

# PAJARITO COMMUNITY ACEQUIA

## BY-LAWS

### Article I. Purpose and Membership

Sec. 1. Name of this Acequia shall be Pajarito Community Acequia.

Sec. 2. The objects and purposes of this Acequia are in accord with provisions of New Mexico state law, Chapter 73, New Mexico Statutes Annotated (1978 as amended) and as stated herein. The purpose of this Acequia, a political subdivision of the State of New Mexico, is to provide surface water to fulfill the needs of member /parciantes, to promote conservation and beneficial use of Acequia water rights, and to govern the Acequia in order to protect this benefit to member parciantes in perpetuity.

Sec.3. The management and operation of this Acequia shall be in compliance with the laws of the State of New Mexico, Policies and Procedures of the Middle Rio Grande Conservancy District (MRGCD,) and customs of the Acequia.

Sec. 4. Pajaritio Acequia is a community ditch which supplies water from the Rio Grande through its historic head gate on the west side of the Rio Grande River 1½ mile south of the bridge at Albuquerque. The Pajaritio Acequia is an ancient acequia established by the Pajarito Community Land Grant on January 1, 1746.

The modern point of diversion is located at the SW ¼ SE ¼ SE ¼ Section: 3 Township 13N Range 4E N.M.P.M. in Sandoval County on the Angostura grant and proceeds via canals of the Middle Rio Grande Conservancy District, organized after 1923, to the ancient heading of Pajarito acequia historic point of diversion which is located at the S.W. corner Sec. 30 Township 10N Range 3E bears S 85°45' W 4,500 feet irrigating 1800 acres. As the Middle Rio Grande Conservancy District has constructed waterways which have engrossed ancient ditches irrigators are now also using the Pajarito Main Canal and Pajarito Lateral ditches.

Sec.5. Membership / Parciantes. The members or parciantes of Pajarito Community Acequia are those persons who own irrigated land with pre March 19, 1907 water rights from the Pajarito Acequia that can be served from the canals described in Sec. 4 above. Only those members who are not delinquent in the payment of their acequia assessments shall have "good standing" in the Acequia Section 73-2-26 NMSA.

### Article II. Officers and Elections

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, collection of assessments, and in charge of water distribution.

Sec.3. The officers of this acequia shall be three commissioners and the mayordomo, each of whom shall serve a two year term. These officers shall be elected at the annual meeting held in odd numbered years on the first Monday of October, or as soon as practicable thereafter. Each officer must be a member of the Acequia, as defined herein. At the end of the annual meeting in which the election is taken place, the three commissioners shall elect, from among themselves, a President, Secretary, and Treasurer with each commissioner holding one office.

Sec.4. Only those members who are neither delinquent in the payment of their assessments nor who have not defaulted on their work assignments shall be allowed to vote. Votes may be cast by written proxy. For the conduct of general business each parciante shall have one vote for each irrigated acre owned. For election of commissioners and mayordomo and amendments to bylaws each parciante shall have one vote.

Sec.5. The annual meeting shall be held at a public place in the county in which the acequia is located. The elections shall be conducted by the outgoing commissioners. Nomination of commissioners and mayordomo may be made by any association member. The persons receiving the majority of votes cast for each commissioner and the mayordomo shall be declared the officers elected.

Sec.6. The elected officers shall assume their office not later than the first Monday following the month they are elected.

Sec.7. Notice of all membership meetings shall be given by notice mailed to each member-of-record at least ten (10) days prior to the meeting, and posted publicly.

Sec.8. Special membership meetings of the acequia may be called by the commissioners or upon written petition to the commission president signed by 50 % of the members. Notice of special meeting will be posted 3 to 5 days in advance of said meeting.

Sec.9. A quorum for conducting a membership meeting shall be 50 % of the members. A quorum, once established for that particular meeting, shall remain in effect to transact all business set on the agenda even though members shall voluntarily leave the meeting. In the event that a quorum is not established at a meeting duly called, those assembled shall recess for a period of not more than 7 to 30 days wherein 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 members are present.

Sec.10. Special meetings of the commission may be called by the President. Two commission officers shall constitute a quorum for the transaction of business at commission meetings. Notice shall be posted in a public place 3-5 days prior to the commissioner meeting.



Sec.11. If any commissioner or mayordomo, after having undertaken to serve as such shall willfully neglect or refuse to perform any of the duties of his office or conduct himself with impropriety or injustice in his office or take any bribe in money, property or otherwise as an inducement to act improperly, that commissioner or mayordomo shall be subject to charges in the appropriate court having jurisdiction.

Sec.12. Compensation of the Commissioners and Mayordomo shall be determined by a majority of the membership.

Sec.13. In the event of a vacancy in the office of Commissioner or Mayordomo, the Commissioners shall appoint a member parciante to hold the office until a successor is elected at a meeting of the membership parciantes.

**Article III. Rights and Obligations of Parciantes**

Sec.1. The available water shall be distributed as nearly equally as practicable, in proportion to the water rights held by each parciante or member.

