



New Mexico Acequia Commission and New Mexico Acequia Association

Presentation to the
Land Grant Legislative Interim Committee
November 18, 2024



Established in 1993 in statute, the New Mexico Acequia Commission is part of DFA Local Government Division and advises the Governor and Legislature on policy matters of interest to acequias.



Established in 1989, the New Mexico Acequia Association is a statewide, membership-based organization dedicated to protecting water and strengthening acequia agriculture.

Presentation Outline

NMAC and NMAA Background

Budget Priorities for 2025 Session

1. Acequia and Community Ditch Fund Increase in Recurring Funding from \$800k to \$2 million
2. Acequia and Community Ditch Infrastructure Fund \$2.5 million to \$5 million
3. Special Appropriation to ISC of \$10 million for acequia infrastructure projects, cost share for federal infrastructure and disaster assistance programs
4. Indian Water Right Settlement Funding \$40 million
5. Acequia and Community Ditch Education Program \$500 to \$750k and NM Acequia Commission \$160k
6. Office of the State Auditor Small Political Subdivision Program \$500k for IPAs to conduct AUPs

Legislative Priorities in 2025 Session

1. Community Governance Attorney Act Amendments
2. Acequia and Community Ditch Infrastructure Fund Amendments
3. Acequia and Community Ditch Education Program Codification

Disaster Recovery Update and Recommendations

1. 2022 Fires and Floods: HPCC and Black Fire & 2024 Fires and Floods: Salt/South Fork and Rio Chama
2. Creation of an Acequia Disaster Program

Other Policy Updates:

1. Water Leasing and Due Process, OSE status
2. Water Quality – Surface Water Permitting Program at NMED

New Mexico Acequia Commission

Established in 1987 as an advisory body and formalized in statute in 1993 by the Legislature as an eleven member commission serving four-year terms. NMSA 1978, § 73-2-66 (1993)

Advise and Assist:

- Governor, Legislature, OSE, ISC, USACE
- acequia infrastructure priorities
- any other matters affecting acequias

Facilitate Communication:

- acequias and state and federal agencies

Review and Comment:

- any plan or legislation affecting acequias
- Governor, Legislature, Secretary of Agriculture and the ISC



NMAC Structure

- NMAC is **administratively attached to the Department of Finance and Administration** NMSA 1978, §73-2-65(A)(1993). Local Government Division provides meeting space and general staff support, processes reimbursements
- **New Mexico Department of Justice provides legal representation** to the NMAC - NMSA 1978, §73-2-67(1993). Assistant Attorneys General in the Guadalupe Hidalgo Treaty Division provide advice on both legal and policy issues and guidance on internal matters, including building internal capacity

NMAC Statutory Duties

- Member of three-member committee that determines distribution amounts to eligible acequia associations from the **Acequia and Community Ditch Fund**. NMSA 1978, § 73-2A-3 (1994)
- With NMAA, **provides consultation to ISC** on guidelines and criteria, applications, and selection requirements for ACDIF. NMSA 1978, § 72-14-24.1(C) (2023)

The New Mexico Acequia Association is a grassroots, membership based organization of acequias and community ditches in New Mexico.

Since 1989, we have been working to protect acequias and agricultural water rights through community education, organizing, and advocacy.



Our vision is for acequias to flow with clean water, to work together to grow food, and to celebrate our cultural heritage.

NMAA Overview

Non-profit established in 1989.

The **statewide** governing body is the Congreso de las Acequias with 50+ delegates representing over 20 regional delegations and regional acequia associations.

Through our programs, **NMAA has assisted over 550 acequias** including 450 acequias in FY24. This includes governance, infrastructure, and disaster recovery.

