

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 26 SURFACE WATER
PART 2 ADMINISTRATION

19.26.2.1 ISSUING AGENCY: Office of the State Engineer.
[19.26.2.1 NMAC - N, 1/31/2005]

19.26.2.2 SCOPE: The administration of all natural waters flowing in streams and watercourses, and supplemental groundwater, within the limits of the state of New Mexico.
[19.26.2.2 NMAC - N, 1/31/2005]

19.26.2.3 STATUTORY AUTHORITY: Chapter 72, Articles 1, 2, 5, 6, 7 and 9, NMSA. Section 72-1-1 NMSA provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts. Section 72-9-1 NMSA gives the state engineer authority to regulate reservoirs, canals, pipelines or other works and the rights of the owners thereof. Nothing in these rules shall be construed so as to limit the state engineer's authority to take lawful alternative or additional actions relating to the management of surface water resources.
[19.26.2.3 NMAC - N, 1/31/2005]

19.26.2.4 DURATION: Permanent.
[19.26.2.4 NMAC - N, 1/31/2005]

19.26.2.5 EFFECTIVE DATE: January 31, 2005, unless a later date is cited at the end of a section.
[19.26.2.5 NMAC - N, 1/31/2005]

19.26.2.6 OBJECTIVE: To establish standards and procedures implementing the duties of the state engineer as set forth by statute and further defined by judicial decisions to supervise and administer the appropriation, allocation, and use of surface water and supplemental groundwater of the state.
[19.26.2.6 NMAC - N, 1/31/2005]

19.26.2.7 DEFINITIONS: Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meaning.

A. Abandonment: The loss of a water right based on the nonuse of water and the intent by the water right owner to permanently relinquish or forsake the right.

B. Acequia: An irrigation ditch managed and maintained by the local community it serves. Acequias and community ditch associations are considered legal subdivisions of the state pursuant to Section 73-2-28 NMSA.

C. Acre-foot: A volume of water sufficient to cover one (1) acre of land one (1) foot deep. One acre-foot is equal to 43,560 cubic feet or 325,851 gallons.

D. Beneficial use: The direct use or storage and use of water by man for a beneficial purpose including, but not limited to, agricultural, municipal, commercial, industrial, domestic, livestock, fish and wildlife, and recreational uses. Beneficial use shall be the basis, the measure, and the limit of a water right.

E. Certificate of construction: A document issued by the state engineer which recognizes that construction of the works has been in accordance with the permit.

F. Community ditch: An irrigation ditch managed and maintained by the local community it serves. Acequias and community ditch associations are considered legal subdivisions of the state pursuant to Section 73-2-28 NMSA.

G. Consumptive irrigation requirement (CIR): The quantity of irrigation water, expressed as a depth or volume, exclusive of effective rainfall, that is consumptively used by plants or is evaporated from the soil

surface during one calendar year. The consumptive irrigation requirement (CIR) may be numerically determined by subtracting effective rainfall from the consumptive use.

H. Consumptive use: The quantity of water consumed during the application of water to beneficial use. The quantity of water beneficially consumed depends on the requirements of a particular enterprise and how it applies and consumes the water. The authorized diversion of water that is not beneficially consumed in the course of water use is not part of the allowable consumptive use allocation of the water right. The consumptive use of water by a crop (evapotranspiration) does not include depletions such as evaporation from canals, ditches or irrigated fields during surface application, transpiration by vegetation along ditches, evaporation or leakage from irrigation water pipes, evaporation of sprinkler spray and drift losses, and evaporation of runoff and seepage from irrigated fields.

I. Dam: A man-made barrier constructed across a watercourse or off-channel for the purpose of storage, control, or diversion of water.

J. Effective rainfall: The average rainfall during the growing period of a crop that becomes available to help meet the consumptive use of water by the crop.

K. Duty of water (farm delivery requirement): The average quantity of water that is delivered on an annual basis to the farm headgate or is diverted from a source of water that originates on the farm itself - such as a well or spring - to satisfy the consumptive irrigation requirement of crops grown on a farm. In practice, the farm delivery requirement is estimated by dividing the crop irrigation requirement by the irrigation efficiency.

L. Forty-year planning entity: A municipality, county, state university, member-owned community water system, special water users' association, or public utility supplying water to a municipality or county which is allowed a water use planning period of not to exceed forty years pursuant to Section 72-1-9 NMSA.

M. Headgate: A mechanism in a dam or ditch that controls the flow of water through the outlet.

N. Hearing: An administrative proceeding on an order entered by the state engineer, or the filing of an application, protest, grievance or other pleading, in which parties may present evidence according to the rules and procedures contained in 19.25.2 NMAC.

O. Historical supply: The average quantity of water historically available from a specific source at the point of diversion to meet the farm delivery requirement. Historical supply is expressed as a percentage of the total farm delivery requirement.

P. Impoundment: Any man made or modified structure or diversion works intended for the retention or detention of water, including but not limited to livestock water tanks, sumps, spring boxes, subsurface excavations, metal tanks, ponds and dams.

Q. Infiltration gallery: Constructed works laid in, adjacent to, or below a streambed or spring source that intercepts surface water.

R. Irrigation efficiency: The portion of the duty of water, expressed as a percentage, consumed to meet the crop irrigation requirement.

S. License: A document issued by the state engineer after final proof of application of water to beneficial use has been filed and inspection has been completed that confirms the extent of diversion and beneficial use of water made in conformance with permit conditions.

T. Livestock: All domestic or domesticated animals that are used or raised on a farm or ranch, including exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae. Livestock does not include canine or feline animals.

U. Livestock water impoundment: Any impoundment used exclusively for watering livestock.

V. Perennial stream: A stream or reach of a stream that flows continuously throughout the year. Under extreme conditions such as severe drought some streams considered perennial may not contain water.

W. Permit: A document issued by the state engineer that authorizes the diversion of water from a specific point of diversion, for a particular beneficial use, and at a particular place of use, in accordance with the conditions of approval. A permit allows the permittee to develop a water right through the application of water to beneficial use, in conformance with the permit's conditions of approval. A permit in itself does not constitute a water right.

X. Point of diversion: The location of constructed works where water is diverted from a stream, watercourse, or well.

Y. Project diversion requirement or off-farm diversion requirement: When the source of water does not originate on the farm, the project diversion requirement or off-farm diversion requirement is the average quantity of water that is diverted from an off-farm source to satisfy the farm delivery requirement for one calendar year.

Z. Proof of application of water to beneficial use: A document filed with the state engineer by a permittee demonstrating the actual beneficial use to which water has been applied under a permit.

AA. Rate of diversion: The instantaneous measurement of water being taken from a stream, watercourse, or well.

BB. Spring: A site where surface water flows freely from the ground under natural conditions. The flow at land surface may be perennial or intermittent in nature.

CC. Stream system: The surface waters of a river or stream and all groundwater hydrologically connected to those surface waters.

DD. Surface water: Water found in any watercourse including impoundments, ponds, lakes, reservoirs, springs, streams and rivers or flows obtained from an infiltration gallery.

EE. Water right: The legal right to appropriate water for a specific beneficial use. The elements of a water right generally include owner, point of diversion, place of use, purpose of use, priority date, amount of water, periods of use, and any other element necessary to describe the right. A permitted or declared right is considered to be a valid water right only to the extent water has been legally placed to beneficial use.

FF. Watercourse: Any river, creek, arroyo, canyon, draw or wash, or any other channel having definite banks and bed with visible evidence of the flow of water.

