



MACIAS, GUTIERREZ & CO., P.C.
CERTIFIED PUBLIC ACCOUNTANTS
TIERRA AMARILLA, NEW MEXICO

STATE OF NEW MEXICO

ACEQUIA DE SANTA CRUZ

Independent Accountants' Report on Applying
Agreed-Upon Procedures (Tier 3)

Year Ended December 31, 2011

STATE OF NEW MEXICO

ACEQUIA DE SANTA CRUZ

**Independent Accountants' Report on Applying
Agreed-Upon Procedures (Tier 3)**

Year Ended December 31, 2011

**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

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**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

**Official Roster
at December 31, 2011**

<u>Name</u>		<u>Title</u>
	<u>Board of Directors</u>	
Joseph Merhege		Chairman
Lonnie Montoya		Secretary
Mel Martinez		Treasurer
	<u>Staff</u>	
Michael Martinez		Mayordomo



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INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES (TIER 3)

To: Ron Gallegos, Commission President
Acequia de Santa Cruz #13006
and
Wayne A. Johnson
New Mexico State Auditor

We have performed the procedures enumerated below, which were agreed to by the Acequia de Santa Cruz (ADSC) and the Office of the State Auditor on the Tier Verification, the State-Funded Capital Outlay Expenditures and Reimbursements and Other (Items 1-7) for the year ended December 31, 2011, included in the accompanying information provided to us by management of the Acequia de Santa Cruz. The Acequia de Santa Cruz is responsible for the Tier Verification, the State Funded Capital Outlay Expenditures and Reimbursements and Other (Items 1-7) for the year ended December 31, 2011 included in the accompanying information provided to us by the management of the ADSC. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. The procedures and associated findings (Results of Procedures Performed) are as follows:

The Contractor shall request and review all state-funded capital outlay awards, joint powers agreements, correspondence and other relevant documentation for the capital outlay award funds expended by the recipient that meet Tier 3 criteria.

1. Before beginning the procedures below, the IPA must verify the local public body's revenue calculation and tier determination using the form provided at www.osanm.org under "Tiered System Reporting Main Page."

We verified the Acequia de Santa Cruz's revenue calculation and tier determination. The ADSC's cash basis revenue was less than \$50,000 and expended at least 50% of, or the remainder of a capital outlay award or the expenditure appropriation period ended, which meets the criteria for **Tier 3 determination**.

2. **The Contractor shall test all state-funded capital outlay expenditures to:**

Procedures

- a) Determine that amount recorded as disbursed agrees to adequate supporting documentation. Verify that amount, payee, date and description agree to the vendor's invoice, purchase order, contract and cancelled check, as appropriate.
- b) Determine that disbursements were properly authorized and approved in compliance with the budget, legal requirements and established policies and procedures.

- c) Determine that the bid process (or request for proposal process if applicable), purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code (Section 13-1-28 through 13-1-99 NMSA 1978) and State Purchasing Regulations (1.4.1 NMAC) and Regulations Governing the Per Diem and Mileage Act (2.42.2 NMAC).
- d) Determine the physical existence (by observation) of the capital asset based on expenditures to date.
- e) Verify that status reports were submitted to the state agency per terms of agreement and amounts in the status report agree with the general ledger and other supporting documentation.

Results of Procedures Performed

- a) We determined that amounts recorded as disbursed agreed to adequate supporting documentation and we verified that amounts, payees, dates and descriptions agreed to the vendor's invoices, purchase orders, contracts and cancelled check copies, as appropriate. There was one project, 07-4802 that began activity in calendar year 2009 but at least 50% of the capital outlay award was not expended until calendar year 2011, the year the expenditure appropriation period ended. Therefore, on a cumulative basis from project inception, we examined 185 disbursements totaling \$46,612.51.
- b) We determined that the disbursement was properly authorized and approved in compliance with the budget, legal requirements and established policies and procedures.
- c) We determined that the bid process or request for proposals, purchase orders, contracts and agreements were processed in accordance with the New Mexico Procurement Code (Section 13-1-28 through 13-1-99 NMSA 1978) and State Purchasing Regulations (1.4.1 NMAC).
- d) We determined the physical existence by photographs of the capital asset based on expenditures to date.
- e) We determined that there was no mention in the Capital Projects Agreement of required status reports to be submitted to the state agency.

3. Procedures

If the project was funded in advance, the Contractor shall determine if the award balance (and cash balance) appropriately reflects the percentage of completion based on the project schedule and expenditures to date.

