

BYLAWS
Acequia del Caño
A Community Ditch Association
Nambe/Pojoaque, New Mexico

Article I.

Sec. 1. The objects and purposes of the Acequia del Caño are in accord with the provisions of New Mexico state law, Chapter 73, New Mexico Statutes Annotated (1978 as amended) and as stated herein.

Sec. 2. Members (also called shareholders) of the Acequia del Caño are those persons who are owners of an interest in the ditch and its water. Members may be represented by proxy with written authorization.

Sec. 3. Acequia del Caño diverts northerly from the Rio Pojoaque in Nambe, NW1/4 NW1/4 SW1/4 Sec. 10, T19N, R9E, shortly below the old grist mill, and runs about 2 1/2 miles to a terminal pond and discharge abutting the property of Transformations Inc. in Pojoaque and adjacent to the lane/arroyo next west from Arroyo de los Chamisos. Irrigated acreage is 190.

Sec. 4. Acequia del Caño is believed locally to be prehistoric.

Article II.

Sec. 1. The management and operation of this acequia shall be in compliance with the laws of the State of New Mexico.

Sec. 2. The affairs of this acequia are under the general control and supervision of the three elected commissioners. The mayordomo, under the direction of the commissioners, shall be the executive officer in charge of supervising maintenance and repairs and of scheduling irrigation times.

Sec. 3. The officers of this acequia shall be three commissioners and the mayordomo. These officers shall be elected biennially at the ditch meeting held on the first Monday of December in odd-numbered years. Each officer must be an owner of an interest in Acequia del Caño or the water therein.

Sec. 4. Only those members who have paid their assessments or have arranged with the treasurer to pay in installments may vote at meetings of the acequia. Votes may be cast by proxy. To make the counting of votes at meetings workable, there shall be five classes of voters with each voter having an integral number of votes. The classes shall be as follows:

Class A. Owners of more than fifteen (15) acres of irrigable land shall have eight (8) votes apiece.

Class B. Owners of at least three (3) acres but not more than fifteen (15), four (4) votes.

Class C. Owners of at least two (2) acres but not more than three (3), three (3) votes.

Class D. Owners of at least one (1) acre but not more than two (2), two (2) votes

Class E. Owners of less than one (1) acre, one (1) vote.

Sec. 5. The biennial meeting of the ditch shall be held in a public place in Santa Fe County, normally in the Nambe/Pojoaque area. The election shall be conducted by the outgoing commissioners. Nomination of officers may be made by any owner or his representative with written authorization. Each commissioner and the mayordomo shall be nominated and voted on separately.

Sec. 6. The elected officers shall assume office not later than the first Monday of the month following the election.

Sec. 7. The treasurer and mayordomo shall be bonded in an amount to be fixed by the commissioners.

Sec. 8. Notice of meetings (biennial, regular, or special) shall be mailed to each member-of-record at least ten days before the meeting.

Acequia del Caño Bylaws

Sec. 9. Special meetings of the acequia may be called by the commissioners, or upon written petition to the commission chairman signed by holders of one third of the votes.

Sec. 10. A quorum for conducting any business shall be one-third (1/3) of the votes. A quorum, once established for a particular meeting, shall remain empowered to transact all business set on the agenda even though members shall voluntarily leave the meeting. In the event that a quorum is not present at a meeting duly called, those assembled shall recess for a period of not more than 15 days. The meeting shall resume at the time and place specified at the call of the recess and all business listed on the agenda shall be transacted whether or not the prescribed number of votes is represented.

Sec. 11. The compensation for commissioners shall be relief from the annual ditch cleaning assessment to the extent of actual holdings, not to exceed five (5) acres. Commissioners may also be reimbursed expenses as per 73-2-23 NM Statutes 1978 as amended. The compensation of the mayordomo shall be determined by the vote of a majority of the owners of the land irrigated by the acequia, pursuant to the classification of votes set forth in Sec. 4 above.

Sec. 12. The treasurer and mayordomo shall be bonded in a sum to be fixed by the commissioners.

Article III.

Sec.1. After the annual cleaning of the acequia in the spring, the commissioners shall meet and determine the assessment per acre for cleaning, to be not less than the actual cost. The maintenance of the ditch shall have been directed and recorded by the mayordomo during the preceding year; with payments made as required by the treasurer, and the cost for the preceding year shall be reported to the commission. The commission shall determine the maintenance costs per acre. The treasurer shall then bill the shareholders for cleaning and maintenance. Cleaning and maintenance of laterals and any associated expenses shall be the responsibility of shareholders whose irrigation is delivered by way of their lateral. Laterals must be well maintained for efficient conveyance of water.