[19.26.2.7 NMAC - N, 1/31/2005]

19.26.2.8 DECLARATION OF A WATER RIGHT DEVELOPED PRIOR TO MARCH 19, 1907: All water rights established by beneficial use in New Mexico prior to March 19, 1907, were recognized and confirmed by the state constitution at the time of its adoption. Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source may file a declaration on a form prescribed by the state engineer setting forth the history and continuity of the beneficial use to which said water has been applied. A declaration may be accompanied by a map prepared pursuant to 19.26.2.26 NMAC and may be accompanied by deeds, survey plats, affidavits and other evidence tending to substantiate the claim. If such supporting documents are filed with the state engineer, they will be filed together with the declaration. The declaration may be filed by the declarant on his personal information and belief. No declarations will be accepted for filing within any stream system where an adjudication court has entered an order or decree that operates to bar such claims.

A. Form - content: A declaration shall be filed on a form prescribed by the state engineer. The declaration shall include the following information: the name and address of the declarant, the owner of the land on which the water is used, legal descriptions for the point of diversion and the place of use, the purpose of use, quantity of water used, periods of use, the date water was first applied to beneficial use and the continuity thereof, and any other information deemed necessary by the state engineer. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. The declarant shall sign the declaration before a notary.

B. Amended declaration: An amended declaration may be filed to supplement the evidence substantiating the claim or to correct any clerical errors in the initial declaration. An amended declaration that changes the purpose of use or amount of water, or that is filed after an application affecting the declared water right has been filed, will only be accepted for filing if substantial and specific documentation supporting the change(s) is filed with the amended declaration. The state engineer will not accept an amended declaration after an application affecting the declared rights has been acted upon by the state engineer in accordance with Subsections F and H of 19.26.2.12 NMAC or 19.25.2 NMAC. An amended declaration may be accompanied by deeds, survey plats, affidavits and other evidence to further substantiate the claim.

C. Filing fee: A fee of \$10 must accompany a declaration, with or without attachments. An amended declaration requires a fee of \$25 with or without attachments. After a declaration has been accepted for filing, submission of any other document associated with the declaration, which becomes a part of the permanent water right record, requires a fee of \$5.00.

D. Action of the state engineer: Upon receipt of a declaration or amended declaration a preliminary investigation may be performed by the state engineer. If this preliminary investigation reveals deficiencies in the declaration or amended declaration, the declaration may be returned to the declarant. If the declaration is accepted for filing by the state engineer, the acceptance does not constitute validation of the right claimed. The declaration may be recorded by the declarant in the office of the county clerk of the county wherein the diversion works are located.

[19.26.2.8 NMAC - N, 1/31/2005]

19.26.2.9 NOTICE OF INTENTION TO FILE APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER: A notice of intention to file an application for permit to appropriate surface water may be filed for the purpose of establishing priority of application. The application shall be prepared and filed within one year of the date of filing of the notice. A notice of intention to file an application for permit to appropriate surface water, automatically expires at the end of one year if an application as described in the notice of intention is not filed.

A. Form - content: A notice of intention to file application for permit to appropriate surface water shall be filed on a form prescribed by the state engineer. A notice of intention shall include the following information: the name and address of the applicant, the use to which the water will be applied, the amount of water required for the proposed use, legal descriptions for the point of diversion and the place of use, the method of conveyance, and the annual water use schedule. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If a notice lacks any of this information, it may be returned for completion.

B. Filing fee: A fee of \$25 must accompany the notice of intention to file an application.

C. Rejection of notice of intention: When the state engineer is of the opinion that there is no unappropriated surface water available, the notice of intention shall be rejected or refused.

[19.26.2.9 NMAC - N, 1/31/2005]

19.26.2.10 APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER: Any appropriation of surface water initiated on or after March 19, 1907 requires a valid permit issued by the state engineer. Any person, firm, corporation, public or private, or any other entity intending to appropriate surface water shall file an application on a form prescribed by the state engineer. Except where a notice of intention is filed, the date of filing of an application for permit to appropriate establishes the priority of application. Application maps (see 19.26.2.25 NMAC), preliminary surveys, design data and additional information shall be included with an application to provide all essential facts relating to the request.

A. Form - content: An application to appropriate surface water shall be filed on a form prescribed by the state engineer. The application shall include the following information: the name and address of the applicant, the proposed use, the annual diversion of water requested for the proposed use, legal descriptions of the point of diversion and the place of use, the method of conveyance, the annual diversion schedule, and other information the state engineer may deem necessary. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system.

B. Filing fee: An application to appropriate surface water shall be accompanied with filing fees as follows:

(1) \$25 for a rate of diversion amount not to exceed five (5) cubic feet of water per second;

(2) \$25 plus \$5 for each additional cubic foot per second over five (5) cubic feet per second, unless the appropriation is for power generation purposes and the amount of water diverted is returned to the river bed in substantially undiminished quantity, in which case, the filing fee shall be \$25 plus \$1 for each additional cubic foot per second required;

(3) \$10 for each one thousand (1000) acre-feet, or fraction thereof, of storage capacity if the request is primarily for storage of excess and flood water;

(4) For a canal or other water conduit, \$25 where the capacity does not exceed fifty (50) cubic feet of water per second, and \$10 for each additional fifty (50) cubic feet per second or fraction thereof.

(5) Additional required fees for examining plans and specifications for dams and for inspection of dam sites are described in 19.25.12 NMAC.

[19.26.2.10 NMAC - N, 1/31/2005]

19.26.2.11 CHANGES TO DECLARED, PERMITTED, LICENSED OR ADJUDICATED RIGHTS: Any change in point of diversion, place of use, or purpose of use of declared, permitted, licensed, or adjudicated surface water rights may be made only upon issuance of a permit by the state engineer. The owner of record of a water right must be the applicant or co-applicant on an application. An access agreement shall accompany an application if the applicant is not the owner of the land on which a new point of diversion is proposed.

A. Application for permit to change point of diversion: A permit from the state engineer is required to change any point of diversion. A point of diversion may be changed within a stream system without losing the priority of the right if such change can be made without detriment to existing surface water rights or impairment to existing ground water rights, and is not contrary to the conservation of water within the state nor detrimental to the public welfare of the state.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply for the move-from point of diversion, the source of water supply for the move-to point of diversion, the priority date of the water right, the diversion amount, the consumptive use amount, the purpose of use, the reason for change, the legal description of the place of use, the location of the present point of diversion, the location of proposed point of diversion, and other information the state engineer deems necessary. The locations of the move-from and move-to points of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. An application for a change in point of diversion of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

(2) **Filing fee:** A fee of \$100 must accompany each application.

B. Application for permit to change place and/or purpose of use: A permit from the state engineer is required to change the place and/or purpose of use of all or any part of a water right. If the applicant is not the landowner, written consent by the owner of the land upon which water rights are appurtenant must accompany the application. Water rights may be transferred within a stream system without losing the priority of the right if such change can be made without detriment to existing surface water rights or impairment to existing ground water rights, and is not contrary to the conservation of water within the state nor detrimental to the public welfare of the state. For applications proposing to change the purpose of use, only the consumptive use established and available at the move-from location may be considered for transfer to the new purpose of use. In the context of permits and declarations, only that amount of water that has been legally placed to actual beneficial use may be considered for a change in place and or purpose of use.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. The application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply, the priority date of the water right, the location of the point(s) of diversion, the present diversion amount, the present consumptive use amount, the present purpose of use, the reason for change, the legal description of the present place of use, the proposed diversion amount, the proposed consumptive use amount, the proposed purpose of use, the legal description of the proposed place of use and other information the state engineer deems necessary. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. An application for a change in place and/or purpose of use of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

(2) **Filing fee:** A fee of \$100 must accompany each application.