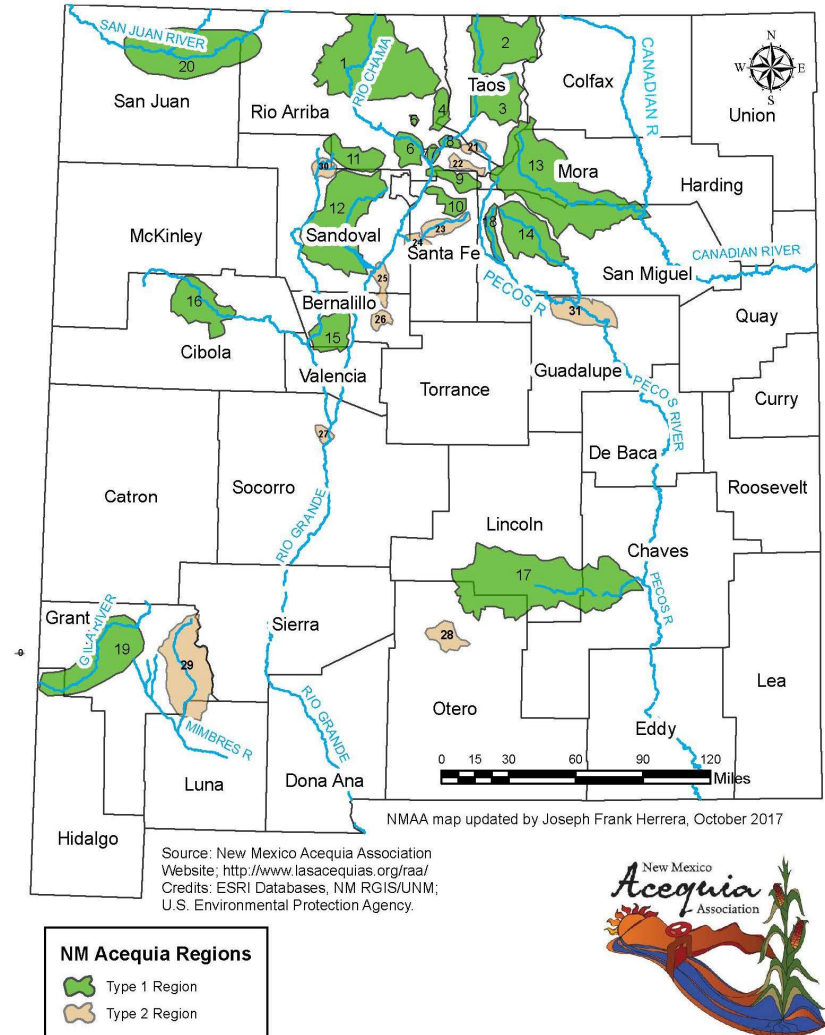
NMAA has a **long track-record of policy advocacy** including key legislation strengthening governance, funding, and infrastructure:

1. 2003 water transfers and water banking laws
2. 2019 codification of acequia recurring funding in ACDIF
3. 2021 Water Protections in the Cannabis Regulation Act
4. 2023 amendments to ACDIF

Others 2000-2020:

1. Update to easements, interference, and enforcement.
2. Clarify agricultural tax exemptions
3. Increases to the Acequia and Community Ditch Fund (ACDF)

Congreso de las Acequias
Regional Acequia Associations



NMAA Programs and Services

12 employees who provide outreach, education, and technical assistance to acequias:

- **Acequia Governance Project.** NMAA provides assistance to an average of 350-400 acequias per year on governance matters. This project includes our Water Transfer Tracker.
- **Infrastructure and Disaster Recovery Project.** NMAA assists an average of 50 acequias per year on infrastructure planning. Since 2022, 150 acequias have been assisted in disaster recovery.
- **Acequia Legal Services Project** (partnership with NM Legal Aid). This project is focused on assisting acequias with water transfers in collaboration with NM Legal Aid.
- **Farmer & Rancher Outreach Project.** Through workshops and technical assistance, this project works to improve operations and participation in USDA programs.
- **Los Sembradores Farmer Training Project.** 3-4 apprenticeships per year on a family farm.
- **Acequia Youth Leadership Institute** and Sembrando Semillas. Youth leadership development, gardens, food, and cultural identity.



NMAC/NMAA Collaboration

Ensuring **compliance with acequia transfer statute** (OSE). NMAA provides a monthly Water Transfer Tracker report to the NMAC with water applications before the State Engineer.

