

University of Colorado Law School

Colorado Law Scholarly Commons

Books, Reports, and Studies

Getches-Wilkinson Center for Natural
Resources, Energy, and the Environment

2016

Colorado Acequia Handbook: Water Rights and Governance Guide for Colorado's Acequias

Jens Jensen

Peter D. Nichols

Ryan Golten

Sarah Krakoff

Sarah Parmar

See next page for additional authors

Follow this and additional works at: https://scholar.law.colorado.edu/books_reports_studies



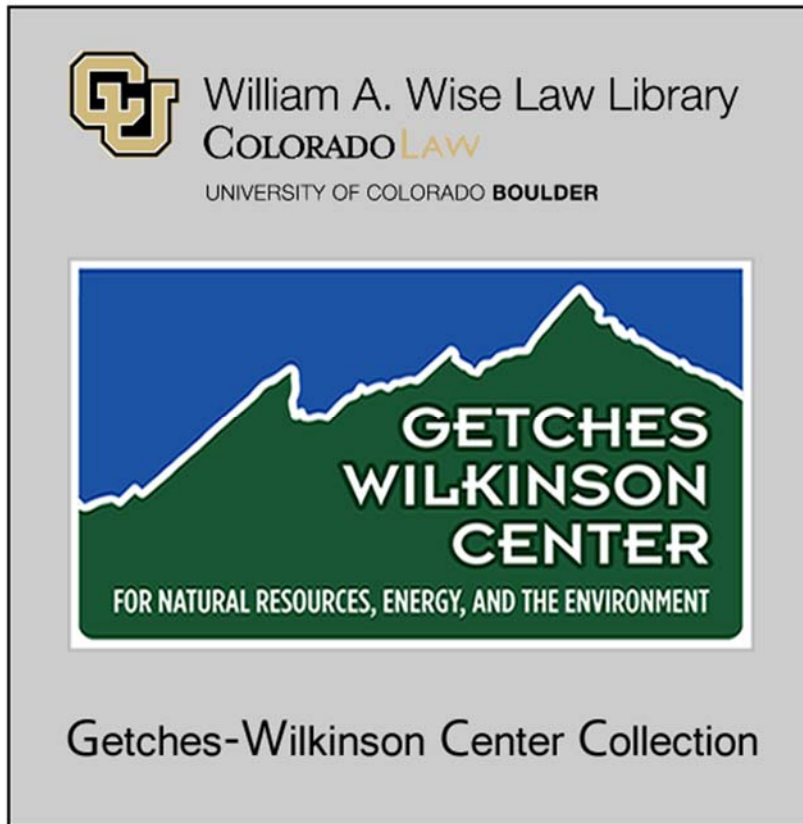
Part of the [Water Law Commons](#), and the [Water Resource Management Commons](#)

Citation Information

Colorado Acequia Handbook: Water Rights and Governance Guide for Colorado's Acequias (Jens Jensen, Peter Nichols, Ryan Golten, Sarah Krakoff, Sarah Parmar, Karl Kumli & Jesse Heibel eds., rev. 2016), <https://www.coloradoacequias.org/data/>
Colorado%20Acequia%20Handbook%20-%20second%20Edition%2010%203%2016.pdf.

Authors

Jens Jensen; Peter D. Nichols; Ryan Golten; Sarah Krakoff; Sarah Parmar; Karl Kumli; Jesse Heibel; Blake Busse; Karoline Garren; Julia Guarino; Megan Gutwein; Cori Hach; Melissa S. Jensen; Shannon Liston; Gunnar Paulsen; Nate Miller; John R. Sherman; Dan Weiss; Michael Weissman; Emily Neiley; University of Colorado Boulder. Getches-Wilkinson Center for Natural Resources, Energy, and the Environment; Gates Family Foundation; Rocky Mountain Mineral Law Foundation; Sangre de Cristo National Heritage Area; Sangre de Cristo Acequia Association; and Colorado Open Lands



COLORADO ACEQUIA HANDBOOK: WATER RIGHTS AND GOVERNANCE GUIDE FOR COLORADO'S ACEQUIAS (Jens Jensen, Peter Nichols, Ryan Golten, Sarah Krakoff, Sarah Parmar, Karl Kumli & Jesse Heibel eds., rev. 2016),

<https://www.coloradoacequias.org/data/Colorado%20Acequia%20Handbook%20-%20Second%20Edition%2010%203%2016.pdf>.

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



Colorado Acequia Handbook

Water Rights and Governance Guide for
Colorado's Acequias
(Revised 2016)



Jens Jensen, Wellborn, Sullivan, Meck & Tooley
Peter Nichols, Berg Hill Greenleaf & Ruscitti, LLP
Ryan Golten, CDR Associates
Sarah Krakoff, University of Colorado Law School
Sarah Parmar, Colorado Open Lands
Karl Kumli, Dietze & Davis, PC
Jesse Heibel, University of Colorado Law School

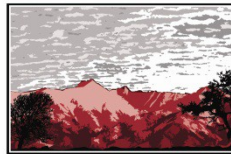
Editors

The Purpose of this Handbook is to provide general information to acequias (irrigation ditches) in Costilla, Conejos, Huerfano and Los Animas Counties. This handbook is not intended to provide legal advice.

Made possible with generous support from:



**Rocky Mountain
Mineral Law Foundation**



SANGRE DE CRISTO
NATIONAL HERITAGE AREA

This handbook is a joint effort of the Sangre de Cristo Acequia Association, the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment at the University of Colorado Law School, Colorado Open Lands, and dedicated private attorneys. The handbook was inspired by the New Mexico Acequia Association's Acequia Governance Handbook, which served as a wonderful model.

The handbook represents the work of law student volunteers at the University of Colorado Law School, with supervision and guidance from Colorado law professors and attorneys. Student contributors to the content of this handbook were:

Blake Busse
Karoline Garren
Julia Guarino, Getches-Wyss Fellow
Megan Gutwein
Cori Hach
Melissa S. Jensen
Shannon Liston
Gunnar Paulsen
Nate Miller
John R. Sherman
Dan Weiss
Michael Weissman
Emily Neiley

Disclaimer

The information provided in this Handbook is for informational purposes only and is intended solely as informal guidance. It is not a determination of your legal rights or your responsibilities under the law. None of the information contained in this Handbook is or should be construed as legal advice. Nothing contained in or received from this Handbook creates an attorney-client relationship.

The information in this Handbook is general in nature and may not apply to each situation. Courts, government agencies, arbitrators, or other adjudicators may interpret the law differently than as stated in this handbook. For these reasons, it is recommended that readers consult legal professionals before taking any action that may result in liability, legal action, or litigation.

Table of Contents

1. Introduction	6
2. Definitions	7
3. Water rights	9
A. Elements of a water right	9
B. The priority system	9
I. <i>How to appropriate</i>	10
II. <i>How to establish priority</i>	10
III. <i>Unadjudicated water rights</i>	11
C. Groundwater	11
D. Calls	12
4. Change of water right	12
5. Transfers of water rights	13
A. Transferring water rights with the land	13
B. Transferring water rights separately from the land	13
6. Water sharing agreements	14
A. Irrigation water loans	14
B. Other formal water sharing agreements	15
7. Losing your water rights (“use it or lose it”)	15
8. Preventing the transfer of water out of the acequia	17
A. Catlin provision	17
B. Right of first refusal	18
C. Others	18
9. Conservation easements	18
10. Governing the acequia	19
A. Bylaws	20
B. The types of organizations acequias can choose from	20
C. Things to consider when choosing the type of organization	21
D. Next steps	21
I. <i>Mutual ditch corporations and acequia ditch corporations</i>	22
II. <i>Mutual ditch associations and acequia ditch associations</i>	23
11. Assessments	23
A. Mutual ditch corporation	23
B. Acequia corporation	23
C. Unincorporated acequia association	24
D. Unincorporated ditch association	24
12. Easements	24
A. Right-of-way for ditch maintenance	24

B. Right-of-way for the mayordomo to inspect and enforce.....	25
C. Using easements to guide public tours along the ditch.....	25
D. Prescriptive easement.....	25
13. Enforcement	25
14. Tort liability.....	26
15. Water quality	26
16. The Rio Grande Compact.....	27
17. Main government water entities	27
18. Where can an acequia get legal assistance?	29
A. Bylaws and Incorporation	29
B. Water Rights Assistance.....	30
Appendix I – Water Rights: Frequently Asked Questions.....	31
Appendix II – Acequia Bylaws: Frequently Asked Questions.....	32
Appendix III – Acequia Incorporation: Frequently Asked Questions.....	33
Appendix IV – Model bylaws	34
Appendix V – Catlin provision (Also included at Art. 10 in Model Bylaws).....	41
Appendix VI – Topics to consider about bylaws	42
Appendix VII - The new Acequia laws passed in 2009 and 2013	44
Appendix VIII – Process for incorporating.....	45
Appendix IX - Protest to Revised Abandonment List.....	46
Appendix X – Contacts for organizations and agencies.....	50

1. Introduction

Acequias are unique and longstanding cultural and legal institutions in Colorado. Spanish and Mexican farmers and ranchers who settled here long before Colorado became a state created these systems for irrigation and water sharing that ensure sustainable use of water, and create important community bonds. Despite their long history, which includes acknowledgment in the session laws of the Colorado Territory, it was not until 2009 that acequias received recognition in Colorado state statutes. The 2009 Acequia Recognition Law, which was amended in 2013, allows acequias to continue to exercise their traditional roles in governing community access to water, and also strengthens their ability to protect their water. For acequias in Colorado to take full advantage of the statute, it is necessary to have a set of written bylaws that formalize existing customs and adopt the recently recognized powers. This Handbook was drafted in part to highlight the opportunities presented by the Acequia Recognition Law, as well as to explain the basics of Colorado water law for acequia members and those who work with acequias.

2. Definitions

Abandonment: The loss of whole or part of a water right, brought on by the users' intent to permanently discontinue putting the water to a beneficial use. A period of non-use for ten consecutive years raises a rebuttable presumption of abandonment.

Adjudication: The court process for obtaining a water court decree. This can involve things such as a trial or hearing.

Appropriation: Diverting, storing, or otherwise capturing water from a natural stream and using it or having a plan to use it for a beneficial use prescribed by Colorado law.

Assessment: The determining of a share of fees to be paid by members of a group who are directly benefited from a common project upon individual or common property.

Augmentation plan: A detailed program to increase the existing supply of water available to use in the natural water system so that there will be less need to curtail the rights of junior users.

