

This rule was filed as State Engineer Rule 66-1, Articles 1 and 2.

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 27    UNDERGROUND WATER**  
**PART 1         UNDERGROUND WATER - GENERAL PROVISIONS (SE-66-1, ARTICLES 1 AND 2)**

**19.27.1.1        ISSUING AGENCY:** Office of State Engineer.  
[Recompiled 12/31/01]

**19.27.1.2        SCOPE:** [RESERVED]  
[Recompiled 12/31/01]

**19.27.1.3        STATUTORY AUTHORITY:** Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978 Compilation.  
[Recompiled 12/31/01]

**19.27.1.4        DURATION:** [Permanent]  
[Recompiled 12/31/01]

**19.27.1.5        EFFECTIVE DATE:** November 1, 1966  
[Recompiled 12/31/01]

**19.27.1.6        OBJECTIVE:** This rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.  
[Recompiled 12/31/01]

**19.27.1.7        DEFINITIONS:** [RESERVED]  
[Recompiled 12/31/01]

**19.27.1.8        DECLARATION OF EXISTING WATER RIGHTS; INITIATION OF WATER RIGHTS: DECLARATIONS, AFFIDAVITS - FILING:** If declarations of existing water rights are filed as permitted by Section 75-11-5, [72-12-5 NMSA 1978] they shall be prepared in triplicate on forms furnished by the state engineer and shall be accompanied by the proper filing fee (Article 6-1) [now 19.25.5.8 NMAC]. Declarations may also be accompanied by affidavits of persons having personal knowledge of the history of the works or by other evidence tending to substantiate the claims and by copies of well logs, if available. If such supporting documents are filed in the state engineer office, they will be filed together with the declaration.  
[SE-66-1 Article 1-1, Recompiled 12/31/01]

**19.27.1.9        APPLICATIONS TO APPROPRIATE - PRIORITY:** Where the well is to be drilled within the boundaries of a declared underground water basin (Article 7) [now 19.27 NMAC] application to appropriate shall be filed in triplicate on forms provided by the state engineer accompanied by the proper filing fee (Article 6-1) [now 19.25.5.8 NMAC]. The date of receipt of an application by the state engineer or his authorized representative shall be endorsed thereon. The date of filing establishes the original priority date of any application, subject to the acceptance of the application and the issuance of a permit by the state engineer and the timely application of water to beneficial use.  
[SE-66-1 Article 1-2, Recompiled 12/31/01]

**19.27.1.10       AMOUNT OF WATER; AMENDMENT; ADVERTISEMENT:** The application and permit limit the nature and extent of the water right. A permit may be granted for an amount less than that asked for in the application. In any event the annual amount of the appropriation permitted under one application will be limited to the annual amount that can reasonably be expected to be produced and applied to beneficial use from a single well constructed at the point, in the manner, and for the purpose set forth in the application.  
[SE-66-1 Article 1-3, Recompiled 12/31/01]

**19.27.1.11 FORM OF APPLICATION; CORRECTIONS:** Before acceptance by the state engineer, applications tendered must conform to the requirements of the statutes and rules and regulations of the state engineer. The description of the well location shall be to the nearest forty (40) acre subdivision, unless otherwise prescribed by the state engineer. Applications which are defective as to form or fail to comply with the rules and regulations shall be returned promptly to the applicant with a statement of the changes required. If the changes are made and the application refiled with the state engineer within thirty (30) days after the applicant has been notified of the changes required, the application shall be processed with a priority date the same as the original filing date. When a corrected application is filed after the time allowed, it shall be treated in all respects as an original application received on the date of its refileing.  
[SE-66-1 Article 1-4, Recompiled 12/31/01]

**19.27.1.12 PUBLICATION:** Upon receipt of an acceptable application the state engineer shall prepare and issue a notice for publication and shall send it to the applicant with instructions that it be published weekly for three consecutive weeks in a newspaper of general circulation within the county in which the well is to be drilled. Cost of publication shall be borne by the applicant who shall also see that the newspaper's affidavit of publication is filed with the state engineer within sixty (60) days from date of issuance of the notice for publication. If the application is for a new appropriation, failure to file affidavit of publication within the time allowed shall cause postponement of the priority date of the application to the date of receipt of such proof in proper form. In the case of any other type of application, failure to file proofs within the time allowed shall cause the application to be cancelled. The issuance of a notice for publication does not in any way indicate favorable action on the application by the state engineer.  
[SE-66-1 Article 1-5, Recompiled 12/31/01]

