



**Advocacy to Protect Water at the NM State Legislature
New Mexico Acequia Association**

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.

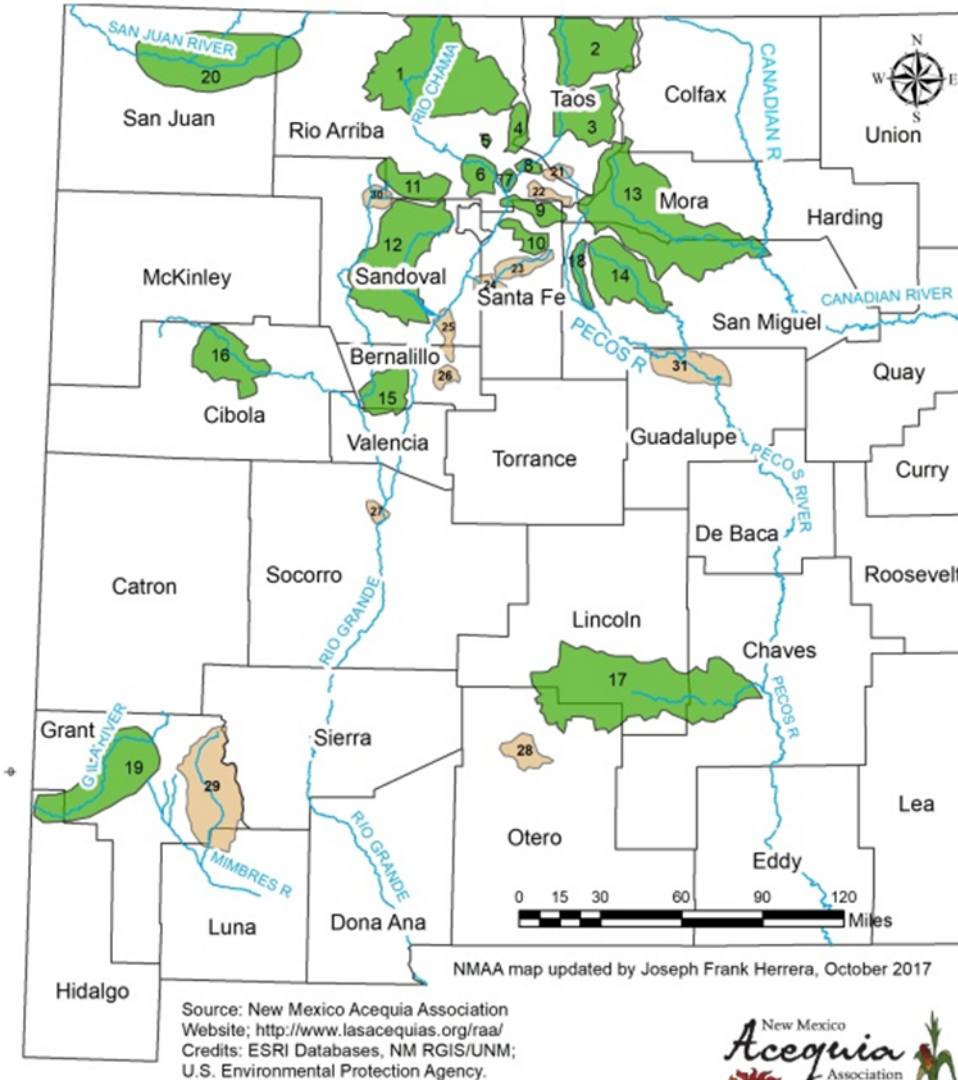


Our vision is for acequias to flow with clean water, to work together to grow food, and to celebrate our cultural heritage.



~640 Acequias in New Mexico

- Rio Grande and Tributaries
- San Juan River
- Rio Chama
- Nambe/Pojoaque/Tesuque
- Pecos River (Gallinas)
- Canadian (Mora)
- Rio Pueblo/Rio Embudo
- Jemez River
- Rio San Jose
- Hondo River
- Gila River
- Mimbres River

Congreso de las Acequias Regional Acequia Associations



NM Acequia Regions

-  Type 1 Region
-  Type 2 Region



Commodification of Water

Water in New Mexico is limited and fully appropriated (and likely overappropriated).