Beneficial Use: The quantity or measure of water applied to a legally recognized non-wasteful use. Colorado law recognizes a wide variety of uses as beneficial, such as commercial, domestic, fire protection, flood control, irrigation, recreation, stock watering and many more.

Decree: A formal water court document that defines a water right.

Deed: A formal document used to transfer water or other real estate.

Diversion: Removal of water from its natural course or controlling water in its natural course through use of a structure such as a ditch, pipeline, pump or well.

Easement: A limited legal right to do something on land that is owned by someone else.

Incorporating: The legal process of creating a corporate entity, which enjoys certain rights and privileges not available to other business entities.

Injury: Actions that cause the holder of a decreed water right to suffer loss of water at the time, place, and amount of which they are entitled to under their water right.

Junior User: A water rights holder who has a later priority date than other water rights holders on a river, stream, or ditch, and therefore is behind these other rights holders in line for water.

Prior appropriation: The legal system used in Colorado to determine who has a right to use water. It is also called the “first in time—first in right” system because the person (appropriator) who historically used the water first has the first right to use it before later appropriators.

Priority: The ranking of a water right as against all other water rights drawing from the same stream or groundwater system. Under Colorado law this is determined by the year in which the application for the water right was filed with the water court.

Right of first refusal: A contractual right that gives its holder the option to enter into a transaction with the owner of something, here a water right, before the owner can enter into that transaction with a third party.

Senior user: A water rights holder who has an early priority date on a river, stream, or ditch and therefore has the right to curtail the use of junior rights holders when there is not enough water for everyone’s use.

Tort: A civil wrong, other than a breach of contract. For example, if you do not maintain your ditch in a reasonable way and as a result it overflows and destroys someone else’s property, that is a tort. If you commit a civil wrong or tort, you may have to pay money, or damages, to make up for the wrong.

Well Permit: A formal decision from the State Engineer governing the use of ground water.

Water Court: Formed by the Colorado General Assembly in 1969, water courts are the legal institution that hears all water right decree applications, applications for changes of water rights and other proceedings involving water rights. There are seven water courts in Colorado, one for each water division based on the major watersheds. *See Figure 1, page 30.*

Water Right: A property right to use a set amount of a surface or groundwater resource. In Colorado these are obtained under a defined procedure involving the water courts.

Waste: The diversion of water in an amount that exceeds what is necessary to achieve the appropriator’s beneficial use. Water waste cannot be included in the measure of a water right.

3. Water rights

Colorado law governs all rights of acequias described in this handbook, including water rights. Under Colorado law, a water right is legally defined as a right to divert a set amount of water that must be put to a beneficial use. The water must be used for the purposes and at the locations intended by the original user at the time of appropriation unless subsequently changed by the water court. In short, a water right is a right to take water from a natural stream and then use it for a specific purpose, at a specific place and time without unnecessary waste. It should be noted that even if a water decree does not list all of these, they are still part of the restrictions on the water right.

A. Elements of a water right

Generally the elements listed in a water right include 1) the point of diversion 2) the type of diversion 3) the amount of water and 4) the time of use. These elements are often included in the water court decree. However, in older decrees the quantity, place, and time of use are often not specified. Even if these elements are not listed in the decree, the water right is limited by the intent of the original user as to these elements. If you go to water court to change your water right or because you are sued, the court will likely try to determine what the missing elements in your decree should have been.

B. The priority system

The priority system of water law was developed in the nineteenth century American West to meet the practical demands of miners and farmers. It is also known as the prior appropriation system

Historical perspective

Before statehood, other water rights systems were in use. The Spanish “right of thirst” doctrine used by the acequias in southern Colorado was recognized in territorial session laws from 1868, 1872, and 1874. But, in 1891, the Colorado Supreme Court held that prior appropriation is the only recognized system in Colorado.

because when it applies, water rights are granted based on time. Once a person appropriates water and applies it to a beneficial use, they have a superior right to the water against any future water users. This leads to the common phrase, “first in time, first in right.”

The prior appropriation system is part of the Colorado Constitution. The Constitution states that “the right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied” and “priority of appropriation shall give the better right.” This means that if there is unappropriated water in a stream or river, anyone can divert it and put it to a beneficial use. However, most streams in Colorado are already over-appropriated.

Water rights under the prior appropriation system are only rights to *use* water as it is considered a public resource owned by the state. Unlike ownership of land - where ownership grants you discretion regarding whether and how to use the land - ownership of water rights only gives you a right to temporarily use the water for a specified beneficial purpose. Once the purpose of your water right has been achieved, any excess water must be allowed to return naturally to the stream for the next user.

I. How to appropriate

A valid appropriation usually consists of 1) an intent to use the water 2) an actual diversion of water from a natural source and 3) applying the water to a legally defined beneficial use. In Colorado, anyone can appropriate water that has not previously been appropriated by someone else by satisfying these three elements. Colorado law defines many uses, including agriculture, recreation, aesthetics, and energy production, as beneficial. However, there are limits to what is legally considered beneficial and it is important to characterize the water use within one of the existing legally recognized beneficial uses. Additionally, for a diversion to establish a valid appropriation in Colorado there must be some physical alteration to the stream's natural course. It is not enough, for example, to say that you have been fishing in the stream and that the water is benefitting you by being in the stream.

Practically speaking, there is very little water left in the Rio Grande or Arkansas River basins that has not yet been appropriated.

II. How to establish priority

Traditionally, the first person to take the water and apply it to a beneficial use had the first right to use the water in the future. In 1969, that changed in Colorado with the passing of the Water Rights Determination and Administration Act. Now, the priority date for water rights is determined by the year that the right was adjudicated in the state's water court, not the year the user first diverted water and put it to beneficial use.

For example, this means that if "user A" diverted and put water to beneficial use two years before "user B," if user B adjudicates her right in water court before user A, user B's right has priority over user A's right. User B has the senior right to use the water, and user A's right is now junior.

III. Unadjudicated water rights

Although a water right's priority is now determined by the year it was adjudicated in water court, that does not mean unadjudicated water rights are not valid rights. They are still valid. The only difference is that, as explained above, if you have an unadjudicated water right, those with adjudicated water rights are senior to you, even if they appropriated the water much later. The adjudication is therefore not about actually getting a water right; it is about establishing priority over those who have not yet adjudicated their water rights.

What if two rights are adjudicated in the same year?

If two water rights are adjudicated in the same year, the person who appropriated first still has the first right to the water. Also, those water rights that were adjudicated in the first round of adjudications, for example the San Luis People's Ditch's water rights, have a priority date based on the date they appropriated the water, even if this was long before the adjudication. The important point is that your priority date is primarily based on when you adjudicate your right.

c. Groundwater

Groundwater in the San Luis Valley is contained in two somewhat separate layers. One is considered confined and the other is unconfined. The difference is that in the lower layer the water is trapped to some extent, and it is under pressure from everything above it. As a result, the pressure in the lower layer pushes the water up when you drill a well, making it easier to get it out of the ground. Both layers are connected to surface waters, so when water is taken out, it affects the surface streams. Because of this connection, and to protect senior water rights, anyone wanting new permits to pump groundwater in the valley must bring in other water and replace what they take from the ground with new water in the streams. As a result, new groundwater pumping within the valley should not directly affect acequia water rights.

Although groundwater has not historically been an important source of water for acequias, increased demand for water in the West has led to greater pressure on all water users. When a large water user, such as a city, wants to pump groundwater in a way that impacts surface waters, they must bring in more water to the surface system to prevent injury to other water users. Doing this is called augmentation, which is described below. As municipalities and the related demand for water grows, water rights will likely become more expensive, and thirsty towns may try to purchase more surface water rights for their augmentation plans.

Because acequias are generally supplied by surface water instead of groundwater, this handbook will not go into further details about groundwater.

D. “Calls”

Under Colorado’s prior appropriation system, a senior user has the right to all his water before junior users on the stream are entitled to any. When senior users are not getting the water they are entitled to, they can make a “call” on the river – a request to the State to “administer” the stream to enforce their rights.

In practice, a senior user places a call by contacting the State. It is then up to the State to determine how best to administer priority rights on the stream. Typically the water commissioner will stop upstream junior users from diverting and using water. That allows the senior user to get the water necessary to fulfill their senior rights, which are superior to the junior users’ rights.

4. Change of water right

Once a water right is adjudicated any change as to how, when, or where you use your water requires a change of the water right itself. In order to change a water right, you must file an application with the water court. The largest consideration for the court in determining whether to approve or deny any proposed changes is whether or not the change would “injure” any other water user. If there is likelihood the change would injure another user, you can sometimes prevent injury through augmentation (bringing in extra water from another source) as mentioned in the groundwater section. Because it can be a long and difficult process to prove the absence of injury and get the water court’s approval, changing your water right often requires help from a lawyer.

The legal definition of change of use

“Change of water right” means a change in the type, place, or time of use, a change in the point of diversion, a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage, a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct application, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage to a fixed place of storage, or any combination of such changes.

Augmentation plan

An augmentation plan is a system for adding extra water to a natural stream. Normally this is done to make sure that no one is injured by a change of use. For example, if you want to change what you use your water for from watering a field, where water runs back to the natural stream both under and sometimes above ground, to a use where there is no return flow to the natural stream, it is your responsibility to create an augmentation plan to bring in water from elsewhere to augment, that is to add, to the natural stream where the return flow from your fields used to return to the natural stream. That way you ensure that no other water user is injured (gets less water) so that you can get court approval for the plan.

5. Transfers of water rights

Under Colorado law holders of water rights can freely separate that water right from their interest or rights in the corresponding land. This means that when someone transfers land, either by sale or gift, they may choose to include their water rights along with the land or separate the two and keep the water right. When making this decision it is crucial that the deed clearly and specifically states whether or not it includes any water rights

When transferring land, make sure water rights are clearly addressed.

If you do not specify what happens to the water rights when you sell the land on which the water right is used, a court might at a later point have to decide what you intended to do at the time you sold the land. Not only may you end up with a lower selling price than you thought, you may also have to pay to defend yourself in a lawsuit brought by the buyer of the land. Additionally, if you have a will you should be careful to clearly address who gets the water rights when you pass away.

A. Transferring water rights with the land

The simplest way to transfer water rights with land is to indicate clearly in the deed that all valid water rights associated with the land are included. Another way to accomplish this is to state in the deed for the land that it does not include the water right and at the same time have a second deed to transfer the water right separately. If you have a will, you should also be careful to be clear about who gets the water rights when you pass away.

