

# Acequia Easements

## Taos Valley Acequia Association Fact Sheet\*

### What is an easement?

An easement is a legal right-of-way onto another person's land. Some examples of easements are those that are acquired by utility companies to place utility lines or to have access to a certain location. Acequias have a type of easement that is well established and often centuries-old.

### What is an Acequia easement?

An Acequia easement runs along the ditch and its laterals. The "bordo" of the Acequia is generally within the easement of that Acequia. State law says that the width of the easement should be adequate for reasonable maintenance, use, and improvements. The easement carries with it the right to access (maintain, use, or improve) the entire length of the ditch. The Acequia easement includes the right to make reasonable improvements. This includes the use of certain machinery as long as its use is for "reasonable maintenance, use or improvements." The Acequia easement also includes the right to gain access to the ditch through traditional points of access, even when that includes crossing a person's property. There must be legitimate Acequia business to be done each time there is entry onto someone's property.

### What kind of legal document is needed for an Acequia easement?

According to state law, an Acequia has a legal easement as long as it has been used historically, since its establishment, for at least five continuous years. Once an easement is established, it remains intact. Acequias generally have easements that date back several hundred years. ***No legal documents are required.*** The easement exists because of historic use regardless of whether the Acequia has documented this easement.

However, some Acequias have documented their easements for purposes of informing parciantes of the Acequia easement. Good documentation of your easements also helps you protect this important right of your Acequia. Some ways to document your easement are as follows:

- Inform your Parciantes  
Include a section in your bylaws that defines your Acequia easement and traditional points of access. Ensure that all parciantes on your Acequia have a copy of your bylaws. The NMAA has sample language to include in Acequia bylaws.
- Document your Easement  
File a map of your Acequia that includes your easement and points of access with the county clerk so that it is on record for title searches.

## **What are some examples of violations of an Acequia easement?**

Access to the Acequia is very important. In addition to informing your parciantes about your easement, Acequia officials should also carefully monitor any actions by landowners that may be violations of the Acequia easement. Some of these violations include the following:

- Building fences across the Acequia which block the ability to walk or use equipment along the length of the ditch.
- Building structures like houses, decks, or corrals within the easement or across the Acequia.
- Blocking access to the Acequia through a traditional point of access. Landowners, particularly new ones, attempt to block Acequia officials or cleaning crews from crossing their property to get to the Acequia.

In the cases of fences or structures, some Acequias will allow them or “grandfather in” these structures in some cases under certain conditions. It may be a good idea to inform new property owners if there is a traditional point of access that crosses their property.

## **What if there is a dispute with a landowner over an Acequia easement?**

If a landowner is violating an Acequia easement, the first thing an Acequia should do is communicate with that landowner. An Acequia official, the Mayordomo or a Commissioner, may initiate this communication and it can be verbal or written. In many cases, a suitable understanding can be reached with the landowner through simple communication and negotiation. However, in some cases such an understanding is not reached and the Acequia must pursue other legal remedies.

An Acequia has several legal remedies in dealing with a landowner that does not recognize the Acequia easement.

- Acequia officials or the District Attorney may file a criminal complaint against the landowner in Magistrate Court. If convicted, the landowner will be guilty of a misdemeanor and fined \$300-\$1,000 and/or sentenced up to 90 days in county jail.
- If the landowner “knowingly, intentionally or willfully” violated the above provisions, Acequia officials or the District Attorney may file a civil (non-criminal) complaint for a penalty of up to \$5,000.
- Acequia officials or the District Attorney may also seek injunctive relief (a court order to stop the activity) in District Court.
- If the behavior caused financial injury to the Acequia, then Acequia officials may also seek damages to compensate the Acequia for its losses.

## **How can our Acequia avoid disputes with landowners over Acequia easements?**

In addition to the above strategies of documenting easements and informing parciantes, an Acequia can take additional measures:

- Inform Parciantes and Landowners before Spring Cleaning  
Many of the disputes over easements reach a critical point during spring cleaning. If possible, an Acequia should use any means available to inform landowners of the cleaning day(s). If a landowner has land through which the cleaning crew must cross, it is a good idea to inform the landowner that you will be crossing the property on cleaning day(s).
- During Spring Cleaning, Work as a Crew  
Some disputes arise when there is confusion with regard to the official duties of the cleaning crew. Generally, during the spring cleaning, the cleaning crew should remain together. Individual peones should be discouraged from traversing the Acequia unless it is part of official business of the Acequia or delegated by the Mayordomo.

## **What if a violent incident occurs as a result of a dispute over an easement?**

If a landowner does not recognize or understand the Acequia easement, that landowner may take drastic measures to prevent a cleaning crew from crossing his or her “private property.” Some landowners may resort to verbal or physical threats. Some Acequia crews have been threatened with gunfire.

If such a confrontation occurs, the Acequia crew should withdraw from the area immediately and the Acequia officials should file a police report documenting the verbal or physical attack. At this point, the incident has a criminal dimension that is beyond the scope of the Acequia easement.

If such a disagreement over an easement exists, the officials of that Acequia may need to take several steps, including legal action, to clarify the nature and extent of the Acequia easement for future use. The Acequia may seek support in their efforts. For example, for serious threatening behavior, the District Attorney can be asked to let the violator know of his or her intent to file criminal charges or to seek injunctive relief.

## **What if my Acequia runs across federal land?**

Whether your Acequia is partially or completely on federal land, you do not need a permit from the federal government to operate and maintain your Acequia, so long as the Acequia serves valid water rights. Federal law protects easements that were in place in the 1800s or earlier, so almost all Acequias have protected easement rights across federal land.

There is a significant advantage to having easement rights on federal land, rather than simply having a special-use permit. If you have an easement, the Acequia has the *right* to be on federal

land, so a permit is unnecessary. A permit usually can be revoked or limited without the agreement of the permittee, whereas an easement is a protected property right that cannot be diminished. As long as the Acequia does not significantly change its *point of diversion, course, or size*, Acequia members and officials can legally enter federal land by traditional access routes for normal operation and maintenance activities, without interference by any federal agency.

If a governmental agency is requiring you to get a special-use permit for your Acequia, you should probably get further legal advice. Do not sign anything until you do so. If you have already signed a special-use permit, you may still be able to establish valid easement rights, and you should get legal assistance.

---

\* Adapted from a fact sheet provided by the New Mexico Acequia Association