

# **AZTEC DITCH BYLAWS**

(Updated 11/2016)

These bylaws are the official bylaws for the AZTEC DITCH (herein referred to as the "Ditch") and are governed by the laws of the State of New Mexico. They supersede any existing or previously adopted bylaws for the Ditch.

## **Article I. Name of the Ditch**

The name of this Ditch is Aztec Ditch.

## **Article II. Purpose of the Organization**

The major purpose for which this organization was created is to serve as the community body that manages and operates the activities of the Ditch. These activities include, but are not limited to, water apportionment and distribution, maintenance of the Ditch and its structures, delivery of water to Ditch head gates, and promoting agricultural activities and interests.

## **Article III. Definitions**

### **1. Ditch**

The Ditch consists of all trenches, ditches, and physical structures under the ownership, supervision, or control of the Aztec Ditch. The Aztec Ditch is a political subdivision of the State of New Mexico. The principal function is to allocate and distribute water.

### **2. Members**

Subject to Article IV, the members are the owners of irrigable land with water rights served by the Ditch. As such, they are also the common owners of the Ditch, and they are its general membership. The Ditch exists only through their participation, and it exists primarily for their benefit.

### **3. The Commission**

Subject to Article V, the Commission is composed of three members, who are elected by the general membership. The Commission is organized by selecting one member as chairperson, one as secretary, and one as treasurer. These commissioners function principally as the Board of Directors for the Ditch.

### **4. Ditch Rider**

Subject to Article VI the Ditch Rider functions as the chief officer of the Ditch. He is selected by the Commissioners and works under the direction of the Commission. The Ditch Rider is principally in charge of allocating and distributing the water and also directs all the work that is performed on the Ditch and its structures.

### **5. Language**

Whenever the context shall so require, all words herein in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

## **Article IV. The General Membership**

### **1. Membership Requirements**

The general members of the Aztec Ditch shall be those parties who own irrigable land with water rights served by the Ditch. As owners of land and water rights change, these membership rolls will be changed to reflect the properties as they are listed by the State Engineer's Office and the County tax rolls of the San Juan County Assessor's Office. Each property will be assessed by the Ditch individually, i.e., if a person owns two or more properties, they will be assessed for each property listed by the County.

2. General Duties, Powers, and Responsibilities

The general duties, powers, and responsibilities of the Members are those commonly associated with volunteer membership in any political organization that exists for the common good of its members.

3. Specific Duties and Responsibilities

- a. Provide labor to clean and keep Ditch infrastructure, easement and right of way clear:  
All members shall be required to provide labor, material, and pay assessments for cleaning and maintaining the Ditch and structures as may be determined by the Ditch Rider and the Commission. The Ditch Rider shall assess for labor and material in proportion to the water rights of each Member.
- b. Select Commissioners: It is the responsibility and duty of the members of the Ditch to regularly elect commissioners pursuant to Article V of these bylaws.
- c. Participate at Meetings – All members should attend the annual meeting or other meetings of the Ditch. They should participate in the discussion and elections and should serve as commissioners if called upon by their fellow members.

4. Privileges

All Members of the Ditch who are in good standing shall enjoy similar privileges. Some of these privileges include, but are not limited to:

- a. The right to water and services provided by the Ditch
- b. The right to vote on matters that concern the Ditch.
- c. The right to be considered for membership in the Commission.

5. Termination of Membership

Membership in this Ditch will terminate automatically when a Member no longer owns land entitled to irrigation from this Ditch, as established by the State Engineer's Office.

**Article V. The Commission**

1. Number and Selection

The Commission of the Ditch shall have three members. Of these three Commissioners, one is elected each year on a rotating basis.

2. Eligibility Requirements and Qualifications

In order to hold office, a prospective commissioner must first qualify as a Member; that is, he or she must own irrigable land with water rights served by the Ditch as established by the State Engineer's Office.

3. Terms of Office/Compensation

The Commissioners shall serve a term of three years. As long as they are still members, they may stand again for election at succeeding annual meetings. Commissioners are to be reimbursed for their reasonable expenses while performing Ditch duties.