B. Transferring water rights separately from the land

Water rights can also be sold separately from the land. However, because the water rights purchaser will not have rights to the land associated with the water right, before the purchaser can use the water for any new purpose or place of use, they must get a court to approve a change of water right. This might be difficult, so it might be hard to sell water rights without selling the land. The restrictions are explained in more detail in the section on change of water rights.

c. Right of first refusal

Colorado's Acequia Recognition Statute - C.R.S. §7-42-101-101.5 - give acequias the power to include in their bylaws the "right of first refusal" on any proposed transfer of water in the acequia. This power means a person offering to sell their water rights separately from the land must offer to sell them to the acequia before they can sell them to an outsider. For more information on this please see Section 9 B.

6. Water sharing agreements

Irrigators have probably shared water for as long as there has been irrigation and drought. Colorado has a long and continuous history of water sharing that predates the creation of the Colorado Territory. This history is most evident in the Culebra watershed around the town of San Luis. The simplest form of water sharing is an informal agreement between two or more water users. For example, users on a ditch may agree to use water in rotation to make it easier for each to flood irrigate their fields in turn. Or, nearby ditches may similarly agree to use water in rotation so that both ditches have enough "head" to transport the water down the length of the ditch. Families and neighbors may also agree to informally share water. None of these practices require approval of the water court, division engineer, or water commissioner so long as no other water right is injured.

Colorado law also allows formal water sharing between users on a ditch and between ditches so long as the ditches are in the same stream system. Formal water sharing includes irrigation water loans, substitute water supply plans, interruptible water supply agreements, and water banks. (There are also special water sharing agreements to provide water for instream flows to the Colorado Water Conservation Board, but those are beyond the scope of this Handbook.)

A. Irrigation water loans

The division engineer must approve irrigation water loans, and these loans are for agricultural purposes only. There is a \$100 filing fee, and you must follow strict procedures to inform other water users about your proposal. It typically takes at least a few weeks for the division engineer to consider and approve water loans, and approval must be obtained before acting on the proposed loan.

B. Other formal water sharing agreements

A substitute water supply agreement (SWSP) allows a one-year change in the type and place of use, which can be renewed for up to five years. An interruptible water supply agreement (IWSA) is a longer-term plan. You can use it to allow someone else to use your water up to three times during a ten-year period, with two 10-year renewals permitted. Both of these sharing agreements are much more complicated than an irrigation water loan.

Each has a substantial application fee, and you must follow strict procedures to inform other water users that may be “injured” about your proposal. Each procedure will take at least weeks, if not months, before the State Engineer can approve the agreement. Obtaining approval will probably require the help of both a lawyer and a water engineer or hydro-geologist.

7. Losing your water rights (“use it or lose it”)

A water right is only a *right to use* water, which means you do not own water like you own land. Because a water right is a right to use, if a person fails to exercise their use right, they risk losing it under the theory of “abandonment.” Under this theory a person must stop using their water AND have the intent to permanently stop using their water. However, even if there is no intent of permanent non-use, depending on the length of time a court may see temporary non-use as evidence that you do not intend ever to use your water again. “Abandonment” can also be applied to a portion of a water right if a user stops using a certain portion AND never intends on using it again.

If there is someone on your ditch who has not irrigated his/her land, it is important to talk to that person about the risk of abandonment because it could reduce the ditch’s overall water right. Once you abandon a water right you no longer have any right to use that water. You cannot later start using the water again.

The best way to avoid abandonment is to irrigate and not change the point where you take the water from the river or the place where you use it, unless you have approval from the water court!

The following questions and answers provide more details about the doctrine of abandonment. The main point is that you do not have to worry about abandonment if you are using all of your water rights. If you do not use your water, you have to make sure that there is evidence that you intend to use it again later, otherwise you risk losing your water rights.

Q: What counts as not using your water?

A: The clearest situation is when you no longer irrigate the land for which you have the water right. A court may consider other things that make it look as if you no longer use your water. For example, if you do not maintain the laterals going from the ditch onto your field, it may appear that you are no longer irrigating that field. Also, a court may think that you have stopped using your water if you no longer pay your property taxes on the land that you are irrigating.

Q: What does it mean to never want to use your water again?

A: It is supposed to mean that you actually never want to use your water again. Because a court cannot know what you think, it will look at the law and your actions, or lack of action, to decide if you ever wanted to use your water again. The first thing a court will look at is how long you have not used your water. A court will think that you never wanted to use your water again if it is **more than ten years** since you used it, unless you can prove that you still intended to use the water. A court will probably conclude that you still wanted to use your water if you were trying to change your right in a water court or if you were trying to sell it. These are considered other ways of using a water right because you still looking to get something out of it.

Q: What is the State Engineer's role?

A: Every ten years the State Engineer will make a list of water rights that he believes are not being used. Normally the Engineer will not look beyond the head gate, although this may change as water becomes scarcer. The State Engineer will make the next list in 2020. The State Engineer will send a letter to the last known owner of any water right that is at risk of being be put on the list and the list is also published in the newspaper.

Q: What if my water right, or a water right on my acequia, is put on the abandonment list?

A: Once a water right is listed on the decennial abandonment list, there is a protest period of six months. Protests are submitted in the form of a written statement of objection that is filed with the Division Engineer. It is best to get legal counsel to help with this process because you risk losing your water rights. If it is not financially possible, you can protest the abandonment yourself (see "Protest to Revised Abandonment List" in Appendix VI). In this written statement, you should present evidence that you did not intend to abandon the water. If there was family illness, military service, or other circumstances which prevented irrigation, it is important to explain these in the protest letter. If the state engineer still believes that you abandoned your water, you can make a legal protest with the water court.

8. Preventing the transfer of water out of the acequia

The main concern for many acequias is how to protect their water from being purchased by people outside of the community who might transfer the water away from the acequia. This section outlines the main methods of preventing such transfers from happening.

The most important thing to understand is that the individual members of the acequia and not the acequia as an entity own water rights. Furthermore, Colorado's constitution protects members's right to sell their individual water rights. It is therefore not legally possible to impose an outright ban on any sale or transfer of the water outside of the acequia. However it is possible to set up legal barriers that make it considerably more difficult and expensive for anyone trying to transfer their water rights out of the acequia.

A. Catlin provision

The strongest barrier that an acequia can create is called a "Catlin provision" which can be inserted into an acequia's bylaws. The name "Catlin provision" comes from a Colorado Supreme Court that held that it is legal for ditches to impose several procedural requirements on members who want to transfer water out of the ditch. A sample Catlin provision is attached in Appendix II. If an acequia already has bylaws, it can simply vote to insert this provision. If an acequia does not have written bylaws, the opportunity to include this provision presents a very good reason to adopt them. For more on the advantages of adopting written bylaws, see the bylaws section of this handbook.

As mentioned previously, under Colorado law an individual can only transfer a water right away from the ditch where it is decreed and used if they can show that the transfer will not "injure" any other water user. Normally, the first step in getting a transfer of water rights approved is applying to the water court so it can decide whether the proposed transfer will injure any other water user. With a Catlin provision, the ditch or acequia takes over this first determination. The person who wants to transfer water out of the ditch must therefore ask the acequia for permission before going to court. If the acequia looks at the evidence presented and decides that it will injure other members if the water is transferred out of the ditch, the court will likely simply agree with the acequia instead of rehearing or revisiting the evidence. If the acequia did not consider the evidence or was arbitrary in its decision, however, the court might disagree and set aside the acequia's decision.

The Catlin provision is therefore a useful tool that allows decisions about injury to be made locally in the first instance rather than at a faraway courthouse.

B. Right of first refusal

A right of first refusal is a provision that can be included in an acequia's bylaws that gives the acequia a right to buy any water rights that a parciante wants to sell. The acequia will have to match the offer of the person to whom the parciante wants to sell the water rights. If the acequia matches the offer, the acequia can demand that the parciante sells to the acequia rather than the proposed buyer. This provision can help keep the water in local hands. It is therefore another procedural means by which acequias can strengthen their abilities to prevent transfers of water outside of their ditches.

c. Others

There are a number of other procedural and legal tools that can be used to benefit acequias, but that are outside of the scope of what can be addressed through acequia bylaws or governance documents. The possibilities include contracts, covenants, and conservation easements. These are complicated legal tools with far-reaching consequences. If an individual, or group of individuals, want to consider these options they should seek legal assistance from an experienced attorney. (Because they are a powerful and increasingly used legal tool, conservation easements are discussed briefly below.)

9. Conservation easements

A conservation easement is an agreement that can be used to make sure that a property is never used for certain purposes or is used only in certain ways. A conservation easement can help conserve a landscape or a preserve particular use for the land. If landowners enter into conservation easements, they still legally own the land and can sell or gift it to whomever they like.

A conservation easement is a permanent legal contract between the landowner and a “qualified organization”- typically a government agency or a private land trust. What makes conservation easements unique is that they attach to the property into the future, regardless of who owns the land. The landowner agrees to the use restriction and the “qualified organization” accepts the responsibility for ensuring that the terms of the conservation easement are upheld in the future.

Each conservation easement is individually tailored to fit the particular tract of land, the conservation values of the property, and the mutual goals of the landowner and participating organization. Typical restrictions in a conservation easement might prevent the landowner from dividing the property in the future and or limit where homes and other structures could be built on the property. Importantly, a conservation easement can be used to keep land and water rights together by prohibiting the sale of water separately from the land and restricting change of use or point of diversion.

There may be tax benefits from creating a conservation easement, and in some circumstances it may be possible to be paid directly for a conservation easement. If you are interested in a conservation easement, you should contact a land trust - such as Colorado Open Lands or the Rio Grande Headwaters Land Trust - or consult the land trust directory for other qualifying organizations at www.findalandtrust.org.

10. Governing the acequia

This section focuses on two important aspects of acequia governance. First, it explains what bylaws are and why it is important for acequias to have written bylaws; they are the governance rules for the acequia and they can be used to protect the acequia against unwanted outside interference. Second, this section explains the various organizational structures that acequias can use, and the legal implications and consequences of each type of structure. Acequias may want to review all the options described so that the members can decide what type of organization the acequia is or should be, rather than having the law decide those questions by default.

A. Bylaws

Bylaws are the rules for governing and operating an organization. Bylaws do not have to change the way an acequia is governed; rather they can provide certainty and clarity when disagreements arise regarding how the acequia should be run. For example, bylaws can prevent conflict by specifying the procedures for ditch cleaning and rights of access along the ditch for cleaning and repair. This clarity may be increasingly helpful as new parciantes join the acequia who may not be familiar with the acequia's traditions and customary rules.

Importantly, bylaws can also be used to protect the water rights in the acequia against transfers out of the acequia. The two main ways to use bylaws to protect the water in the acequia are the Catlin provision and a right of first refusal. Both of these are explained in more depth in Section 7.

