

Appendix B: Water Banking Notes

In 2003, the N.M. Legislature passed a law allowing Acequias to do a very limited and very specific type of water banking.

Under this new law, an Acequia water bank is a tool for holding water rights that are owned by parciantes of the Acequia and are temporarily not in use. Placing water rights in the water bank does not affect the legal status of the water right in terms of its ownership, etc.

Protection against loss of water rights for non-use is the key benefit of the water bank. If an adjudication (or a re-adjudication) occurs many years from now, the State may claim that a particular water right was lost because it was not in use for a period of time in the past. However, if the Acequia can show the water right was in the bank during that period of time, there is a good possibility that the water right would remain valid. This is why it is essential that all water bank records be kept permanently in the records of the Acequia.

The parciante can withdraw the water right back to his or her own exclusive use any year by simply indicating so to the Commission.

In order to keep a complete paper trail, it is critical that the Acequia maintain a log of all contact with the depositor of the water right and keep this information on file permanently in the Acequia's records.

This provision allows water rights in the water bank to simply be absorbed into the Acequia's regular rotation, as is the traditional method for reallocating water rights temporarily not in use. This is the most simple and recommended way to manage banked water rights.

If the Commission wishes to allow the banked water right to benefit a water user not on the Acequia, it would be necessary to get a permit from the State Engineer, a much more costly and involved process.

Just as a parciante remains liable for Acequia dues even if he or she does not irrigate for a year, a parciante with banked water rights is ordinarily responsible for Acequia dues as the owner of the water right and a continuing member of the Acequia. This is not legally required, however, so an Acequia may choose to waive such fees or omit this section from its bylaws.