4. General Duties, Powers, and Responsibilities

The general duties, powers, and responsibilities of the Commission are:

- a. To have general control and supervision over the business affairs of the Ditch, and the general power to act and contract for the Ditch in all regular and emergency matters and in any manner not prohibited by law or these bylaws.
- b. To set the policies regarding work or tasks of all parties owning water rights in the Ditch and regulate the price to be paid in lieu of work.
- c. To contract on behalf of the Ditch, including contracts for obtaining irrigation water, but these water contracts must be ratified by a vote of the majority of the voting Membership.
- d. To make all necessary assessments to provide funds for payment of the Ditch Rider's and Bookkeeper's salaries and other legitimate expenses related to the proper conduct and maintenance of the Ditch.

- e. To adopt and provide Bylaws for the operation of the Ditch and to provide each member with a written copy, if requested. A copy of the most current approved Bylaws shall be posted on the Ditch's website.
  - f. To act as representatives of the Ditch in all civil cases concerning the Ditch.
5. **Specific Duties, Powers, and Responsibilities**
- a. Provide year-end reports – The Commission is responsible for making a year-end report to the members at the Annual Meeting. This report should detail how the Ditch functioned during the previous year.
  - b. Direct activities of Ditch Rider – The Commission shall oversee the work and performance of the Ditch Rider.
  - c. Arrange for Annual Meeting – The Commission shall provide for an Annual Meeting to be held on the first Monday of December of each year.
6. **Removal of Commissioners**  
Commissioners will be removed from office and their term declared vacant if they neglect or refuse to perform their duties, powers, and responsibilities. In order to remove an offending commissioner, any water user of the Ditch must petition the district court in San Juan County. If any or all commissioners are removed, the judge ordering the removal will appoint interim commissioners until the next annual meeting. Removal proceedings may also be held at any duly called meeting held for that purpose. The members may make specific findings concerning removal and vote on taking any appropriate action, including petitioning the district court.
7. **Vacancies**  
In the event of one or more vacancies in the office of Commissioner, the remaining Commissioner or Commissioners shall appoint a Commissioner(s) to hold office for the remainder of the term until his/her successor is elected at a meeting of the membership.
8. **Bond Restrictions and Malfeasance**  
The Treasurer and the Bookkeeper shall be bonded in the amount of a sum fixed by the other Commissioners, if the Commissioners determine such a bond is necessary. The condition of the bond is to be for the accounting of money coming into the Treasurer's and Bookkeeper's hands by virtue of their respective positions.

## **Article VI. The Ditch Rider**

- 1. **How Selected**  
The Ditch Rider shall be hired by the Commission for the day-to-day operations of the Ditch. The Ditch Rider shall answer to the Commission and shall be responsible for communicating members' concerns back to them. This position shall not require the candidate to have shares and/or property on the Ditch.
- 2. **Compensation Of Ditch Rider**  
The pay, if any, of the Ditch Rider shall be determined by the Commission.
- 3. **General Duties, Powers, and Responsibilities**  
The Ditch Rider shall perform all the duties assigned to him by the Ditch Bylaws and shall also perform all the duties assigned to him by the Commissioners.
- 4. **Specific Duties, Powers, and Responsibilities**
  - a. **Ditch Cleaning and Maintenance**  
The Ditch Rider shall direct the cleaning, maintenance, and construction of the Ditch, including the head gates, bridges, and other structures, which are a part of the Ditch and for which the Ditch assumes responsibility.

b. Distribution of Water

The Ditch Rider shall distribute and allocate the water of the Ditch. Amount of acreage with water rights served by the Ditch shall be the determining factor in apportioning the water of the Ditch. Ownership, acreage and water rights are based on the current records at the State Engineer's Office.

c. Regular Reporting to the Commission

The Ditch Rider shall prepare and present written reports to the Commission regarding:

- 1) All money owed to the Ditch
- 2) All money spent

These reports shall be presented whenever requested by the Commission. The Ditch Rider shall also report on all other activities and actions he has performed as requested by the Commission. These reports shall include work to be completed, estimate of dollars for work needed, whom he has contacted for bid, progress of maintenance and cleaning of Ditch made daily by phone, and all other activities and actions he has performed at the request of the Commission.

5. Removal of the Ditch Rider

The Ditch Rider may be removed for any of the following reasons:

- a. Failure or refusal to perform the duties required of him.
- b. Failure to conduct himself with propriety and justice.
- c. Accepting bribes in the form of money, property, or any other form for any reason.
- d. Malfeasance.

6. Vacancies

When a vacancy occurs in the office of the Ditch Rider for any reason other than removal by a district judge, the Commission may appoint another person as the Ditch Rider on an interim basis. This Ditch Rider shall hold this position until his successor is hired and assumes the responsibility as Ditch Rider.