Appendix I contains a set of model bylaws. This model can be changed and adapted to suit each individual acequia. It is also possible to create completely new bylaws or update existing ones. However, it is advisable to get legal assistance when making major changes to bylaws in order to make sure everything will work as you intend if challenged in court. See Section 17 for more information on seeking legal help.

B. The types of organizations acequias can choose from

In Colorado, irrigation ditch organizations - including acequias - are legally classified as non-profit mutual ditch associations unless they actively choose to operate as another type of entity. That means that even if you have not done anything to make your acequia organization formal, the law will still consider your organization a nonprofit mutual ditch association. While this is the legal default, there are a number of other organizational forms you can adopt for your acequia.

Generally, irrigation ditches – including acequias - can choose to either be incorporated or non-incorporated. In addition, acequias can choose to take advantage of the 2009 and 2013 statutes that grant certain powers to acequias that choose to adopt them. **For more information about these statutes, see Appendix IV.** As a result, the main options for acequia organization are; 1) mutual ditch association, 2) mutual ditch corporation, 3) acequia association, 4) acequia corporation.

c. Things to consider when choosing the type of organization

Reasons not to incorporate:

As described above, if an acequia has done nothing, it is considered an unincorporated non-profit mutual ditch association. The advantage of remaining unincorporated is that it is informal and you do not have to file any papers with the State. For smaller acequias that prefer to operate less formally and/or are unwilling to pay the \$50 incorporation-filing fee to the state, it might not make sense to incorporate.

Reasons to incorporate:

Many of the traditional benefits of incorporating, such as shielding members from the acequia's liabilities and making the acequia a legal entity, have been extended to unincorporated acequias. However, these changes are relatively new, so there is still greater certainty about those benefits when an acequia is incorporated. This increased certainty can be helpful when an acequia seeks to do business with outside businesses, banks, government entities, or others. Many of these entities may prefer to lend money to, and enter into contracts with, incorporated acequias because corporations are familiar to them. Acequias interested in contracting with outside businesses or seeking grant funding from government agencies may wish therefore to consider incorporating.

Reasons to Pass (or Amend) Bylaws Regardless of the Decision about

Incorporation: An intermediary step before incorporating is to formalize in writing that the ditch is an acequia ditch association under the new acequia laws. The acequia would then have certainty that it can exercise all the powers and rights recognized in the acequia statutes. These four powers are:

- 1) the right to use a one landowner-one vote system,
- 2) make assessments of work or monetary payments to maintain the ditch,
- 3) share the water on a basis other than pro-rata ownership, and
- 4) a right of first refusal on sale of water from the acequia.

(Note that even if the ditch is already incorporated as an ordinary mutual ditch corporation, it can amend its bylaws to include these powers under the new acequia laws.)

d. Next steps

Acequias should seriously consider adopting bylaws so that they can assume the powers described above. If an acequia also chooses to incorporate, it may need to amend its bylaws,

but having an initial set of bylaws will make any subsequent steps much easier.

E. Incorporation

To incorporate as a for-profit entity, the owners or shareholders contribute assets such as money or property in exchange for shares of stock. To incorporate as a non-profit, the entity must assert a non-profit purpose. In Colorado, a corporation becomes a legal entity as soon as it files articles of incorporation with the Colorado Secretary of State and pays a filing fee. Articles of incorporation are short but relatively technical documents that serve as simple constitutions for the corporation. It is therefore advisable to get legal help creating them. For more details about the process of incorporation see Appendix V.

F. Maintaining records

All acequias should keep records of the basic decisions and acts of the acequia, and records of their accounts.

I. Mutual ditch corporations and acequia ditch corporations

There is certain record keeping requirements that corporations must fulfill. Those are described below. These are only required if the acequia has incorporated, but many of these are best practices for keeping good records, and should be followed regardless.

The legal requirements for incorporated acequias are:

- (1) That you permanently keep the following records: Minutes of all meetings, records of all actions taken by the board or on behalf of the board, and records of all the people who have agreed to meet without being properly notified of the meeting the way described in the bylaws.
- (2) That you keep records of the corporation's accounts.
- (3) That you keep records of the names and addresses of the acequia's shareholders.
- (4) The records should be in writing.
- (5) That you keep a copy of each of the following at the corporation's principal office:
 - (a) Its articles of incorporation;
 - (b) Its bylaws;

- (c) The minutes of all member's/shareholders' meetings, and records of all action taken by members/shareholders without a meeting, for the past three years;
- (d) All written communications within the past three years to shareholders as a group or to the holders of any class or series of shares as a group;
- (e) A list of the names and business addresses of its current directors and officers;
- (f) A copy of its most recent periodic report to the secretary of state;
- (g) All financial statements from the past three years.

All members/shareholders have the right to ask for a copy of the documents listed in number 5, except that they normally only have a right to the latest financial statement. If the acequia is a non-profit corporation, shareholders also have a right to a copy of any board resolutions about the status, rights, and obligations of members. The shareholder who wants access to these documents must notify the acequia at least five days in advance and then show up at the acequia's office during regular business hours to make the copies.

II. Mutual ditch associations and acequia ditch associations

Unincorporated acequias are considered to be nonprofit associations. The law does not specify which records these organizations must keep. But, it is a very good idea to keep most of the records described above whenever practical.

11. Assessments

A. Mutual ditch corporation

An incorporated mutual ditch corporation can require payments from the owners for the costs of the ditch. The company can require these to be monetary payments, labor, or both. One of the benefits of being incorporated is that the corporation can make these assessments to cover costs, and it can enforce the payments if someone does not want to pay.

B. Acequia corporation

An incorporated acequia corporation can also require payments from the owners for the costs of the corporation. The acequia corporation can require monetary payments or labor. Acequia corporations can also make assessments to cover costs, and can also enforce the payments if someone does not want to pay.

c. Unincorporated acequia association

An unincorporated acequia association can require payments for repair and maintenance of the acequia, but probably nothing else. The acequia association can require monetary payments or labor.

d. Unincorporated ditch association

Members of unincorporated ditches still have to pay their share of the cost to maintain and clean the ditch. The share is based upon the share of the water you get. However, a member only has to help maintain the part of the ditch that is before the point where he or she takes water. Additionally, the association itself cannot claim money or labor from the other members, instead each member can demand that each other member contributes. If someone does not contribute after having been asked to do so by the board or the owners of one third of the water, each other member can try to enforce his or her rights in court.

12. Easements

An easement is a property right to cross, use or prohibit the use of someone else's land for a specific purpose. While there are many different types of easements, the one most relevant for ditches and acequias is a right-of-way easement. This easement is used to cross another's land to gain access to the ditch, most often to maintain it. It is important to realize that under Colorado law all acequias and ditches have automatic easements for access along the ditch to maintain and repair it. Although there is already a legally enforceable easement that all landowners must respect, it can often be a good idea to specify in the bylaws what the extent of the easement is, and how it will be used under normal circumstances. That way you can avoid conflicts because everyone is notified, in writing, what the easement is and how it will be used.

A. Right-of-way for ditch maintenance

Reflecting the importance of irrigation ditches in Colorado, the right-of-way to maintain them is protected by the Colorado Constitution. Ditch owners are also required by law to maintain their ditches. Ditch maintenance is necessary to prevent the water in the ditch from damaging other people's property, and to ensure that the water is not wasted. Overall, Colorado law supports the traditional acequia practice of cooperating in maintaining the ditch, even if doing so requires crossing other people's land.

B. Right-of-way for the mayordomo to inspect and enforce

The right-of-way that all ditches in Colorado inherently have includes the right of the mayordomo or ditch rider to walk along the ditch to perform his duties. That allows assurances that everyone on the ditch can enjoy the benefits of the mayordomo overseeing the acequia's operations.

C. Using easements to guide public tours along the ditch

It is probably not legal to use a maintenance easement for the purpose of guiding tours along the ditch. It is unlikely that a court would approve of using the access right for any other purpose than maintaining the ditch. Guided tours along ditch easements may be a great way to educate people about the acequia systems and to bring money into the community but those who want to organize such tours should first seek permission from the landowners along the ditch. Such permission can be formalized in another easement for the specific purpose of guiding tours. If you want to formalize such an arrangement in another easement, you should seek legal advice because it is a complicated legal document that affects your property rights.

D. Prescriptive easement

A prescriptive easement can be acquired when somebody openly and obviously uses your land for a period of eighteen years in a way that interferes with your exclusive use of your property right. If a person uses your land for eighteen years without you stopping them, the court will say that that person has acquired a "prescriptive easement," or a right to continue making use of your land in that way. So, for example, if your neighbor walks or drives across your property as a shortcut to his property for eighteen years, he might gain a legal right to continue using your property even if you later try to make him stop.

13. Enforcement

An acequia can enforce its rules and decisions in a number of ways depending on its goals and the surrounding circumstances. It can always go to court to have its bylaws enforced, as once adopted they are legally binding on the members or shareholders.

A. Enforcement of assessments

In addition to taking assessment issues to court, acequias can force members and shareholders to pay assessments by stopping water deliveries to those who have not paid the required fee.

If a member or shareholder continues to refuse to pay assessments, it is also possible for the acequia to essentially foreclose on that person's water rights. By forcing a foreclosure sale of those water rights, the acequia can also ensure that water rights belonging to absent owners who do not pay assessments are not abandoned. Before doing this, it is advisable to get legal help.

B. Other enforcement

Acequias can also specify in their bylaws reasonable amounts that members or shareholders must pay if they violate provisions of the bylaws. It is important that the amount is reasonable in relation to the injury to the acequia. Such payments cannot be used as a method to fine or punish members, but merely as a method of compensating the acequia for the injury caused by the violation. This is another reason to specify the extent of easements along the ditch for maintenance and repairs. Once the easement is specified in the bylaws, you can include a provision for how much a member has to pay if the member improperly denies access to those performing the maintenance or repairs.

14. Tort liability

Generally, a person or corporation that owns an irrigation ditch has to pay for damage or injuries caused by a failure to properly construct or maintain the ditch. There may also be other situations where a ditch suddenly has to pay for damage to people or their property. A ditch may even, in some circumstances, have to pay if a trespasser gets injured on the ditch. A ditch or acequia corporation can buy insurance by itself or together with other ditches to pay for damage that the ditch or its members might otherwise have to pay for themselves.

15. Water quality

Irrigation runoff and return flow are generally not considered pollution. However, if an agricultural operation releases pollution into a body of water from an "identifiable source," that operation may be fined. Therefore, you must be careful about not dumping waste or disturbing ditches in a way that causes large amounts of sediment or other pollution to enter the connected rivers and streams.