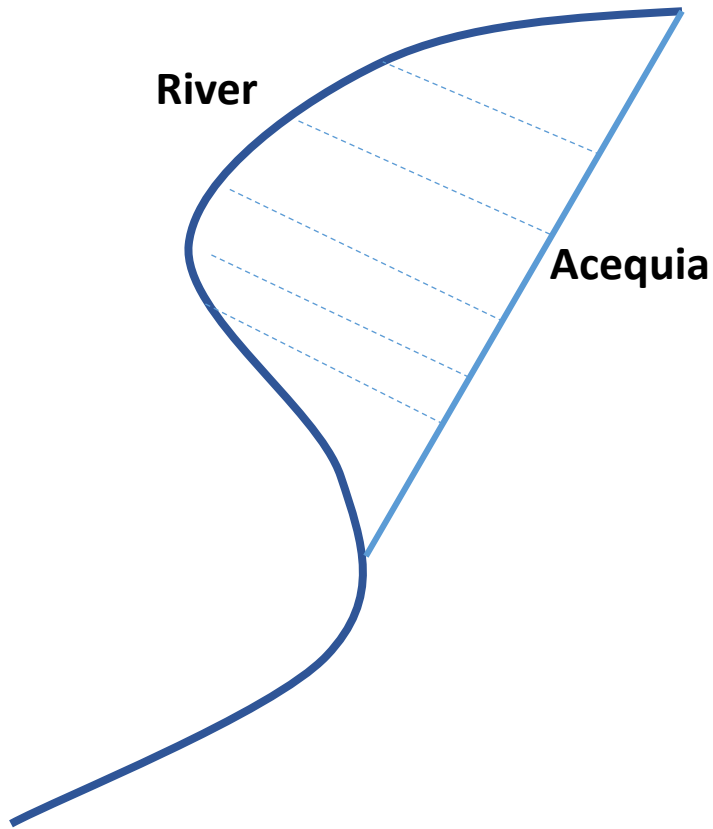
Any new uses of water have to come from existing uses of water through water transfers or water leases. **There is more “paper water” than “wet water.”**

New demands for water are driving a water market in New Mexico, which puts **pressure on rural, agricultural communities.**

Acequias are at the forefront of protesting water transfers and strengthening local water governance to regulate water transfers and protect acequia communities.



Why do acequias care so much about water transfers and water leases?



Transfers/leases **out of acequia** affect viability of acequia:

- Less water diverted from stream into main headgate
- Fewer parciantes for collective work and governance

Transfers/leases **outside an acequia** may impair existing water rights:

- Groundwater depletion
- Upstream diversion of surface water

How acequias respond:

- Transfers within an acequia - For specific applications into or out of acequia, the acequia has authority to deny transfers (due to 2003 law)
- Transfers outside an acequia - Filing protests to water transfers that impact them
- **Protests are a vital tool for acequias (and other stakeholders) to raise concerns about water transfers/leases**

1992 – Pecos Valley Learning Center, Acequia de Vado de Juan Paiz,
Anton Chico in Guadalupe County



SANTA FE/REGION

DEATH

Acequias: 'This is our bloodstream'

But money may prove stronger than tradition

By BIDDLE DUKE
The New Mexican

Francisco "Kiko" Padilla knows that nothing good ever came from selling water rights to outsiders.

He watched in the 1960s as subsistence farmers in towns along the Gallinas River south of Las Vegas sold their land and their water rights to vast nearby ranches. They're ghost towns now.

Saturday, Padilla spat out the abandoned village names with bitterness: "La Junta, Park Springs, Chaperito, La Liendre, Los Torres. They're nothing. Nothing. There's water. But no farming, no people. The ranches own the water and they don't want to use it. . . They bought the water just for investment."

Now, a company is after water rights on Padilla's acequia, El Vado de Juan Paiz, which snakes its way through the little subsistence farming communities of Dilia and Anton Chico, tucked along the banks of the Pecos River, 80 miles southeast of Santa Fe.

The Pecos River Learning Center has applied with the State Engineer's Office for permission to buy 45 acre-feet of water — or about 15 million gallons — a year from a willing El Vado de Juan Paiz ditch association



Photos by Steve Northrup/The New Mexican

Francisco "Kiko" Padilla stands beside El Vado de Juan Paiz near Dilia, N.M.

the El Vado de Juan Paiz, near where | They're just waiting for someone to

Paiz and the other ditch that serves the communities.