In the event that the vacancy is created from the removal of the Ditch Rider by a district judge, the same judge shall name a replacement Ditch Rider to serve out the unexpired term.

7. Bond, Restrictions, Malfeasance

The Ditch Rider shall be bonded in the sum fixed by the Commissioners if they determine such a bond is necessary. The conditions of the bond will be for the accounting of all money handled by the Ditch Rider and for the faithful performance of all of his duties while he holds the position.

The Ditch Rider is prohibited from using his office to an unfair advantage, to the harm of the other members, or to benefit land irrigated by him or his associates from the Ditch.

**Article VII. Meetings of the General Membership**

1. Annual Meetings / Notice Requirements

The Annual Meeting of the members is a general or regular meeting and shall be held on the first Monday in December of each year. The notice of the annual meeting should be mailed to each member of the Ditch directed to the address shown on the books and records, and at least ten days prior to this meeting. The notice of the Annual Meeting shall also be posted in a public place at least ten days prior to the meeting. Notice of the meeting shall include the date, time, location, and the agenda or information about where to obtain a copy of the agenda. The Ditch may also provide other types of notice as appropriate.

2. Special Meeting / Notice Requirements

Special meetings of the members of the Ditch may be called at any time by the Commissioners, or upon written petition to the Commission, signed by fifty-one percent (51%) of the voting membership. The purpose of every special meeting shall be stated in the notice, and no business can be transacted except as specified in that notice.

Notice of special Ditch meetings must be given by notice mailed to each member of record and directed to the address shown on the books/records of the Ditch at least ten days prior to the meeting. This notice must include the date, time, place, and purpose/agenda of the meeting. The Acequia may also provide other types of notice as appropriate.

3. **Agenda**

The agenda for the Annual Meeting shall be prepared by the Chairperson of the Commission or his designee after consulting with the members regarding their ideas for the agenda items, and shall be posted on the Ditch's website at least 72 hours prior to the meeting. The agenda shall at a minimum include these items:

- a. Call to order
- b. Sign in of members attending
- c. Reading of agenda
- d. Presentation and approval of minutes of last annual meeting
- e. General activities and status report by the Commissioners
- f. Update of old business
- g. Presentation of new business
- h. Approval or disapproval of the Ditch Rider's work
- i. Open forum discussion
- j. Election of one of the Commissioner's positions
- k. Adjournment

4. **Voting Rights/Voting Membership**

Each member attending an annual or special meeting shall have one vote, regardless of the amount of property owned. For voting purposes, each household or co-tenancy arrangement (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned.

5. **Proxy Voting**

Proxy voting shall be allowed at meetings of the members provided that the member has assigned his voting right through a written and signed instrument. The proxy shall contain the member's name, the name of the person delivering the proxy vote on behalf of the member, the effective period of the proxy, and the member's signature and date.

6. **Quorum**

The quorum for membership meetings shall be 5% of the members in good standing except as otherwise provided in this section. For purposes of calculating a quorum, each household or co-tenancy arrangement (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned. Valid proxy votes shall be counted toward a quorum. A quorum once attained at either regular or special membership meeting shall be deemed to continue until adjournment. Once a quorum has been established, the actions of the majority shall constitute actions of the membership.

In the event that the above quorum is not established at a meeting duly called, the meeting may be recessed and later reconvened at a date, time and place specified at the call of the recess and on a written notice immediately posted at the location of the original meeting. All business listed on the original agenda shall be transacted by those present at the reconvened meeting, provided there are five (5) or more persons present, who shall then constitute a quorum for conducting business.

**Article VIII. Meetings of the Commission**

1. **Regular Meetings/Notice Requirements**

Meetings of the Commission should be held on a regular, frequent, and public basis. Notice of these meetings should be provided to each of the Commissioners. Responsibility for this rests with the Chairperson.

2. Special Meetings/Notice Requirements

Special meetings of the Commission can be called at any time by the Chairperson, provided that the other two Commissioners are not prohibited from attending because of illness or major inconvenience. Any one of the Commissioners may request that the Chairperson call a special meeting if in his or her opinion a need for such a meeting exists. In the event that the Chairperson refuses to call such a meeting, the remaining two Commissioners may call and convene the meeting and take action on the matter or matters for which the meeting was called, provided that proper notice of the proposed meeting was provided to the Chairperson.