16. The Rio Grande Compact

Colorado, New Mexico and Texas have entered into the Rio Grande River Compact to share the water fairly among the states. The Compact requires Colorado to deliver a certain amount of water to New Mexico. Depending on water flows that year, Colorado may be required to deliver as little as 25 percent or as much as 70 percent of the natural flow of the Rio Grande River to New Mexico. This may limit the amount of water that users in Colorado may take.

The Compact covers uses of water of “any stream which naturally contributes to the flow of the Rio Grande.” It makes no exception for acequias. Like other Colorado users of the Rio Grande river system, acequias may be affected by the limits of the Compact. The Compact only affects streams that have an effect on the flow of the Rio Grande where it enters into New Mexico. The Culebra River is no longer a tributary to the Rio Grande, so it does not have any compact obligations. However, the Conejos River and its tributaries are tributary to the Rio Grande, so the compact may affect acequias in this system.

17. Main government water entities

Water Court

The Water Right Determination and Administration Act of 1969 created seven water divisions, see map below. Each water division is staffed with a division engineer, a water judge, a water referee, and a water clerk.

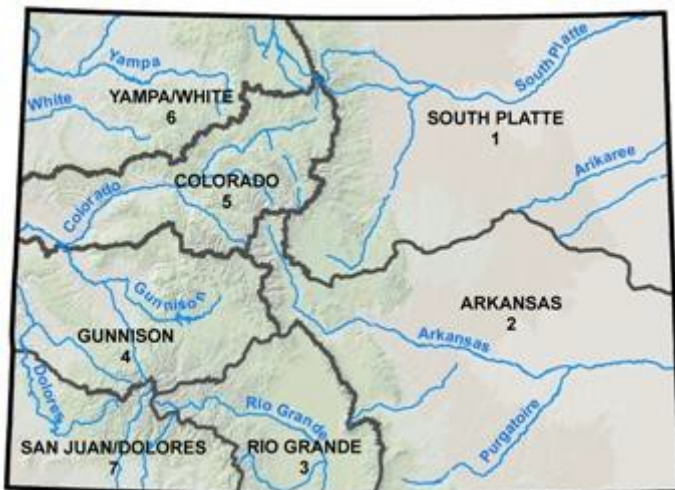


Image 1. Source: <http://water.state.co.us/DIVISIONSOFFICES/Pages/default.aspx>

Division of Water Resources (Office of the State Engineer)

The Division of Water Resources "administers water rights, issues water well permits, represents Colorado in interstate water compact proceedings, monitors stream flow and water use, approves construction and repair of dams and performs dam safety inspections, issues licenses for well drillers and assures the safe and proper construction of water wells, and maintains numerous databases of Colorado water information."

Division Offices employ Water Commissioners, who ensure that the priority system is followed. They enforce the decrees and water laws of the State of Colorado.

Colorado Water Conservation Board

The Colorado Water Conservation Board's responsibilities range from protecting Colorado's streams and lakes to water conservation, flood mitigation, watershed protection, stream restoration, drought planning, water supply planning, and water project financing.

Colorado Water Resources & Power Development Authority

The Authority funds all types of water and wastewater projects in Colorado, including treatment plants, pump stations, water storage projects, storm water facilities, and pollution control projects.

Special Districts

When a special district is created, it is required to submit a service plan that explains what services that the district will provide. There are many types of special districts. For water purposes the major ones include water districts, sanitation districts, and combined water and sanitation districts.

Water and Irrigation Districts

These districts may be organized for specific water related purposes with the general powers to achieve that purpose. They can tax, borrow, and condemn land.

Conservancy Districts

Conservancy districts may be created for any of the following purposes:

- Preventing floods;
- Regulating stream channels by changing, widening, and deepening them;
- Regulating the flow of streams;

- Diverting, controlling, or eliminating watercourses;
- Protecting public and private property from flooding, which they can do by: altering watercourses; building reservoirs, canals, or embankments; and draining lowlands;
- Conserving, developing, using, and disposing of water for agricultural, municipal, and industrial purposes;
- Participating in the development of parks and recreational facilities within the boundaries of the conservancy district.

Drainage Districts

Drainage districts are created to drain land in order to improve public health and welfare.

Irrigation Districts

Irrigation district are created to irrigate land in order to improve farming.

Water Conservation Districts

Water conservation districts are special districts that can be formed in certain river basins, including Rio Grande. These districts are created to make better use of the water in the river.

18. Where can an acequia get legal assistance?

In general, any acequia needing legal assistance is welcome to come to a meeting of the Sangre de Cristo Acequia Association (SdCAA). The SdCAA may be able to help directly through its legal assistance partnership (more below) or may be able to suggest practicing water attorneys who may be willing to help with reduced cost assistance, depending on need. The Costilla County Conservancy District may be able to provide funds or technical assistance, depending on the situation.

Currently, the SdCAA has a partnership with the University of Colorado Law School's Getches-Wilkinson Center and Colorado Open Lands to provide legal assistance in two specific ways:

A. *Bylaws and Incorporation*

The partnership can assist acequias who would like to 1) draft bylaws for the first time and decide whether or not they would like to incorporate or 2) revise their bylaws and decide whether they want to incorporate or 3) are already incorporated as mutual ditch companies, but would like to re-incorporate as acequia ditch corporations to take advantage of the

Acequia Recognition Law of 2009 (amended in 2013). Acequias requesting legal help will be considered partly on a first-come, first-served basis, with consideration as to the size of the acequia (we try to serve a mix of large and small) and willingness and interest of the parciantes to participate in the process.

B. Water Rights Assistance

If your water has been shut off by the State Engineer (through the water commissioner) because the state does not have a record of your water right, legal assistance is available to help research whether 1) you did have a decreed water right and the record was simply not in the state's possession or 2) your water right was never adjudicated and you need to apply for a new water right. In the either case, the partnership will help with the water court filing process.

If you wish to apply for assistance through either of these programs, please contact the Sangre de Cristo Acequia Association at (719) 695-0060, or at P.O. Box 721 San Luis CO 81152, or via email at info@sangreacequias.org. Applications can also be found on the SdCAA website at www.sangreacequias.org.

Appendix I – Water Rights FAQ

About Water Rights Frequently Asked Questions

1. What should I do if I am not getting the water I think I am entitled to from the acequia/ditch?

You can talk to the person you believe is using your share; talk to the mayordomo (or ditch rider); or contact a Water Commissioner. The situation may lead to the Commissioner issuing a call on the stream, which would limit low priority users water consumption until senior rights are fulfilled.

2. I can't get my water or am not using it on a regular basis and I'm worried I may lose my water right. Should the acequia be concerned?

Generally, no. If you are prevented from using your water, you are normally safe from abandonment. But if you can use the water, you should. You should also pay annual assessments and otherwise make it known that you intend to keep your water.

3. What should I do if I want to sell or give away my water rights but keep my land?

You will want to check your acequia's bylaws to see whether they restrict sale of water rights separately from the land and whether they have the right of first refusal to purchase your water right. Depending on if either of these is present, the sale of water rights separate of the land may be impossible or more difficult.

4. I want to use my water for something else, what should I know?

Once a water right is adjudicated any change as to how, when, or where you use your water requires a change of the water right itself. In order to change a water right, you must file an application with the water court. You will want to check your acequia's bylaws to see whether they restrict change of use.

5. How do I know if the state engineer wants to declare my water rights abandoned?

The state engineer must notify you and list your water right on the abandonment list so you have a chance to object. Note that abandonment lists are not in the local newspapers. They can be downloaded from:

<http://www.water.state.co.us/pubs/abandonment.asp>. The next abandonment list will be prepared in 2020.

Appendix II – Acequia Bylaws FAQ

Should Our Acequia Adopt Bylaws? Frequently Asked Questions

1. What are the advantages of adopting bylaws under Colorado law?

In 2009, Colorado passed a law that allows acequias to be recognized as unincorporated acequia associations. The law acknowledges that acequias have unique governance structures and powers. For acequias to take advantage of the new law, they must adopt written bylaws. Adopting bylaws can help acequias maintain traditional governance and water-sharing systems, and help protect water rights on the acequia.

2. Are there disadvantages to adopting bylaws?

No, there are no disadvantages to adopting bylaws. However, acequias should be careful about what they put in their bylaws, and should make sure that the bylaws reflect the actual practices of the acequia and are enforceable under Colorado law.

3. What can an acequia include in its bylaws?

Acequias can do everything a mutual ditch corporation can do, and also have some special powers. An acequia may: 1) set up a voting system of one-landowner, one-vote, rather than one based on shares; 2) assess fees or require labor of the parciantes on the ditch; and 3) decide how the acequia will share water between parciantes.

4. Can an acequia prevent parciantes from selling his or her water rights outside the acequia?

No, an acequia cannot outright prevent anyone from selling water rights outside the acequia. However, it can include a provision in its bylaws that grants the acequia a “right of first refusal,” which means that the acequia has the option to buy the water rights from anyone on the acequia who wants to sell at the same price and with the same terms as it is being offered for sale to someone else. An acequia can also require anyone who wants a change of use or transfer to comply with various requirements to guarantee no injury to others on the acequia.

5. Does an acequia need to incorporate to enforce its bylaws?

No. Under the acequia statute, acequias have the same legal power whether they incorporate or not, as long as they adopt bylaws. There are, however, some practical advantages to incorporating, which include the fact that third parties, including grant-making entities, businesses, and financial institutions, tend to have more confidence in entering into arrangements with a non-profit corporation than an unincorporated association.

Appendix III – Acequia Incorporation FAQ

Should We Incorporate? Next Steps for Acequias That Have Adopted Bylaws

Frequently Asked Questions

1. What are the advantages of incorporating as a non-profit under Colorado Law?

The most significant advantage of incorporating is that third parties, including grant-making entities, businesses, and financial institutions, may have more confidence in entering into arrangements with a non-profit corporation than an unincorporated association.

2. If an acequia chooses not to incorporate, are individual members (parciantes) subject to liability for actions taken by the acequia?

No. As long as the acequia has passed a set of by-laws that allow it to be viewed as an unincorporated acequia association, then individual parciantes should be protected from liability.

3. Can an unincorporated acequia association set up a bank account and act as a fiscal agent?

Yes, as long as the acequia has passed by-laws consistent with the acequia statute and is therefore recognized as an unincorporated acequia association, it should be able to act as a fiscal agent and hold funds as an association.

4. If an unincorporated acequia association can act as a fiscal agent, why are some grant funds only available to non-profit corporations?