Results of Procedures Performed

The project was not intended to be funded in advance but on a reimbursement basis.

4. Procedures

If the project is complete, the Contactor shall determine if there is unexpended balance and whether it was reverted per statute and agreement with the grantor.

Results of Procedures Performed

Project 07-4802 GF is complete (the expenditure appropriation period ended June 30, 2011) but there is an unexpended balance of \$19,128.66 above the actual amount requested/received and the actual amount expended and has not been reverted per statute. However, it appears that the balance of the Capital Outlay funds may have been expended on project related improvements and repairs but amounts paid to individuals and/or vendors do not match the invoices or invoice dates submitted with the requests for reimbursement. See noncompliance Finding 2011-3 on page 6.

5. Procedures

The Contractor shall determine whether cash received for the award was accounted for in a separate fund or separate bank account that is non-interest bearing if required by the capital outlay agreement.

Results of Procedures Performed

Since the project was approved on a reimbursement basis, no separate fund or bank accounts were required.

6. Procedures

The Contractor shall determine whether reimbursement requests were properly supported by costs incurred by the recipient. The Contractor shall determine whether the costs were paid by the local public body prior to the request for reimbursement.

Results of Procedures Performed

Except as noted below, we determined that reimbursement requests were properly supported and the Acequia incurred costs prior to the submission of requests for funding from the New Mexico Interstate Stream Commission Acequia Program. For Project 07-4802, we examined eleven (11) reimbursement requests totaling \$64,741.17. However, only \$46,612.51 of the amounts requested/received was expended. The eleven reimbursement requests included eight-four (84) amounts totaling \$19,128.66 that were not paid to individuals or vendors matching the invoices and invoice dates submitted for reimbursement.

7. Other Procedures

If information comes to the Contractor's attention (regardless of materiality) indicating any fraud, illegal acts, noncompliance, or any internal control deficiencies, disclose in the report as required by Section, 12-6-6 NMSA 1978. The findings must include the required content per Section 2.2.2.10 (l) (3) (C) NMAC.

Results of Procedures Performed

No exceptions were found as a result of applying the procedures described above (regardless of materiality) indicating any fraud, illegal acts, or internal control deficiencies. However, see two noncompliance findings for Late Report submission and Form 1099-MISC not issued for payments of at least \$600 made to individuals for services rendered as Findings 2011-1 on page 4 and 2011-2 on page 5, respectively.

* * * * *

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to and did not conduct an examination or a review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Tier Verification, State-Funded Capital Outlay Expenditures and Reimbursements or Other for the Acequia de Santa Cruz for the year ended December 31, 2011, included in the accompanying information provided to us by management of the Acequia de Santa Cruz. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Acequia de Santa Cruz, the New Mexico State Auditor's Office, the Department of Finance and Administration, Local Government Division and the New Mexico Legislature and is not intended to be and should not be used by anyone other than the specified parties.

Macias, Gutierrez & Co., CPAs, P. C.

Macias, Gutierrez & Co., CPAs, P. C.
Tierra Amarilla, New Mexico 87575
December 5, 2018

STATE OF NEW MEXICO
 ACEQUIA DE SANTA CRUZ
 Agreed-Upon Procedures (Tier 3)
 For the Year Ended December 31, 2011

Exhibit A

Capital Outlay Project No.	Pay Request	Amount Awarded	Amount Requested/ Received	Actual Amount Expended	Remaining Balance	Actual Legislation	Effective Dates
07-4802 GF		<u>\$ 65,000.00</u>					
	1		\$ 5,689.02	\$ 5,087.02	\$ 59,912.98	Laws of 2007, Chapter 42, Section 67, Paragraph 24, for improvements and repairs to the acequia de Santa Cruz in Santa Fe and Rio Arriba counties.	Through 6/30/2011
	2		1,552.00	800.00	59,112.98		
	3		3,946.44	3,946.34	55,166.64		
	4		3,990.00	3,270.00	51,896.64		
	5		1,315.00	1,315.00	50,581.64		
	6		5,920.69	5,789.62	44,792.02		
	7		9,628.92	8,920.85	35,871.17		
	8		1,939.20	1,588.00	34,283.17		
	9		19,689.92	12,644.45	21,638.72		
	10		3,874.33	1,438.33	20,200.39		
	11		<u>7,195.65</u>	<u>812.90</u>	<u>19,387.49</u>		
			<u>\$ 64,741.17</u>	<u>\$ 45,612.51</u>	<u>\$ 19,387.49</u>	Project Unspent	
Project	Balance		\$ 258.83		\$ 19,128.66	Actual Unspent	

