

**Acequia del Caño
Minutes
General membership Meeting
November 10, 2008**

The meeting was called to order at 7 p.m.

Members present:

Eduardo Archuleta, Robert Baran President, Jack Blum Mayordomo, Peter Buehner, Debora Day, Gary Clark, Pojoaque Pueblo Lieutenant Governor Linda Diaz, Frank DeMolli, Leonard Gutierrez, John Gutting, Ferril and Adel Hamil, Lany & Chuck Berger, Tom Leitner, Ernesto Lujan, Meade Martin Secretary, Robin Martin, Mark McNow, Tim Merrigan, Dr. Maureen Merritt, Joe Montes Treasurer, Jim Rogers, Robert Salazar, Julia Takahashi, Mariano J. Tixier, Ralph Viarail.

Ramos Archuleta, former member accompanied his father Edwardo.

The meeting was called to order at 7PM.

All 3 Commissioners and the Mayordomo were present.

22 member parciales were present.

A quorum of 94 votes including proxies was determined at 7:30PM. (Proxies from members not present are on file with the secretary).

Standing room only.

(It was mentioned that the next meeting might be held in the SPMDTU Hall in Nambé to afford more space.)

The first order of business was to approve the minutes of Dec.12, 2007 Acequia del Caño meeting. Eduardo Archuleta moved and Rob Salazar seconded the motion to accept the minutes.

Unanimous ayes.

Meade Martin, Secretary, announced the Pojoaque Pueblo purchase of La Mesita ranch in Nambé, previously owned by Transformations, Inc. Lieutenant Governor

Linda Diaz, Ralph Viarrial, and Frank DeMolli were introduced as present and representing the Pueblo this evening. All welcomed them.

Meade talked about Acequia del Caño priority of 1859 per State Engineer's office documents. A discussion ensued that the actual age of acequia probably dated to 1700's instead. It was discussed how to prove and protect our earlier priority date. Meade gave a brief oral history of Acequia de Caño's origins and documentable water rights. He held up a history of the Acequia Del Caño commissioned by Louise Trigg, his Mother in law, the previous owner of Las Acequias Farm. He offered to provide copies or email versions to all who were interested. Gave his email address as nighthawk@newmexico.com.

Discussion followed on The Notice and Order to Show Cause papers that were mailed by the State Engineer to some but not all, parciantes on the Acequia regarding the long running Aamodt lawsuit, and what it means to ditch-rights holders. Old priority doctrine of "First in time, first in line" discussed at length. The importance of signing the papers and protesting the State's proposed priority date was discussed.

Meade stated he had spoken with private attorney Peter Schoenfeld, who has offered to represent parciantes collectively at \$10-40/hr per parciante in order to formally protest the 1859 priority date, instead of each individually, which could be cumbersome. Stated Mr. Schoenfeld expects to negotiate an earlier priority date for our ditch in one brief meeting with the State Engineer's Water Master, and Meade thinks it should not cost much to resolve this issue. Importance of pursuing this legal remedy correcting our priority date in relationship to all other Pojoaque Valley ditches and their priority dates was emphasized.

A lengthy discussion ensued on a 2-part motion:

The first motion made by John Gutting was to authorize the Caño Commission to seek to obtain legal representation for all current parciantes. Second by Chuck Berger. Passed unanimously.

A second motion by John Gutting, moved that all parciantes should join in the effort and pay attorney fees proportional to each owner's surface water rights. Seconded by ____? Passed unanimously.

Dr. Merritt asked about the status of the Gerald/Soren/Erika Peters water rights transfer. Meade Martin reported that there has been no action or news since the last meeting and then distributed a handout with a new proposed amendment to Acequia del Caño by-laws, relating to this issue.

A lengthy discussion ensued regarding the additional language proposed for Article 7, Paragraph 3, and what it means to parcientes.

Julia Takahachi moved to adopt the amendments (highlighted in orange in the handout) of the bylaws as written, with the exception of adding one additional line after paragraph 3, and at the beginning of the proposed amendment language, which shall read;

“If any one or more of the following occurs···.” it shall be deemed detrimental to the Acequia or its members if:

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

Robert Baran seconded the motion. Passed unanimously.
(New language is attached to these minutes.)

To finish his answer to Dr. Merrit’s question Meade stated, “there is no final decision yet on del Caño legal protest of the Peters’ water rights transfer out of our Acequia. He stated, “this transfer sets a bad precedent”, and the Commission will keep parcientes closely informed of the outcome.