See the answer to Question 1 above. Even though an acequia association can act as a fiscal agent, some funders may be more comfortable working with incorporated entities and only willing to provide funds to an incorporated non-profit. This is an important practical benefit, even though it is not legally mandated.

6. If an acequia chooses to incorporate, will it have to change its voting requirements from one landowner/one vote to voting by shares of water owned?

No. The acequia statute allows acequias to incorporate without changing their traditional voting structure or water allocation scheme. In other words, an acequia can continue to operate as it has traditionally, and still incorporate under Colorado law.

6. What changes, if any, will an acequia have to make to its by-laws in order to incorporate?

If an acequia already has a set of by-laws that allow it to operate as an unincorporated acequia association, then the changes are very minimal. The acequia will have to have a “purpose” clause that indicates that the acequia is operated for a non-profit purpose, and the acequia will have to include a “dissolution” clause that describes how the acequia’s assets will be distributed in the event the non-profit corporation dissolves.

7. Is it complicated or expensive to register as a non-profit corporation?

No. You can register and file the articles of incorporation on-line, and the fee is \$50.00

Appendix IV – Model bylaws

MODEL BYLAWS FOR COLORADO ACEQUIAS

Preamble (optional): This can be a statement as to the identity and philosophy of the acequia.

Article 1. Purpose and Membership

*Section 1: Purpose Statement

This section should come from the members of the acequia, and it should reflect your purposes and practices.

The purposes could include any or all of the following: 1) promote the agricultural uses of water on the lands served by the acequia, 2) promote the efficient and beneficial use of water, 3) sustain customs and traditions of providing water to parciantes in a manner that is fair and equitable, 4) protect and defend the rights and interests of the Acequia and the parciantes, 5) maintain the infrastructure and easements of the Acequia, and 6) maintain an adequate diversion right to ensure a sufficient water supply for parciantes.

*Section 2: Compliance with Colorado Law

The management and operation of the Acequia shall be in compliance with the laws of the State of Colorado.

Section 3: Description

Option 1. If your Acequia has received a court decree, use its description. Indicate that the Acequia includes the mainstem and all laterals and drainages or desagues.

Option 2. If no legal description is available, give a general description that includes your point of diversion (where you divert from the river), along with any laterals and desagues.

*Section 4: Membership – Parciantes

The members or parciantes of the Acequia are those persons who own irrigated land with water rights from the Acequia.

In the event there is a question as to what constitutes a single membership, the Commissioners shall decide the matter using history and tradition as a guide.

Article 2. Commission

Section 1: Number of Commissioners

The Commission (1) shall consist of three commissioners elected in accordance with Article 5 or (2) appointed in accordance with this Article.

Section 2: Duties of the Commission

The commission shall be responsible for the management of the Acequia, and the commission must approve all major decisions.

Section 3: Vacancy of Commissioners

In the event of a vacancy on the Commission, the remaining Commissioners shall appoint a Commissioner to hold office for the remainder of the term or until his or her successor is elected at a meeting of the membership. If there are two vacancies on the Commission, the remaining Commissioner shall convene a special meeting of the membership to fill the vacancies for the remainder of the term of office.

Section 5: Meetings of Commissioners

Special meetings of the Commission may be called by the President (defined below in Article 3, Sections 1 and 2). Two Commissioners shall constitute a quorum for such meetings. Notice shall be posted in a public place three (3) days prior to a meeting.

Article 3. Officers

*Section 1: Types of Officers

The officers of the Acequia shall consist of a President, Secretary, Treasurer, (**optional:** and a Mayordomo). The Commissioners shall appoint among themselves a President, Secretary, and a Treasurer. (**Optional:** They may also appoint

one of the members of the Acequia as Mayordomo.)

Section 2: Duties of Officers (these may vary by acequia)

- a. President: Responsibilities of the President will be to direct the activities of the Acequia jointly with the other commissioners and call and preside at all Acequia meetings. In the event the President is unable to preside at a meeting, he or she will appoint one of the other Commissioners to preside over the meeting.
- b. Secretary: The Secretary is responsible for keeping complete and accurate records, minutes of meetings, reading the minutes of the previous meeting, and assisting the other Commissioners in running the business affairs of the Acequia.
- c. Treasurer: The Treasurer shall be responsible for management of the finances of the Acequia including the following:
 1. Send notices to parciantes for billing of and collection of assessments and fines.
 2. Maintain accurate records for each parciante including assessments due, hours worked and fines due in coordination with the Mayordomo.
 3. Make payments for labor and materials as necessary.
 4. In coordination with the Mayordomo, prepare an annual financial report to be presented to the membership.
- d. Mayordomo: The Mayordomo shall work under the direct supervision of the Commission. His or her responsibilities shall be as follows:
 1. Coordinate and supervise all work on the Acequia including the annual Spring-cleaning, day-to-day maintenance, and emergency repairs.
 2. Distribute water to parciantes in a manner that is equitable and is consistent with the customs of the Acequia.
 3. Collect delinquencies from parciantes as reported by the Treasurer.
 4. Supervise the Acequia to ensure that delinquent parciantes do not take water unlawfully. The Mayordomo has full authority to shut the individual headgate along the banks of the Acequia of those parciantes who are delinquent and to secure the headgates by any available means.

*Section 3: Vacancy of Mayordomo

In the event of a vacancy in the office of Mayordomo, the Commissioners shall appoint a Mayordomo to hold office for the remainder of the term (*or until his successor is elected at a meeting of the membership*).

*Section 4: Compensation of Officers

Compensation of the officers, if any, shall be determined by a majority of the membership.

Section 5: Bonding of Mayordomo and Treasurer (Optional)

The Commissioners shall determine an appropriate bond for the Mayordomo and Treasurer, and the Mayordomo and Treasurer shall be bonded for that amount, to the extent that these individuals handle Acequia funds.

Article 4. Meetings of Membership

*Section 1: Annual Membership Meeting

The Annual Membership Meeting shall be held every year on _____ (*e.g., the first Monday of October, or as soon as practicable thereafter*).

*Section 2: Notice of Annual Membership Meetings

Option 1: Notice shall be provided to each parciante by mail to the addresses as recorded in the records of the Acequia and posted in a public place ten days in advance of 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 Acequia may provide other types of notice as appropriate.

Option 2: Notice shall be posted in a public place ten days in advance of 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 Acequia may provide other types of notice as appropriate.

Option 3: Notice shall be provided to each parciante by mail, phone call, email, or other reasonable method of

communication and posted in a public place ten days in advance of 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 Acequia may provide other types of notice as appropriate.

*Section 3: Purpose of Annual Membership Meetings

Option 1: At each Annual Meeting, the Secretary shall present the minutes from the previous Annual Meeting. The Mayordomo shall report on the management and operations of the Acequia and the Treasurer shall provide a financial report.

Option 2: At each Annual Meeting, the Mayordomo shall report on the management and operations of the Acequia and the Treasurer shall provide a financial report.

Section 4: Location of Annual Membership Meeting

The annual meeting shall be held at a public place [**within _____ miles of the headgate of the acequia**] **OR** [in the County in which the Acequia is located].

*Section 5: Quorum

A quorum for conducting any business shall be [insert] percent of [*either the total membership or total number of shares or water rights*] eligible to vote, except as otherwise provided in this section. 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.

Optional: If quorum is a percentage of the membership, include the following: For purposes of calculating a quorum, each household (or land co-owned by more than one person) shall constitute one “membership,” regardless of the number of separate properties owned.”

Optional: 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 posted at the location of the original meeting, and all business listed on the original agenda shall be transacted by those present at the reconvened meeting, who shall then constitute a quorum for conducting business provided there are [*insert number*] or more persons present.

*Section 6: Special Membership Meetings

Special meetings of the Acequia may be called by the Commissioners or upon written petition to the Commission President signed by [*insert percentage figure*] of the members. Notice for special meetings shall be the same as for annual meetings.

Article 5. Voting and Elections

*Section 1: Election of Commissioners

The Commissioners (**optional:** and Mayordomo) shall be elected at the Annual Meeting by a vote of the membership. The outgoing Commissioners shall conduct the election.

Option 1: Nomination of Commissioners may be made by any parciante. The nomination and voting for each office (President, Secretary, Treasurer, (**optional:** and Mayordomo) shall be conducted separately. The person receiving the highest number of votes cast for that office shall be elected to that office.

Option 2: Nomination of Commissioners may be made by any parciante. The three commissioners shall be elected at-large. At the end of the Annual Meeting in which the election is taking place, the three Commissioners shall elect, from among themselves, a President, Secretary, and Treasurer with each Commissioner holding one position.

*Section 2: Terms of Office

The elected commissioners shall assume their office not later than the first Monday following the month they are elected. The term of office for the Mayordomo and Commissioners is [*insert number of years*] years.

*Section 3: Voting Rights of Parciantes

Only those members who are not delinquent in the payment of their assessments and who have not defaulted on their work assignments will be in good standing and shall be allowed to vote in any election or other vote of the Acequia. Eligible parciantes who are unable to attend a meeting may vote by written proxy.

Optional: The proxy should contain the member’s name, the particular issue or election to be voted on, how the member wishes to vote, the name of the person delivering the proxy vote on behalf of the member, and the member’s signature.

Insert the language that applies to your Acequia. Or, if none of the below methods applies, please describe your system of voting:

Option 1: Each member shall have one vote. For voting purposes, each household (or parcel of land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned.

Option 2: A member's vote shall be in proportion to his/her shares.

Option 3: Each member shall have one vote, and for voting purposes, each household (or parcel of land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned, except that voting shall be in proportion to shares for any votes concerning *[insert issues such as the financial obligations of the parciantes or the Acequia]*.

Article 6. Management and Operations

Optional: Section 1: Allocation Between Neighboring Acequias

As practiced traditionally, during times of emergency and/or drought, the Commission will represent the Acequia for the purpose of cooperating with the other Acequias in the _____ *[name your valley or community]* which draw water from the _____ *[name stream system]* in order to determine the most effective and equitable manner of allocating water in all of the Acequias.

Section 2: Acequia Cleaning

A community cleaning of the Ditch's main stem or *acequia madre* involving all parciantes will take place during the Spring before the irrigation season on a date determined by the Mayordomo and Commissioners.

Optional: Parciantes on laterals shall be responsible for cleaning their own laterals.

The Mayordomo or commissioners will make every effort to discuss with the individual landowner the potential removal of trees from the side banks and easement of the Acequia, if they interfere with the Acequia or its easement, in order to make arrangements for their removal and disposal.

