



## 2023 CONGRESO DE LAS ACEQUIAS RESOLUTIONS PACKET

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## **23<sup>rd</sup> Annual Congreso de las Acequias**

Saturday, November 18, 2023

### **RESOLUTION 2023-01 – DEFINITION OF REGIONS**

BE IT RESOLVED by the Congreso de las Acequias that the following are defined for purposes of determining types of representation on the Congreso as provided for in the bylaws passed December 8, 2001 and updated December 6<sup>th</sup>, 2008.

#### **Type 1 Regions**

Cow Creek Regional Acequia Association  
El Rito Acequia Association  
Embudo Valley Regional Acequia Association  
Gallina/Capulin Acequia Association  
Gila Basin Irrigation Commission  
Jemez River Basin Coalition of Acequias  
La Asociación de las Acequias del Valle de Mora  
La Asociación de las Acequias Norteñas del Rio Arriba  
Las Nueve Acequias del Rio Grande  
Rio de Chama Acequia Association  
Rio de las Gallinas Acequia Association  
Pojoaque Valley Regional Acequia Association  
Rio Quemado, Rio en Medio, Rio Frijoles, Rio Santa Cruz Stream System Ditch Association  
Rio Santa Barbara Unified Acequia Association  
Association of Community Ditches of the Rio San Jose  
Rio Vallecitos, Rio Tusas, Ojo Caliente Acequia Association  
San Juan Agricultural Water Users Association  
South Valley Regional Acequia Association  
Taos Valley Acequia Association  
Upper Hondo Water Users Association

#### **Type 2 Regions**

Carnuel/Tijeras/San Antonio  
Cerro  
Estancia Valley  
La Cienega  
Las Huertas  
La Joya  
Nacimiento  
North Valley  
Rio Costilla  
Rio Pueblo  
Rio Las Trampas  
El Valle/Ojo Sarco  
Rio Sapello  
Rio Mimbres  
Upper Rio Pecos  
El Valle (Pecos)  
Tecolote  
Dilia/La Loma/Anton Chico/Tecolotito  
Puerto de Luna  
Questa  
Santa Fe  
San Cristobal  
Santa Teresita  
San Francisco  
Tesuque  
Truchas  
Tularosa

**Resolution 2023-02**

**Supporting the Water Rights Settlement of the parties in the Rio Chama Stream System**  
Submitted by Rio Chama Acequia Association (RCAA)

**WHEREAS**, the Ohkay Owingeh Rio Chama water rights settlement in the case titled *State of New Mexico, ex rel. State Engineer v. Roman Aragon, et al.*, Case No. 69-cv-07941-KWR/KK (D.N.M.), has been approved by the Pueblo of Ohkay Owingeh, the United States as trustee for Ohkay Owingeh, the State of New Mexico, the City of Espanola, and five regional Acequia Associations representing 79 independent acequias in the Rio Chama Stream System. An Interim Implementation Agreement is in effect, and

**WHEREAS**, the water rights of Pueblo and non-Pueblo water users on the Rio Chama Stream System are fully resolved in the Agreement after a 30-year adjudication, and

**WHEREAS**, the Agreement recognizes the unique historic, social, and cultural characteristics of both Pueblo and non-Pueblo water users, and

**WHEREAS**, the ancient tradition of acequia water sharing (*repartimiento*), rather than priority administration, is established as the primary approach to managing water shortages in the Agreement,

**WHEREAS**, full implementation requires Legislative action at both the Federal and State levels to provide funds for key provisions of the Agreement concerning infrastructure enhancements, basin-wide drought management, water acquisition, and shared water storage, and

**THEREFORE BE IT RESOLVED**, the Congreso de las Acequias supports the Ohkay Owingeh Rio Chama water rights settlement and calls upon the New Mexico State Legislature and the United States Congress to fund the settlement to ensure effective implementation of the settlement provisions important to future water uses of Ohkay Owingeh and 79 acequias on the Rio Chama system;

**BE IT FURTHER RESOLVED** that copies of this resolution will be transmitted to the New Mexico Congressional Delegation, NM Legislators representing Rio Arriba County, the NM Office of the State Engineer, the NM Interstate Stream Commission, and the NM Acequia Commission.

