

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 26   SURFACE WATER**  
**PART 11       DECLARATION OF THE GALLINAS RIVER WATER SUB-DISTRICT OF THE PECOS**  
**RIVER STREAM SYSTEM**

**19.26.11.1      ISSUING AGENCY:** Office of State Engineer ("OSE").  
[19.26.11.1 NMAC - N, 8/29/03]

**19.26.11.2      SCOPE:** This rule applies to all waters of the Gallinas river located in San Miguel and Guadalupe counties, state of New Mexico.  
[19.26.11.2 NMAC - N, 8/29/03]

**19.26.11.3      STATUTORY AUTHORITY:**

**A.**      Section 72-2-8 NMSA (1997 Repl.) authorizes the OSE to develop, adopt, and promulgate all rules necessary to implement and administer the provisions of the Water Code.

**B.**      New Mexico law declares that all natural water flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use. NMSA 1978, Section 72-1-1 (1907).

**C.**      The state engineer has a statutory duty to provide general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required. NMSA 1978, Section 72-2-1 (1907).

**D.**      The state engineer has the responsibility for appropriation of the state's waters in accordance with the laws of the state. NMSA 1978, Section 72-2-1 (1907); Const. Art. XVI, Section 2.

**E.**      The state engineer is authorized to establish water districts upon any stream system within the state of New Mexico as necessary for the economical and satisfactory apportionment of said waters. NMSA 1978, Section 72-3-1 (1907).

**F.**      The state engineer is authorized to divide a stream system into sub-districts, each of which said sub-district shall be designated by a distinct name. NMSA 1978, Section 72-3-1 (1907).

**G.**      The state engineer is authorized, if in his opinion it is in the interest of public safety or the best interest of water users in a water district, to appoint a water master who shall have immediate charge of the apportionment of waters in his district under the general supervision of the state engineer, and shall so appropriate, regulate and control the waters of such water districts so as to prevent waste. NMSA 1978, Section 72-3-2 (1907).

[19.26.11.3 NMAC - N, 8/29/03]

**19.26.11.4      DURATION:** Permanent.  
[19.26.11.4 NMAC - N, 8/29/03]

**19.26.11.5      EFFECTIVE DATE:** August 29, 2003, unless a later date is cited at the end of a section.  
[19.26.11.5 NMAC - N, 8/29/03]

**19.26.11.6      OBJECTIVE:** The objective of this rule is to declare the Gallinas River Water Sub-District of the Pecos River Stream System and to appoint a water master who will have immediate charge of such apportionment of such waters of the Gallinas river.

[19.26.11.6 NMAC - N, 8/29/03]

**19.26.11.7      DEFINITIONS:** [RESERVED]  
[19.26.11.7 NMAC - N, 8/29/03]

**19.26.11.8      FINDINGS OF FACT:**

**A.**      The United States district court for the district of New Mexico handed down a decree on May 9, 1933 entitled "The United States of America, Plaintiff, vs. Hope Community Ditch, et al., Defendants, No. 712 Equity," defining the rights of several parties to the use of water along the Pecos river in New Mexico and some of its tributaries, among which is the Gallinas river.

**B.**      On May 6, 1935, said court relinquished jurisdiction of said case to the state engineer.

C. In order to properly apportion the waters of the Gallinas river in San Miguel and Guadalupe counties, New Mexico, the establishment of a water sub-district for those waters and the appointment of a water master in and for said water sub-district of the Pecos river water district is necessary.

D. The amount of water flowing in the Gallinas river is finite and varies year to year based on annual spring run-off, which is dependent on annual precipitation.

E. The city of Las Vegas, numerous acequia associations ("acequias"), Gallinas canal storage and irrigation company, and Storrie project water user's association ("Storrie project") are all water users of the Gallinas river.

F. Adjudication of water rights along the Gallinas river has not been completed.

G. Recent droughts in the state of New Mexico have created a water shortage crisis in the Pecos river stream system, including the Gallinas river.

H. The shortage of water on the Gallinas river is a problem affecting the citizens of San Miguel and Guadalupe counties.

I. By letter dated March 19, 2003, Storrie project requested that the state engineer administer the water in the Gallinas river.

J. By letter facsimiled May 19, 2003, several acequias requested that the state engineer administer the water in the Gallinas river.

K. On January 20, 1956, the Pecos river water district was declared by the state engineer.

L. Creation of a water sub-district and appointment of a water master for the Gallinas river is needed to ensure public safety and that the interests of each water user are protected so that they receive the water to which they are entitled.

[19.26.11.8 NMAC - N, 8/29/03]

#### **19.26.11.9 CONCLUSIONS OF LAW:**

##### **A. Water sub-district creation and appointment of water master**

(1) The state engineer concludes that in the interest of public safety and in the interest of water users, the GALLINAS RIVER WATER SUB-DISTRICT should be formed and a water master appointed on a permanent basis, so as to administer the waters of the Gallinas river, a tributary of the Pecos river stream system, in accordance with New Mexico law.

(2) The GALLINAS RIVER WATER SUB-DISTRICT water master shall have immediate charge of the apportionment of waters in the water sub-district under the general supervision of the state engineer, and shall appropriate, regulate and control the waters of the water sub-district so as to prevent waste.

##### **B. Administration of affected water rights**

(1) The state engineer concludes that the immediate administration of water rights on the Gallinas river is necessary for the protection of the public, protection of prior water rights, and the prevention of waste.

(2) The state engineer concludes that the water master of the water sub-district created by this rule shall apportion the waters of the sub-district in accordance with the guidelines, existing or future regulations, manuals, directions, and supervision provided by the state engineer.

(3) Additional instructions to the water master for the apportionment of water within the sub-district will be based upon available data, models, (including water master manual models), surveys and the state engineer's best professional judgment.

(4) The state engineer concludes that the water sub-district created by this rule shall include the following organizational features:

(a) The appointment of a single water master for the GALLINAS RIVER WATER SUB-DISTRICT.

(b) The water master shall be a direct employee of the OSE and shall receive compensation in an amount to be determined by the state engineer. The water master shall also be compensated for all actual and necessary expenses incurred in performing the duties of water master.

(c) After appointment of the water master, the state engineer shall prepare a budget of estimated amount required to pay the compensation and expenses of the water master to the end of the current fiscal year, and shall certify the same to the board of county commissioners of San Miguel and Guadalupe counties, wherein the duties of the water master are to be performed. The budget shall specify the distribution of the amounts to be charged against and allotted to each water user or ditch owner, and which respective amounts shall be based upon the quantity of water received or to be received by each in proportion to the total quantities of water delivered or to be delivered under the water rights of all. The salary and expenses of the water master will be paid monthly by the board of county commissioners in accordance with the requirements of NMSA, 1978, Section 72-3-4 (1907).

[19.26.11.9 NMAC - N, 8/29/03]

**HISTORY OF 19.26.11 NMAC:**

Pre-NMAC History:

Order No. 041, Declaration of Gallinas River Water District of the Pecos River Stream System, originally filed with the Supreme Court Law Library 7/27/53. Filed with the State Records Center 6/27/91.

History of Repealed Material:

Order No. 048 Rescinded Order No. 041 on 10/7/54.