Streamlining **acequia auditing requirements** for infrastructure projects (ISC, OSA) by communicating concerns and identifying potential solutions.

Researching and developing policy recommendations regarding **real estate disclosure requirements** in transactions involving acequia-served lands (UC Boulder)

Outstanding National Resource Waters (**ONRW**) for the Upper Pecos River. NMAA was a petitioner for ONRW status and NMAC supported. Both are members of the Stop Tererro Mine Coalition.

Advisory role in development of the administrative guidelines for the **Acequia and Community Ditch Infrastructure Fund** (ACDIF) with the ISC

NMAA provides a detailed **monthly report** to the NMAC on work performed under the Acequia and Community Ditch Education Program (ACDEP) as well as updates on policy advocacy.



Budget Priorities for 2025 Session

1. **Acequia and Community Ditch Fund (ACDF)** Increase in Recurring Funding from \$800k to \$2 million to the New Mexico Department of Agriculture
2. **Acequia and Community Ditch Infrastructure Fund (ACDIF)** \$2.5 million to \$5 million to the Interstate Stream Commission
3. **Special Appropriation to ISC of \$10 million** for acequia infrastructure projects, cost share for federal infrastructure and disaster assistance programs
4. **Increase funding** for acequia education and technical assistance and for the NM Acequia Commission
5. **Indian Water Right Settlement Funding \$40 million** to the Office of the State Engineer
6. **Office of the State Auditor Small Political Subdivision Program \$500k** for Independent Public Accountants (IPAs) to comply with the tiered reporting system, Agreed Upon Procedure Reports (AUP).



Acequia and Community Ditch Fund (ACDF)

- The purpose is to assist acequias in the adjudication process
- Administered by NM Department of Agriculture
- Created in statute in 1988
- Funds are used for attorneys and subject matter experts such as hydrologists and historians
- A recent AG opinion states that it is appropriation for ACDF to be used for “settlement implementation” as part of the adjudication process.
- **Currently has about \$830k in recurring revenue**
- **Total requests in FY24 were \$1.3 million**
- **NMDA Executive Budget includes \$1.5 million in recurring funding.**
- **NMAC/NMAA recommend increasing recurring appropriation to \$2 million**

ARTICLE 2A

Acequia and Community Ditch Fund

73-2A-1. Short title.

This act [73-2A-1 through [73-2A-3](#) NMSA 1978] may be cited as the "Acequia and Community Ditch Fund Act".

History: Laws 1988, ch. 157, § 1.

73-2A-2. Purpose of act.

The purpose of the Acequia and Community Ditch Fund Act [[73-2A-1](#) NMSA 1978] is to provide financial assistance to acequias and community ditch systems to develop hydrological studies, acquire technical and legal research and other information and services necessary to conserve and protect water for New Mexico's future through the adjudication of water rights.

History: Laws 1988, ch. 157, § 2.

73-2A-3. Fund created.

A. An "acequia and community ditch fund" is created in the state treasury, to be expended upon order of the director of the New Mexico department of agriculture to carry out the purposes of contracting with acequia and ditch associations constituting a majority of acequias or ditches within an adjudication suit or a separately administered portion of an adjudication suit to provide assistance to acequias and community ditch associations in the adjudication process, including historical studies, economic impact reports, expert witness fees, legal fees and other technical services related to the adjudication process.

Acequia and Community Ditch Infrastructure Fund (ACDIF)

- The **purpose** is to provide funding to acequias or community ditches for 1) planning, engineering design or construction of irrigation works and match or 2) meet cost share requirements of other state and federal funding programs.
- Created in statute in 2019, codified a previous year-to-year appropriation to ISC.
- Receives **\$2.5 million in recurring funds** from the Irrigation Works Construction Fund (IWCF).
- Amended in 2023 to remove any cost share requirements and to enable use for “disaster recovery.”
- During the past two years, the ISC has spent over **\$5 million per year** through the ACDIF (combination of \$2.5 recurring plus special appropriations).
- **ISC has \$5 million** for acequia infrastructure in their capital request.