**Resolution 2023-03**  
**Strongly Urging Compliance with State Law and**  
**Protection of Due Process in Water Leasing**

WHEREAS, the New Mexico Acequia Association has been advocating for protection of due process provisions in the Water Use Lease Act since 2014 when the acequias in the Upper Hondo filed numerous protests to applications granted by the OSE for “immediate use” through a procedure entitled “preliminary approval” and passed resolutions in support of due process and in opposition to the administrative practice of “preliminary approval” in 2014, 2015, and 2021;

WHEREAS, New Mexico statutes require a permit from the OSE before water can be put to beneficial use. Before granting a permit, the State Engineer must consider impairment of existing water rights, conservation of water, and public welfare;

WHEREAS, new appropriations or changes in point of diversion, place of use, or purpose of use are subject to public notice, opportunity to protest, and mandatory public hearing on protested applications. These requirements apply to new appropriations of surface or groundwater, water transfers involving surface or groundwater, and water leases;

WHEREAS, the Water Lease Use Act was enacted in 1967 and defines the process of water leases like any other water transfer, which specifically requires public notice, opportunity to protest, and mandatory public hearing on protested applications;

WHEREAS, in 2005, the OSE enacted the Surface Water Regulations which state that the procedure for filing a lease application shall be the same as for any other application for water transfers or new/supplemental wells, including changes in point of diversion, purpose of use, or place of use;

WHEREAS, in 2010, the OSE began an administrative practice of granting “preliminary approval” to water lease applications in conflict with state statute and the Surface Water Regulations of the agency. By granting “preliminary approval” to water use lease applications, the OSE failed to provide public notice, opportunity to protest, and mandatory public hearings on protested applications prior to allowing “immediate use” of water;

WHEREAS, in 2015, the OSE granted preliminary approval to three water lease applications to the Village of Ruidoso, after which over 300 protests by downstream irrigators and acequias were filed. In the years that followed, acequias would be some of the most vocal critics of the OSE’s practice of preliminary approval;

WHEREAS, in 2019, the OSE granted preliminary approval to seven applications by Intrepid to use old mining water rights for the oil and gas industry. The application was protested by Carlsbad Irrigation District, Pecos Valley Artesian Conservancy District, Otis Mutual Domestic

Water Consumers Association, and the Interstate Stream Commission over concerns about impacts to compact deliveries to Texas and related impacts;

WHEREAS, Carlsbad Irrigation District and Otis Mutual Domestic Water Consumers Association proceeded to file a Writ of Mandamus with the 5<sup>th</sup> Judicial District stating that the permits granted via preliminary approval violated state law. Judge Romero ruled against the OSE and commanded the State Engineer to cancel the permits;

WHEREAS, in February 2020, the 5<sup>th</sup> Judicial District Court found that the State Engineer's practice violated both the Water-Use Leasing Act and the state engineer's implementing regulations and the practice deprived existing priority water rights owners of the statutorily required public hearing.

WHEREAS, despite the ruling in the 5<sup>th</sup> Judicial District, the OSE continued to grant preliminary approval to water lease applications outside the 5<sup>th</sup> Judicial District in significant numbers;

WHEREAS, in January 2023, the Attorney General stated the following: "Our determination that the State Engineer cannot lawfully grant "preliminary" approval of changes in use or location of water rights is based on the plain language of the Water Use Lease Act and supported by statutory interpretation and considerations of due process. The law does not allow for the State Engineer to circumvent procedures and protections clearly defined in statute, even if temporary in nature.";

WHEREAS, the Attorney General Opinion stated that there is no explicit or clearly implicit authority for the State Engineer to grant preliminary approval in state statutes or agency regulations and that preliminary approval may violate constitutional due process;

WHEREAS, during the 2023 session of the New Mexico State Legislature, Senator Peter Wirth and Representative Christine Chandler sponsored HB 121 to clarify existing language in the Water Use Lease Act that applications were subject to public notice, opportunity to protest, and mandatory public hearing on protested applications. Initially opposed by the State Engineer, a compromise was reached with language to create in statute an expedited hearing process that retained due process protections. However, the legislation did not pass;

WHEREAS, despite the 5<sup>th</sup> Judicial District ruling and the Attorney General Opinion stating that preliminary approval is unlawful, the OSE continued to grant preliminary approval to numerous applications for substantial amounts of water in 2023;