(3) **Appurtenance:** No irrigation right shall be assigned or transferred apart from the land, and title to land may not be transferred apart from appurtenant water rights, except in the manner specifically provided in Sections 72-1-2, 72-5-22, and 72-5-23 NMSA.

C. Application for permit to drill and use a well to supplement a surface water right: Within declared underground water basins an application for a permit from the state engineer is required to drill a well and use the groundwater to supplement any part of a surface water right. Surface water rights may be supplemented with groundwater provided that groundwater is available for appropriation and such change can be made without impairment to existing water rights, is not contrary to conservation of water within the state, and is not detrimental to the public welfare of the state. In the context of declared, permitted, licensed, or adjudicated surface water rights, only that amount of water that has been historically and legally placed to beneficial use from the surface source may be supplemented with groundwater. In no event shall the combined diversion from the surface source and supplemental well exceed the historical supply. Upon approval of a supplemental well, the state engineer shall require metering and reporting of diversions from both sources.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of surface water supply, the priority date of the surface water right, the location of the surface water point of diversion, the diversion amount, the consumptive use amount, the purpose of use, the legal description of the place of use, the reason for the supplemental well, the location of the proposed well, and other information the state engineer deems necessary. The proposed supplemental well shall be described using latitude and longitude or the New Mexico state plane coordinate system. If an application lacks any of this information, it may be returned to the applicant for completion.

(2) **Filing fee:** A fee of \$100 must accompany an application.

(3) **Emergency supplemental wells:** Emergency authorization to drill and use a well to supplement a primary surface water rights is not authorized in statute and will not be considered.

D. Emergency change in point of diversion, storage or use of an existing water right: Written authorization from the state engineer is required for an emergency change in point of diversion, storage, or use of water. Emergency authorization may be requested upon the filing of an application and an affidavit showing that an emergency exists in which the delay caused by awaiting publication or hearing would result in crop loss or other serious economic loss. The state engineer may grant the authorization if he determines, after preliminary review, that no foreseeable detriment will occur to existing water rights of other ownership. Within thirty (30) days of an authorization granted by the state engineer, if notice of the application has not already been published, the applicant shall publish the notice in accordance with 19.26.2.12 NMAC. The emergency authorization shall continue in effect as conditioned in the emergency authorization or until the state engineer enters a final decision on the application, whichever occurs first. The emergency authorization will be revoked upon violation of any condition of the emergency authorization. Issuance of the authorization does not obligate favorable consideration by the state engineer on the pending application. A request for an emergency change in the point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

E. Return flow credit: Surface water return flow is that percentage of the total diversion of surface water that has been applied to beneficial use pursuant to a water right or permit and returned to the same surface water stream from which it was appropriated. In no instance may a return flow credit allow an increase in the authorized consumptive use amount, impair existing water rights, be contrary to the conservation of water within the state, or be detrimental to the public welfare of the state. A permit from the state engineer is required to receive return flow credit. An application for return flow shall be accompanied by a return flow plan. Upon review of a return flow application and plan, the state engineer may request additional information, correction, clarification, modification, or other revision as deemed necessary. The permittee has the final burden of demonstrating return flow. The state engineer may approve an application for return flow if the permitted, licensed, or adjudicated consumptive use amount is not increased, the return flow does not violate any applicable standards, regulations, or permits promulgated pursuant to the New Mexico Water Quality Act, or the federal Clean Water Act, and the requirements of 19.26.2.12 NMAC have been satisfied.

(1) Form - content: An application shall be filed on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply, the priority date of the water right, the location of point of diversion, the authorized diversion amount, the authorized consumptive use amount, the purpose of use, the legal description of the place of use, the proposed diversion amount, the location of the return flow back to the source, the measurement technique employed to quantify the total diversion, the measurement technique employed to quantify the return flow, proof of any applicable New Mexico environment department or other discharge permits, and other information the state engineer deems necessary. The location of the point of diversion and the location of return flow back to the source shall be described using latitude and longitude or the New Mexico state plane coordinate system.

(2) Filing fee: A fee of \$100 must accompany an application.

(3) Return flow plan: The permittee shall demonstrate any return flow claimed by submitting a return flow plan acceptable to the state engineer. The actual timing and amount of return flows shall be demonstrated by acceptable field measurement. The plan shall describe the hydrologic conditions and must substantiate the return flow sought by a method acceptable to the state engineer.

(4) Monitoring, reporting and continuing jurisdiction: All approved permits for return flow credit shall require monitoring and annual reporting. The state engineer shall retain jurisdiction over all return flow credit permits and may revise return flow credits as deemed appropriate. The amount of return flow credit may be administered on a year-to-year basis. Return flow credits shall not accrue and may not be carried over to the following year. In the event of changes in established patterns of water use, appropriately revised return flow plans may be required in order to receive continued consideration for return flow credit.

F. Additional application requirements for water rights associated with acequias or community ditches: In addition to the requirements of Subsections A, B, C, and D of 19.26.2.11 NMAC, an application for a change, including an emergency change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 and Sections 73-3-1 through 73-3-11 NMSA, shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA. The documentary evidence shall include a copy of the applicant's written request to the commissioners of the acequia or community ditch for approval of the proposed change, together with the evidence that the request was delivered to the commissioners by certified mail; and one of the following:

(1) documentary evidence provided by the commissioners of the acequia or community ditch showing that the applicant has complied with all applicable requirements duly adopted by the acequia or community ditch pursuant to Sections 73-2-21 or 73-3-4.1 NMSA; or

(2) an affidavit provided by the commissioners of the acequia or community ditch stating that the acequia or community ditch has not adopted any requirements pursuant to Sections 73-2-21 or 73-3-4.1 NMSA; or

(3) an affidavit provided by the applicant stating that the acequia failed to make a decision in response to the applicant's written request for approval of the proposed change within one hundred and twenty (120) days after the applicant mailed the request to the commissioners by certified mail.

G. Additional changes requiring permit: Any other change requiring a permit from the state engineer not specifically covered by this section shall conform generally to this section and the rules and regulations of the office of the state engineer.

[19.26.2.11 NMAC - N, 1/31/2005]

19.26.2.12 APPLICATION PROCESSING: This section describes the process in which applications filed pursuant to 19.26.2.10 or 19.26.2.11 NMAC will be processed.

A. Return of application: The state engineer may return an application to the applicant, with a statement of corrections required, if the application is found to be faulty or incomplete. If the application is returned to the state engineer with the necessary information within sixty (60) days from the date the application is returned by the state engineer, the original filing date of the application shall be retained.

B. Rejection of application: When, after preliminary review of the information provided by the applicant, the state engineer is of the opinion that there is no unappropriated surface water available, or that the approval of the application would be contrary to the conservation of water within the state or detrimental to the public welfare of the state, or that the applicant has not complied with the applicable requirements of Section 72-5-24.1 NMSA, then the application shall be rejected. The state engineer shall decline to order the publication of notice of any such application.

C. Publication: After receipt of an acceptable application, the state engineer will issue a notice for publication to the applicant. The notice issued by the state engineer shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation - as prescribed by the state engineer - for every county affected. The notice will also be placed on the state engineer web-site (www.ose.state.nm.us). Only notices issued by the state engineer pursuant to Section 72-5-4 or Section 72-12-3 NMSA shall be valid. Prior to publication, the applicant shall ensure that the notice provides all essential facts pertaining to the application, including the location of the point(s) of diversion, the amount and timing of the diversion of water, the place of use, and the purpose for which the water is to be used. The applicant shall ensure the accuracy of publication of the notice in the newspaper. The responsibility for publication and all expenses associated with publication or republication shall be borne by the applicant. An affidavit of the publication shall be filed with the state engineer within sixty (60) days of the notice being issued to the applicant by the state engineer. Failure to file an affidavit of publication within the stated time shall result in the filing date of the application being postponed to the date the last affidavit is filed.