3. Public Notice of Commission Meetings

The Ditch shall post the notice of any Commission meeting in a public place. The notice shall contain the date, time, place and location of the meeting, and the agenda, or information about where to obtain a copy of the agenda. The Ditch may also provide other types of notice as appropriate.

4. Agenda

The agenda for all special meetings of the Commission should be prepared by the Chairperson of the Commission or his designee after consulting with the other two Commissioners for their ideas of agenda items. The agenda shall be posted on the Ditch's website at least 72 hours prior to the meeting. All Commission meeting agendas shall, at minimum, include the following items.

- a. Call to order
- b. Sign in of members attending
- c. Reading of agenda
- d. Presentation of new business
- e. Adjournment

5. Voting Rights

Voting by Commissioners shall be on a "one person-one vote" basis.

6. Proxy Voting

Proxy voting shall not be allowed at meetings of the Commission

7. Quorum

A quorum of the Commission shall consist of two Commissioners.

**Article IX. Management and Operations**

1. Water Distribution and Allocation

Water distribution and allocation, on a day-by-day basis, is the responsibility of the Ditch Rider. The Ditch Rider must strive to distribute the water equitably while at the same time taking into consideration special needs and circumstances. Amount of acreage with water rights served by the Ditch, as determined by the State Engineer, shall be the determining factor for apportioning the water.

2. Assessments

The Commission shall have the authority to impose annual assessments on all members for the purpose of retiring certain debts, including, but not limited to:

- a. Repairs or construction of bridges
- b. Ditch lining
- c. Legal fees

The Commissioners 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 compensation of the officers, if any. The Commissioners shall then assess each member based upon that information.

These assessments shall, at a minimum, include a basic maintenance fee for each individual property owned by the member, as listed by the County Assessor's office, along with a fee based on the amount of water rights owned by the member, as established by the State Engineer's Office.

3. Delinquencies

Members, who after due notice, fail or refuse to provide labor or pay assessments assigned to them, shall be determined by the Commission to be delinquent. The Commission shall direct the Ditch Rider to deprive any and all delinquent members the use of water from the Ditch until such time as the Commission determines that the member is no longer delinquent. Delinquent members shall not be entitled to vote on any matter concerning the Ditch or at any election. A lien may be placed on properties that have accounts to be in arrears of three years or greater. This shall be done as a last resort in an effort to collect monies due to the Aztec Ditch.

4. Water Transfers

Any type of change or modification whatsoever to the point of diversion, purpose of use, or place of use of a water right served by the Acequia, including but not limited to any type of partial or temporary or supplemental or emergency change or water-use lease, is a water transfer and must comply with Appendix A of these Bylaws. Any type of change or modification to a water right so that it is moved into and then served by the Acequia, including but not limited to any type of partial or temporary or supplemental or emergency change or water-use lease, is a water transfer and must comply with Appendix A of these Bylaws. Appendix A also addresses any uncertainty whether a particular change is a "transfer" reviewable by the Commission under these bylaws. If a water transfer has been approved by all necessary authorities, the transferring parciante shall provide updated information about the water right to the Secretary for recording in the records of the Acequia.

5. Water Banking

The Aztec Ditch hereby forms a Water Bank under Section 73-2-55.1, NMSA 1978 (2003). The Water Bank shall be managed according to the provisions of Appendix B: Water Banking.

Nothing in the formation of the Water Bank or its operation shall affect the traditional and recognized lawful authority of the Acequia Commissioners and Mayordomo. Issues of daily water use, periodic allocation, water issues between members, and all other matters normally managed by the Acequia officers will continue without change. Use of the Water Bank shall not affect existing vested water rights, priority dates or any existing lawful use of water by members. No action connected to the Water Bank shall be considered an adjudication of any person's water rights.

6. Ditch Easement and Prohibition Against Interference

All persons, whether or not they are members, are prohibited from cutting or breaking the banks or any other portion or part of the Ditch, unless approved by the Ditch Rider. The ditch banks shall be kept clear of obstacles that can interfere with the orderly cleaning, maintenance, or flow of the water in the Ditch. Potential obstacles, such as corrals and fences, shall be kept away from the Ditch or constructed in such a way that they do not interfere with the management of the Ditch. The Ditch may require removal of any obstacle, whether permanent or temporary, on its easement, therefore, all construction or material changes within the Ditch's easement must first be approved by the Commission.