NMAC/NMAA recommend:

- **Legislation to increase \$2.5 million to \$5 million in recurring funding.**
- **Special appropriation or capital appropriation of \$10 million**



Acequia Funding at Local Government Division

The **Acequia and Community Ditch Education Program (ACDEP)** is a line item in the DFA Local Government Division budget in the amount of \$492k per year. This program (under contract with NMAA) has been successful in assisting acequias across New Mexico with governance, infrastructure, and disaster recovery. It has also supported community and youth education. Codification of the program in statute would ensure more reliability of these critical services to acequias. Because of an increasing demand for services, an increase to \$750k would better meet the needs of acequias statewide.

The **New Mexico Acequia Commission** is also funded with a line item in the DFA Local Government Division budget and is appropriated \$88k per year. An increase is needed to support 1.0 FTE to fulfill their statutory duties in addition to their current activities of holding monthly meetings. \$160k per year is the recommendation for FY26.

Indian Water Right Settlements Funding

- Adjudication involving Pueblos, tribes, acequias and other parties reach resolution through water right settlements.
- They include agreements on water rights and water administration as well as funding for infrastructure and other water projects.
- In addition to funding for Pueblos, other parties including acequias are included in the funding package.
- Water right settlements are based on a federal/state match.
- **The OSE is requesting \$40 million for Indian Water Rights Settlements.**
- **NMAC/NMAA recommend support for the OSE request.**

Several Pueblos, Tribes, and Nations have reached final settlements with Congressional, State, and Judicial Approval:

- Jicarilla Apache Water Rights Settlement
- Taos/Abeyta Settlement Agreement
- Navajo San Juan Settlement Agreement
- Aamodt Settlement Agreement (Nambé, Pojoaque, Tesuque, San Ildefonso Pueblos)

Local settlement agreements have been signed and federal legislation has been introduced:

- Rio San José Stream System (Acoma Pueblo, Laguna Pueblo, Navajo Nation)
- Jemez River Stream System (Zia Pueblo, Jemez Pueblo)
- Rio Chama Stream System (Ohkay Owingeh)
- Zuni River Stream System (Zuni Pueblo)

State Auditor Funding for Small Political Subdivisions

Background:

1. In 2010, the Audit Act was amended to include the Tiered Reporting System to have a scaled approach to audit compliance for small political subdivisions.
2. In 2013, the Governor approved an Executive Order that required that any entity receiving state funds should be in compliance with the Audit Act.
3. In response to concerns from small political subdivisions, the State Legislature approved funding to assist small entities with compliance.
4. The OSA started a grant program whereby small entities could apply for funds to pay for IPAs to prepare their AUP reports.
5. More recently, since 2023, the OSA has started using state funds to procure IPAs to prepare AUPs for acequias and other small entities.

Current Challenge

1. Capacity for financial management and audit compliance is still a challenge.
2. The funding to OSA is not enough to meet the need. Acequias have long wait times to complete their AUPs, affecting their eligibility for future funds.

NMAC/NMAA Recommendations:

1. Short-term recommendation: **Support OSA request for \$500 for small political subdivision financial compliance.**
2. Long-term recommendation: Additional funding for OSA, training resources for acequias, reform of infrastructure funding process to reduce burden on small entities.

Legislative Priorities in the 2025 Legislative Session

1. Community Governance Attorney Act Amendments Section NMSA 1978 § 21-21Q-1 (2019)
2. Acequia and Community Ditch Infrastructure Fund Amendments Section 1978 § 72-14-24 (2019)
3. Acequia and Community Ditch Education Program Codification (New language)



Community Governance Attorney Act

Background

- Enacted in 2019, the Act creates a commission and a tuition waiver program that supports law school graduates to specialize in land grants, acequias, and colonias.
- To date, New Mexico Legal Aid has worked with one attorney with more progress.

NMAC/NMAA Recommendations:

- Support the NM Land Grant Council recommendations to add the New Mexico Department of Justice and **acequia-serving non-profits** as qualifying employers.
- Support the NM Land Grant Council recommendations to **fully fund and remove the 50% cost share** for qualifying employers when hiring attorneys.
- For the three member commission, add a condition that the “acequia” appointee be a member or former member of the **New Mexico Acequia Commission**. This is consistent with the other two representatives of the Land Grant Council and the Colonias Infrastructure Fund.