Include Option 1 or 2, based on the tradition of your Acequia:

Option 1: During Spring cleaning and/or during the normal maintenance activities during the irrigation season, the removal and disposal of debris from the Acequia and side banks, including trash and organic matter such as soil, rocks and brush, is performed by the acequia or peones doing the work soon after the spring cleaning.

Option 2: During Spring cleaning and/or during the normal maintenance activities during the irrigation season, the removal of debris from the Acequia, including trash and organic matter such as soil, rocks and brush, is performed by the acequia or peones doing the work; however, landowners are responsible for removing the debris from their own property following the cleaning.

Optional: The commission may assess those not participating in the community cleaning \$**[insert amount]** as compensation for the work not performed.

Section 3: Allocation of Water Between Parciantes

Option 1: The available water in the Acequia shall be distributed in proportion to the lands with water rights owned by each member of the Acequia. The Mayordomo shall be in charge of the distribution of the water to the members based on the general schedule established by the Commissioners. The schedule may be adjusted depending on the availability of water by the Mayordomo in consultation with the Commissioners.

Option 2: The available water in the Acequia shall be distributed according to *[describe system and give example -- for instance, one acequia may have one day of irrigation for every ten acres and that acequia may allocate one derecho for every ten acres]*.

Section 4: Parciante Assessments

Option 1: An annual assessment of *[insert dollar amount]* per acre will be assessed against all parciantes to help support the cost of operating the Acequia.

Option 2: The Commissioners, immediately upon assuming office or as soon as practicable thereafter, 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, in proportion to their acreage, the amount of labor and dues needed.

Option 3: The amount to be assessed per acre shall be determined by a vote of the membership after being presented the recommendation of the Commissioners and that amount will remain as the annual assessment until changed by a vote of the membership.

Option 4:

- a. Each parciante shall be assessed an annual ditch cleaning assessment of five dollars (\$5). Landowners on the Acequia are responsible for the timely payment of this assessment, even if they have leased their property to a tenant to irrigate.
- b. In addition to the annual ditch cleaning assessment, an annual assessment of one dollar (\$1) per irrigated acre will be assessed against each person irrigating with waters of the Acequia.
- c. Assessment amounts shall be established at the Annual Membership Meeting by a vote of the membership, but the assessments may not be set at an amount less than the values set forth in subsections (a) and (b) of this section.

Article 7. Rights and Obligations of Parciantes

Section 1: Maintenance of Headgates

All members shall maintain their individual headgates in good condition and keep their ditch sections free of trash and other obstructions. Repairs and construction of headgates and other works should be completed before the start of the irrigation season.

Section 2: Assessments

All members shall pay assessments as required by the Commission. All monies assessed by the Acequia are due upon receipt of the Treasurer's statement. These assessments become delinquent thirty (30) days following the date of receipt of the billing.

Section 3: Participation in Acequia Cleaning

All members shall contribute peones for the annual Spring cleaning or for emergency repairs as required by the Mayordomo.

Section 4: Compliance with Bylaws

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

Optional: Section 5: Public Inspection of Acequia Records

All records of proceedings by Commissioners and financial records of the Acequia shall be subject to inspection by any concerned person.

Section 6: Copy of Bylaws

The Secretary shall provide each parciante with a copy of the current by-laws of the Acequia and amendments thereafter adopted. **Optional:** One of the Commissioners or the Mayordomo will orient new members to the Acequia and its operations.

Section 7: Name and Address in Acequia Records

Each parciante shall provide the Secretary of the Commission with the following:

- a. The name of the owner of the property,
- b. The owner's contact information (mailing address, telephone number, and email address), and
- c. The exact amount of irrigated acreage or water rights claimed by the parciante.

If any of the information in (a) through (c) changes, the parciante shall give the Secretary of the Commission updated information no more than thirty days after the change takes effect.

Section 8: Change of Ownership

It shall be the responsibility of a landowner who has purchased or leased land with Acequia water rights to report such transaction promptly to the Secretary for recording in the Acequia's records. Delinquencies, if any, are due from the past owner or lessee on said land, and must be paid before the new owner or lessor may be entitled to the use of the Acequia.

Section 9: Change in Point of Diversion, Purpose of Use, or Place of Use

Water transfers or changes, by changing the point of diversion, purpose of use, or place of use of water rights, must comply with Article 10 of these Bylaws. It shall be the responsibility of the parciante to provide updated information about any change in water rights to the Secretary for recording in the records of the Acequia.

Article 8. Easements

*Section 1: Definition of Easement

Each parciante recognizes that the Acequia, including all of its laterals and drainages or desagues, possesses a historical permanent easement for purposes of maintenance, operations, and improvements. No parciante may build within the easement or otherwise obstruct or limit access to this easement. The easement is described as follows:

Option 1: From the inner edge of each bank, a distance of [*insert number*] feet to each side of the Acequia.

Option 2: The easement is as wide is as necessary for maintenance, use and improvements.

Section 2: Use of Easement

Each parciante agrees that it must be possible to walk the full length of the ditch along its banks. Therefore, if a fence or other obstruction crosses the ditch or the easement, there must be a gate or crossover.

Section 3: Access to Easement

Acequia de la Comunidad has the right to use the historic and customary points of access to the ditch across members' and non-members' property in order to access the ditch for maintenance, operations and improvements.

Section 4: Changes to Acequia

The Commission shall approve any material changes to the Acequia, including any crossings, in advance.

Article 9. Enforcement

*Section 1: Delinquencies

The Mayordomo has the authority to suspend the right to use the Acequia and the water therein of a parciante who is delinquent in the payment of his or her assessment or fails to perform required work. This shall remain in effect until the assessments and fines are paid. The Mayordomo has the authority to collect delinquent assessments through appropriate legal action. The Acequia may file a civil action for the collection of any assessment, fine or penalty, which, after due notice to the member, the member has failed to pay.

Section 2: Unlawful Use of Water or Acequia Interference

The Acequia may pursue legal action against any person who, without permission of the Mayordomo, takes water or interferes with the Acequia in any manner, in accordance with Colorado law.

Section 3: Violation of Easement Rights

Any person who interferes with the Acequia easement or access to the easement may be subject to legal actions in accordance with Colorado law.

Article 10. Water Transfers

Section 1: Purpose

All water provided by the Acequia is to be used solely to benefit the lands of the members of the Acequia and the community. The water's continued use on member lands is essential to the welfare of the community. Any change in water right may injure both the Acequia and its members. The water available to the members of the Acequia is regarded as appurtenant to the land on which the water is used. Sale of these lands is understood to carry with it the right to continued historic beneficial use of the water supply. "Change in water right" can mean change in the type, place, or time of use, change in point of diversion, changes from a fixed point of diversion to alternate or supplemental points of diversion, change from alternate or supplemental points of diversion to a fixed point of diversion, or change in the means of diversion.

Section 2: General Requirements for Transfers and Change of Use

A Parciante desiring to make a change in water right, as described in Article 10, Section 1, shall obtain the approval of the Commissioners prior to filing a change of water right application. If, in the opinion of the Commissioners, the change can be made without injury to the ditch structures, the Acequia, and other Parciantes, the request shall be granted, with such terms and conditions as may be necessary to prevent injury. The Commissioners may require the Parciante desiring to make a change in water right to include a report by the Parciante's engineer, which may be reviewed by the Commissioners' engineer and attorney.

Section 3: Costs and Liability

In the event that the Commissioners, in making any determination as provided in this Article, shall require legal and/or engineering services to evaluate the Parciante's request, including any engineering report submitted with the request, the expense shall be paid by the Parciante making the request and the Commissioners may require that all or part of the estimated cost thereof be paid to the Acequia prior to engaging such services by the Commissioners. Payment of expenses for legal and/or engineering services for any such review shall be limited to actual expenses. The Commissioners may, without penalty or liability, defer any determination until all required costs have been paid.

In the event the Acequia approves the request, the Acequia may elect to file a statement of opposition to the water court application filed by the Parciante in order to ensure that the Commissioners' decision is complied with in any final decree and to otherwise represent the interests of the Parciantes. If the Acequia files a statement of opposition to the application in water court to ensure compliance with the Commissioners' decision, the Parciante requesting the change shall pay the Acequia's actual legal and engineering fees to ensure such compliance.

Each Parciante desiring to make a change in water right shall also be required to indemnify the Acequia, its Commissioners, its agents, and its employees for any and all claims against the Acequia by third parties that may arise from the Acequia's approval of the change of use or point of diversion.

Section 4: Right of First Refusal

In the event that the Acequia approves the request, and if the Parciante desiring to make a change in water right is attempting to sell, trade, or exchange his or her water right, the Parciante must first offer the water right to the Acequia on the same price, terms, and conditions as those being offered to any other party. Any person who fails to offer water rights to the Acequia prior to sale may be subject to legal action in accordance with Colorado law.

Article 11. Miscellaneous Provisions

*Section 1: Amendments to Bylaws

These bylaws may be enacted, amended, or modified by a [*choose simple majority vote or 2/3 majority vote, or other percentage*] of the [*insert total membership or total water rights*] at any duly called meeting.

*Section 2: Applicability of State Law

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.

*Section 3: Severability Clause

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

THE FORGOING BYLAWS WERE ADOPTED BY THE PARCIANTES OF THE ACEQUIA AT A MEETING DULY CALLED AND HELD ON (*insert date*).

Chair

Secretary

Treasurer

Appendix V – Catlin provision (Also included at Art. 10 in Model Bylaws)

Section 1: Purpose

All water provided by the Acequia is to be used solely to benefit the lands of the members of the Acequia and the community. The water's continued use on member lands is essential to the welfare of the community. Any change in water right may injure both the Acequia and its members. The water available to the members of the Acequia is regarded as appurtenant to the land on which the water is used. Sale of these lands is understood to carry with it the right to continued historic beneficial use of the water supply. "Change in water right" can mean change in the type, place, or time of use, change in point of diversion, changes from a fixed point of diversion to alternate or supplemental points of diversion, change from alternate or supplemental points of diversion to a fixed point of diversion, or change in the means of diversion.

Section 2: General Requirements for Transfers and Change of Use

A Parciante desiring to make a change in water right, as described in Article 10, Section 1, shall obtain the approval of the Commissioners prior to filing a change of water right application. If, in the opinion of the Commissioners, the change can be made without injury to the ditch structures, the Acequia, and other Parciantes, the request shall be granted, with such terms and conditions as may be necessary to prevent injury. The Commissioners may require the Parciante desiring to make a change in water right to include a report by the Parciante's engineer, which may be reviewed by the Commissioners' engineer and attorney.