STATE OF NEW MEXICO
 ACEQUIA DE SANTA CRUZ
 Agreed-Upon Procedures (Tier 3)
 For the Year Ended December 31, 2011

Exhibit B

Grant No.	Pay Request	Invoice/ Request Date	Amount Awarded	Amount Requested/ Received	Date Received	Invoice Amount	Check Number	Check Date	Actual Amount Expended	Vendor Paid
07-4802 GF			<u>\$ 65,000.00</u>							
	1	3/10/2009		\$ 5,689.02	4/6/2009	\$ 5,689.02	Various	Various	\$ 5,087.02	Various
	2	4/22/2009		1,552.00	5/14/2009	1,552.00	Various	Various	800.00	Various
	3	1/14/2010		3,946.44	1/27/2010	3,946.34	Various	Various	3,946.34	Various
	4	2/5/2010		3,990.00	2/19/2010	3,990.00	Various	Various	3,270.00	Various
	5	2/10/2010		1,315.00	2/22/2010	1,315.00	Various	Various	1,315.00	Various
	6	3/16/2010		5,920.69	3/26/2010	5,920.69	Various	Various	5,789.62	Various
	7	3/19/2010		9,628.92	3/31/2010	9,618.88	Various	Various	8,920.85	Various
	8	3/24/2010		1,939.20	4/16/2010	1,939.20	Various	Various	1,588.00	Various
	9	4/12/2011		19,689.92	4/26/2011	18,345.97	Various	Various	12,644.45	Various
	10	6/20/2011		3,874.33	7/15/2011	3,874.33	Various	Various	1,438.33	Various
	11	7/14/2011		7,195.65	8/11/2011	7,195.65	Various	Various	812.90	Various
				<u>\$ 64,741.17</u>		<u>\$ 63,387.08</u>			<u>\$ 45,612.51</u>	

**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

**Schedule of Findings and Responses
Year Ended December 31, 2011**

	<u>Type of Finding *</u>	<u>Prior Year Finding Number</u>	<u>Current Year Finding Number</u>
Current Year Findings:			
Late Report	D	N/A	2011-1
Form 1099-MISC not issued for payments of at least \$600 made to individuals for services rendered	D	N/A	2011-2
Capital Outlay Appropriation balance not yet reverted	D	N/A	2011-3
Follow-up on Prior Year Findings:			
None	N/A	N/A	N/A

An agreed-upon procedures report was not required for the year ended 12/31/10

*** Legend for Findings:**

- A. Fraud
- B. Illegal Act(s)
- C. Internal Control Deficiency(ies)
- D. Noncompliance

**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

**Schedule of Findings and Responses
Year Ended December 31, 2011**

2011-1

Late Report (Noncompliance)

Criteria

Office of the State Auditor, Rule 2011, Section 2.2.2.16.G, states that local public bodies with a calendar fiscal year-end must submit the agreed-upon procedures report no later than May 31 of the following year.

Condition

Acequia de Santa Cruz has a calendar fiscal year-end but the agreed-upon procedures report for the year ended December 31, 2011 was submitted after May 31, 2012.

Cause

Acequia de Santa Cruz did not submit the IPA recommendation or AUP contract to the State Auditor by the deadline and was unable to provide the IPA appropriate requested documents to support the state funded capital outlay expenditures in a timely manner.

Effect

Acequia de Santa Cruz has not complied with Office of the State Auditor, Rule 2011, Section 2.2.2.16.G.

Recommendation

For all future agreed-upon procedures engagements, we recommend that Acequia de Santa Cruz complete the recommendation and contract forms and submit the agreed-upon procedures reports by the required deadlines.

Entity Response

“As new commissioners, to the Acequia de Santa Cruz, since 2016, we have reviewed the findings of the contract auditor and have no reason to believe his findings in this regard are neither inaccurate or untrue. Consequently, we agree with his findings. We cannot speak to the actions of any prior administration as it pertains to its compliance of established state regulations.

The current commissioners herein agree to abide by the Annual Audit Rule, Section 2.2.2.16.G, which states that local public bodies with a calendar fiscal year-end must submit the agreed-upon procedures report no later than May 31 of the following year. It is our intent to become fully compliant with all established requirements.”

