

## **PILAR ACEQUIA ASSOCIATION BYLAWS**

**Preamble:** Water is the lifeblood of our communities. The parcientes of Pilar Acequia Association believe that water should be protected as a community resource so that future generations can grow food and can have a healthy and secure source of water for needs within the community. We seek to promote agriculture by keeping water rights on historically irrigated land. If changes in historic uses of water become necessary, those decisions should be made through a cultural and spiritual connection to our community and through our own process of self-governance so that those decisions can be made for the common good. We honor the ancient customs and traditions embodied in our acequia and seek to govern our acequia to continue the connection between our land, water and culture in perpetuity.

### **Article 1. Purpose and Membership**

#### Section 1: Purpose Statement

The purpose of Pilar Acequia Association (“Acequia”) is to 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 parcientes in a manner that is fair and equitable, 4) protect and defend the rights and interests of the Acequia and the parcientes, 5) maintain the infrastructure and easements of the Acequia, and 6) maintain an adequate diversion right to ensure a sufficient water supply for parcientes.

#### Section 2: Compliance with New Mexico Law

The management and operation of Pilar Acequia Association, a political subdivision of the State of New Mexico, shall be in compliance with the laws of the State of New Mexico and the customs of the Acequia.

#### Section 3: Description

Pilar Acequia Association also known as Aquitas Calientes Ditch is located in Pilar, NM in Taos County. The acequia serves approximately sixty four (64) acres of irrigable land and is approximately 5 miles long. The acequia diverts from the Agua Calientes Creek that is made up of 5 springs, the acequia includes the mainstem and all laterals and drainages or desagues. Pilar Acequia Association utilizes two ponds, the lower pond is owned by the association and the upper pond is located in Taos Resource Area of the BOM.

#### Section 4: Definition of Membership

The members or parcientes of Pilar Acequia Association are those persons who own irrigable land with water rights from the Acequia.

### **Article 2. Officers**

#### Section 1: Types of Officers

The officers of Pilar Acequia Association shall consist of three Commissioners and one Mayordomo, each of whom shall be an Acequia member, as defined in Article 1. The Commissioners shall consist of a Chair, a Secretary, and a Treasurer.

#### Section 2: Duties of Officers

- a. Chair: The Chair shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall call and preside at all Acequia meetings. In the event the Chair is unable to preside at a meeting, he or she shall appoint one of the other Commissioners to preside at the meeting.
- b. Secretary: The Secretary shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall keep complete and accurate records of Acequia actions and proceedings, prepare agendas for meetings, prepare the minutes of meetings, read the minutes of the

previous meetings, and receive and respond to requests for Acequia records.

c. Treasurer: The Treasurer shall manage the affairs of the Acequia in accordance with law jointly with the other Commissioners and shall manage the finances of the Acequia including the following:

1. Send notices to parciantes for billing and collection of assessments and fines.
2. Maintain accurate records for each parciante including assessments, hours worked, and fines, in coordination with the Mayordomo.
3. Make payments for labor and materials as necessary, in coordination with the Mayordomo.
4. In coordination with the Mayordomo, prepare an annual report to be presented to the membership.

d. Mayordomo: The Mayordomo shall be the Executive Officer of the Acequia in accordance with law. His or her responsibilities shall include the following:

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 consistent with the customs of the Acequia.
3. Collect assessments and fines from parciantes, in coordination with the Treasurer.
4. Make payments for labor and materials as necessary, in coordination with the Treasurer.
5. Supervise the Acequia to ensure that delinquent parciantes do not take water. The Mayordomo has full authority to shut the individual headgate(s) along the banks of the Acequia of any parciante who is delinquent and to secure the headgate(s) by any available means.
6. In coordination with the Treasurer, prepare an annual report to be presented to the membership.

### Section 3: Vacancy of Mayordomo

In the event of a vacancy in the office of Mayordomo following departure by an elected Mayordomo, the Commission shall appoint a Mayordomo to hold office for the remainder of the term until his/her successor is elected at a meeting of the membership.

### Section 4: Vacancy of Commissioners

If there is one vacancy for Commissioner the two remaining Commissioners and the Mayordomo shall appoint a Commissioner to serve for the remainder of the term. If there are two vacancies for Commissioner, the remaining Commissioner shall convene a special meeting of the membership to fill the vacancies for the remainder of the terms of office.