Acequia and Community Ditch Infrastructure Fund

Increase the appropriation from the Irrigation Works Construction Fund (IWCF) from \$2.5 million annually to \$5 million annually.

The purpose of the IWCF is for design and engineering of irrigation projects.

SECTION 2. Section [72-14-23](#) NMSA 1978 (being Laws 1955, Chapter 266, Section 15, as amended) is amended to read:

"72-14-23. NEW MEXICO IRRIGATION WORKS CONSTRUCTION FUND CREATED-- LIMITATION OF LIABILITY UNDER ACT--REPARATION OF DAMAGES CAUSED IN CARRYING OUT POWERS GRANTED--AUTHORITY OF COMMISSION TO RECEIVE CONTRIBUTIONS.--

A. There is created a fund to be known as the "New Mexico irrigation works construction fund", which shall consist of the income creditable to the permanent reservoirs for irrigation purposes income fund not otherwise pledged under Section [72-14-19](#) NMSA 1978 and all other money that may be appropriated by the legislature to the construction fund. The fund shall be a continuing fund and shall not revert to the general fund or to any other fund.

B. Annually, two million five hundred thousand dollars (\$2,500,000) shall be transferred from the New Mexico irrigation works construction fund to the acequia and community ditch infrastructure fund.

72-14-24.1. Acequia and community ditch infrastructure fund; created.

A. The "acequia and community ditch infrastructure fund" is created in the state treasury and shall be administered by the interstate stream commission. The fund consists of money transferred from the New Mexico irrigation works construction fund and interest accruing to the fund. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the interstate stream commission or the director's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall revert to the New Mexico irrigation works construction fund.

B. Money in the fund is appropriated to the interstate stream commission to:

- (1) provide funding to acequias or community ditches for planning, engineering design or construction of irrigation works, and infrastructure projects, including dams, reservoirs, diversions, ditches, flumes or other appurtenances for the purposes of restoration, repair, disaster response recovery and hazard mitigation, improvement of irrigation efficiency and protection from floods; and
- (2) match or meet cost share requirements of other state and federal funding programs.

C. The interstate stream commission shall:

- (1) consult with the acequia commission and the New Mexico acequia association to develop:
 - (a) guidelines and criteria for funding eligibility; provided that no local cost share shall be required;
 - (b) applications; and
 - (c) selection requirements with a prioritization on project readiness and need;
- (2) review acequia or community ditch plans and specifications;
- (3) inspect completed projects; and
- (4) report biannually to the acequia commission on the progress of projects funded through the fund and the expenditure of money from the fund.

D. As used in this section, "fund" means the acequia and community ditch infrastructure fund.

ACDEP technical assistance, community and youth education

Acequia Governance Project

- NMAA assists over 400 acequias per year through this project.
- Infrastructure Planning
- Water rights and water management
- Acequia Bylaws
- Financial Compliance
- Easements & Permitting Issues

Acequia Youth Education

- Acequia Youth Leadership Institute
- Classroom Presentations

NMAC/NMAA Recommendation:

- Enact the Acequia and Community Ditch Education and Technical Assistance Act to codify the program with a statutory purpose and recurring funding.
- Funds are already in DFA's budget.



Status of Acequia Disaster Recovery

Hermit's Peak Calf Canyon (2022)

- Estimated 90 acequias damaged and applied for funding
- 40 have completed emergency debris removal by NMDOT
- 50 are waiting to have completed engineering designs through NRCS EWP
- 1 acequia has been completed by NRCS EWP
- There is no federal/state cost share requirement for HPCC

Black Fire (2022)

- Estimated 20 acequias damaged on Gila and Mimbres
- Most applied for DHSEM funds or NRCS EWP
- Estimated 4 NRCS EWP designs complete and others pending
- State special appropriation was used for \$1.5 EWP cost share
- Gila has a \$500k shortfall for EWP matching funding
- Ditches on the Mimbres are still waiting on an engineering design

Salt/South Fork – Upper Hondo (2024)

- Estimated 30 acequias damaged. Most applied for FEMA PA or NRCS EWP.
- EWP funds up to \$53 million have a state cost share. It is not enough.

