

Appendix A: Water Transfers Notes

New Mexico law allows Acequias to safeguard against harm that may result from a proposed water transfer. An Acequia must adopt a bylaw such as this one in order to have this power.

“Transfer” is defined here in accordance with state law. A simple change in ownership of a water right is not a transfer, and does not require approval.

Once an Acequia adopts a bylaw, the State Engineer is prohibited from considering a transfer into or out of the Acequia unless the transfer has first been approved by the Acequia.

(Section 72-5-24.1)

An application form is included in these materials or is available from NMAA.

The statute requires a written decision within 120 days of the written request. (Section 72-5-24.1(D)) We suggest that the Acequia hold a special membership meeting within 90 days.

The meeting should be held in accordance with the Open Meetings Act. A sample Open Meetings Act Resolution is included in the NMAA Acequia Governance Handbook.

Many of the requirements of this paragraph are to ensure that the applicant and the other parciantes are afforded constitutional due process before a decision is made affecting their interests.

The Commission can run the meeting in the same manner as a regular meeting of the Acequia. It is not intended to be a trial-type proceeding.

Although the meeting is open to the public, the Commission has the right to limit who may present information and who may participate in the discussion.

If the proposed transfer is denied, the written decision should clearly indicate how the transfer would be detrimental to the Acequia and/or its parciantes. (Sections 72-2-21(E) and 73-3-4.1).

The Open Meetings Act allows a public body to recess a meeting and then reconvene the meeting at a later date. The date, time, and location for reconvening must be set and announced publicly prior to recessing the meeting. The decision to approve or disapprove the water right transfer and the rendering of the written decision must take place at the meeting when it is reconvened.

The law provides for a limited right to appeal. An appeal does not involve a new hearing on the proposed transfer, but only whether the commissioners in making their decision acted “fraudulently, arbitrarily, or capriciously, or...not in accordance with law.”

Arbitration is an informal trial-type proceeding in which an individual chosen by both sides judges the correctness of the commission's decision. Arbitration can be less expensive for both the Acequia and the dissatisfied party than an appeal to court. However, the Acequia is not required to agree to arbitration in every case nor is it required to accept the person suggested by the dissatisfied party as the arbitrator. Only if agreement is reached on these matters does the arbitration go forward.

Just as with an appeal to court, the commission's decision can only be overturned in arbitration if it was fraudulent, arbitrary, capricious, or not in accordance with law.