WHEREAS, the NMAA has raised concerns with the OSE and the Attorney General about the ongoing practice of granting preliminary approval for water lease applications because of the due process implications, the past impacts on acequia communities, and the potential for future impacts to senior water rights, acequias, aquifers, and rivers;

WHEREAS, the OSE has announced that the agency will be promulgating a rule regarding water leasing and is seeking input on concepts. The current conceptual outline includes an option for codification of a process for granting “immediate use” to certain applications prior to publication and opportunity for protest;

THEREFORE BE IT RESOLVED, the Congreso de las Acequias calls upon the Office of the State Engineer comply with the Water-Use Leasing Act and refrain from unlawfully granting immediate use of water for a water lease application before due process requirements are met;

BE IT FURTHER RESOLVED the Congreso de las Acequias continues to oppose legislation or administrative rules that remove due process protections in the water leasing process;

BE IT FURTHER RESOLOVED the Congreso de las Acequias maintains that any rulemaking by the State Engineer with regard to water leasing should maintain due process protections including public notice, opportunity to protest, and mandatory public hearing on protested applications;

BE IT FURTHER RESOLVED that the Congreso de las Acequias recommends that any administrative rulemaking should be consistent with state statutes as well as the findings and conclusions of law in the 2020 Intrepid Decision and the guidance provided by the state Attorney General in Opinion No. 2023-01;

BE IT FURTHER RESOLVED that the Congreso de las Acequias urges policymakers to affirm that any future regulations or legislation retain requirements for public notice and opportunity to protest. These due process requirements must be provided at the beginning of the WULA application process to ensure affected acequias and other communities can raise concerns about impairment, conservation, or public welfare;

BE IT FURTHER RESOLVED that copies of this resolution be delivered to the New Mexico Acequia Commission, the Office of the State Engineer, the Interstate Stream Commission, state House of Representatives and Senate leadership, the New Mexico Attorney General, and Governor Lujan Grisham.

APPROVED BY THE CONGRESO DE LAS ACEQUIAS THIS DAY THE 17th OF NOVEMBER 2023.

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Harold Trujillo, President

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Attest: Don Bustos, Secretary

**Resolution 2023-04**  
**Supporting Inclusion of Acequias in State and Regional Water Planning**

WHEREAS, drought and climate change continue to have profound impacts on acequia communities, which are already experiencing threats from megadrought, aridification, catastrophic wildfire, floods, erosion, and damaged infrastructure;

WHEREAS, acequia leaders have a long history of adaptation to environmental and institutional changes and continue to provide vital expertise in water management. Therefore, our expertise should be acknowledged, honored, and incorporated in all levels of water planning and management;

WHEREAS, acequia leaders have made important contributions to regional water planning in their respective regions with policy recommendations and engagement with other stakeholders on past regional water planning efforts as well as the 2018 State Water Plan;

WHEREAS, acequias in many areas of the state are organized into regional acequia associations that engage in their respective regions in water management decisions including water sharing agreements, negotiation and implementation of water rights settlements, and communication between acequias. This makes them vital partners in regional water planning in New Mexico;

WHEREAS, the New Mexico State Water Plan Act was signed into law in 2003, requiring the state to prepare and implement a comprehensive state water plan and, at a minimum, review, update and amend the State Water Plan in response to changing conditions every five years. The State Water Plan was last updated in 2018, therefore the state is now in the process of updating this plan;

WHEREAS, in 2022, the Interstate Stream Commission (ISC) was tasked with putting together the 50 Year Water Plan and invited acequia leaders to participate. The New Mexico Acequia Association convened the Acequia Water Working Group (AWWG) during the summer of 2022 and the ISC incorporated the AWWG's Recommended Action as well as a two-page Acequia Policy Recommendations section (see attachments);

WHEREAS, during the 2023 state Legislative Session, the Water Security Planning Act was adopted into law, which updated the previous statute for regional water planning. The new Act directs the ISC to establish and conduct a regional water security program including criteria for ISC approval of regional water plans, and procedures for regional water planning entities to consider public welfare, and the needs of future generations of New Mexicans;

