:

_____

Initial Deposit Year:_____

_____ _____

Signature of Depositor Date

_____ _____

Signature of Water Bank Record Keeper Date

FOR ACEQUIA USE ONLY Page_____

BANKING LOG – OWNER DEPOSITS AND WITHDRAWALS

(not for use when water right deposited automatically)

Depositor Name: _____

Date:_____

____ Initial Owner Deposit

____ Owner Withdrawal – Owner Deposit

Owner Withdrawal Effective Date (if different than above): _____

Name of Water Bank Record Keeper_____