### Section 5: Compensation of Mayordomo

Compensation of the Mayordomo or ditch rider shall be determined by a majority of the membership.

## **Article 3. Meetings**

### Section 1: Date of Annual Membership Meeting

The Annual Membership meeting shall be considered a Regular meeting and shall be held every year between March 1<sup>st</sup> and April 30<sup>th</sup> as determined by the Commission.

### Section 2: Notice of Annual Membership Meeting

Notice shall be posted in a public place at least 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 also provide other types of notice as appropriate.

### Section 3: Purpose of Annual Membership Meeting

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. The Acequia may adopt an Open Meetings Act Resolution.

#### Section 4: Location of Meetings

Each Membership or Commission meeting shall be held at a public place in Taos county in which the Acequia is located or a non-public place in Taos County that is open and easily accessible to the public and the members.

#### Section 5: Membership Quorum

A Membership quorum shall be 20% of the total membership. For purposes of calculating a quorum, each household or co-tenancy arrangement (land co-owned by more than one person) constitutes one membership, regardless of the number of separate properties owned.

Valid proxy votes shall be counted toward a quorum. A quorum, once established for that particular meeting, shall remain in effect to transact all business set on the agenda even though members shall voluntarily leave the meeting.

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

#### Section 6: Special Membership Meetings

Special (non-annual) meetings of the Acequia members may be called by the Commissioners or upon written petition to the Commission Chairman signed by 20% of the members. Notice for Special Membership meetings shall be the same as for Annual meetings, except that the timing for the posting of notice shall be at least 3 days prior to the meeting.

#### Section 7: Special Commission Meetings

Special meetings of the Commission may be called by the Chairman. Two Commissioners shall constitute a quorum for such meetings. Notice for Special meetings shall be posted in a public place at least three days prior to a meeting.

### **Article 4. Voting and Elections**

#### Section 1: Election of Officers

The Commissioners and Mayordomo shall be elected by a vote of the membership at the Annual Membership Meeting held every year or as soon as practicable thereafter. The elections shall be conducted by the outgoing Commissioners.

#### Section 2: Voting Rights of Parciantes

Only those members who are not delinquent in the payment of their assessments shall be deemed in good standing and 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, a copy of which shall be submitted to the Secretary upon voting to maintain in the Acequia records. The proxy shall 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, the meeting date and the member's signature and date.

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

#### Section 3: Nomination and Assignment of Officers

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

#### Section 4: Terms of Office and Record Transfers

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

The outgoing officers shall transfer all Acequia records to the elected officers by that date. The term of office for the Mayordomo and Commissioners is three years and the Mayordomo one year. Officers shall hold staggered terms based on the following:

Elections for Mayordomo shall be held every year at the annual meeting.

An election for one commissioner shall be held every year at the annual meeting according to the following table. In subsequent years elections shall follow the same pattern.

|          |           |           |           |           |           |           |
|----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Election |           |           |           |           |           |           |
| Year     | 2018      | 2019      | 2020      | 2021      | 2022      | 2023      |
| Office   | President | Secretary | Treasurer | President | Secretary | Treasurer |
|          | Mayordomo | Mayordomo | Mayordomo | Mayordomo | Mayordomo | Mayordomo |

## **Article 5. Management and Operations**

### Section 1: Acequia Cleaning

A community cleaning of the Acequia's mainstem or *acequia madre* involving all parciantes shall take place during the Spring before the irrigation season on a date and according to requirements determined by the Mayordomo and Commissioners. Each parciante, regardless of whether his/her land is currently in irrigation, shall provide the required number of peones or pay the amount in lieu of peones. The acequia may also hire a contractor to dig, clean out and maintain the acequia and assess members for those costs.

The community Acequia cleaning shall include cleaning of all laterals.

Prior to the Spring cleaning, the Mayordomo or Commissioners shall discuss any tree that interferes with the Acequia or its easement with the applicable landowner, to arrange for possible removal and disposal.

During or immediately following Spring cleaning or normal maintenance activities throughout the irrigation season, debris generated by the cleaning or maintenance, including trash and organic matter such as soil, rocks and brush, shall be removed and disposed of by the landowners.