WHEREAS, the NMAA, the NMSU Water Resources Research Institute (WRRI), and the ISC are working together to develop planning tools to be used for regional water planning and for other water management decisions at the local and regional levels;

WHEREAS, the ISC has stated that the agency will begin implementation of the Water Security Planning Act starting with promulgation of rules and adoption of guidelines in 2024 and 2025, and that the development of regional water plans will begin in July 2025;

THEREFORE BE IT RESOLVED that the Congreso de las Acequias recommends that the ISC continue to engage with acequia leaders in the State Water Plan and Regional Water Planning efforts through the Acequia Water Working Group and regional acequia associations, and to include acequia policies and recommended actions in final plans;

BE IT FURTHER RESOLVED that the Congreso de las Acequias requests that the State Legislature and the ISC provide resources and funding to build capacity of regional acequia associations to be engaged in regional and state water planning, as well as development of their own community-based planning processes, by ensuring access to data and resources for coordination, organizing, and technical experts;

BE IT FURTHER RESOLVED that the Congreso de las Acequias strongly urges acequias to be organized at the regional level, to develop strategies for engagement in water planning, and to advocate for public welfare statements are inclusive of acequias and that recognize the interconnectivity of watersheds, rivers, acequias, and aquifers;

BE IT FURTHER RESOLVED that the Congreso de las Acequias requests that the ISC integrate the 50 Year Water Plan and its “Protect Acequias” Recommended Action and Acequia Policy Recommendations section into the upcoming State Water Plan;

BE IT FURTHER RESOLVED that the Congreso de las Acequias requests that the legislature increase funding for the ISC’s water planning efforts during the 2024 state Legislative Session;

BE IT FURTHER RESOLVED that copies of this resolution be delivered to the New Mexico Acequia Commission, the Office of the State Engineer, the Interstate Stream Commission, state House of Representatives and Senate leadership, the New Mexico Attorney General, and Governor Lujan Grisham.

APPROVED BY THE CONGRESO DE LAS ACEQUIAS THIS DAY THE 17th OF NOVEMBER 2023.

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Harold Trujillo, President

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Attest: Don Bustos, Secretary



**Resolution 2023-05**  
**Supporting Protections for Clean Water in New Mexico and Creation of a State-based  
Surface Water Permitting System**

WHEREAS, clean water is vital to the health and well being of communities in New Mexico and acequias are uniquely affected by potential contamination from wastewater effluent from towns and cities, stormwater and flash flooding, and a range of contaminants from mining, nuclear laboratories, ski areas and other industrial and commercial uses;

WHEREAS, New Mexico has unique challenges with regard to protecting clean water because of interpretation of the federal Clean Water Act during the past two decades resulting in different standards to determine which waterways are under the jurisdiction of the Clean Water Act;

WHEREAS, the most recent interpretation of the Clean Water Act has been through the *Sackett* decision, a US Supreme Court ruling stating that wetlands can only be defined as “navigable waters,” and therefore protected by the Clean Water Act, through a “relatively permanent” test in which wetlands have to be connected to surface waters that are under the jurisdiction of the Clean Water Act;

WHEREAS, this new “relatively permanent” test replaced a previous standard for Waters of the US (WOTUS) which was the “significant nexus” test, which extended protections of the Clean Water Act if there was a hydrological connection between wetlands, ephemeral streams, and intermittent streams from “navigable waters;”

WHEREAS, following the Sackett Decision, the Environmental Protection Agency (EPA) and the Army Corp of Engineers (USACE) enacted a new rule to interpret the Clean Water Act. This new rule narrows the coverage of protected waters and only protects wetlands that have a “continuous surface water connection” to other covered waters, while the previous WOTUS Rule covered wetlands that were “bordering” or “neighboring.”