The Ditch's easement is as wide as necessary to conduct reasonable use, maintenance or improvements and a minimum 15 foot opening on the Ditch's easement to accommodate heavy equipment shall be the standard.

All material changes to the Ditch or its easement shall comply with the Ditch's current set of best practices and shall require Ditch approval prior to the change. The Ditch Commission has full authority to determine best practices as they relate to the Ditch's easement and infrastructure and to periodically revise them.

Any gate placed across the ditch bank must be free-swinging and shall allow for adequate clearance to maintain the ditch. The Ditch Company will provide its own lock for the gate and shall have access at all times through the gate. The Ditch Rider or any other authorized person shall be able to work the full length of the Ditch, along the bank, without interference from man-made structures.

Any person who interferes with the Ditch's easement or prevents the Ditch's convenient access to the easement commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico. A civil action may also be pursued against the violator.

7. Illegal use of water

All persons, whether or not they are members with established rights to the use of water from the Ditch, are prohibited from withdrawing water from the Ditch, except as consented to and supervised by the Ditch Rider. Any person who, contrary to an order of the Ditch Rider or Commission, interferes with the Ditch in any manner, or who takes or uses Ditch water contrary to such orders, commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico. A civil action may also be pursued against the violator.

8. Penalties/Denial of Service/Court Action

Members who become delinquent in their assessment (financial or labor), or who in any way interfere with the orderly operation of the Ditch, or who are determined to have taken water illegally, shall be denied the service of the Ditch and the right to withdraw water therefrom until the Commission has determined that the infraction has been corrected. In the event that a member, after having been denied the services of the Ditch and the right to withdraw water from it, does not in any way indicate an intention to correct the infraction, a complaint against such member may be filed by the Commission before the appropriate court of law.

The Ditch may also issue citations against members requesting payment for the Ditch's reasonable expenses associated with removing obstructions or preventing the illegal withdrawal of water. Failure to pay the citation may result in a complaint before the appropriate court requesting repayment of reasonable charges associated with the Ditch's efforts plus interest, court costs, and legal fees. Upon a favorable judgment to the Ditch, the Ditch may place a lien on the violator's property.

9. Head Gates

Water users are required to have screw-type head gates for which water is diverted from the main Ditch.

**Article X. Specific Duties of the Officials of the Commission**

On or before the first Monday in January, the Commissioners shall organize by electing one of their members as Chairperson, another as Secretary, and the other as Treasurer.

1. Duties of the Chairperson

The Chairperson shall preside at all meetings of the membership and the Commission. The Chairperson shall coordinate the commission's conduct and supervision of the Ditch's affairs and shall perform such additional duties as may be assigned to the Chairperson by the Commission.



2. Duties of the Secretary

The Secretary shall record or cause to be recorded the minutes of all Commission proceedings. The Secretary assures proper custody of all records other than financial, and shall assure that all certificates and other documents are properly kept and filed. In the absence of the Chairperson, the Secretary shall assume the duties of the Chairperson.

3. Duties of the Treasurer

In general, the Treasurer shall be responsible for all funds and securities of the Commission. The Treasurer shall maintain a proper record of the receipts and disbursement of the Commission.

**Article XI. Miscellaneous Provisions**

1. Amendments to Bylaws

These bylaws shall be enacted, amended, or modified at any lawfully noticed meeting by a simple majority vote of the members present and voting, with each member having one vote.

2. Applicability of State Law

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

3. Severability Clause

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

4. Compliance with Bylaws

All members shall abide by Ditch Bylaws, Rules and Regulations and shall comply with decisions duly adopted by the Commission.

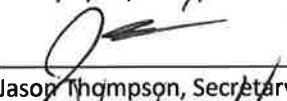
Section 5: Inspection of Ditch Records

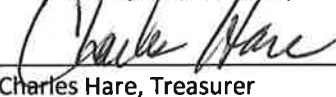
All records of proceedings by Commissioners, financial records, and other reports and records of the Ditch shall always remain public property and shall be subject to inspection by any person pursuant to state law.