Sec. 2. Improvements to the ditch, as opposed to cleaning and maintenance, shall be consented to by owners of two-thirds (2/3) of the irrigable lands under the ditch. The cost per acre of improvements shall be billed to each owner for payment in full (in order to be able to pay the contractor when his bill comes due). Improvements to a lateral shall be consented to by owners of two-thirds (2/3) of the irrigable lands under the lateral. The cost per acre of improvements shall be billed to each owner along the lateral for payment in full.

Sec. 3. Any member, who is delinquent in paying, or arranging to pay, his assessments, shall have no use of water from the ditch. Unpaid assessments will be delinquent after 90 days and the delinquent owner shall be sent notice of delinquency at the address on record with the commission

Sec. 4. The mayordomo is in total and complete command of the operation of the ditch. No person, shareholder or not, shall put water into or take water from the acequia without the knowledge and consent of the mayordomo. No person shall fail to release water into the acequia at the time specified, either orally or in writing, by the mayordomo. Except by the express consent of the mayordomo, no water from any source

other than the acequia itself shall be allowed to flow in the acequia during any period other than that allotted to the shareholder in question.

Sec. 5. State law grants the acequia, its members, its lateral ditches and members, a right of way easement of reasonable width, along the main ditch and laterals. This easement is for operations, cleaning, maintenance and improvements. It is the responsibility of the landowners to keep the ditch and lateral right of ways clear of vegetation, structures and obstructions.

Sec. 6. When practicable, normally during the irrigation season when there is water available, the mayordomo shall issue printed schedules of irrigating times, based on an approximate acreage basis, to each shareholder in turn. In the absence of a printed schedule, requests for irrigation times should be made to the mayordomo. Shareholders are responsible for the water in the ditch during their irrigation times. Schedules may be interrupted when there is no water available at the head gate.

Acequia del Caño Bylaws

Sec 7. Water will be conveyed to shareholders through historic points of diversion. Each member shall provide and maintain a sturdy, workable, tight gate at his diversion from the acequia or from any of its lateral ditches, and shall keep that gate closed except when allotted water by the mayordomo. The mayordomo shall inspect shareholder head gates and shall require conformation to standards agreed to by the shareholder, mayordomo and commission. He may, after written notice, cause defective gates to be repaired, and shall inform the treasurer of costs so that the owner may be billed for the expense as part of his debt to the acequia.

Sec. 8. Each shareholder shall make full and fruitful use of ditch water during his allotted time. If he is not going to use the water on schedule, he is requested to notify the mayordomo.

Sec. 9. Minor matters involving deviations from bylaws and regulations of the commission shall be dealt with by the commission, with due regard for the significance of deviation and for repetition of deviations. The mayordomo or any shareholder may bring deviations to the attention of the commission. Major matters shall be governed by state law and may involve either civil or criminal action.

Article IV.

Sec. 1. It shall be the responsibility of both the seller and purchaser of any right on the acequia to report such sale or transfer of right to the Secretary not later than thirty (30) days after said sale or transfer. Delinquencies, if any, must be paid before the new owner will be recognized by the acequia.

Sec. 2. The commission may propose amendments or modifications to the bylaws. They must be ratified by a two-third (2/3) majority of the acequia shareholder votes.

Sec. 3. Where not covered otherwise by these bylaws, the requirements of state law shall apply.

Sec. 4. Robert's Rules of Order, current revision, shall govern procedures of ditch meetings where not provided otherwise in these bylaws.

Sec. 5. These bylaws were duly adopted on this 30th day of October 2001.

Sec. 6. A copy of these bylaws shall be mailed or delivered to each shareholder of the acequia whose address is known to the commission as soon as practicable after adoption.

Paul Montoya, Chairman

Meade P. Martin, Secretary/Treasurer

Don Roybal, Commissioner

Pete N. Romero, Mayordomo

P.O. Box 1116 Santa Fe, NM 87504

ADMENDMENT TO ACEQUIA BY-LAWS

ARTICLE V:

Re: The Open Meetings Act

WHEREAS, the Acequia del Caño met in regular session at the Pojoaque Valley Irrigation District Office on, January 31, 2005 at 6:30 p.m. as required by law; and

WHEREAS, section 10-15-1 of the Open Meetings Act (NMSA 1978, Sections, 10-15-1 to 4) state that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission, administrative and judicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS; any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule regulation or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS; Section 10-15-1(D) of the Open Meetings Act Requires the Acequia Del Caño to determine annually what constitutes reasonable notice of its public meetings; and

NOW THEREFORE, BE IT RESOLVED by the Acequia Del Caño that the following by-law also be adopted:

Article V.

