

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
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July 8, 2021

Jeff M. Witte
Director/Secretary of Agriculture
Chairman, Acequia and Community Ditch Fund Committee
MSC 3189, Box 30005
Las Cruces, NM 88003-8005

Re: Opinion Request – 73-2A-3(A) NMSA

Dear Secretary Witte:

You requested our opinion regarding the distribution of funds from the Acequia and Community Ditch Fund (“ACDF”), which fund was created in accordance with the Acequia and Community Ditch Fund Act. NMSA 1978, Sections 73-2A-1 to -3 (1988, as amended through 1994). We understand that your question arises from a difference of opinion between the Pojoaque Valley Regional Acequia Association (“PVRAA”) and the Office of the State Engineer (“OSE”) on PVRAA’s eligibility for funding, and whether under Section 73-2A-3(A), the ACDF may be used to fund the implementation of court approved settlements that have been entered into prior to a final judgement and decree of water rights. Based upon our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that the Acequia and Community Ditch Fund may be used to fund the implementation of court approved settlements that have been entered into prior to a final judgement and decree of water rights.

The Acequia and Community Ditch Fund Act (the “Act”) was enacted to “provide financial assistance to acequias and community ditch systems.” § 73-2A-2. The Act establishes an acequia and community ditch fund in the state treasury to support “acequias and community ditch associations in the adjudication process, including historical studies, economic impact reports, expert witness fees, legal fees and other technical services related to the adjudication process.” § 73-2A-3(A). The disbursement of funds to acequias and ditch associations is determined by a committee including the director of the New Mexico department of agriculture, the chairman of the interstate stream commission, and a person elected from the New Mexico acequia commission. As part of the committee’s funding process, the OSE submits a report on the eligibility and priority of applicants for funds. § 73-2A-3(B).

The OSE contends that PVRAA is not eligible to receive ACDF funding because the request was specifically for compliance with provisions of a settlement agreement, not for the adjudication of water rights. According to the OSE, because a final decree was entered in the adjudication and the case was closed, the adjudication of water rights has been completed. The OSE also notes that the language of Section 73-2A-3(A) should be read as setting specific requirements for eligibility for ACDF funds, only to be expended “to carry out the purposes of contracting with acequia and ditch associations constituting a majority of acequias or ditches within an adjudication suit or a separately administered portion of an adjudication suit...”

The PVRAA contends that the implementation of a settlement agreement comes within the meaning of “related to the adjudication process.” NMSA 1978 § 73-2A-3(A). PVRAA asserts that the settlement agreement arises out of the adjudication and relates to the purpose of the Act to “conserve and protect water for New Mexico’s future through the adjudication of water rights.” § 73-2A-2. PVRAA further contends that the Legislature intentionally defined the statutory scope broadly, as including support for, “other technical services related to the adjudication process,” rather than writing a narrow scope, limiting the use of the funds. § 73-2A-3(A). PVRAA also argues that the public policy of New Mexico favoring settlement agreements as preferable to litigation is furthered by providing the acequias and community ditches with ACDF funding for purposes of settlement implementation.

Based on canons of statutory construction, we are inclined to agree with the PVRAA’s reading of the Act. First, a statute should generally be read according to its plain, written meaning, to give effect to the Legislature’s intent. *State v. Davis*, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 175, 74 P.3d 1064, 1067. Here, the Act expressly states that its purpose is “to provide financial assistance to acequias and community ditch systems to develop hydrological studies, acquire technical and legal research and other information and services necessary to conserve and protect water for New Mexico's future through the adjudication of water rights.” § 73-2A-2. Additionally, as mentioned in the Report of the State Engineer to the Acequia and Community Ditch Fund Act Committee for fiscal year 2020, the original motivation behind the ACDF was to provide state financial assistance to acequias and community ditches to participate in litigation involving Indian water rights claims in water right adjudications. Pueblos and Tribes receive representation in water rights adjudications from the U.S. Department of Justice, as well as the funding to implement the settlement agreements. *See* 43 U.S.C.A. § 407 (funding the Federal share of the remaining costs of implementing the Indian water rights settlement agreements entered into by the State of New Mexico in the *Aamodt* adjudication). Section 73-2A-3(A) plainly states the fund is created to “provide assistance to acequias and community ditch associations in the adjudication process, including historical studies, economic impact reports, expert witness fees, legal fees and other technical services *related to the adjudication process.*” (emphasis added). The Legislature could have but did not limit the ACDF to on-going litigation and expressly exclude related services.

Second, courts will not construe a statute in a manner that would, “render the statute's application absurd or unreasonable” or “lead to injustice or contradiction.” N.M. *State Bd. of Educ. v. Bd. of Educ.*, 95 N.M. 588, 591, 624 P.2d 530, 533 (1981); *State v. Willie*, 2009-NMSC-037, ¶ 9, 146 N.M. 481, 212 P.3d 369. Statutes “must be interpreted to accord with common sense and reason.” *Sandoval v. Rodriguez*, 77 N.M. 160, 163, 420 P.2d 308 (1966). To give effect to the purpose of the Act, the Legislature created the ACDF to benefit acequia and community ditches and aid in the defense of their water rights. The ACDF plays a vital role in allowing acequias to negotiate water right settlements. The *implementation* of such settlements, that have been approved by the Court, relates to the public policy underlying of the Act, and denying funding would contradict the purpose of the ACDF. Thus, we believe a court may reasonably find that assistance for activities, “related to the adjudication process,” is broad enough to include the implementation of settlement agreements arising out of the adjudication.

As previously stated, the Legislature’s stated purpose for enacting the Act was to “provide financial assistance to acequias and community ditch systems to develop hydrological studies, acquire technical and legal research and other information and services necessary to conserve and protect water for New Mexico's future through the adjudication of water rights.” NMSA 1978 § 73-2A-2. Included in the adjudication process, and encouraged, is the informal disposition of adjudicatory proceeding by agreed settlement in order to expedite a resolution. In fact, “it is the policy of the law and of the State of New Mexico to favor settlement agreements.” *Am. Civil Liberties Union of N.M. v. Duran*, 2016-NMCA-063, ¶ 50, 392 P.3d 181 (quoting *Navajo Tribe of Indians v. Hanosh Chevrolet-Buick, Inc.*, 1988-NMSC-010, ¶ 3, 106 N.M. 705, 749 P.2d 90). Denying funding for settlement implementation would be contrary to the purpose of the Act and public policy.¹

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Respectfully,



Novela Salazar,
Assistant Attorney General

¹ While we have concluded that the request for funds to implement a settlement agreement qualifies for eligibility under the ACDF, the awarding of grant agreements to acequia and ditch associations will continue to be determined by the Acequia and Community Ditch Fund Act Committee. NMSA 1978 § 73-2A-3 (B). As such, the report submitted to the Committee on the priority of applicants for funding is still determined by the OSE. *Id.* Whether, the PVRAA’s request should be granted, is not within the scope of this analysis.