D. Amended notice and republication: If publication of the notice is defective, the state engineer may order republication. If an amendment is made to an application after publication of the original notice that changes the location of the point of diversion, requests a larger diversion amount or a larger consumptive use of water or changes the place or purpose of use of the water, the state engineer shall issue an amended notice and require the publication of the amended notice. Any republication cost or cost to publish an amended notice shall be paid by the applicant. An amended notice shall be published in accordance with the requirements of Subsection C of 19.26.2.12 NMAC.

E. Protest to application: Any person, firm, corporation or other entity objecting that the granting of the application will impair the objector's water rights shall have standing to file objections or protests. Any person, firm, corporation or other entity objecting that granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests. Pursuant to Section 72-5-5.1 NMSA, standing shall be afforded for those asserting legitimate concerns involving public welfare and conservation of water in a manner which avoids unduly burdening the administrative and judicial process. All objections and protests shall set forth the grounds for asserting standing. All objections or protests failing to meet the above criteria for standing will not be recognized as valid protests. The state of New Mexico or any of its branches, agencies, and political subdivisions shall have standing to file objections or protests. The state engineer will mail one copy of the objections or protests to the applicant.

(1) Filing deadline: All objections and protests must be filed with the state engineer not later than ten (10) calendar days after the date of the last publication of the notice. If the final day for filing a protest falls on a weekend or a state of New Mexico recognized holiday, protests received on the next business day shall be deemed timely. All objections or protests filed after the ten-day period will not be recognized as valid protests.

(2) Filing an objection or protest by facsimile: Objections or protests may be filed via facsimile no later than 5:00 p.m. (mountain time) of the tenth calendar day after the date of last publication of notice, provided the original objections or protests are mailed and postmarked within twenty-four (24) hours after transmission of the facsimile. If the original objections or protests are not mailed and postmarked within twenty-four (24) hours of transmission, the protest will be deemed untimely, and will not be recognized by the state engineer as a valid protest.

(3) Hearing before the state engineer: The state engineer encourages the parties to resolve the objection or protest. If the applicant and protestant cannot reach agreement by which the protest can be withdrawn, the matter shall proceed to hearing as described in 19.25.2 and 19.25.4 NMAC, unless the state engineer determines that the application should be denied, in which case the state engineer may deny the application prior to holding a hearing.

F. Action of the state engineer - protested application:

(1) Denial of application: The state engineer may deny a protested application, prior to or after holding a hearing, if the state engineer determined one or more of the following:

- (a)** No water right exists.
- (b)** Granting the application would be detrimental to or impair existing water rights.
- (c)** Granting the application would be contrary to the conservation of water within the state.
- (d)** Granting the application would be detrimental to the public welfare of the state.
- (e)** For a new appropriation, available information indicates that there is no unappropriated

surface water.

(2) Permits - conditions of approval: The state engineer may approve a protested application after holding a hearing and may impose reasonable conditions of approval.

G. Withdrawal of application: An applicant may request in writing that an application be withdrawn. A withdrawn application is not subject to reinstatement, although the applicant may refile the application or a similar application at a later date. A copy of the withdrawn application remains part of the public record. A protested application may not be withdrawn and refiled for the purpose of removing a standing protest. When a protested application is withdrawn and the same or similar application is filed within one calendar year of the withdrawal date, the state engineer will attempt to notify the previous protestant(s) of the refiled application. The withdrawal of an application that is currently in the hearing process before the state engineer may only be withdrawn pursuant to 19.25.2 NMAC.

H. Action of the state engineer - unprotested application: After receipt of an affidavit of publication for an application to which no timely protest was received or remains, the state engineer will act on the application.

(1) Denial of application: The state engineer shall deny an application if the state engineer makes any of the five determinations listed in Paragraph 1 of Subsection F of 19.26.2.12 NMAC.

(2) Permits - conditions of approval: The state engineer may approve an application and may impose reasonable conditions of approval including measurement at the point of diversion. The state engineer retains jurisdiction of all permits.

I. Request to set aside decision for reconsideration or hearing: Upon receipt of notice from the state engineer of the decision on an application, if the permittee is aggrieved by any of the conditions of approval, the permittee may within thirty (30) calendar days of such receipt request in writing that the decision be set aside for the purpose of reconsideration or hearing. The state engineer may issue an order setting aside all or part of his decision for the purpose of reconsideration or hearing. That part of the permit which is set aside shall revert to application status and may not be exercised.

(1) State engineer order to set aside decision for the purpose of reconsideration: At the request of the permittee, the state engineer may issue an order setting aside all or part of his decision for the purpose of reconsideration. If additional information is to be submitted for reconsideration, the order shall specify the time allowed for submission. Failure to submit information within the specified time shall result in reinstatement of the original decision. Upon receipt of notice from the state engineer of the decision on a reconsideration of an application, if the permittee is aggrieved by the decision, the permittee may within thirty (30) calendar days of such receipt request in writing that the decision be set aside for the purpose of hearing in accordance with 19.25.2 and 19.25.4 NMAC.

(2) **State engineer order to set aside decision for the purpose of hearing:** At the request of the permittee, the state engineer shall issue an order setting aside all or part of his decision for the purpose of hearing. After the state engineer issues an order setting aside all or part of his decision for the purpose of hearing in accordance with 19.25.2 and 19.25.4 NMAC.
[19.26.2.12 NMAC - N, 1/31/2005]

19.26.2.13 PERMITS: Upon state engineer approval an application becomes a permit. A permit allows the permittee to place water to beneficial use in accordance with the permit conditions of approval.

A. Construction of works and proof of completion: No works for the storage, diversion, or carriage of water may be constructed or substantially modified except in accordance with the permit conditions of approval. Any such construction or modification must be supervised by a professional engineer, registered in the state of New Mexico, unless the state engineer in his discretion expressly waives this requirement. On or before the date set in the permit for the completion of works, the permittee shall notify the state engineer that work has been completed by filing with the state engineer proof of completion of works.

(1) **Form - content:** The permittee shall submit proof of completion of works on a form prescribed by the state engineer. The form shall include the following information: the name and address of the permittee, the pertinent state engineer file number(s), the source of water supply, the name of the stream system, the location of point of diversion, a description of the constructed works - including diversion dams, storage dams, main canals, headgates, pipelines, flumes, reservoirs, and laterals, the date the construction of works was completed, a description of rights-of-way, and other information the state engineer deems necessary. The point(s) of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If the proof of completion form filed by the permittee lacks any of this information, it may be returned for completion.

(2) **Filing fee:** A fee of \$25 must accompany a proof of completion of works.

(3) **Unsafe or defective construction:** Upon submission of a proof of completion of works, the state engineer will order the inspection of the works after notice to the permittee. At any time before or after issuance of a certificate of construction, the state engineer may order the inspection of the works after notice to the permittee. If the state engineer determines after inspection that the works for the storage, diversion, or carriage of water are unsafe or do not comply with the permit conditions of approval, the state engineer may require the permittee to make necessary changes within a reasonable time.

(4) **Certificate of construction:** Upon completion of the works to the satisfaction of the state engineer, the state engineer will issue a certificate of construction, which shall describe the constructed works, the location of the point(s) of diversion, the capacities of the works for the storage, diversion, or carriage of water, and certify the adequacy of the works for the permitted uses.

