

# Protecting Traditional Acequia Irrigators' Rights Through Real Estate Disclosure Requirements

Team Vitalagua: Jennie Lynch and Tati Eldridge

In partnership with the New Mexico Department of Justice, New Mexico Acequia Association, New Mexico Acequia Commission, and advisor Gregor MacGregor

## Background

Acequias are centuries-old communal irrigation systems, both the physical ditches and the organizations that govern them. Established by Hispano settlers in the 16th century, they are concentrated in rural, agricultural, historically Hispanic, and Indigenous communities. Acequias are one of the oldest examples of water sharing governance in the United States, blending traditional and modern approaches to work to irrigate nearly 160,000 acres of land through times of drought and abundance. These are typically hand-dug irrigation ditches and are co-managed and maintained by members and governed as a local collective of irrigators.

In New Mexico, Acequias are also political subdivisions of the state under NMSA 1978, Chapter 73, Article 2, enabling acequias to manage water rights and easements. As such, they elect officers, impose assessments, and adopt and enforce bylaws

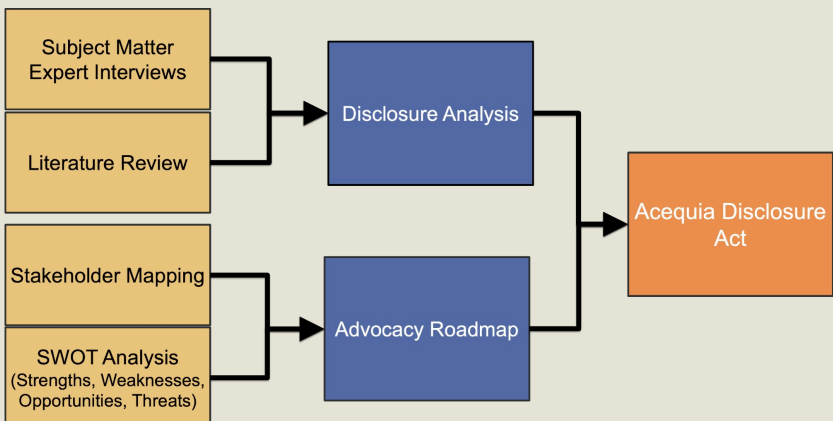
## Problem

Acequias have seen an increase in conflicts resulting from misunderstandings, disagreements, and a lack of information regarding the nature of water rights and acequia easements that cross private property as new buyers move into these rural communities.

Challenges resulting from the encroachment of development and demographic change, and the overlap of a collective irrigation system and private property.

New landowners may be unaware of the nature of acequia easements and could be reluctant to the needed involvement in the operation, maintenance, and improvements of the acequias. This ignorance or unwillingness to participate in the acequia or the maintenance of the ditch can undermine the self-governance of the ditch, and cause arguments with neighbors.

## Methodology and Deliverables



## Policy and Advocacy Recommendations

Our primary recommendation is to reintroduce legislation that requires property sellers to disclose acequias at the time a property is sold, accompanied by a contract that includes transparent and inclusive language regarding acequias, easements, maintenance responsibilities, and access rights. This bill has been drafted by this team, with support from NMAA, New Mexico State Legislatures and representatives from New Mexico Realtors.

We further recommend that NMAA, NMAC and the NMDNJ work on creating more comprehensive pathways for community engagement and public outreach to better support any future legislation efforts. We also strongly recommend that all partners draft and make amendments to already existing laws surrounding the education and licensing requirements for real estate professionals, professional engineers and property surveyors with any appropriate organizations.

## Proposed Policy Vehicle

### An Act

Relating to property law, enacting the "Acequia Disclosure Act," requiring disclosure of acequia and community ditch easements and related association obligations in certain real property transactions; providing for buyer remedies for noncompliance; preserving prior rights.

#### **Section TBD: Disclosure of acequia use easements.**

In any conveyance of real property containing or benefitting from an acequia use easement, the seller or seller's broker shall deliver a disclosure certificate to the purchaser or purchaser's agent no later than seven days before closing.

The disclosure certificate shall include sufficient information for the purchaser to determine the nature and extent of the acequia easement, including any obligations for maintenance or assessments.

No acequia use easement may impair an interest in real property existing at the time of its creation unless the owner of that interest consents in writing.

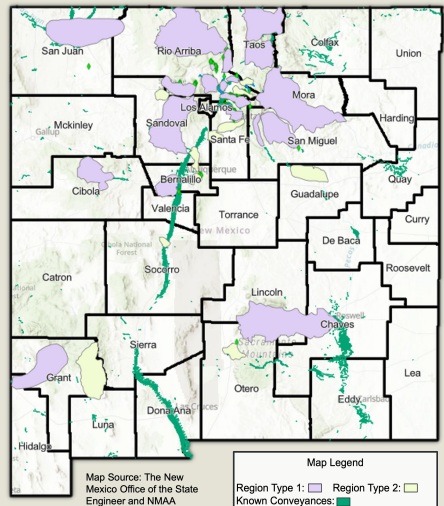
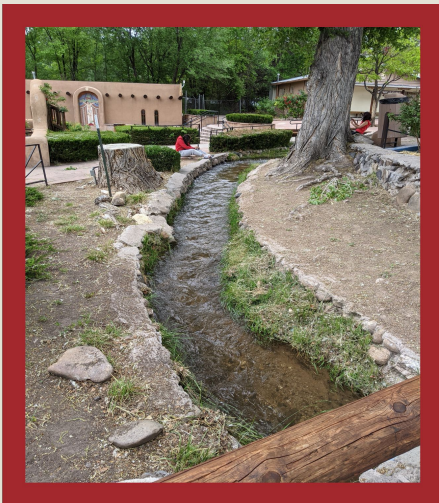
#### **Section TBD: Disclosure of acequia associations**

Where the property is subject to membership in, or obligations to, an acequia association, the disclosure certificate shall include: (adapted from 47-7A-4)

The current bylaws of the association; The amount and due dates of regular and special assessments

The status of any unpaid assessments or liens;

The names and contact information of current officers or the mayordomo.



Map of Acequia Regions and Known Conveyances



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