- 1) All meetings shall be held as indicated in the meeting notice.
- 2) The agenda will be available at least twenty-four (24) hours prior to any scheduled meeting from the Acequia Secretary. Notice of any other meetings will be given at least ten (10) days in advance of the meeting date. The notice shall indicate how a copy the agenda may be obtained.
- 3) The Chairman or the majority of the Acequia members may upon three (3) days notice call special meetings. The notice shall include an agenda for the meeting or information on how members of the public may obtain a copy of the agenda. The agenda shall be available to the public at least twenty-four (24) hours before any special meeting.
- 4) Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial loss. The Acequia Association will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chairman or a majority of Acequia members on twenty-four (24) hours notice, unless threat of personal injury or property damage which require less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda.
- 5) For the purpose of "meetings" as described in paragraph 2 of this resolution; notice requirements shall be met by including the date, time, place and information on agenda obtainment and posting said information in three local business locations and mailing to each Acequia Association member. Copies

of the written notice shall be provided to those broadcast stations licensed by the Federal Communications Commission and Newspapers of circulation, which have made a request for a notice of public meetings.

- 6) For the purpose of special meetings and emergency meetings described in paragraph 3 and 4 of this resolution, notice requirements are met if notice of the date, time, place, and agenda attainment information's posted in at least three (3) prominent locations within the community as listed above and mailed to each Acequia Association member. Copies of the Agenda and meeting minutes shall be made available to the public within five (5) working days of a special or emergency meeting.
- 7) In the information specified above, all notices shall include the following language:
If you are an individual with a disability who is in need of a reader or interpreter, or to attend or participate in the meeting, please contact the Acequia Secretary at least one week prior to the meeting.
- 8) The Acequia Del Caño may close a meeting to the public only on the subject matter where such discussion is exempted from the Open Meetings Act requirements under Section 10-15-(H).

(a) Except as provided in Section 10-15-(H) of the open meetings Act, any action taken, as a results of discussions in a closed meeting shall be made by a vote of the Acequia Del Caño in an open public meeting.

BE IT RESOLVED that all acts and Resolutions in conflict with this resolution are hereby rescinded, annulled and repealed.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon its adoption

THIS RESOLUTION IS HEREBY APPROVED AND ADOPTED on this day of _____

GOVERNING BODY: Acequia del Caño

Robert Baran, President Date

Joseph O. Montes, Treasurer, Date

Meade P. Martin, Treasurer, Date

Jack Blum, Mayordomo Date

SEAL:
Attest:

By: _____

Date: _____

My Commission Expires: _____

ADMENDMENT TO ACEQUIA BY-LAWS

ARTICLE VI:

WATER BANK POLICIES AND PROCEDURES:

The Acequia Del Caño hereby forms a Water Bank to promote conservation and beneficial use of Acequia water rights. The Acequia has adopted the following procedures to manage the operation of the Water Bank. The Commissioners will apply them in the best interest of the Acequia and its parciantes.

These procedures have been adopted under the Acequias powers as a political subdivision of the State of New Mexico, and under Section 73-2-55.1 NMSA 1978 (2003).

Nothing in the formation of the Water Bank or its operation will affect the traditional and recognized lawful authority of the Acequias Commissioners and Mayordomo. Issues of daily water use, periodic allocation, water issues between parciantes, and all other matters normally managed by the Acequias 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 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.

Section 2: Protection from Loss for Non-Use:

As provided in Section 73-2-55.1 NMSA (2003), water rights deposited in the Water Bank are not subject to loss for non-use during the time they are placed in the bank,

Section 3: Definitions:

a) Water Bank: The system used by the Acequia by which water rights are deposited and reallocated for beneficial use.

b) Reallocation Fund: The amount of water rights on deposit in the Water Bank.

c) Water Bank Ledger: The written records of all Water Bank deposits and any other information determined appropriate by the Commissioners or Mayordomo.

d) Person: An individual, corporation, partnership, unincorporated association, political subdivision, or any other recognized legal entity.

Section 4: Water Bank Procedures:

a) Water Rights in the Reallocation Fund:

The Water Bank Ledger will identify water rights in the Reallocation Fund by Map and Tract Number of the most recent Hydrographic Survey or, in the absence of that, by whatever system is traditionally used by the Acequia for the identification of water rights.

b) Use of the Reallocation Fund:

The Reallocation Fund will be used to hold and distribute water rights for temporary reallocation to parciantes, without change of purpose of use or point of diversion, to augment shortfalls of available water in the Acequia. The fund may also be used in any other lawful manner, which, in the judgment of the Commissioners, will benefit the Acequia.

c) Water Bank Record Keeping:

The Water Bank Ledger will contain current written records of all Water Bank deposits or other information required by the Commissioners. The Commissioners may delegate their record keeping duties to the Mayordomo or any officer of the Acequia.

d) Depositing Water Rights:

Any person owning a water right on the Acequia may submit a water right deposit to the Water Bank. A deposit is made by completing a deposit form prepared by the Acequia, and giving 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 will use the Map and Tract Number of the most recent Hydrographic Survey or, in the absence of that, the Acequias traditional identification system to correctly identify the right being deposited. The deposit shall become effective upon signing of the deposit form by a Commissioner or by the Mayordomo.