**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

**Schedule of Findings and Responses
Year Ended December 31, 2011**

2011-2

Form 1099-MISC not issued for payments of at least \$600 made to individuals for services rendered (Noncompliance)

Criteria

Department of the Treasury, Internal Revenue Service (IRS) requires Form 1099-MISC to be issued to individuals who are not employees that have been paid at least \$600 during the year for services performed.

Condition

During the performance of the agreed-upon procedures, we noted that the Acequia de Santa Cruz paid at least \$600 to several individuals but did not issue Form 1099-MISC for any calendar year when that occurred as follows: 2009, two individuals, 2010 eleven individuals and 2011 nine individuals. There are several others that are not associated with the agreed-upon procedures engagement.

Cause

Acequia de Santa Cruz was not aware that the IRS regulation regarding 1099-MISC applied to acequias.

Effect

Acequia de Santa Cruz has not complied with Department of the Treasury, Internal Revenue Service regulations and might be subject to substantial fines for noncompliance. Such payments to individuals are taxable income and may not have been reported on their tax returns.

Recommendation

We recommend that Acequia de Santa Cruz issue Form 1099-MISC to individuals who are not employees that have been paid at least \$600 during the calendar year for which services are performed.

Entity Response

“The current commission cannot speak to the actions of any prior administration as it pertains to its failure to issue Form 1099-MISC to individuals who were not employees of the Acequia de Santa Cruz and were paid at least \$600 dollars during the calendar year for which services were rendered.

The current commission will implement the appropriate Internal Revenue Service regulations as they pertain to the issuance of Form 1099-MISC to non-employees of the Acequia de Santa Cruz paid in excess of \$600.”

**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

**Schedule of Findings and Responses
Year Ended December 31, 2011**

2011-3

Capital Outlay Appropriation balance not yet reverted (Noncompliance)

Criteria

Laws of 2007, Chapter 42, Section 2 states that the unexpended balance of the Capital Outlay appropriation made from the General Fund shall revert within six months of completion of the project, but no later than the end of fiscal year 2011.

Condition

During the performance of the agreed-upon procedures, we noted that the Acequia de Santa Cruz had an unexpended balance of \$19,128.66 that has not yet reverted to the State General Fund. However, it appears that the balance of the Capital Outlay funds may have been expended on project related improvements and repairs but amounts paid to individuals and/or vendors do not match the invoices or invoice dates submitted with the requests for reimbursement.

Cause

Acequia de Santa Cruz may or may not have been aware that the full amount of the requested/received funding matching the invoices and invoice dates submitted for reimbursement remained unexpended.

Effect

Acequia de Santa Cruz may not have complied with Laws of 2007, Chapter 42, Section 2.

Recommendation

If determined that funds were not expended as specified, we recommend that Acequia de Santa Cruz revert the unexpended balance to the State General Fund as soon as possible.

Entity Response

“As new commissioners, to the Acequia de Santa Cruz, since 2016, we have reviewed the findings of the contract auditor and have no reason to believe his findings in this regard are neither inaccurate or untrue. Consequently, we agree with his findings. We cannot speak to the actions of any prior administration as it pertains to its compliance of established state regulations.

The current commissioners are in agreement that a portion of the Capital Outlay funds may have been expended and paid to individuals and or vendors whose invoices do not match those that were submitted within the commissions represented timeframes.

Upon review of the commission’s fiscal records, we can attest that all Capital Outlay monies received by the prior commission were deposited and expended on various ditch related activities.

**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

**Schedule of Findings and Responses
Year Ended December 31, 2011**

Entity Response (cont'd)

We acknowledge that for whatever reason the actions taken by the previous commission resulted in a finding that there exists an unexpended sum of Capital Outlay money that is recommended be returned to the state general fund. Regrettably, the current fiscal condition of the Acequia de Santa Cruz does not allow for the whole and complete return of said monies to the State of New Mexico at this time. To comply with such a request, would in effect cause the total fiscal insolvency of the Acequia de Santa Cruz resulting in its inability to function as entity.

The commission respectfully requests that all options short of a total return of unexpended monies be considered at this time. This would allow the Acequia de Santa Cruz to continue performing its obligations to its parciantes.”

**STATE OF NEW MEXICO
ACEQUIA DE SANTA CRUZ**

**Exit Conference
Year Ended December 31, 2011**

EXIT CONFERENCE

The report contents were discussed at a telephonic exit conference held on December 11, 2018 with the following:

Acequia de Santa Cruz

By telephone:

Lonnie Sanchez, Board Treasurer

Accounting Firm

James R. (Jim) Macias, CPA