WHEREAS, these new limitations on clean water protections for wetlands have raised concerns about the protection for ephemeral and intermittent streams. Approximately 96% of New Mexico’s streams and rivers are ephemeral and intermittent;

WHEREAS, ephemeral waters are ecologically and hydrologically significant in New Mexico, helping to recharge aquifers used for drinking water making New Mexico is disproportionately impacted by the new WOTUS Rule;

WHEREAS, New Mexico does not currently have a state surface water permitting program to fall back on like other states to protect our wetlands and ephemeral and intermittent streams and

the New Mexico Environment Department has requested resources to establish a permitting program;

WHEREAS, the New Mexico State Legislature approved a \$680,000 special appropriation for FY23 to begin programing development and more resources are needed to realize this critical permitting program;

THEREFORE BE IT RESOLVED, that the Congreso de las Acequias supports the development of a state surface water permitting program to help protect the lifeblood of our acequias and our traditional ways of life;

BE IT FURTHER RESOLVED, that the Congreso de las Acequias supports a base budget increase and special appropriations for the upcoming 2024 state Legislative Session for the New Mexico Environment Department (NMED);

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the New Mexico Acequia Commission, the New Mexico Land Grant Council, the New Mexico Environment Department Secretary, state House of Representatives and Senate leadership, the New Mexico Attorney General, Governor Lujan Grisham, and the New Mexico Congressional Delegation.

APPROVED BY THE CONGRESO DE LAS ACEQUIAS THIS DAY THE 17th OF NOVEMBER 2023:

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Harold Trujillo, President

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Attest: Don Bustos, Secretary

## **Resolution 2023-06**

### **Supporting Initiatives to Address Challenges Related to Acequias and Real Estate Transactions**

WHEREAS, acequia communities are facing tremendous development pressures that are resulting in shifts in land ownership that are impacting the cohesion and viability of acequias and the farmland that is fed by irrigation;

WHEREAS, an increasing number of absentee landowners has resulted in a growing trend of unpaid acequia assessments, also known as delinquencies, which acequias rely upon for their general operations and maintenance. Newer landowners who acquire lands with delinquencies create a problem on acequias by demanding delivery of water but not addressing the backlog of unpaid assessments;

WHEREAS, acequia leaders have observed that dues owed to homeowner's associations (HOAs) are required to be paid when the real estate transaction from a previous owner to a new owner takes place, while no similar requirement exists for acequia delinquencies;

WHEREAS, a related problem with real estate transactions is that new owners of land on an acequia do not fully understand their responsibilities as parcientes on the acequia, the nature and extent of acequia easements, the basic tenets of water rights, and other related roles and responsibilities;

WHEREAS, acequia leaders have observed that real estate agents that are better informed about the governance and operation of acequias are better prepared to provide guidance to new landowners about their relationship to the acequia;

WHEREAS, some counties, such as Santa Fe County, have taken steps to encourage newly licensed real estate agents to be better informed about acequias by requiring that their licensure requirements include a minimum of a certain number of credits on acequia land and water basics;

WHEREAS, the Taos Valley Acequia Association has taken the initiative to develop educational materials for landowners and real estate agents to improve the connection and understanding between new landowners and their respective acequia elected officials and neighboring parcientes;

THEREFORE BE IT RESOLVED that the Congreso de las Acequias supports the creation of a working group with regional acequia leaders, like-minded real estate agents, surveyors, title companies, and local government officials to identify actionable policy recommendations to address the challenges related to real estate transactions;

BE IT FURTHER RESOLVED that the Congreso de las Acequias commends the Taos Valley Acequia Association for their work to improve relations between new landowners and acequias by developing educational materials on acequia water rights, easements, assessments, and other related topics;

BE IT FURTHER RESOLVED that copies of this resolution will be transmitted to the New Mexico Acequia Commission, the New Mexico Land Grant Council, the New Mexico Real Estate Commission, New Mexico Counties, New Mexico Municipal League.

APPROVED BY THE CONGRESO DE LAS ACEQUIAS THIS DAY THE 17th OF NOVEMBER 2023:

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Harold Trujillo, President

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Attest: Don Bustos, Secretary

DRAFT

**Resolution 2023-07**  
**Supporting Legislation that Increases Monetary Penalties for Illegal Uses of Water**

WHEREAS, illegal uses of water for ponds, irrigation, or other uses, has detrimental impacts on acequias;

WHEREAS, acequias have limited enforcement powers as political subdivisions of the state and limited capacity and scope in how they exercise those powers;

WHEREAS, the State Engineer has enforcement powers based on the use of compliance orders and monetary penalties. However, the penalties are outdated and have not kept pace with the serious nature of violations of the Water Code nor have they kept pace with penalties of similar regulatory functions in state government;

WHEREAS, the OSE has proposed legislation to address gaps in the State Engineer's enforcement authority to ensure that the State Engineer has the appropriate tools to ensure compliance with water laws.