Dated: January 10, 2017

Approved by Commissioners:

  
Randy Lydic, Chairperson

  
Jason Thompson, Secretary

  
Charles Hare, Treasurer

## APPENDIX A: WATER TRANSFERS

### Section 1: General

The members of Aztec Ditch declare that a transfer of a water right served by the Acequia, or a transfer of a water right so that it is moved into and then served by the Acequia, may be detrimental to the Acequia and/or its members. Therefore, any such proposed transfer by any person or entity must be formally considered by the Commission using the procedure set forth below, and must be approved prior to application for the transfer to the Office of the State Engineer. As used in this document, "transfer" means any type of change or modification whatsoever to the point of diversion, and/or place of use, and/or purpose of use of a water right, including but not limited to any type of temporary transfer, partial transfer, transfer to a supplemental supply of water, emergency transfer, or water-use lease.

### Section 2: Process

**Application Submittal.** An application to transfer a water right served by the Acequia or transfer of a water right into the area served by the Acequia shall be made by the owner of the water right using the application form adopted with this bylaw, which shall be delivered by certified mail to each Commissioner. The 120-day timeline in Section 72-5-24.1(D), NMSA 1978 (2003) shall not begin to run until the applicant submits a complete application form with all required information. Submittal of an application that the Acequia deems incomplete shall not cause the timeline to begin to run.

**Meeting.** Within 90 days of receipt of the complete written request, the Commissioners shall hold a meeting to allow the applicant and members who support or oppose the request to be heard and/or submit information.

**Meeting Notice.** Notice of the meeting shall be given in the same manner required for the Acequia's annual meeting. In addition, notice shall 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.

**Meeting Agenda.** The meeting agenda shall include at least the following information: date, time, location, and an item entitled "Consideration by Commission of Application by [name of applicant] to Transfer Water Rights".

**Meeting Procedure.** The management of the meeting, such as date, location, length, and other related matters shall be decided by the Commission. Only the entities mentioned in this section shall be allowed to speak at the meeting. The rules of civil procedure and the rules of evidence shall not apply to the meeting.

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. During the presentations, the Commission shall accept and consider any documents or other exhibits, written or oral statements, or arguments offered by the applicant or any non-commissioner Acequia member, or by any individual who is presented by the applicant or any non-commissioner Acequia member. The Commissioners may ask any questions they believe may help in their decision. The Commissioners may defer any questions posed to them until after all comments have been received and deliberations have taken place.

The applicant or any non-commissioner Acequia member may be represented by an attorney or other representative. The applicant or any non-commissioner Acequia member may respond, personally or through a representative, to exhibits, statements, arguments, or questions offered at the meeting, directing such response to the Commission.

Following the presentations, the Commission shall deliberate, prepare a written decision, and vote. The Commission may choose to recess the meeting prior to doing or completing any of these activities. If it chooses to recess, the Chair shall announce the date, time, and location of the reconvened meeting prior to recessing. The last of any reconvened meetings shall be within 120 days of receipt of the complete written application. The Commission shall also immediately post notice of the date, time, and location on or near the door of the original

meeting location and at least one other public notice location. Only matters appearing on the original agenda may be discussed at the reconvened meeting.

The transfer application may be denied, in whole or in part, if the Commission finds that the transfer would be detrimental to the Acequia and/or its members. The application may also be conditionally approved, with conditions which address potential detriments to the Acequia or its members. The Commission shall base its decision on the record; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation. A decision requires a majority vote of the Commissioners and shall be made within 120 days upon receipt of the complete, written application. The Commission's decision shall be in writing, explaining the reasons for its decision. The vote on the written decision shall be made at an open meeting. This shall constitute a decision of the Acequia in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D), NMSA 1978.

### Section 3: Appeal to District Court

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 Section 73-2-21(E) or Section 73-3-4.1, NMSA 1978, whichever is applicable. The appeal must be filed within 30 days of the Commissioners' written decision.

### Section 4: Prior Application to State Engineer Prohibited; Commissioner Protest

A person or entity desiring a water right transfer is required to seek approval from the Acequia Commission prior to seeking approval from the Office of the State Engineer. If a person or entity fails to do so and files an application for the change with the State Engineer, an Acequia Commissioner shall timely file a protest to the application with the State Engineer on behalf of the Acequia, objecting to the failure of the applicant to first bring the request, or the question of the bylaws applicability, before the Acequia. Any Commissioner is authorized to file the protest. Any uncertainty whether a particular change is a "transfer" reviewable by the Commission under these bylaws shall be decided by the Commission in an open meeting prior to any application for the change to the Office of the State Engineer, and the Commission's decision shall be communicated to the Office of the State Engineer. Absent such a meeting and decision, no Commissioner shall sign any affidavit, nor make any statement, written or otherwise, stating that the Acequia does not have an applicable bylaw.