Sec.2. All members shall maintain their individual head gates in good condition and keep their Acequia sections free of trash and other obstructions. Repair and construction of head gates and other works should be completed before the start of the irrigation season.

Sec.3. All members shall abide by Acequia Bylaws, Rules and Regulations and shall comply with decision adopted by the Commission for the common good.

Sec.4. All records of proceedings by Commissioners and financial records of the Acequia shall always remain public property and shall be subject to inspection by any concerned person or entity.

Sec.5. Each parciante or property owner shall be provided with a copy of the current bylaws of the Acequia and amendment thereafter adopted. New members or property owners will be briefed on the operation of the Acequia by the Mayordomo.

Sec.6. Any member who is current in the payment of MRGCD water service charges, acequia assessments, and has performed his ditch maintenance is entitled to the use of the acequia and the water contained therein. (ref. MRGCD vs. Chavez, NM Supreme Court, 1940)

**Article IV. Management and Operations**

Sec.1. The commissioners, immediately upon assuming office or as soon thereafter as is practicable, shall determine the amount of money necessary for the ensuing year for the operation, maintenance, repair and improvement of the Acequia and for payment of the expenses of the acequia, including the compensation of the officers, if any. The commissioners shall then assess each member, in proportion, the amount of labor and dues needed.

Sec.2. The officers may file a civil action for the collection of any assessment, dues, fee, fine or penalty which, after due notice to the member, the member has failed to pay in accordance with state law Section 73-2-21NMSA.

Sec.3. Each parciante or member recognizes that the Acequia reserves a historical permanent easement in order to operate and maintain the Acequia. It may become necessary to enter into members or owners properties to access the Acequia for maintenance purposes. No parciante or owner may build within or otherwise obstruct or limit access within and to this easement in accordance with state law Section 73-2-5 NMSA.

Sec.4. Any person, member or non-member, who interferes with the Acequia in any manner, or who takes water without the permission of the mayordomo, shall be guilty of a criminal misdemeanor and may be prosecuted in accordance with state law Section 73-2-64 NMSA.

#### **Article V. Water Bank**

Sec.1. This Article is adopted under the Pajarito Community Acequia's powers as a political subdivision of the State of New Mexico, and under Section 73-2-55.1 NMSA 1978 (2003). 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.

Sec.2. As provided in Section 73-2-55.1 NMSA (2003) the Acequia's 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 during the time they are placed in the bank.

Sec.3. The Water Bank Ledger will be maintained by the Treasurer and will identify water rights that have been deposited in the Water Bank by Map and Tract Number including the property owner's name, address, and the exact amount of irrigated acreage or water rights claimed by the parciante.

Sec.4. The Water Bank 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 water may also be used in any other lawful manner which in the judgment of the Commissioners will benefit the Acequia and community.

Sec.5. Any parciante owning a water right on the Acequia may submit a water right deposit to the Water Bank by completing a deposit form prepared by the Treasurer. The Deposit will become effective upon signing of the deposit form by the Treasurer, and will be for one year, renewable annually. At the end of the deposit period, the Acequia shall notify each depositor by written notice that they may withdraw their deposit. 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 intentions to the Treasurer.



Sec.6. MRGCD and Acequia assessments or fees owed by a water right owner who has deposited water rights in the Water Bank will continue to be paid by the water right owner.

#### **Article VI. Water Transfers**

Sec. 1. The members of Pajarito Community Acequia declare that a transfer of a water right off 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. This Article is adopted under NMSA 1978 § 73-3-4.1.

Sec. 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.

Sec. 3. A request for approval of a transfer of a water right off 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. Appendix A is the form used for this purpose.

Sec. 4. 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.

Sec. 5. 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.

Sec. 6. The conduct of the meeting, such as its location, length, and other matters will be decided by the Commissioners. 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.

Sec. 7. 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 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.

Sec. 8. 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, all 3 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.

Sec. 9. 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 NMSA 1978 § 73-3-4.1. The appeal must be filed within 30 days of the Commissioners' written decision.

#### **Article VII. Amendments to Bylaws**

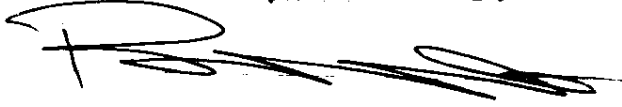
Sec.1. These bylaws may be enacted, amended, or modified by majority vote, described herein these bylaws in Article II Sec. 4 & Sec. 9, of the members at any duly called meeting after members receive written notice of the proposed amendment(s) at least 10 days in advance of said meeting.

Sec.2. Where not otherwise covered by these bylaws, the requirements of state law shall be applicable. These bylaws are supplemental to any applicable provisions of state law.

Sec.3. If any part or application of these bylaws is held invalid, the remainder or its application to other situations or persons shall not be affected.

Sec.4. Robert's Rules of Order current edition shall govern the procedures of this acequia where not otherwise provided in these bylaws.

Sec.5. These bylaws were duly adopted by the owners of water rights of the Pajarito Community Acequia on this 10<sup>th</sup> of December, 2006.



Margaret C Toulouse Bern. Co. BLAW R 21.00

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