B. Proof of application of water to beneficial use: Upon applying water to beneficial use as provided by the permit, on or before the due date set by the permit, the permittee shall file with the state engineer proof of application of water to beneficial use. The beneficial use of water must be in accordance with the permit conditions of approval. Once a proof of application of water to beneficial use has been filed, the water right shall be limited to the amount of water that has been put to beneficial use, and no further development of the water right may occur.

(1) **Form - content:** The permittee shall submit proof of application of water to beneficial use on a form prescribed by the state engineer. The form shall include the following information: the name and address of permittee, the pertinent state engineer file number(s), the source of water supply, the name of the stream system, the location of the point(s) of diversion, the location of the place of use, the purpose of use to which the water is being beneficially applied, the annual diversion of water, the method of conveyance, the annual diversion schedule, and other information the state engineer may deem necessary. The point(s) of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If the form filed by the permittee lacks any of this information, it may be returned for completion.

(2) **Filing fee:** A fee of \$25 must accompany a proof of application of water to beneficial use.

(3) **Survey plat:** A survey shall be conducted in accordance with the requirements of 19.26.2.26 NMAC of the diversion works and place of use of the water by a surveyor or professional engineer registered in the state of New Mexico. The permittee shall submit a plat of the survey with the proof of beneficial use.

C. Application for extension of time: When a permittee is unable to construct the necessary works or apply water to beneficial use within the time authorized, the permittee may file with the state engineer an application for extension of time. The application shall state all reasons for the request for additional time, describe the works which have been completed, the extent of application of water to beneficial use under the permit at the time of the request, and a plan setting forth the dates when the project will be completed or when the total amount of

water to be appropriated under the permit will be applied to beneficial use. The application may be accompanied by affidavits, photographs of works completed, or other information supporting the request. The state engineer may grant an extension of time upon a proper showing of due diligence or reasonable cause for delay, or upon the state engineer finding that it is in the public interest to allow additional time. Financial inability of the permittee to proceed with a project is not a sufficient reason for granting an extension of time. Failure of the permittee to provide a proper showing of due diligence or reasonable cause for delay as described in Section 72-5-28 NMSA, shall result in denial of the extension of time. Denied requests for extension of time may be appealed as provided in Subsection I of 19.26.2.12 NMAC. The water right established shall be limited by that amount of water lawfully applied to beneficial use pursuant to the terms of the permit. Failure to file proof of beneficial use within the time allotted by the state engineer shall result in cancellation of the permit.

(1) Term: An extension of time may be granted for a period not to exceed three (3) years. Except as provided in Subsections F and G of 19.26.2.19 NMAC, no extensions of time shall be granted which in combination extend the time allowed by the permit beyond ten (10) years from the initial date of approval of the application, unless the state engineer in his discretion expressly waives this limitation pursuant to Section 72-5-14 NMSA. For applications for extension of time for filing proof of completion of works, the state engineer may upon the request of the applicant allow additional time for the completion of works equal to the time during which work was prevented by acts of God, operation of law, or other causes beyond the control of the applicant. For applications for new appropriations pursuant to Subsection G of 19.26.2.19 NMAC, and for application for water rights transferred pursuant to Subsection F of 19.26.2.19 NMAC, no extensions of time shall be granted which in combination extend the time allowed by the permit beyond forty (40) years from the date the application was filed at the office of the state engineer.

(2) Form - content: The permittee shall submit an application for extension of time on a form prescribed by the state engineer. The form shall include the following information: the name and address of the permittee, the pertinent state engineer file number(s), the reason(s) for requesting additional time under which to complete constructed works or apply water to beneficial use, a plan setting forth the dates when the project will be completed or when the total amount of water to be appropriated under the permit will be applied to beneficial use, a description of the works which have been completed and the extent of application of water to beneficial use under the permit at the time of the request, and other information the state engineer may deem necessary. If an application lacks any of this information, it may be returned for completion. The application may be accompanied by affidavits, photographs of works completed, or other information supporting the request.

(3) Filing fee: A fee of \$50 must accompany an application for extension of time.

D. License to appropriate: After notice to the permittee, the state engineer or his designee may perform a field inspection of the permittee's application of water to beneficial use. Upon application of water to beneficial use in accordance with the permit conditions of approval the state engineer will issue a license to appropriate water, which shall define the extent and conditions of use under which the water right has been established. A license to appropriate shall recognize a water right only to the extent water has been applied to beneficial use under the conditions of the permit, and shall not recognize any diversion of water that exceeds the permit conditions of approval. A license may be revoked for failure to comply with the terms of the license.

E. Cancellation of permit: The state engineer may cancel a permit upon failure of a permittee to comply with the permit conditions of approval or any applicable provisions of 19.26.2 NMAC or Chapter 72 NMSA. The state engineer may also cancel a permit upon request from the permittee. Upon final cancellation of a permit, the water subject to the permit reverts to the public.
[19.26.2.13 NMAC - N, 1/31/2005]

19.26.2.14 LIVESTOCK WATER IMPOUNDMENTS: A permit is required to impound surface water for watering livestock. If the proposed impoundment is created by a dam that exceeds ten feet in height measured from the lowest point on the downstream toe to the dam crest, or exceeds ten acre-feet in storage capacity, the applicant shall comply with the applicable dam construction requirements in 19.25.12 NMAC. Watering of livestock does not include the impoundment of surface or groundwater in any amount for fishing, fish propagation, recreation, or aesthetic purposes.

A. Form - content: An application for permit for livestock water impoundment shall be filed on a form prescribed by the state engineer. The application shall include the following information: the name and mailing address of the applicant, owner of land on which the livestock water impoundment will be constructed, proof of permission from land owner (if other than applicant) to construct a livestock water impoundment, name of the livestock water impoundment, location of the livestock water impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, name of the watercourse, maximum depth

of the livestock water impoundment, height of dam and height of spillway from the lowest natural ground surface on the downstream side to the dam crest, surface area and storage capacity of the impoundment at lowest spillway elevation, map illustrating location of proposed livestock water impoundment and source of water, type of stock, amount of stock, other sources of water locally available for stock watering, and any other information deemed necessary by the state engineer. If an application lacks any of this information, it may be returned to the applicant for completion.

B. Filing fee: A fee of \$10 must accompany the application for a livestock water impoundment.

C. Return or rejection of an application: After reviewing each application, the state engineer will notify the applicant if any deficiencies are found with the application. The applicant will be given an opportunity to correct any deficiencies noted in the application. All deficiencies noted by the state engineer shall be corrected prior to acceptance and action on the proposed application for livestock water impoundment.

D. Action of the state engineer: The state engineer shall approve an application if, after review, the state engineer is of the opinion that the proposed use qualifies as a livestock water impoundment by meeting the following requirements: the impoundment is not fed by or located on a perennial stream, the impoundment is used for stock watering, and the capacity of impoundment is 10 acre-feet or less. The state engineer may take into account the maximum amount of water required per livestock unit and shall take into account regional and climatic conditions that affect consumption. The state engineer may impose reasonable conditions of approval. An application may be denied if the state engineer is of the opinion that the proposed impoundment does not qualify as a livestock water impoundment. A permit to appropriate water must be obtained pursuant to Section 19.26.2.10 or 19.26.2.11 NMAC if the proposed impoundment is located on or fed by a perennial stream or if the capacity of the impoundment exceeds 10 acre-feet.

E. Proof of construction: No works may be constructed or modified except in accordance with the permit conditions of approval. Upon completion of a livestock water impoundment, a statement of completion of construction shall be filed with the state engineer on a form prescribed by the state engineer. Said statement of completion shall be filed within one year of approval or the permit shall automatically expire. An expired permit shall not be subject to reinstatement.