### Section 2: Distribution of Available Water

Water shall be distributed in a manner that is equitable and consistent with the customs of the acequia. The Mayordomo shall oversee the distribution of the appropriate amounts of available water among parciantes in accordance with the Acequia's distribution schedule. The Commission shall be the final arbitrator of water distribution should a conflict arise.

### Section 3: Parciante Assessments

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 parciante, in proportion to his/her acreage, based upon that information. The approved amount shall remain as the annual assessment per acre until changed by the Commission.

## **Article 6. 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: Culverts

All culverts delivering water to other parciantes shall be approved by the Mayordomo and shall have a minimum

inner diameter of 5 inches and shall be maintained by the member to avoid leakage.

#### Section 2: Assessments

All members shall pay assessments as required by the Commission. All monies assessed by the Pilar Acequia Association 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 the required number of peones, or the required assessment in lieu of peones, for the annual Spring cleaning and 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 duly adopted by the Commission.

#### Section 5: Inspection of Acequia Records

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

#### Section 6: Copy of Bylaws

Each new parciante shall be provided with a copy of the current bylaws of the Acequia and amendments thereafter adopted. New members shall be briefed on the operation of the Acequia by one of the Commissioners or the Mayordomo.

#### Section 7: Acequia Records

Each parciante shall keep current in the records of the Commission of the Acequia the name(s) of the owner(s) of the property with Acequia water rights, the owner mailing address(es) and telephone number(s), and the amount of irrigated acreage or peon/tiempo/derecho/water rights claimed by the owner(s). The parciante shall also keep current the name, mailing address, and telephone number of any person who has leased the property.

#### Section 8: Change of Ownership

A person who has purchased land with Acequia water rights shall report such transaction promptly to the Secretary for recording in the Acequia's records. Delinquencies, if any, are due from the past owner unless the new owner has agreed to pay them, and shall be paid before the new owner is entitled to the use of the Acequia.

If a parciante wishes to sell a water right separate from the land to which it attached, or to sell land with a water right to a buyer who intends to sever all or a portion of the water right from the land, the Acequia shall have the right of first refusal to obtain that water right. This means the Acequia must be given an opportunity to match the price agreed upon by the prospective buyer and seller, and if the Acequia does so, the water right shall be sold to the Acequia instead of to the prospective buyer.

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

Any type of change or modification whatsoever to the point of diversion, purpose of use, or place of use of a water right served by the Acequia, including but not limited to any type of partial or temporary or supplemental or emergency change or water-use lease, is a water transfer and must comply with Article 9 and Appendix A of these Bylaws. Any type of change or modification to a water right so that it is moved into and then served by the Acequia, including but not limited to any type of partial or temporary or supplemental or emergency change or water-use lease, is a water transfer and must comply with Article 9 and Appendix A of these Bylaws. Appendix A also addresses any uncertainty whether a particular change is a "transfer" reviewable by the Commission under these bylaws. If a water transfer has been approved by all necessary authorities, the transferring parciante shall provide updated information about the water right to the Secretary for recording in the records of the Acequia.

### **Article 7. Easements**

#### Section 1: Description of Easement and Prohibitions

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. The scope of the easement is defined as follows: The easement is as wide as necessary for reasonable maintenance, use and improvements.

No person may obstruct, interfere with, or prevent access to, the easement. Prohibited activities include, but are not limited to, erecting a building within the easement, locking a gate to the easement, allowing a dog to create a potential threat within the easement, or restricting in any way a customary or historical access route or point to the easement.

#### Section 2: Maintenance of Easement

Each Acequia parciante shall ensure that it is possible for Acequia officers and others conducting Acequia business to freely and safely use the Acequia easement within his or her property. For instance, if a fence or other barrier crosses the ditch or the easement, the barrier shall provide an unlocked accessible gate or crossover.

#### Section 3: Access to Easement

Pilar Acequia Association has the right to use the historic and customary routes or points of access to the Acequia within members' and non-members' property and other such routes or points of access as may be necessary to afford convenient access to the Acequia for inspection, maintenance, operations and improvements.

#### Section 4: Changes to Easement

Any material changes to the Acequia easement, including any crossings, shall be approved in advance by the Commission.

### **Article 8. Enforcement**

#### Section 1: Delinquencies

A parciante who is delinquent in the payment of his or her assessment or fails to perform required work shall not be entitled to use water from the Acequia. He or she shall also not be entitled to vote in any Acequia election. These prohibitions shall remain in effect until the assessment(s) and any fines are paid. Acequia officials have the authority granted by statute to collect penalties and delinquent assessments through appropriate civil legal action.