Rio Chama (2024)

- Estimated 8 acequias were damaged. All applied for FEMA PA and NRCS EWP.
- \$3 million in EWP federal funds. Uncertain about state cost share.



Ongoing concerns with Acequia Disaster Recovery

Lack of Capacity for Technical Assistance and Project Management. NMAA and High Water Mark (under contract with NMAA) have provided no-cost technical assistance to acequias. This is vital to navigating the various programs. The scope and need has exceeded our capacity. Likewise, local SWCDs lack administrative capacity to serve as fiscal agents for EWP in providing project management and cost share funding.

Lack of Cost Share funding. Disaster funding from FEMA Public Assistance and DHSEM Disaster Assistance require a 75/25 cost share match. The NRCS EWP program requires a 72/25 cost share match to be provided by the sponsor. Neither acequias nor local sponsors have the resources to cover this cost share. Without state funding to cover the cost share, these programs will be inaccessible to acequias for disaster recovery.

Uncertainty of Acequia Debris Removal. The State of New Mexico created an Acequia Debris Removal Program in 2022 to provide responsive debris removal and to act as the fiscal entity to deal with FEMA reimbursements. However, the program for current and future disasters is uncertain. NRCS may provide debris removal through its EWP program but it takes several weeks before NRCS determines whether acequias will be eligible after a disaster.

Delays and Lack of Timelines. Disaster recovery is a complex process. However, the communities impacted would greatly benefit by having more certainty in the timelines for recovery. The process is often hampered by delays that are not fully understood. For example, there is a bottleneck in engineering design but it is not clear how that is being addressed.

Collaboration and Transparency. There remain gaps in collaboration and transparency. It is not clear how resources are allocated to acequia disaster recovery, making it challenging for stakeholders to offer feedback.

Acequia Disaster Recovery Recommendations

Create an Acequia Disaster Program: ISC, NMDOT, DHSEM, NRCS, and DFA collaborate to operate an Acequia Disaster program that is reliably available to acequias to respond to and recovery from state and federal disasters. We recommend the following:

- Agency partners use **state funding to meet cost share requirements** for federal programs including FEMA PA and NRCS EWP and to provide efficient and timely acequia debris removal;
- Agency partners should develop an interagency agreement on the administration of the program so that there is a **plan for future disasters** and that acequias have certainty about how to ask for assistance;
- Agency partners build upon the existing **Acequia Task Force and strengthen collaboration** with each other and with NMAA including appropriate data sharing, coordination of assistance to acequias, and input into decision-making;

Funding to address gaps in disaster recovery:

- Appropriate **funding that is earmarked for acequia disaster response** and recovery and that agencies develop a plan for program delivery, including technical assistance and cost share funding;
- Consider **executive orders that are specific to acequia disaster response** if other state funds are not readily available so that the Acequia Disaster Program have a reliable source of funding as needed;
- DHSEM has stated that they are applying for CDBG grants to address some of these needs, which is a good start. However, disasters should be considered a permanent state and one-time grants will not meet the need.

Other Water Policy Updates

Water Leasing and Preliminary Approval

- Since 2015, NMAA has raised concerns about the OSE practice of granting preliminary approval without notice and due process.
- In 2020, a judge in the 5th Judicial District ruled against the State Engineer saying that he was not authorized to grant preliminary approval in water leases.
- In 2023, the Attorney General issued a formal opinion also stating that the State Engineer was not authorized in statute to grant P.A. and that the practice violated due process.
- In 2024, the NMAA met with the OSE and was told that the agency is no longer granting P.A. The agency is also planning to engage in a rulemaking on the matter of preliminary approval or expedited water lease applications.

Surface Water Permitting at NMED

- The NMAA is participating in the Surface Water Advisory Panel (SWAP) for NMED's efforts to create in statute and rule a new surface water permitting system to fill the gaps after the SCOTUS Sackett decision.
- Our current recommendation is to support the NMED in this effort.