F. Declaration of existing livestock water impoundments: Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source, may file a declaration on a form prescribed by the state engineer pursuant to 19.26.2.8 NMAC. Any person, firm or corporation claiming to be the owner of a livestock water impoundment where the impoundment was created after March 19, 1907 but before May 19, 2004, may file a declaration of existing livestock water impoundment, provided the storage capacity is less than ten acre-feet. The declaration shall set forth the history and continuity of the beneficial use to which said water has been applied. A declaration may be accompanied by a map prepared pursuant to 19.26.2.26 NMAC and may be accompanied by deeds, survey plats, affidavits and other evidence tending to substantiate the claim. If such supporting documents are filed with the state engineer, they will be filed together with the declaration. The declaration may be filed by the declarant on his personal information and belief. No declarations will be accepted for filing within any stream system where an adjudication court has entered an order or decree that operates to bar such claims.

(1) Form - content: A declaration of livestock water impoundment shall be filed on a form prescribed by the state engineer. The declaration shall include the following information: the name and mailing address of the declarant, owner of land on which the livestock water impoundment is located, proof of permission from land owner(if other than declarant) to construct a livestock water impoundment, name of the livestock water impoundment, location of the livestock water impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, name of the watercourse, maximum depth of the livestock water impoundment, height of dam and height of spillway from the lowest natural ground surface on the downstream side to the dam crest, surface area and storage capacity of the impoundment at lowest spillway elevation, map illustrating location of the livestock water impoundment and source of water, type of stock, amount of stock, other sources of water, quantity of water used, the date of construction, the date water was first applied to beneficial use and the continuity thereof, and any other information deemed necessary by the state engineer. The declarant shall sign the declaration before a notary. If a declaration lacks any of this information, it may be returned to the declarant for completion.

(2) Filing fee: A fee of \$10 must accompany the declaration for a livestock water impoundment.
[19.26.2.14 NMAC - N, 1/31/2005]

19.26.2.15 PONDS AND OTHER IMPOUNDMENTS: A permit is required to capture or store surface water in an impoundment. An application to capture and store surface water shall be filed pursuant to 19.26.2.10

NMAC or 19.26.2.11 NMAC unless the impoundment of water is authorized as a livestock watering impoundment under 19.26.2.14 NMAC. A permit to appropriate water is required for an impoundment created by constructed works, sand and gravel operations, or mining operations, including excavations that fill with water. Dams exceeding 10 feet in height or that can store in excess of 10 acre-feet shall meet the requirements of 19.25.12 NMAC.

A. Form - content: An application for an impoundment shall be filed pursuant to the requirements of 19.26.2.10 NMAC or 19.26.2.11 NMAC. In addition to the information required for an application filed under 19.26.2.10 NMAC or 19.26.2.11 NMAC, an application for a pond or other impoundment shall also include: the name of the proposed impoundment, the location of the impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, the maximum depth of the impoundment, the perimeter of the impoundment, the maximum surface area, the estimation of annual evaporative losses, the slope(s) of the interior basin, the outlet conduit size and slope, a table showing the stage, surface area and storage capacity of the impoundment, and the time to empty the impoundment.

B. Flood control: No permit to appropriate water is required for an impoundment when the primary purpose of the impoundment is flood control, provided the outlet drains the impoundment (from the spillway crest) in 96 hours. The water shall not be detained in the impoundment in excess of 96 hours unless the state engineer has issued a waiver to the owner of the impoundment.

[19.26.2.15 NMAC - N, 1/31/2005]

19.26.2.16 [RESERVED]

19.26.2.17 CHANGE OF OWNERSHIP: In the event of any changes of ownership affecting the title to a declaration, permit, license, or adjudicated water right, the new owner shall file a change of ownership form with the state engineer. The new owner shall file a separate change of ownership for each declaration, permit, license, or adjudicated water right of record filed with the state engineer. Upon acceptance by the state engineer for filing, the new owner shall record a copy of the change of ownership form filed with the state engineer with the clerk of the county in which the declaration, permit, license, or adjudicated water right is located.

A. Form - content: The new owner shall file a change of ownership in duplicate on a form prescribed by the state engineer. A change of ownership shall include the following information: the name of the owner of record, the name and address of the new owner, the state engineer file number, the diversion amount, the consumptive use amount, the purpose of use, the legal description of the place of use, the priority date(s), and any other information the state engineer deems necessary. The new owner shall sign each form before a notary. If a change of ownership form lacks any of this information, it may be returned for completion.

B. Filing fee: A fee of \$5 must accompany a change of ownership form.

C. Proof of ownership: The new owner shall attach to the change of ownership form a copy of a warranty deed or other instrument of conveyance that has been duly recorded with the clerk of the county in which the declaration, permit, license, or adjudicated water right is located. The warranty deed or other instrument of conveyance shall show the ownership of the declaration, permit, license, or adjudicated water right in the name of the new owner. The state engineer will not accept for filing a change of ownership form that is not accompanied by a recorded instrument of conveyance.

(1) Acceptable instruments of conveyance for the purposes of this section include, but are not limited to, warranty deeds, special warranty deeds, quitclaim deeds, personal representative's deeds, special master's deeds, and tax deeds, where such instruments unconditionally convey present title to the declaration, permit, license, or adjudicated water right.

(2) Real estate installment sales contracts or memoranda of such contracts, mortgages, instruments conveying security interests, or other documents that do not on their face unconditionally convey present title to the declaration, permit, license, or adjudicated water right are not acceptable instruments of conveyance for the purposes of this section.

D. Effect: A change of ownership form filed with the state engineer notifies the state engineer that a change in ownership has been effected by a legal instrument of conveyance. Acceptance of a change of ownership form by the state engineer for filing does not constitute approval by the state engineer of either the validity of the conveyance or the validity of the right conveyed.

E. Appurtenance: Except as otherwise provided by written contract between the owner of the land and the owner of a ditch, reservoir, or other works for the storage or conveyance of water, all surface waters appropriated for irrigation purposes are appurtenant to the land upon which they are used by operation of Sections 72-1-2 and 72-5-23 NMSA. No irrigation water right appurtenant to the land irrigated shall be assigned or conveyed apart from the land unless it is expressly severed from the land in the manner provided by law.

[19.26.2.17 NMAC - N, 1/31/2005]

19.26.2.18 LEASE OF WATER RIGHTS: An owner of a water right may lease all or any part of their right for a period not to exceed ten (10) years pursuant to Section 72-6-3 NMSA except that a water right may be leased for a period not to exceed forty years by a forty year planning entity as provided in Section 72-1-9 NMSA. Transfers of agricultural water to municipal/industrial use pursuant to Section 73-10-48 NMSA will be covered by rules and regulations promulgated pursuant to the statute. Prior to the use of water pursuant to a lease, if the proposed point of diversion or place or purpose of use differs from that of the owner's water right in any respect, a permit must be obtained from the state engineer for the term of the lease. The procedure for filing an application shall be the same as described in 19.26.2.11 NMAC. The amount of water that an owner/lessor may use during the term of a lease shall be reduced by the amount of water so leased. Upon termination of such a lease, the point of diversion and place and purpose of use subject to the lease shall revert to the owner's original point of diversion and place and purpose of use. Renewal of a lease shall require a new application, unless a longer period has been previously applied for, advertised, and approved by the state engineer.

[19.26.2.18 NMAC - N, 1/31/2005]

19.26.2.19 WATER DEVELOPMENT PLANS: A forty-year planning entity shall be allowed a water use planning period, not to exceed forty years, to acquire and hold water rights pursuant to Section 72-1-9 NMSA. A water development plan may be filed at any time. If a plan is not already on file, a water development plan shall be filed with an application to appropriate water or transfer a water right where the water right will be held unused or undeveloped pursuant to the plan.