Meade then handed out Oct 23, 2008 *Rio Grande Sun* news article on similar Richard Cook water rights cases where NM Court of Appeals overturned 2 District Court decisions favoring Mr. Cook, instead ruling to affirm the legal governing right of individual acequia associations to deny the transfer of water rights if it harms the acequia. Discussion ensued as to timely relevance.

Julia Takahachi took floor. She suggested that the State Engineer’s Office will be getting tougher enforcing water rights laws and water-banking is particularly important. The purpose of which is to promote water conservation on a temporary

basis if a parciante is not using theirs. Stated benefits all parciantes by helping prevent the permanent loss of our water by virtue of non-use. She wanted to know how the Commission or Majordomo should handle water banking? Discussion ensued.

One proposal: Instead of parciante writing a letter to Acequia Association Commission requesting water banking, to just tell the Majordomo and he/she will document it in a “water bank journal”

Meade Martin opined that “It is not a good idea...too loosey-goosey and doesn’t leave a paper trail if issues arise.” He pointed out that the Acequia already has a water-banking bylaw. Instead, water banking should be done with the permission of the Majordomo and one Commissioner should be designated as the water-banker (who is it??) and he/she will provide an annual (or more frequent) review and written report to all parciantes on status of our water banking.

Motion to approve by _____? Second_____? Unanimous ayes.

Meade states NRCS is designing a new pipeline from our sand trap to our diversion on the Rio Nambé.

Discussion ensued on collecting the delinquent dues of 6 parciantes in various stages of arrears, some of them 4-5 years behind. Parciantes want this to be an “action item” for the Commission Treasurer and the Majordomo. Joe Montes, when asked, stated the delinquent dues total about \$1600 to date, which raised several eyebrows. Parciantes agreed that they want to see “active” efforts to collect delinquent dues after brief study of options by Commission, including placing liens on property if necessary. Per Dr. Merritt, this same issue was brought up at last years meeting. Meade suggested David Benevides be invited to an interim meeting to instruct the Commission on their collection options. No date was given for that meeting.

Other Business:

Lany Berger announced the Annual Fireman’s Ball and invited all present to this Saturday night event, tickets still available, phone 660-3837. The Ball is to be held at Nambé Pueblo Hall, Highway 1.

Meade invited everyone to the New Mexico Acequia Association Congresso de Acequias Conference, Fri & Sat, Dec 5 & 6, 2008. Contact Meade Martin or NM Acequia Association for details.

Meade also stated one more item; the best method to ask for your water is to ask Majordomo about 1 week ahead of time. There was no written schedule this year, no major problems.

Mark McNown moved to adjourn. Seconded by Dr. Merritt. Unanimous ayes.

Meeting adjourned at 8:30PM.

Minutes taken by Dr. Maureen Merritt, parciante

Edited by and respectfully submitted by Meade Martin, Secretary.

ACEQUIA del CAÑO

AMENDMENT TO ACEQUIA BYLAWS: Additional language presented in red lettering was amended and adopted at the November 10th, 2008 general membership meeting:

ARTICLE VII

ACEQUIA APPROVAL OF CERTAIN WATER RIGHT: TRANSFERS:

General:

1. The members of Acequia del Caño declare that a transfer of a water right served by the Acequia, or a transfer of a water right into the area served by the Acequia, may be detrimental to both the Acequia and its members. Therefore, any such proposed transfer by any person or entity must be formally approved by the Commissioners, using the procedure in this Article, prior to application for the transfer to the Office of the State Engineer. As used in this Article, “transfer” means a change in point of diversion, and/or place of use and/or purpose of use of a water right, including temporary transfers and water use leases.
2. Without formal consent of the Commissioners to such a transfer, any attempt to obtain approval of the transfer from the State Engineer, or any other effort to implement the transfer, is unlawful and void.
3. This Article is adopted under Section 73-2-21(E) NMSA 1978. (or “under Section 73-3-4.1 NMSA 1978.” depending on the county)

Approval Procedure:

1. A request for approval of a transfer of a water right served by the Acequia or a transfer of a water right into the area served by the Acequia must be made by the owner of the water right in writing, delivered by certified mail to each Commissioner. It must be on a written form prepared by the Commissioners requiring any information about the proposed transfer, which they consider appropriate.
2. Within 90 days of receipt of the written request, the Commissioners will hold a public meeting to allow members who support and oppose the request to be heard or submit additional information.