#### Section 2: Illegal Use of Water or Acequia Interference

Any person who, contrary to an order of the Mayordomo or Commission, interferes with the Acequia in any manner, or who takes or uses Acequia water contrary to such orders, commits a criminal misdemeanor and may be prosecuted in accordance with the laws of New Mexico. A civil action may also be pursued against the violator.

#### Section 3: Violation of Easement Rights

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

### **Article 9. Water Transfers**

Water transfers shall be governed by Appendix A: Water Transfers, which is adopted under Section 73-2-21(E), NMSA 1978 (2003) or Section 73-3-4.1, NMSA 1978 (2003), whichever is applicable.

### **Article 10. Water Banking**

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

Nothing in the formation of the Water Bank or its operation shall affect the traditional and recognized lawful authority of the Acequia Commissioners and Mayordomo. Issues of daily water use, periodic allocation, water issues between members, and all other matters normally managed by the Acequia officers will continue without change. Use of the Water Bank shall not affect existing vested water rights, priority dates or any existing lawful use

of water by members. No action connected to the Water Bank shall be considered an adjudication of any person's water rights.

#### **Article 11. Miscellaneous Provisions**

##### Section 1: Amendments to Bylaws

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

##### Section 2: Applicability of State Law

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

##### Section 3: Severability Clause

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

THE FORGOING BYLAWS WERE ADOPTED BY THE PARCIANTES OF THE PILAR ACEQUIA ASSOCIATION AT A MEETING DULY CALLED AND HELD ON \_\_\_\_\_

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Treasurer

## **APPENDIX A: WATER TRANSFERS**

### Section 1: General

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

### Section 2: Process

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

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

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

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

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

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

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

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

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

### Section 3: Appeal to District Court

If the applicant or a member of the Acequia is aggrieved by the Commission's decision, he or she may appeal to the State District Court under the provisions of Section 73-2-21(E) or Section 73-3-4.1, NMSA 1978, whichever is applicable. The appeal must be filed within 30 days of the Commissioners' written decision.

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

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

### Section 5: Arbitration

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

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

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

**WATER RIGHT TRANSFER APPLICATION FORM**

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

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

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

\_\_\_\_\_

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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**FOR ACEQUIA USE ONLY**

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

## APPENDIX B: WATER BANKING

This Appendix contains the Water Banking provisions referenced in Article 10, Water Banking, and the Water Banking Deposit Form.

### Section 1: Purpose

The purpose of the Water Bank is to promote conservation and beneficial use of Acequia water through a locally managed system of temporarily reallocating water for beneficial use within the area served by the Acequia. The Water Bank will also allow water right owners who are temporarily not using some or all of their water rights to benefit by protecting those rights from loss for non-use.

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

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

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

### Section 3: Water Bank Procedures

#### a) Water Bank Record Keeping

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

#### b) Depositing Water Rights

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

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

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

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

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

(1) A parciante who has used a deposit form to make a deposit shall make a brief written request for non-

renewal or withdrawal of the water right, specifying the date that the withdrawal shall take effect, and submit it to the Water Bank's designated record keeper. If the written request is instead submitted to an Acequia officer who is not the designated record keeper, the officer shall forward it to the designated record keeper. Any initial term or automatic renewal will end as of the specified date of withdrawal.

- (2) A water right that is automatically deposited may be withdrawn in the manner described in the above paragraph or by verbal request of the parciante to use the water. If the parciante requests to use the water, the water right will be deemed to be withdrawn after such request followed by actual beneficial use of the water. Any initial term or automatic renewal will end when the withdrawal becomes effective.

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

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

d) Water Right Reallocation

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

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

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

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

Section 4: Acequia Dues and Fees

Water rights may be deposited in the Water Bank regardless of whether the owner is in good financial standing with the Acequia. However, ditch dues or fees owed the Acequia by a water right owner who has deposited water rights in the Water Bank will continue to accrue and be owed by the water right owner.

## WATER BANK DEPOSIT FORM

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**FOR ACEQUIA USE ONLY**

Page \_\_\_\_\_

**BANKING LOG – OWNER DEPOSITS AND WITHDRAWALS**

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

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

\_\_\_\_ Initial Owner Deposit

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

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

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