Section 3: Costs and Liability

In the event that the Commissioners, in making any determination as provided in this Article, shall require legal and/or engineering services to evaluate the Parciante's request, including any engineering report submitted with the request, the expense shall be paid by the Parciante making the request and the Commissioners may require that all or part of the estimated cost thereof be paid to the Acequia prior to engaging such services by the Commissioners. Payment of expenses for legal and/or engineering services for any such review shall be limited to actual expenses. The Commissioners may, without penalty or liability, defer any determination until all required costs have been paid.

In the event the Acequia approves the request, the Acequia may elect to file a statement of opposition to the water court application filed by the Parciante in order to ensure that the Commissioners' decision is complied with in any final decree and to otherwise represent the interests of the Parciantes. If the Acequia files a statement of opposition to the application in water court to ensure compliance with the Commissioners' decision, the Parciante requesting the change shall pay the Acequia's actual legal and engineering fees to ensure such compliance.

Each Parciante desiring to make a change in water right shall also be required to indemnify the Acequia, its Commissioners, its agents, and its employees for any and all claims against the Acequia by third parties that may arise from the Acequia's approval of the change of use or point of diversion.

Appendix VI – Topics to consider about bylaws

This checklist can be used for developing new bylaws or amending existing bylaws.

- Preamble

Purpose and Membership

- *Purpose Statement
- *Compliance with NM Law
- Description (amount of water, land, line of ditch)
- *Definition of Membership

Officers

- *Types of Officers
- *Duties of Officers
- *Vacancy of Commissioner
- *Meetings of Commissioners
- *Compensation for Officers
- *Mayordomo (selection, duties, vacancy)

Meetings of Membership

- *Date of Annual Meeting
- *Notice of Membership Meetings
- *Purpose of Annual Membership Meetings
- *Location of Annual Membership Meetings
- *Quorum of Membership
- *Special Membership Meetings

Elections and Voting

- *Election of Officers
- *Voting Rights of Parciantes
- *Nomination of Officers
- *Terms of Office

Management and Operations

- *Spring Acequia Cleaning
- *Allocation of Water Between Parciantes
- *Parciante Assessments
- *Allocation of Water Between Acequias

Rights and Obligations of Parciantes

- Maintenance of Headgates
- Assessments
- Participation in Acequia Cleaning
- Compliance with Bylaws
- *Public Inspection of Records

- *Copy of Bylaws
- Name and Address for Acequia Records

Easements

- *Definition of Easement
- Use of Easement
- *Access to Easement
- Changes to Acequia

Enforcement

- *Delinquencies
- *Illegal Use of Water / Acequia Interference
- *Violation of Easement Rights

Water Transfers

- Water transfers/ change of use/change of POD

Amendments to Bylaws

- *Amendments to Bylaws
- *Compliance with State Law
- *Severability Clause

- *Date of Adoption or Amendment
- *Signature of Commissioners

Appendix VII - The new Acequia laws passed in 2009 and 2013

The new laws grant acequias four powers:

- 1) Acequia elections may be governed by one landowner-one vote rules rather on the basis of water (share) ownership.
- 2) Acequias may require that landowners on the acequia help maintain the ditch, or require that landowners pay a fee for maintenance.
- 3) Acequias may decide how to share water between landowners.
- 4) Acequias may adopt a first right of refusal in their bylaws so that if a member of the acequia wants to sell the member's water rights, then the acequia may buy those water rights by paying the same amount as a proposed buyer offered to pay.

Requirements to be considered an acequia under the new laws:

- 1) all water must come from surface water and have been used since before Colorado became a state;
- 2) the irrigated land must be in Costilla, Conejos, Huerfano, or Las Animas counties, and;
- 3) the acequia must either be incorporated as an acequia corporation or the acequia members must agree to operate as an unincorporated acequia.

These powers may have been available before the Acequia Recognition laws were passed, but it is now easier to claim them. To take advantage of these powers, an acequia has to list them in the acequia's bylaws. Therefore, whether an acequia decides to incorporate or not, it is a good idea for the owners of the acequia to draft and pass a formal set of bylaws.

There is nothing in the new laws indicating that it would affect any other rights.

Appendix VIII – Process for incorporating

A corporation is a legal entity that exists separately from the people who create it. Shareholders or members elect officers, adopt bylaws that govern the corporation, attend annual membership meetings, and vote to approve major actions affecting the corporation or to amend the articles of incorporation.

Selecting a Corporate Name

Under Colorado law, a corporation's name must include the term "Corporation," "Incorporated," "Company," "Limited," "Corp.," "Inc.," "Co.," or "Ltd." The name chosen must be unique and should not be confused with another corporate or business name. There is a search function on the Colorado Secretary of State's website where you can check if a name has already been taken. A name can be reserved for 120 days with the Secretary of State by filing a Statement of Reservation of Name. That gives you time to get all the documents sorted without risking someone else taking your name in the meantime.

Appoint a Registered Agent

A corporation must have a person (or another company) designated as the "agent." The agent is the person that is the official point of contact for the firm. That means that if someone wants to sue the corporation, they must give the agent the notification that the corporation is being sued. Small corporations often appoint a director or officer to serve as the registered agent. The agent must agree to the appointment, be at least 18 years old, and live full-time in Colorado. The registered agent is the person who will receive important information from the state about filing updated documents.

Filing Corporate Articles of Incorporation

In Colorado a corporation becomes a legal entity when it files its articles of incorporation with the Colorado Secretary of State and pays a filing fee. The filing can be done online at the Secretary of State website, <http://www.sos.state.co.us/biz/FileDoc.do>.

The Articles of Incorporation must include:

- 1) The name and principle office address of the corporation;
- 2) The name and address of the corporation's registered agent;
- 3) The name and address of each incorporator; and
- 4) If a for-profit corporation, the classes of shares, if more than one, or that there is only one class of shares, and number of shares of each class the corporation is authorized to issue. If a non-profit, the non-profit purpose.

Organizational Issues

To finalize the incorporation process, the members should meet to adopt bylaws and elect a board of directors.

The corporation must obtain a Federal Employer Identification Number (FEIN) that will serve as its federal tax ID number. The FEIN can be obtained online by an officer of the corporation who will serve as the Responsible Party of the corporation.

[http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Apply-for-an-Employer-Identification-Number-\(EIN\)-Online](http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Apply-for-an-Employer-Identification-Number-(EIN)-Online).

Filing reports

It is important to remember that an acequia that has been incorporated as any type of corporation must send a report to the Secretary of State each year. Otherwise, it might lose its status as a corporation and be fined.

The report must contain:

- The name of the acequia and where it is formed.
- The registered agent of the acequia, and that agent's address.
- The address of the acequia's office.

The report must fulfill certain requirements, as set out on the Secretary of State's website. It is no longer possible to file this form by mail. It must be filed electronically by searching for your corporation at <http://www.sos.state.co.us/biz/FileDocSearchCriteria.do> and then filing the required information through the site for your corporation.

Appendix IX - Protest to Revised Abandonment List

The following pages contain a form, provided by the State, which should be used to file a formal objection to a water right being placed on the abandonment list.

District Court, Water Division _____, Colorado Court Address: <hr/> CONCERNING THE PROTEST OF Protestant/Owner: TO REVISED ABANDONMENT LIST OF WATER RIGHTS INVOLVING WATER RIGHT IN _____ COUNTY	COURT USE ONLY
If Represented by an Attorney, Attorney's Name and Address: Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: Division: _____ Courtroom: _____
PROTEST TO REVISED ABANDONMENT LIST	

Any person who wishes to protest the inclusion of any water right in a decennial abandonment list after its revision by the division engineer shall file a written protest with the water clerk and the division engineer. All such protests to the decennial abandonment list shall be filed not later than June 30, 2012, or the respective tenth anniversary thereafter. Such protest shall set forth in detail the factual and legal basis therefor. §37-92-401(5), Colo. Rev. Stat. See instructions for all Colorado water court divisions for the appropriate filing fee.

1. Name, mailing address, email address and home telephone number of Protestant/Owner:

Name of Protestant/Owner	Mailing Address	Email address	Home Phone Number

2. Describe the Water Right:

- A.** Name of Structure: _____
- B.** Date of Original Decree: _____ Case No: _____ Court: _____
- C.** Location and legal description: (PLSS) (include perpendicular distances from section lines, and indicate ¼ ¼, section number, township, range, meridian and county; mark the location of the structure on a USGS topographic map and attach to this application a legible 8 ½ x 11 inch copy of the applicable portion of the map). In areas where section lines have not been established, a bearing and distance to an established government monument is acceptable. In areas having generally recognized street addresses, include street address, and if applicable, the lot, block, and subdivision:

Preferred Legal Description (PLSS):

Preferred Legal Description: County	_____ 1/4 of the	_____ 1/4	Section	Township _____ N or S	Range _____ E or W	Principal Meridian
---	---------------------	-----------	---------	-----------------------------	--------------------------	--------------------

Distance from section lines (section lines are typically not property lines) _____ Feet from <u> </u> N <u> </u> S and _____ Feet from <u> </u> E <u> </u> W		
Street Address: _____		
Subdivision:	Lot	Block

OR, in the alternative, if PLSS is not available. GPS location information in UTM format.
 Required settings for GPS units are as follows: Format must be UTM; Zone must be 12 or 13; Units must be Meters; Datum must be NAD83, and Units must be set to true North.

Alternative Description (UTM): Were points averaged? <u> </u>Yes <u> </u>No	Northing _____ Easting _____ <u> </u>Zone 12 <u> </u>Zone 13
---	--

- D. Source of water: _____
- E. Decreed use or uses: _____
- F. Appropriation Date: _____ Decreed Amount: _____
- G. Amount listed as having been abandoned: _____
- H. Former District Number and Page Number where listed on Abandonment List: _____

3. State factual and legal basis for this Protest:

4. Remarks:

Signature of Attorney (if applicable) Date

**VERIFICATION AND ACKNOWLEDGMENT OF PERSON HAVING KNOWLEDGE OF
THE FACTS STATED IN THIS PROTEST**

Being first duly sworn, I hereby state that I have read this document, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

Signature

Date

The foregoing instrument was acknowledged before me in the County of _____, State of Colorado, this _____ day of _____, 20____, by the person whose signature appears above.

My Commission Expires: _____

Notary Public/Deputy Clerk

The person signing this verification is: qhe person sqhe personqhe pe(describe) _____

Verifications of other persons having knowledge of the facts may be attached to this Protest.

CERTIFICATE OF MAILING

I certify that I mailed a copy of the foregoing Protest to Abandonment List to (insert Division Engineer's name and address):

on _____ (date), postage prepaid.

Protestant

Appendix X – Contacts for organizations and agencies