

**Congress of the United States**  
**Washington, DC 20515**

October 8, 2020

The Honorable Sonny Perdue  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, D.C. 20250

Dear Secretary Perdue:

We are writing to express our concern for New Mexico's farmers and ranchers and their access to the critical federal assistance programs they depend on during times of drought. We have been made aware of a recent change in policy implementation from the New Mexico Farm Service Agency (NM FSA) that drought conditions on farms and ranches irrigated by acequias will no longer be considered an eligible cause of loss under the Noninsured Crop Disaster Assistance Program (NAP).<sup>1</sup> This decision is inconsistent with how the program has been administered in previous years, and it represents an egregious misunderstanding of drought conditions and how they impact crop yields.

Acequias are centuries-old irrigation structures that are unique and still in use today in rural communities across New Mexico. Each acequia is governed by a board made up of private landowners, known as a community ditch association. These community ditches are the lifeblood that enables New Mexicans to tend to their crops, care for their animals, carry on valued traditions, and make their living. During times of drought, these community systems govern how much water each member is allocated and, in some cases, allowable uses.

This form of communal governance allows New Mexican communities to navigate and ensure water rights in times of scarcity or extreme scarcity—water rights that go back hundreds of years for most acequias. While the approach to water distribution varies greatly depending on the acequia and its bylaws, commonly the parciante or mayordomo who manages the acequia divides water between members.<sup>2</sup> This means that water may not be guaranteed to the individual users, which can greatly impact these farmers' and ranchers' ability to produce crops and sustain their farms.

New Mexico farmers and ranchers are facing a difficult year due to COVID-19 and drought conditions across the state. Most of the state has been designated by the U.S. Department of Agriculture (USDA) as experiencing either severe or extreme drought.<sup>3</sup> Given these circumstances, it is particularly concerning that New Mexico FSA has been communicating to farmers and ranchers that drought is not an eligible cause of loss on irrigated lands for disaster assistance programs like NAP.

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<sup>1</sup> White, Michael S. letter to Paula Garcia. September 4<sup>th</sup>, 2020. FSA Response to New Mexico Acequia Association

<sup>2</sup> <https://lasacequias.org/wp-content/uploads/2017/10/Governance-Handbook-Rev-2014.pdf>

<sup>3</sup> <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?West>

As you are aware, New Mexico FSA's mismanagement of the NAP program in recent years was the subject of a USDA National Appeals Division (NAD) Director Review Determination on August 4, 2020, in which NAD Director Frank Wood reminded FSA that it "must comply with its regulations and the procedures specified in its handbook provisions." We are deeply concerned that New Mexico FSA appears to be circumventing its own rules at the expense of New Mexico's farmers and ranchers. Most recently, it has come to our attention that NM FSA has been misrepresenting the NAD Director's ruling to local farmers and ranchers, including by suggesting that FSA made a decision not to recoup overpayments out of generosity, when in fact the NAD Director's determination explicitly prohibits recoupment.<sup>4</sup>

We respectfully request that you clarify FSA's position on drought as a cause of loss on acequia irrigated lands and immediately provide oversight over NM FSA's mismanagement of the NAP program. Additionally, we urge you to implement the NAD Director Review decisions, dated July 16<sup>th</sup>, 2020 and October 8<sup>th</sup>, 2020,<sup>5</sup> and any subsequent clarifications from the NAD Director. Lastly, we urge USDA to recognize the NAD Director's determination that FSA's adjustment of the county-expected yields was improper and to ensure that farmers and ranchers who were adversely impacted by this case are paid at the original certified and agreed upon T-yields, which for Rio Arriba County was based on a county-expected yield of 4.18 tons/acre, either as compensation from their NAP contracts or through Equitable Relief.

Thank you for your prompt attention to this issue.

Sincerely,



Tom Udall  
United States Senator



Ben Ray Luján  
United States Representative

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Martin Heinrich  
United States Senator



Deb Haaland  
United States Representative



Xóchitl Torres Small  
United States Representative

<sup>4</sup> White, Michael S. letter to farmers. October 1, 2020.

<sup>5</sup> See USDA National Appeals Division Case IDs 2019W000061 and 2019W000198, respectively.