A deposit will be for one year, renewable annually. At the end of the deposit period, the Acequia shall notify each depositor by written notice or otherwise that the depositor must contact the Acequia if the depositor desires to withdraw his or her water right from the Water Bank, and that if the depositor does not contact the Acequia to withdraw the water right from the Water Bank, the deposit will be deemed to be renewed for another year. Non-response by the depositor to the notice will be deemed to be consent to renewal of the deposit for another year, if the depositor does not otherwise communicate his or her intentions to the Acequia.

e) Water Right Reallocation:

Temporary reallocation of water rights from the bank shall be done by the Mayordomo. The Mayordomo will apply traditionally accepted methods of managing the reallocation.

Section 5: Ditch Dues and Fees:

Ditch dues or fees owed the Acequia by a water right owner who has deposited water rights in the Water Bank will continue to be paid by the water right owner.

THIS RESOLUTION IS HEREBY APPROVED AND ADOPTED by the membership of the Acequia Del Caño on _____.

GOVERNING BODY: Acequia del Caño

_____		_____	
Robert Baran, President	Date	Martin Meade, Secretary	Date
_____		_____	
Joseph O. Montes Treasurer	Date	Jack Blum Mayordomo	Date

Acequia del Caño

WATER BANK DEPOSIT FORM

Water rights owner: _____

Contact Person: _____

Mailing Address: _____

Phone Number: _____

Acreage of water hereby deposited: _____

Current state Engineer Hydrographic Survey Description of Property

Hydrographic Survey

Map Number

Tract number

Deposited for the year: _____

Signature of Depositor Date

Signature of Mayordomo Date

CONTACT LOG

For the year 20____ Renewal _____ Not renewed _____

Contacted by: _____ Date _____

By: Letter _____ Telephone _____

AMENDMENT TO ACEQUIA BYLAWS: Additional language presented in red lettering was amended

and adopted at the November 10th, 2008 general membership meeting:

ARTICLE VII

ACEQUIA APPROVAL OF CERTAIN WATER RIGHT: TRANSFERS:

General:

1. The members of Acequia del Caño 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 in this Article, prior to application for the transfer to the Office of the State Engineer. As used in this Article, “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. This Article is adopted under Section 73-2-21(E) NMSA 1978. (or “under Section 73-3-4.1 NMSA 1978.” depending on the county)

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. It must be on a written form prepared by the Commissioners requiring any information about the proposed transfer, which they consider appropriate.
2. Within 90 days of receipt of the written request, the Commissioners will hold a public meeting to allow members who support and oppose the request to be heard or 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, during 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. Following the presentation of the evidence or arguments at the meeting, the Commissioners will recess to deliberate their decision for a period of no longer than 30 days. The request may be denied, in whole or in part, if the Commissioners find it would impair or be detrimental to the Acequia or its members. The burden is on the applicant to prove that the proposed transfer will not have a detrimental impact. 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. Approval requires a unanimous vote of the Commissioners, including any approval sought on reconsideration.

It shall be deemed detrimental to the Acequia or its members if any one of the following occurs:

- a. The transfer of water from the Acequia results in a reduction by Pojoaque Valley Irrigation District, of allocated volume;
- b. It reduces the revenue available or to be used for the maintenance and operation of the Acequia;
- c. It negatively impacts the labor pool available for maintenance of the Acequia;
- d. It reduces recharge from the Acequia of the underlying aquifer;
- e. It reduces water volume and hydraulic head in the Acequia needed to deliver water to down-ditch users;
- f. It results in the waste of water;
- g. It adversely affects the maintenance of the traditional Acequia environment;
- h. Any other legitimate reason the Commission deems will or may effect the ability of the Commission, or the Mayordomo, to deliver water to all the remaining Parciantes served by the Acequia.

4. Within 30 days of the recessed meeting, the Commissioners will reconvene at the date, time, and location announced prior to recessing. The Commissioners will either approve or deny the request, in whole or in part, and announce its written decision including grounds and findings at the reconvened meeting. 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 Court:

If the applicant or a member of the Acequia is aggrieved by the Commission's decision, he or she may appeal to the Santa Fe County District Court under the provisions of Section 73-2-21(E) NMSA 1978; (*or* "under the provisions of Section 73-3-4.1 NMSA 1978;" *depending on the county*). The appeal must be filed within 30 days of the Commissioner's written decision.

Arbitration:

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 on reconsideration. 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 present 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.

THIS RESOLUTION IS HEREBY APPROVED AND ADOPTED by the membership of the Acequia Del Caño on March 28, 2005. Amended On November 10, 2008

GOVERNING BODY: Acequia del Caño

Robert Baran, President Date

Meade Martin, Secretary Date

Joseph O. Montes, Treasurer Date

Jack Blum, Mayordomo Date