WHEREAS, the bill would amend Sections 72-2-18, 72-5A-12, and 72-12-14 to increase the maximum penalties for violations of these portions of the water code to amounts commensurate with the maximum penalties available to NMED for violations of the statutes it administers. The bill also would include automatic increases for these maximum penalties indexed to inflation;

WHEREAS, Section 72-2-18 contains a monetary penalty of \$100 per day, and does not become effective until after a compliance order becomes final. This penalty is too low, and too remote to be an effective deterrent. The bill would increase the maximum penalty to \$2,000 per day. By comparison, NMED can assess penalties of up to \$15,000 per day for violations of air quality permits;

WHEREAS, the \$100/day penalty amount was fixed in the original 1907 Water Code and has never been increased for inflation. In today's dollars, the original penalty of \$100/day would now be approximately \$3,000/day, which is similar to the maximum penalty being sought in the bill of \$2,000/day.

THEREFORE BE IT RESOLVED, that the Congreso de las Acequias supports more tools for enforcement of illegal diversions of water and other types of violations of the Water Code and supports legislation proposed by the Office of the State Engineer to update the monetary penalties that the agency can impose as part of their compliance orders;

BE IT FURTHER RESOLVED that copies of this resolution be delivered to the New Mexico Acequia Commission, the Office of the State Engineer, the Interstate Stream Commission, state House of Representatives and Senate leadership, the New Mexico Attorney General, and Governor Lujan Grisham.

APPROVED BY THE CONGRESO DE LAS ACEQUIAS THIS DAY THE 17th OF  
NOVEMBER 2023:

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Harold Trujillo, President

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Attest: Don Bustos, Secretary

**Resolution 2023-08**  
**Supporting the Inclusion of Acequia Funding to the**  
**Land of Enchantment Conservation Legacy Fund**

WHEREAS, the New Mexico State Legislature passed the Land of Enchantment Conservation Legacy Fund in the 2023 legislative session and provided funding several agencies including the Energy, Minerals, and Natural Resource Department, New Mexico Department of Agriculture, New Mexico Department of Game and Fish, New Mexico Environment Department, Economic Development Department, and Department of Cultural Affairs;

WHEREAS, the NMAA was one of the original members of a coalition to create a fund in state government for the purpose of generating revenue for vital programs that protect our land and water for future generations along with several organizations working on conservation and working lands;

WHEREAS, the Legacy Fund, as enacted, is a program that is beneficial to rural and land-based communities by supporting healthy soils, rivers, and watersheds, all of which are supportive of acequia communities;

WHEREAS, however, in negotiations over the content of the bill, a critical component of funding acequias was not included in the legislation as introduced and passed by the State Legislature. Earlier versions of the concept for the fund had included the Acequia and Community Ditch Infrastructure Fund at the Interstate Stream Commission as one of the programs that would receive funding through disbursements from the legacy fund;

WHEREAS, the final version of the bill as passed excluded a policy priority of the statewide acequia community, which was to ensure that the revenue stream generated by the Legacy Fund would support acequia infrastructure projects;

WHEREAS, acequias are a vital part of the legacy of the State of New Mexico with hundreds of years of contributions to the social, cultural, and economic fabric of our rural, agricultural communities;

WHEREAS, existing acequia infrastructure recurring funding streams do not meet the need for infrastructure projects statewide and the Legacy Fund can help to meet that need;

THEREFORE BE IT RESOLVED, the Congreso de las Acequias supports an amendment to the Land of Enchantment Legacy Fund to include funding for the Acequia and Community Ditch Infrastructure Fund (ACDIF) to the statute such that a commensurate and fair percentage of the fund be earmarked for acequias;

BE IT FURTHER RESOLVED that copies of this resolution be delivered to the New Mexico Acequia Commission, the Office of the State Engineer, the Interstate Stream Commission, state House of Representatives and Senate leadership, the New Mexico Attorney General, and Governor Lujan Grisham.

APPROVED BY THE CONGRESO DE LAS ACEQUIAS THIS DAY THE 17th OF NOVEMBER 2023.

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Harold Trujillo, President

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Attest: Don Bustos, Secretary

DRAFT