A. Planning period: The water rights of a forty-year planning entity subject to this section shall be based upon the reasonably projected additional needs for water within forty years set out in a water development plan. The implementation of the plan shall not exceed a forty-year period from the date the forty-year planning entity files with the state engineer an application to change the place or purpose of use of a water right pursuant to the plan or an application for a new appropriation pursuant to the plan.

B. Water development plan - content: A water development plan shall include the following information: the name and address of the owner of record of the water rights subject to the plan, a summary of all water rights subject to the plan, the place and purpose of use of the identified water rights, the historical and current water use, the historical and existing population served by the identified water rights, reasonable population projections, implemented water conservation measures, planned water conservation measures, a summary of the per capita water use including a comparison with the per capita water use of other similar forty-year planning entities, reasonably projected additional needs - taking into account the variability of surface water supply and the sustainability of groundwater supply - for water within forty years, and any other information the state engineer deems necessary. If a development plan lacks any of this information, it may be returned to the forty-year planning entity for completion.

C. Filing fee: A fee of \$100 must accompany a water development plan.

D. Return of plan: The state engineer may return the plan to the forty-year planning entity, with a statement of corrections required, if it is found to be faulty or incomplete.

E. Approval of plan: Upon review of the plan, if the state engineer finds the plan to be reasonable, the plan and projected needs of the planning entity will be approved by the state engineer. Notification of the approval shall be given to the planning entity.

F. Water rights held pursuant to plan: For permits for water rights acquired by forty-year planning entities pursuant to a forty-year plan, the state engineer may grant extensions of time which in combination extend the time allowed by the permit up to forty (40) years from the date of the application where:

(1) the planning entity acquires and holds the water right pursuant to a water development plan approved by the state engineer; and

(2) upon acquisition of the water right it files with the state engineer an application to change the place or purpose of use of the water right pursuant to the water development plan; and

(3) the quantity of water associated with the water right, together with the quantity of water associated with the other water rights and permits held pursuant to the plan, does not exceed the reasonably projected additional needs for water within forty years set out in the plan.

G. Permits for new appropriations held pursuant to plan: For permits for new appropriations for forty-year planning entities, the state engineer may grant extensions of time which in combination extend the time allowed by the permit up to forty (40) years from the date of the application where:

(1) the application is filed and the permit will be held pursuant to a water development plan approved by the state engineer; and

(2) the quantity of water authorized in the permit, together with the quantity of water associated with the water rights and other permits held pursuant to the plan, does not exceed the reasonably projected additional needs for water within the forty years set out in the plan.

[19.26.2.19 NMAC - N, 1/31/2005]

19.26.2.20 FORFEITURE AND ABANDONMENT OF A WATER RIGHT: A water right may be lost for nonuse in two ways. First, the right may be forfeited pursuant to Section 72-5-28 NMSA or Section 72-12-8 NMSA. Alternatively, the right may be abandoned. Abandonment is a judicial doctrine.

A. Forfeiture: All or any part of a water right is subject to forfeiture when a person entitled to the use of water fails to apply water to beneficial use for a period of four or more consecutive years. If the state engineer determines that a water right is subject to forfeiture, the water right owner will be sent a notice and declaration of nonuse by certified mail. If failure to apply water to its associated beneficial use persists for one year after receipt of notice and declaration of nonuse given by the state engineer the water right will be forfeited and the unused water shall revert to the public. The requirement for an issuance of a notice and declaration of nonuse by the state engineer shall not apply to water that has reverted to the public by operation of law prior to June 1, 1965 (see Sections 72-5-28 and 72-12-8 NMSA). Periods of non-use for the following reasons shall not be applied towards the four or more consecutive year period required for a water right to be subject to forfeiture:

(1) Despite the diligent effort on the part of the water right owner, circumstances beyond the control of the water right owner have prevented the application of water to beneficial use.

(2) The state engineer has granted an extension of time in which to apply water to beneficial use.

(3) The water is part of a state engineer approved water development plan (see 19.26.2.19 NMAC).

(4) The water right owner is on active duty in the armed forces of the United States of America.

(5) The water right is acquired and placed in a state engineer approved water conservation program.

(6) The water right is appurtenant to irrigated farm lands which have been placed under the acreage reserve or conservation reserve program provided by the Food Security Act of 1985, P.L. 99-108.

B. Abandonment: Common law abandonment of a water right requires both the nonuse of water by a person entitled to such use and the intent to abandon the right. Whether or not a court would determine that a water right has been abandoned depends on the facts and circumstances in each particular case. The intent to abandon the right may be express or may be inferred from the acts of the water right owner. In making such determination, the state engineer is not adjudicating a right, but merely making a threshold administrative determination of the validity and existence of the underlying water right. Nonuse for an unreasonable period of time establishes a presumption of abandonment and prima facie evidence of the intention to abandon the right. To rebut a presumption of abandonment a person must establish not merely their expressions of desire or hope or intent, but some fact or condition excusing the period of nonuse.

[19.26.2.20 NMAC - N, 1/31/2005]

19.26.2.21 - 19.26.2.24 [RESERVED]

19.26.2.25 APPLICATION MAPS: An application for appropriation, change in point of diversion or change in place and/or purpose of use shall require a map delineating the proposal described in the application. The map shall include a description of all lands, point(s) of diversion, place(s) of use, accurate locations of canals and streams, and other relevant features included in the application. In general, maps accepted by the state engineer are: irrigation and conservancy district maps, maps prepared by a licensed professional surveyor or engineer, and state engineer hydrographic survey maps. Plan drawings and maps prepared with the aid of a computer shall be submitted with a copy of the digital data files in a format acceptable to the state engineer.

[19.26.2.25 NMAC - N, 1/31/2005]

19.26.2.26 FORMAT FOR PLAN DRAWINGS, PROOF OF BENEFICIAL USE AND DECLARATION MAPS: All plan drawings, proof of beneficial use maps, and declaration maps filed with the state engineer shall meet the requirements listed below. Proof of beneficial use maps and declaration maps shall be prepared by either a licensed professional surveyor or licensed professional engineer in the state of New Mexico. Plan drawings and maps prepared with the aid of a computer shall be submitted with a copy of the digital data files in a format acceptable to the state engineer.

A. Map quality: Plan drawings and maps shall be made from actual field or photogrammetric surveys of an accuracy acceptable to the state engineer. Plan drawings and maps shall be prepared with permanent black ink on mylar. All original signatures, dates, and acknowledgments appearing on the sheet(s) shall be in permanent ink. If more than one sheet is required, each shall be numbered in sequence (example: Sheet 1 of 3). Plan drawings and maps shall always be rolled - never folded - for transmittal.

B. Scale and size: Mylar sheets shall be twenty-four (24) inches by thirty-six (36) inches with one (1) inch margins on all sides unless otherwise specified by the state engineer. The scale(s) used on the drawings may vary according to requirements and space available to show all necessary data in detail clearly in feet and decimals. Detailed dimensions of structures, headgates, drops, etc. shall be given in feet and 1/10th of a foot or inches.

C. Map details: The following information is required on declaration and proof of beneficial use maps.

(1) **Title sheet:** The following title shall be placed on and made a part of the first sheet:

MAP
of the

_____ (name of system: ditch, ditch & reservoir, irrigation, power, etc.)

_____, Applicant/Declarant/Permit Holder

State Engineer File Number(s): _____

Located in _____ County, State of New Mexico.

Scale of Map: 1 inch = _____ feet.

