

APPENDIX A: WATER TRANSFERS

General

1. The members of [Insert Acequia Name] (the Acequia) declare that a transfer of a water right served by the Acequia, or a transfer of a water right into the area served by the Acequia, may be detrimental to both the Acequia and its members. Therefore, any such proposed transfer by any person or entity must be formally approved by the Commissioners, using the procedure set forth below, prior to application for the transfer to the Office of the State Engineer. As used in this document, “transfer” means a change in point of diversion, and/or place of use and/or purpose of use of a water right, including temporary transfers and water use leases.
2. Without formal consent of the Commissioners to such a transfer, any attempt to obtain approval of the transfer from the State Engineer, or any other effort to implement the transfer, is unlawful and void.
3. These policies and procedures are adopted under
Option 1: Section 73-2-21(E) NMSA 1978. (for Article 2 Acequias)
Option 2: Section 73-3-4.1 NMSA 1978. (for Article 3 Acequias)

Approval Procedure

1. A request for approval of a transfer of a water right served by the Acequia or a transfer of a water right into the area served by the Acequia must be made by the owner of the water right in writing, delivered by certified mail to each Commissioner. The request must be on an application form prepared by the Commissioners. (See example attached.)
2. Within 90 days of receipt of the written request, the Commissioners will hold a public meeting to allow members to be heard and/or to submit additional information.

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

The Commissioners will decide the conduct of the meeting, such as its location, length, and other matters. The Commissioners will accept and consider any documents, written or oral statements, or arguments offered by the applicant or any Acequia member, as well as any information from individuals who may be presented by the applicant or any Acequia member. The applicant or any Acequia member may have an attorney or other representative present his or her information to the Commission in his or her place. The applicant or any Acequia member, or their representative, may respond to evidence or arguments offered at the meeting, directing such response to the Commission. The rules of civil procedure and the rules of evidence shall not apply to the meeting.

The Commissioners may ask any questions they believe may help in their decision. The Commission is not required, prior to recessing the meeting, to make any decisions or answer any questions on issues raised, before the final decision is announced publicly. 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. Except as provided in this section, only the applicant, other Acequia members and the Commissioners may speak at the meeting.

3. The request may be denied, in whole or in part, if the Commissioners find it would be detrimental to the Acequia or its members. The Commission will base its decision on the presentations, documents and arguments made at the meeting; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation. Action on the application requires a majority vote of the Commissioners.
4. Following the presentation of the evidence or arguments at the meeting, the Commissioners will recess for a period of no longer than 30 days. Within 30 days of the recessed meeting, the Commissioners will reconvene at the date, time, and location announced prior to recessing. At the reconvened meeting, the Commissioners will approve or deny the request, in whole or in part, and render their decision in writing explaining the reasons for their decision. This will constitute a decision of the Acequia in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D) NMSA 1978.

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

Option 1: Section 73-2-21(E) NMSA 1978. (for Article 2 Acequias)

Option 2: Section 73-3-4.1 NMSA 1978. (for Article 3 Acequias)

The appeal must be filed within 30 days of the Commissioners' written decision.

Arbitration (Optional)

1. Instead of an appeal to court, the applicant or a member of the Acequia aggrieved by the Commission's decision may submit the Commission's decision 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 for the arbitration to proceed. The Commission must notify the person requesting arbitration whether it agrees to the request within 20 days of receipt of the request.
2. The arbitrator must be a person experienced in acequia organization, governance and procedure and must be mutually agreed upon by the Commission and the aggrieved party. If agreement cannot be reached, the arbitration will not proceed.
3. The issue presented to the arbitrator will be solely whether the Commissioners' decision was fraudulent, arbitrary, capricious, or otherwise not in accordance with law. The arbitration will be conducted in a manner directed by the arbitrator, and must include a) the right of any party to be represented by an attorney, b) the right to present testimony 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 will not apply. Fees will be paid equally by the Commission and the person or persons requesting arbitration. The arbitrator must 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 should 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: _____

Number of acre-feet per year: _____

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: _____

Signature of Applicant

Date

FOR ACEQUIA USE ONLY

Received by _____

Date _____