In dry years, acequias, which usually dry up in July, would cease to run in early or mid-June, weeks — perhaps months — earlier than usual, they said. Fewer parcels could be irrigated. The community, like their alfalfa, vegetable and fruit crops, would shrivel.

Kent Breese, who is handling the application for the State Engineer's office, said the impact of the proposed upstream well is likely being overestimated by the residents.

But he said they might have a legal right to block the sale.

"An application can't be detrimental to public welfare," he said. "Is this a detriment to the whole state of New Mexico? Yes, maybe, because it's changing a way of life."

But Breese said the Pecos River Learning Center might not need the entire 45 acre-feet of water. An average household uses one-third of an acre-foot and domestic wells use about three acre-feet, he said.

"Are these people going to be able to prove beneficial use of this water over a reasonable period of time?" he asked.

Even though they won't be using the ditch, Pecos River Learning Center has offered \$500 a year to the acequia association to help defray the costs of ditch maintenance. It was a show of good faith by the company and was far more than the approximately \$125 a year Tenorio paid for ditch maintenance.

But Sullivan said the offer was a

**2003 Legislative Session –
SB 123 was passed and signed into law.**

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SENATE BILL 123

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Carlos R. Cisneros

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING FOR COMPLIANCE WITH AN ACEQUIA OR
COMMUNITY DITCH REQUIREMENT FOR A CHANGE IN POINT OF DIVERSION
OR PLACE OR PURPOSE OF USE OF A WATER RIGHT.

Community

Commodification

Re-Communitize

Pre-1907
19th Century

Post-1907
20th Century

2003 forward
21st Century

Spanish, Mexican, territorial laws provided for local decisions – water as a local commons

State Engineer established to be state’s water administrator

State Engineer still state’s water administrator

Water rights attached to the land, non-severable

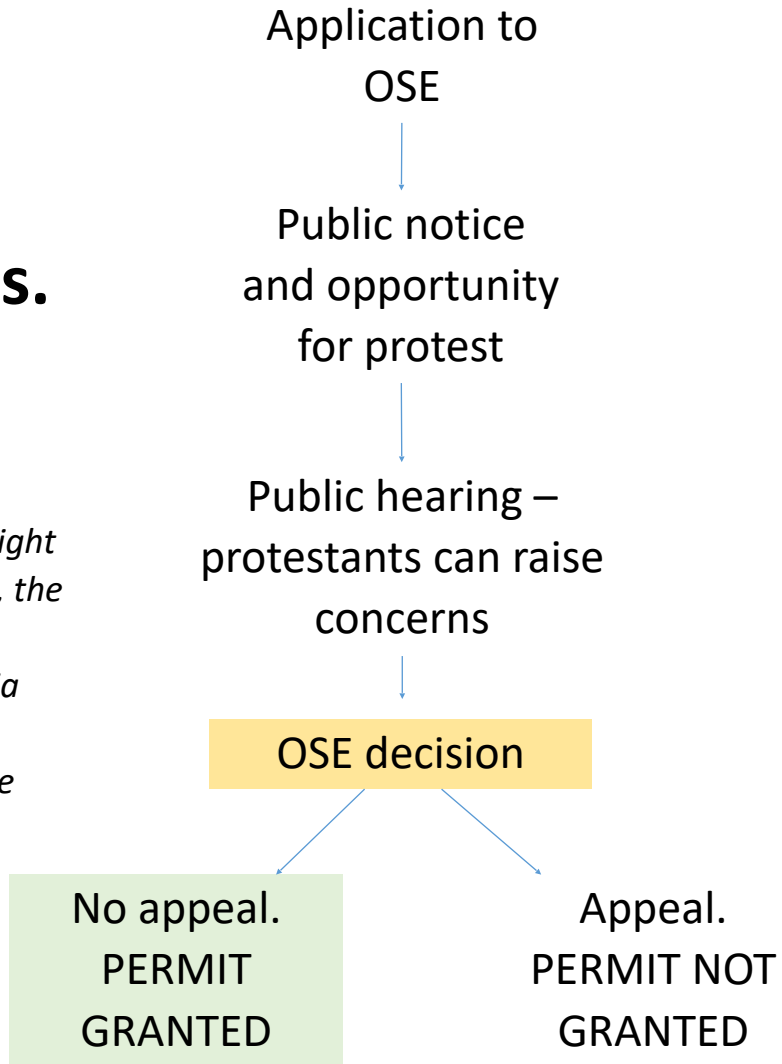
Water rights can be severed from the land through water transfers