The undersigned,

_____,
whose address is: _____,
Zip Code _____, County of _____, State of _____.

(2) **Location of point of diversion:** The location of the point of diversion on the stream, whether supplying water to direct diversion to a ditch or to an off-channel reservoir, shall be identified on the drawings as follows:

The headgate, which is the point of diversion from _____ (river, creek, spring, arroyo) from which the works derive their water supply, is located as follows _____ (latitude) and _____ (longitude) or X = _____ and Y = _____, (New Mexico state plane coordinate system), NAD _____.

(3) **Acreage irrigated, to be irrigated, or retired:** Acreage irrigated or retired from irrigation shall be clearly indicated on the maps. Cross-hatching the subject area on the location map is preferred. A written description of the location of the acreage, acceptable to the state engineer, shall be provided.

D. Orientation and date: The direction of north and the basis of bearings shall be shown on all maps. The date that field surveys are made or the date of the aerial photography used shall be shown on the maps.

E. Vicinity map: A vicinity map of sufficient scale and size to locate the pertinent area shall be shown on the maps and/or plan drawings.

F. Surveyor's certification and seal: A licensed professional surveyor preparing maps shall place on the first sheet the certificate shown below and the certificate shall be signed. The surveyor's license number and the seal impression shall accompany the certificate.

State of New Mexico)
) ss.
County of _____)

I, _____, hereby certify that I am licensed professional surveyor and that the accompanying maps were prepared by me or under my direction, and that the same are true and correct to the best of my knowledge and belief.

Licensed Professional Surveyor

License Number: _____
Date Submitted: _____

G. Engineer’s certification and seal: A licensed professional engineer preparing maps, plan drawings, or specifications shall place on the first sheet of the map or plan drawings and the first page of the specifications the certificate shown below and the certificate shall be signed. The engineer’s license number and the seal impression shall accompany the certificate.

State of New Mexico)
) ss.
County of _____)

I, _____, hereby certify that I am a licensed professional engineer, qualified in _____ (agricultural, civil, geological etc.) engineering and that the accompanying _____ (maps, drawings or specifications) were prepared by me or under my direction, and that the same are true and correct to the best of my knowledge and belief.

Licensed Professional Engineer

License Number: _____
Date Submitted: _____

H. Owner’s certificate: An owner’s certificate shall be placed on the first sheet of the plan drawings and shall be signed by the owner and acknowledged by a notary public.

State of New Mexico)
) ss.
County of _____)

I, _____, being first duly sworn, upon my oath, state that I have read and examined the accompanying drawings and statements, (consisting of _____ sheets) and know the contents thereof and representations thereon, and all that is shown hereon is done with my free consent and in accordance with my wishes and state that the same are true to the best of my knowledge and belief.

Owner

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public

My commission expires _____ (SEAL)

If a claimant is a corporation, political subdivision or other governmental entity the following shall be used:

State of New Mexico)
) ss.

County of _____)

I, _____, being first duly sworn, upon my oath, state than I am the _____ (officer) of _____, a corporation duly organized under the laws of the State of _____, and that the accompanying drawings and statements, (consisting of __ sheets) were made under authority of the Board of Directors of said Corporation, and that, in their behalf, I have read and examined the statements and representations thereon and all that is shown hereon is done with their free consent and in accordance with their wishes and state that the same are true to the best of my knowledge and belief.

Representative, Title

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My commission expires _____ (SEAL)

I. State engineer’s certificate: A certificate form for the state engineer approval shall be placed on the first sheet of the maps, plan drawings, and the specifications. This certificate is to be signed by the state engineer after all necessary corrections or additions, if any, have been made.

State of New Mexico)
) ss.
County of _____)

I hereby certify that the accompanying _____ (map, plans, specifications) have been duly examined by me and accepted for filing on the _____ day of _____, 20_____.

State Engineer

J. Reproduction fees: Copies of maps and plan drawings on record with the state engineer may be purchased at a cost of fifteen dollars (\$15) for each sheet.
[19.26.2.26 NMAC - N, 1/31/2005]

19.26.2.27 LIBERAL CONSTRUCTION: This part shall be liberally construed to carry out its purpose.
[19.26.2.27 NMAC - N, 1/31/2005]

19.26.2.28 SEVERABILITY: If any portion of this part is found to be invalid, the remaining portion of this part shall remain in force and not be affected.
[19.26.2.28 NMAC - N, 1/31/2005]

HISTORY OF 19.26.2 NMAC:

Pre-NMAC History: The material in this part is a compilation of previous filings with the New Mexico State Supreme Court Law Library (SCLL) and with the State Records Center and Archives (SRC) pertaining to the administration of surface water as follows:
Manual of Revised Rules, Regulations and Requirements for Filing Claims to Water Rights under Laws of 1907 as amended; in force after June 14, 1913. Filed 6/27/91 (SRC);
Manual of Revised Rules, Regulations and Requirements for Filing Applications for Permit to Appropriate Water under Laws of 1907 as amended; in force after April 14, 1915. Filed 6/27/91 (SRC);
Manual of Revised Rules, Regulations and Requirements Under Laws Affecting the Public Waters; Revised Manual in Effect May 1, 1918. Filed 6/27/91 (SRC);
Manual of Revised Rules, Regulations, Requirements and Instructions Under Law Affecting the Public Waters; Revised Manual in effect May 1, 1918. Filed 6/27/91 (SRC);

Manual of Rules and Regulations for Proceeding Before the State Engineer Under the Laws Affecting the Surface Waters of the State of New Mexico; Revised April, 1941. Filed 6/27/91 (SRC);
Order No. 32. Amendment to Rules and Regulations Governing the Appropriation and Use of Surface Waters of the State of New Mexico, Revised January 1951. Filed 7/12/52 (SCLL) and 6/27/91 (SRC);
Manual of Rules and Regulations Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Revised August 1953. Filed 6/27/91 (SRC);
Order No. 61. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 5/31/56 (SCLL) and 6/27/91 (SRC);
Order No. 62. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 7/20/56 (SCLL) and 6/27/91 (SRC);
Order No. 68. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 3/10/57 (SCLL) and 6/27/91 (SRC);
Order No. 76. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 7/2/59 (SCLL) and 6/27/91 (SRC);
Order No. 89. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed February 12, 1962 (SCLL) and 6/27/91 (SRC);
Order No. 140. In the Matter of the Revision of Article VII of the Manual of Rules and Regulations of the State Engineer Governing the Appropriation and Use of Surface Waters of the State of New Mexico. Filed 7/7/87 (SRC).

History of Repealed Material:

The following rules and orders are repealed effective January 31, 2005. They have been replaced by 19.26.2 NMAC, Administration, effective January 31, 2005.

Manual of Revised Rules, Regulations and Requirements for Filing Claims to Water Rights under Laws of 1907 as amended; in force after June 14, 1913. Filed 6/27/91 (SRC);
Manual of Revised Rules, Regulations and Requirements for Filing Applications for Permit to Appropriate Water under Laws of 1907 as amended; in force after April 14, 1915. Filed 6/27/91 (SRC);
Manual of Revised Rules, Regulations and Requirements Under Laws Affecting the Public Waters; Revised Manual in Effect May 1, 1918. Filed 6/27/91 (SRC);
Manual of Revised Rules, Regulations, Requirements and Instructions Under Law Affecting the Public Waters; Revised Manual in effect May 1, 1918. Filed 6/27/91 (SRC);
Manual of Rules and Regulations for Proceeding Before the State Engineer Under the Laws Affecting the Surface Waters of the State of New Mexico; Revised April, 1941. Filed 6/27/91 (SRC);
Order No. 32. Amendment to Rules and Regulations Governing the Appropriation and Use of Surface Waters of the State of New Mexico, Revised January 1951. Filed 7/12/52 (SCLL) and 6/27/91 (SRC);
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