### Section 5: Arbitration

Instead of an appeal to court, the applicant or a member of the Acequia aggrieved by the Commission's decision may request that the Commission's decision be submitted to binding arbitration. The request must be in writing, sent to each Commissioner by certified mail within 30 days of the Commission's decision. The Commission must agree to the request in order for the arbitration to proceed. The Commission shall send notice to the person requesting arbitration of whether it agrees to the request within 15 days of receipt of the request.

If the Commission agrees upon arbitration, the arbitrator shall be a person experienced in acequia organization, governance and procedure and shall be mutually agreed upon by the Commission and the aggrieved party. If agreement on the arbitrator cannot be reached within 30 days of the date of the Commission's agreement to the request, the arbitration shall not proceed.

The issue presented to the arbitrator shall be solely whether the Commissioners' decision was fraudulent, arbitrary, capricious, or otherwise not in accordance with law. The arbitration shall be conducted in a manner directed by the arbitrator, and shall include a) the right of any party to be represented by an attorney, b) the right to present testimony and/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 shall not apply. Fees shall be paid equally by the Commission and the aggrieved party. The arbitrator shall provide a written explanation of the reasons for the decision. The result of the arbitration shall be final and binding.

## **WATER RIGHT TRANSFER APPLICATION FORM**

*A copy of this form must be delivered by certified mail to each of the three commissioners of the acequia.*

Name of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

Current point of diversion of water right: \_\_\_\_\_

Current place of use of water right: (If a Hydrographic Survey is available, provide map name, map number, and tract number. Otherwise, provide a legal description of the tract of land. Attach map.)

\_\_\_\_\_  
\_\_\_\_\_

Number of acres to transfer: (Please specify or designate on attached map where rights would transfer from if part of a larger tract.)

\_\_\_\_\_

Number of acre-feet per year to transfer: \_\_\_\_\_

Current purpose of use of water right: \_\_\_\_\_

Proposed new point of diversion of water right: \_\_\_\_\_

Proposed new place of use of water right: \_\_\_\_\_

Proposed new purpose of use of water right: \_\_\_\_\_

Please attach documentation demonstrating you are the true owner of the water right.

If the proposed new place of use is on land already served by the Acequia, explain how the proposed transfer would not exceed the maximum amount of water rights allowed on that land.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

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FOR ACEQUIA USE ONLY

Received by \_\_\_\_\_ Date \_\_\_\_\_

## APPENDIX B: WATER BANKING

This Appendix contains the Water Banking provisions referenced in Article 9, Water Banking, and the Water Banking Deposit Form.

### 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 also 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.

In adopting this section, the parciantes of Aztec Ditch agree that a banked water right may be exercised on lands not otherwise associated with the water right so as to further the purpose of the Water Bank, and further agree that a parciante who owns a banked water right may remove the water right from the Water Bank at any time, and shall therefore not be deprived of the water right, lose ownership of the water right either permanently or temporarily, or experience any reduction in the economic value of his or her property as a result of the Water Bank.

### Section 2: Protection from Loss for Non-Use

As provided in Section 73-2-55.1, NMSA 1978 (2003), water rights deposited in the Water Bank are not subject to loss for non-use during the time they are in the bank.

### Section 3: Water Bank Procedures

#### a) Water Bank Record Keeping

The Commissioners may delegate to the Mayordomo or any member of the Acequia the responsibility to maintain records on all Water Bank deposits forms submitted, contact logs, and other information required to achieve the purposes of the Water Bank, not including, however, automatic deposits and withdrawals. These records shall be maintained permanently in the records of the Acequia.

#### b) Depositing Water Rights

Water rights may be deposited in the Water Bank in one of two ways, either by (1) a parciante depositing his or her own water right in the Water Bank by submitting a deposit form, or (2) a water right being automatically deposited in the Water Bank after two full consecutive calendar years of non-use. In both cases the parciante has the right to withdraw the water right from the Water Bank at any time, as described below.

(1) Deposit form. Any person or entity owning a water right on the Acequia may submit a water right deposit to the Water Bank. The owner shall complete a deposit form provided by the Acequia, and submit 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 shall use the Map and Tract Number of the most recent Hydrographic Survey or, in the absence of that, the Acequia's traditional identification system to identify the right being deposited. The deposit shall become effective upon receipt of all necessary information by the record keeper. The record keeper shall inform the Mayordomo of the deposit as soon as possible.