Acequias authorized to decide about water transfers and water banking

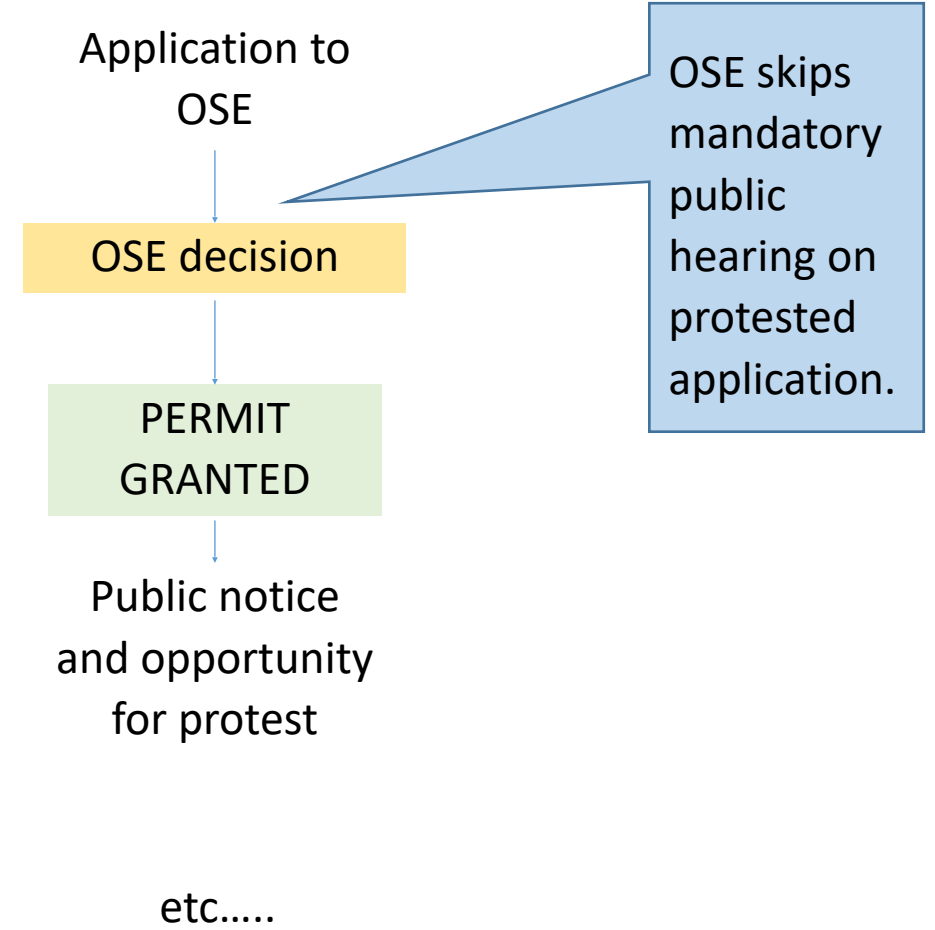
Protect due process in the water lease applications.

Note that if the water right is served by an acequia, the application has to be approved by the acequia before going to OSE (if acequia has appropriate language in bylaws).

NORMAL Water Transfer/Lease Process



NOT NORMAL Preliminary Approval Process



REVIEW OF TERMS

Water transfer – A change in a water right in terms of:

- Purpose (e.g. agriculture, municipal, industrial, etc.)
- Place of Use
- Point of Diversion

Water lease – A water lease is a TEMPORARY water transfer.

- Maximum of ten years (with some exceptions)
- Same application process as a water transfer

Water transfer process – This is the process of applying for a water transfer:

- Application to OSE, publishing notice, providing opportunity for protest.
- If protested, public hearing process is MANDATORY.
- Only after process is complete, OSE may grant permit for new/changed water use.

Preliminary approval – A relatively new and controversial practice by the State Engineer

- Preliminary approval is not authorized in state law or regulation
- By granting a permit for “immediate use”, OSE bypasses requirement for public hearing before approving new permit.
- Violates due process of impacted communities and existing water right owners.