Notice of the meeting will be given in the same manner required for the Acequia's annual meeting. In addition, notice will be given 1) by mail to the applicant at the address on the request form, and 2) by posting a notice of the request and meeting date, at least 10 days before the meeting, at a prominent public place near the site of the proposed change.

The Commissioners will decide the conduct of the meeting, such as its location, length, and other matters. The Commissioners will accept and consider any documents, written or oral statements, or arguments offered by the applicant or any Acequia member, as well as any information from individuals who may be presented by the applicant or any Acequia member. The applicant or any Acequia member may have an attorney or other representative present his or her information to the Commission in his or her place. The applicant or any Acequia member, or their representative, may respond to evidence or arguments offered at the meeting, directing such response to the Commission. The rules of civil procedure and the rules of evidence shall not apply to the meeting.

The Commissioners may ask any questions they believe may help in their decision. The Commission is not required, during the meeting, to make any decisions or answer any questions on issues raised, before the final decision is announced publicly. The Commission may be represented by an attorney or other representative, and may be assisted in the conduct of the meeting by other such persons as it may designate.

Except as provided in this section, only the applicant, other Acequia members and the Commissioners may speak at the meeting.

3. Following the presentation of the evidence or arguments at the meeting, the Commissioners will recess to deliberate their decision for a period of no longer than 30 days. The request may be denied, in whole or in part, if the

Commissioners find it would impair or be detrimental to the Acequia or its members. The burden is on the applicant to prove that the proposed transfer will not have a detrimental impact. The Commission will base its decision on the presentations, documents and arguments made at the meeting; provided that the Commission may take notice of facts and circumstances generally known with respect to the Acequia and its operation. Approval requires a unanimous vote of the Commissioners, including any approval sought on reconsideration.

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

- a. The transfer of water from the Acequia results in a reduction by Pojoaque Valley Irrigation District, of allocated volume;
 - b. It reduces the revenue available or to be used for the maintenance and operation of the Acequia;
 - c. It negatively impacts the labor pool available for maintenance of the Acequia;
 - d. It reduces recharge from the Acequia of the underlying aquifer;
 - e. It reduces water volume and hydraulic head in the Acequia needed to deliver water to down-ditch users;
 - f. It results in the waste of water;
 - g. It adversely affects the maintenance of the traditional Acequia environment;
 - h. Any other legitimate reason the Commission deems will or may effect the ability of the Commission, or the Mayordomo, to deliver water to all the remaining Parciantes served by the Acequia.
4. Within 30 days of the recessed meeting, the Commissioners will reconvene at the date, time, and location announced prior to recessing. The Commissioners will either approve or deny the request, in whole or in part, and announce its written decision including grounds and findings at the reconvened meeting. This will constitute a decision of the Acequia in compliance with the 120-day deadline set forth in Section 72-5-24.1 (D) NMSA 1978.

Appeal to Court:

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

Arbitration:

1. Instead of an appeal to court, the applicant or a member of the Acequia aggrieved by the Commission's decision may submit the Commission's decision

to binding arbitration. The request must be in writing, sent to each Commissioner by certified mail within 30 days of the Commission's decision on reconsideration. The Commission must agree to the request for the arbitration to proceed. The Commission must notify the person requesting arbitration whether it agrees to the request within 20 days of receipt of the request.

2.The arbitrator must be a person experienced in Acequia organization, governance and procedure and must be mutually agreed upon the Commission and the aggrieved party. If agreement cannot be reached, the arbitration will not proceed.

3.The issue present to the arbitrator will be solely whether the Commissioners' decision was fraudulent, arbitrary, capricious, or otherwise not in accordance with law. The arbitration will be conducted in a manner directed by the arbitrator, and must include a) the right of any party to be represented by an attorney, b) the right to present testimony or other evidence, c) the right to cross-examine witnesses and d) the opportunity to present written briefs or summaries at the end of the hearing. No formal record need be made and the formal rules of civil procedure and evidence will not apply. Fees will be paid equally by the Commission and the person or persons requesting arbitration. The arbitrator must provide a written explanation of the reasons for the decision. The result of the arbitration shall be final and binding.

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

GOVERNING BODY: Acequia del Caño

Robert Baran, President Date

Meade Martin, Secretary Date

Joseph O. Montes, Treasurer Date

Jack Blum, Mayordomo Date

These minutes were approved unanimously at the April 21, 2009 extraordinary meeting of the Acequia membership