(2) Automatic deposit. A water right that is not used for two full and consecutive calendar years (January through December) shall, on January 1 of the following year, be deemed to be deposited in the Water Bank.

#### c) Renewing Deposits; Withdrawing Water Rights

Each deposit shall have a term of one year, renewable annually, except that a deposit made after January 1 shall have an initial term of less than one year. A water right may be withdrawn from the Water Bank at any time including during the initial term as described in paragraphs (1) and (2) below. Each deposit shall renew automatically on January 1 unless the owner has withdrawn the water right.

- (1) A parciante who has used a deposit form to make a deposit shall make a brief written request for non-renewal or withdrawal of the water right, specifying the date that the withdrawal shall take effect, and submit it to the Water Bank's designated record keeper. If the written request is instead submitted to an Acequia officer who is not the designated record keeper, the officer shall forward it to the designated record keeper. Any initial term or automatic renewal will end as of the specified date of withdrawal.
- (2) A water right that is automatically deposited may be withdrawn in the manner described in the above paragraph or by verbal request of the parciante to use the water. If the parciante requests to use the water, the water right will be deemed to be withdrawn after such request followed by actual beneficial use of the water. Any initial term or automatic renewal will end when the withdrawal becomes effective.

Use of a water right following non-renewal or withdrawal from the Water Bank shall be subject to all Acequia requirements, including the requirement that the owner be in good financial standing with the Acequia prior to receiving water.

Water rights deposited in the Water Bank that are sold or otherwise conveyed to a new owner shall be deemed to remain in the Bank until the new owner withdraws the water right as provided above.

d) Water Right Reallocation

All water rights deposited in the Water Bank shall be temporarily transferred by the Mayordomo by absorbing them into the Acequia's regular rotation so that the rights are put to use to augment shortfalls at the remaining places of use served by the Acequia. The temporary transfer shall not include any change of purpose of use or point of diversion of the water rights. A water right deposited in the Water Bank shall be presumed to be put to beneficial use beginning at the next water distribution by the Mayordomo, for the duration of the term authorized above. Such temporary transfer does not require Commission action or approval.

Water rights deposited in the Water Bank may also be temporarily transferred to a specific place(s) of use already served by the Acequia, by action of the Commission in any other lawful manner which, in the judgment of the Commissioners, will benefit the Acequia, subject to all applicable procedures, rules and laws. The temporary transfer shall not include any change of purpose of use or point of diversion of the water rights.

The temporary transfer of water rights deposited in the Water Bank, done in accordance with this section, shall occur in the year in which the rights were deposited, initially or through renewal. Such water rights shall not accumulate or carry over to be reallocated in future years.

Temporary transfers of banked water rights done in accordance with this section are not subject to Article 9 or Appendix A of these bylaws (regulating water rights transfers).

Section 4: Acequia Dues and Fees

Water rights may be deposited in the Water Bank regardless of whether the owner is in good financial standing with the Acequia. However, ditch dues or fees owed the Acequia by a water right owner who has deposited water rights in the Water Bank will continue to accrue and be owed by the water right owner. An owner who deposits water rights after January 1 shall pay dues and fees for that year, and dues and fees must be paid for the year in which the water rights are withdrawn. An owner who was not in good standing when his or her rights were deposited shall pay the outstanding dues and fees prior to receiving water after withdrawal of the rights from the Bank.

## WATER BANK DEPOSIT FORM

Water Right Owner: \_\_\_\_\_

Contact Person (If Different): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Acreage of water hereby deposited: \_\_\_\_\_

If a hydrographic survey is available, provide the map name, map number, and tract number: \_\_\_\_\_

Otherwise, please provide a description of the tract of land and a map if available: \_\_\_\_\_

Initial Deposit Year: \_\_\_\_\_

\_\_\_\_\_  
Signature of Depositor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Water Bank Record Keeper

\_\_\_\_\_  
Date

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Page \_\_\_\_\_

**BANKING LOG – OWNER DEPOSITS AND WITHDRAWALS**

Depositor Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Initial Owner Deposit

\_\_\_\_\_  
Owner Withdrawal – Owner Deposit

Owner Withdrawal Effective Date (if different than above): \_\_\_\_\_

Name of Water Bank Record Keeper \_\_\_\_\_