Cannabis Production and WATER

With passage of the Cannabis Regulation Act (CRA), adult-use cannabis production adds a new demand to already strained water supplies in New Mexico.

Study released by UC-Berkley in February 2021 expects the overall legal U.S. cannabis industry to grow at a compound annual growth rate of 21% through 2025, and total water use in the legal cannabis market to increase by 86 percent.

Possible sources of water for recreational cannabis production:

- Municipal water supplies
- Rural community water systems
- Private wells
- Surface water (acequias or irrigation/conservancy districts)
- Bulk water purchases (truck and tank)



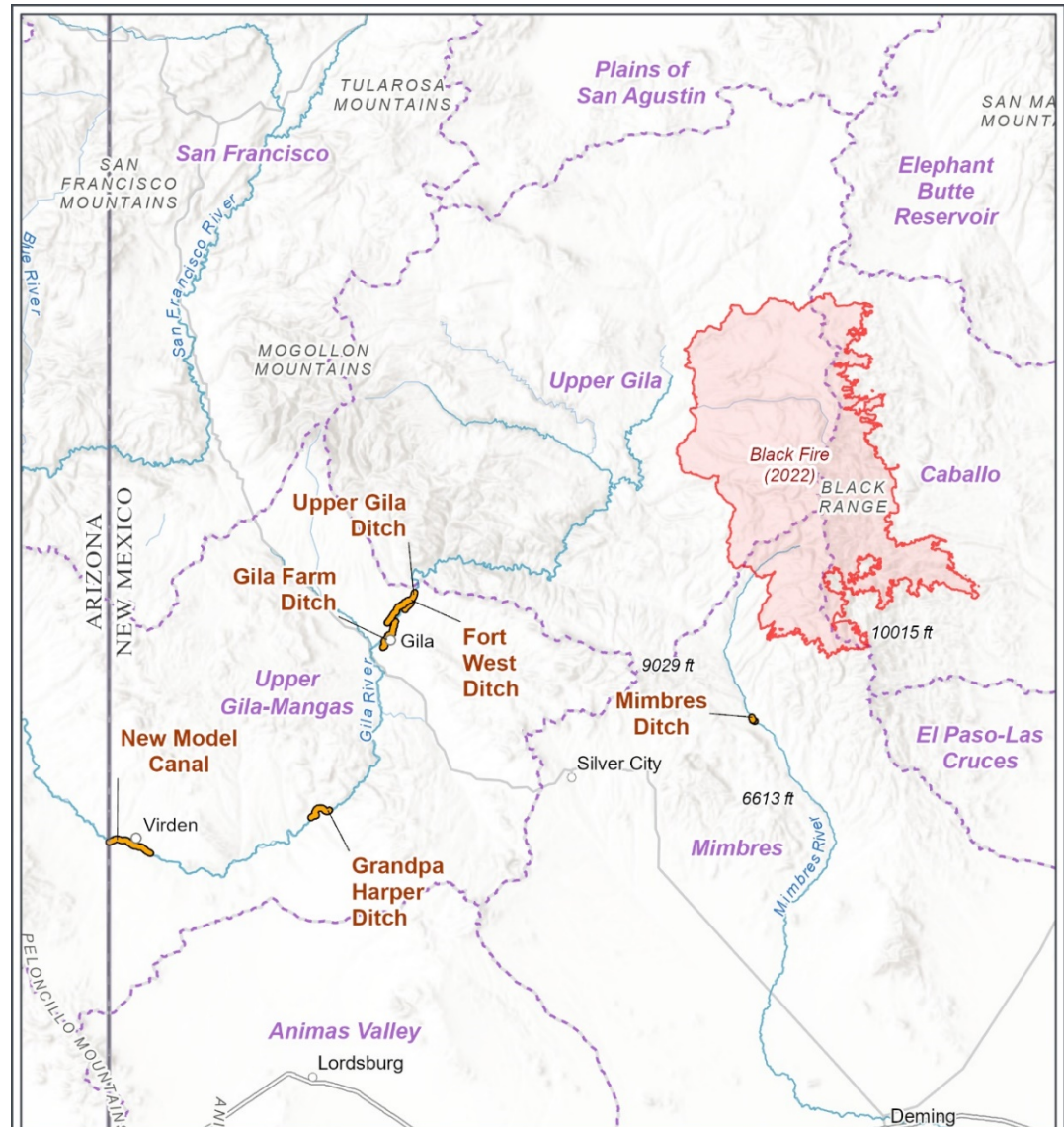
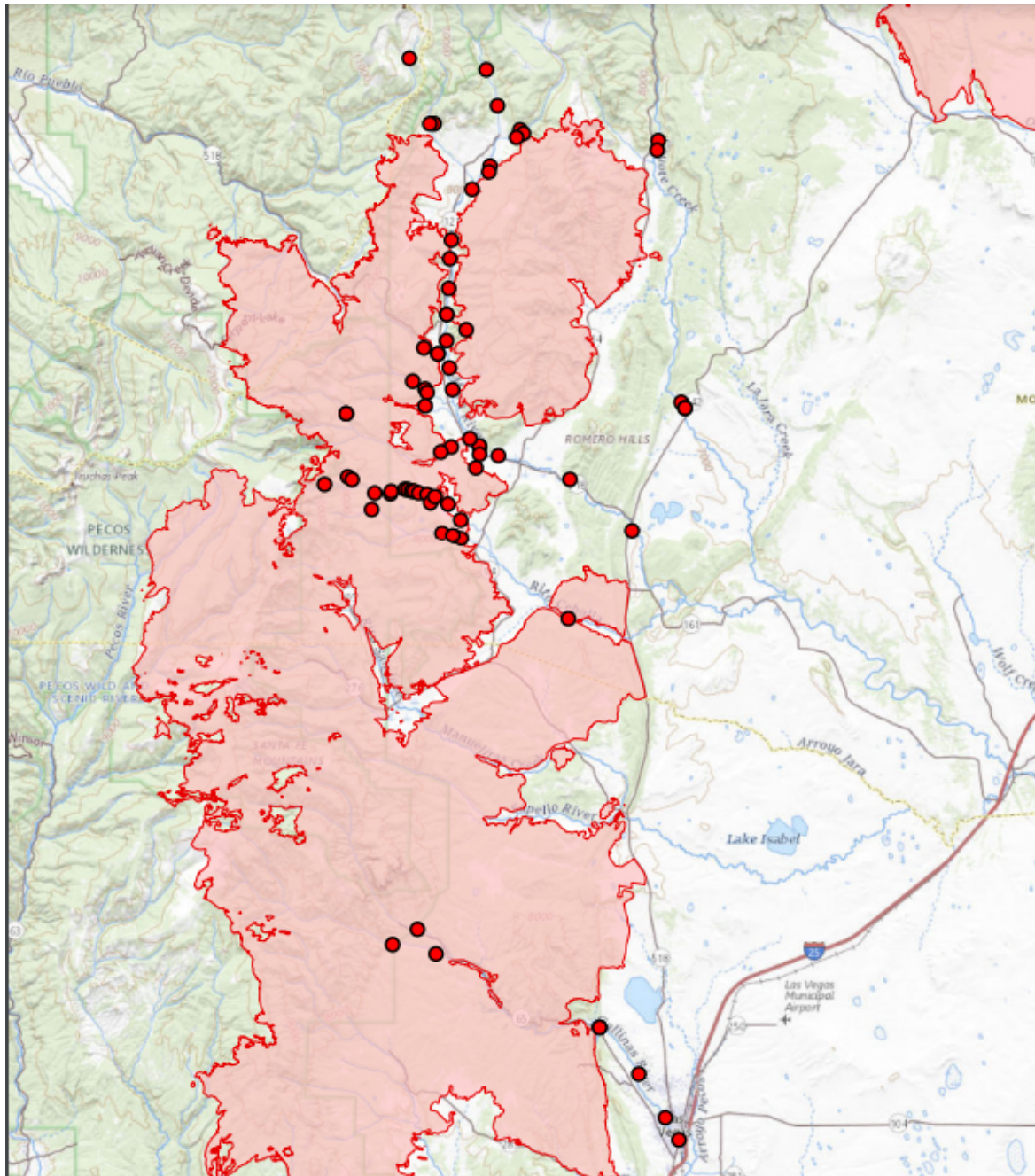
Source: “Rio Grande runs dry in Albuquerque for the first time in 40 years,” Washington Post, July 2022

Why water protections in the CRA are necessary:

Cannabis producers may incorrectly think they can:

- Use a domestic well for commercial production;
- Use acequia water whether their land has water rights or not;
- Use water from a mutual domestic water consumer association despite local rules that water is for domestic purposes only; and
- Use water by pumping directly from a river or other water body despite not having any surface water rights

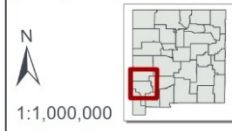




NEW MEXICO POST-FIRE
ACEQUIA SUPPORT
**Exhibit 1 - Black
Fire Area and
Project Locations
Overview**

- Surveyed Acequia
- Major Stream/
River
- Fire Perimeter
(2017 - 2022)
- - - Watershed
Boundary (HUC-8)

New Mexico
NAD 1983 UTM Zone 13N
33.0609°N 108.3283°W



Base Map: Esri ArcGIS Online,
accessed October 2022
Updated: 10/16/2022
Project No. 75322
Layout: overviewMap
Aprx:
75322_newMexicoPostFireAcequiaSupport





Appropriate funds for **Acequia Disaster Recovery** to support state agency response specific to acequias.

- Special appropriation of \$10-\$20 million for disaster recovery (cost estimates pending).
- Include acequia disaster recovery in new emergency fund created at DFA.

Amend the **ACDIF** with the following language:

- Expand the Acequia and Community Ditch Infrastructure Fund (ACDIF) from \$2.5 million to \$5.0 million recurring funds from the Irrigation Works Construction Fund.
- Include language to ensure that ISC does not require a local cost share.
- Add language to explicitly include disaster recovery as a purpose of the fund.

Create an **Acequia Bureau at the Interstate Stream Commission (ISC)** with dedicated staffing to provide a systemic and programmatic response for acequias in addition to the existing work of supporting acequia infrastructure projects. The current program as 1.5-2.0 FTE. **NMAA recommends adding additional 3.0 FTE.**



Acequia and Community Ditch Infrastructure Fund (ACDIF)

- Created in statute with SB 428 (2019)
- Administered by the Interstate Stream Commission (ISC)
- Receives \$2.5 million annually from the Irrigation Works Construction Fund (IWCF)
- ACDIF will fund:
 - Planning
 - Engineering Design
 - Construction
- More staffing is needed to effectively implement the purpose of the ACDIF.

Recommendation: Amend the ACDIF to include disaster recovery, cost share for state and federal programs, and to increase from \$2.5 million to \$5.0 million.

Increase funding for the **Acequia and Community Ditch Education Program** at DFA to expand technical assistance services to acequias. Increase funding from \$400k per year to \$800k.

Between July 1, 2021 and June 30, 2022:

Number of acequias assisted **371**
 Water rights, bylaws, infrastructure, and other governance matters.

Infrastructure:
 Infrastructure Capital Improvement Plans **39**
 Capital Outlay Requests **23**
 Acequia and Community Ditch Fund applications **30**

In 2022, conducted mapping and damage assessments on numerous acequias and provided assistance to acequias statewide in disaster response.

	Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf
1	(f) Leasehold community			
2	assistance	120.0		
3	(g) Acequia and community			
4	ditch education program	398.2		
5	(h) New Mexico acequia			
6	commission	88.1		
7	(i) Land grant council	496.9		
8	(j) Membership and dues	148.0		
9				
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NMAA Legislative Priorities

Protect Water

- Protect due process in the Water Use Leasing Act (WULA). Language would address the unlawful practice of the OSE to grant “preliminary approvals” in water lease applications and make it even more clear that water lease applications are required to follow requirements for notice, protest, and hearings.
- Retain water protections in the Cannabis Regulation Act (CRA). Current law requires that water rights for a cannabis production license be verified up front. Industry will likely seek to remove that protection.

Increase Funding for Disaster Recovery and Infrastructure

- Support special appropriation of \$10 million for disaster recovery from 2022 fires and floods and \$2 million for cost share for the Army Corp 1113 program (\$9.6 federal CDS for 1113 program).
- Amend the ACDIF to change increase appropriation from \$2.5 to \$5.0 million, require that there be no local cost share requirement, and add disaster recovery as an explicit purpose.
- Create an ISC Acequia Bureau with 3.0 FTE.

Other appropriations:

- Support additional \$200,000 for the Acequia and Community Ditch Fund
- Support additional \$400,000 for the Acequia and Community Ditch Education Program
- Support 1.0 FTE for the NM Acequia Commission