**19.27.1.13 RE-ADVERTISEMENTS - EXPENSES:** The completeness and accuracy of the notice for publication is the responsibility of the applicant. If there are substantive errors in the published notice, it shall be re-advertised at the expense of the applicant.  
[SE-66-1 Article 1-6, Recompiled 12/31/01]

**19.27.1.14 PROTEST - FILING, ANSWER:** Any person deeming that the granting of an application would be detrimental to his rights may protest in writing the proposal set forth in the application. The protest shall set forth reasons why the application should not be approved and must be filed in triplicate with the state engineer not later than ten (10) days after the date of the last publication of the notice referred to in Article 1-5 [now 19.27.1.12 NMAC]. The state engineer shall mail one copy of the protest to the applicant. The applicant may file with the state engineer, in triplicate, answers to such protests. The state engineer shall furnish all protestants with a copy thereof by mail.  
[SE-66-1 Article 1-7, Recompiled 12/31/01]

**19.27.1.15 HEARINGS:** In the event an application is protested, hearings shall be conducted pursuant to the provisions of Article 3 [now 19.25.4 NMAC] of these rules and regulations.  
[SE-66-1 Article 1-8, Recompiled 12/31/01]

**19.27.1.16 CANCELLATION:** Upon failure of the applicant to comply with the provisions of the permit within the time specified in such permit or to secure an extension of time within which to do so, the state engineer shall cancel the permit.  
[SE-66-1 Article 1-9, Recompiled 12/31/01]

**19.27.1.17 CONSTRUCTION OF WELL:** The well shall be constructed in full compliance with the terms of the permit and the rules and regulations of the state engineer.  
[SE-66-1 Article 1-10, Recompiled 12/31/01]

**19.27.1.18 TRANSPORTATION:** In the case of any ground water right initiated after September 6, 1912, the water may not be transported in earthen ditches more than one and one half (1 1/2) miles or in open ditches or flumes lined with concrete or other impervious material more than two (2) miles from the well which is the source of supply.  
[SE-66-1 Article 1-11, Recompiled 12/31/01]

**19.27.1.19 STORAGE:** Water from artesian or shallow ground water sources may be stored in reservoirs or ponds to facilitate and improve irrigation practices. The capacity of such reservoirs shall be so limited that they will store the continuous flow of a well producing more than three hundred (300) gallons of water per minute for no more than forty-eight (48) hours and the flow of a well producing three hundred (300) gallons of water per minute or less for no more than ninety-six (96) hours.  
[SE-66-1 Article 1-12, Recompiled 12/31/01]

**19.27.1.20 REQUIREMENTS AFTER COMPLETION OF WELL:** As soon as practicable after completing the well and the application of water to the intended use pursuant to the permit, the applicant shall have prepared and file a "final inspection and report" in triplicate on forms provided by the state engineer. The final report shall be accompanied by a plat prepared in accordance with Article 5 [now 19.25.3 NMAC]. The final inspection and report shall be prepared by a registered professional engineer and land surveyor or by a registered land surveyor as specified by the state engineer.  
[SE-66-1 Article 1-13, Recompiled 12/31/01]

**19.27.1.21 CERTIFICATE AND LICENSE:** Upon receipt of "final inspection and report" together with attachments thereto required by Article 1-13 [now 19.27.1.20 NMAC], the state engineer shall issue a "certificate and license to appropriate."  
[SE-66-1 Article 1-14, Recompiled 12/31/01]

**19.27.1.22 APPLICATIONS NOT REQUIRING PUBLICATION AND NOTICE - DOMESTIC AND LIVESTOCK USE - AMOUNT:** Section 75-11-1 [72-12-1 NMSA 1978] excepts applications for water for certain purposes from the requirement for publication of notice. The state engineer shall permit use under such applications for domestic, stock watering, drinking and sanitary purposes, and the irrigation of not to exceed one (1) acre of trees, lawn and non-commercial garden in an amount not to exceed three (3) acre-feet per annum, subject to limitation imposed by the courts. Applications for wells for such purposes shall be prepared and filed in triplicate on forms provided by the state engineer. Compliance with the provisions of Article 4 [now 19.27.4 NMAC] is required in the completion of such wells.  
[SE-66-1 Article 1-15, Recompiled 12/31/01]

**19.27.1.23 RETENTION OF OLD WELL FOR DOMESTIC USE - REQUIREMENTS:** If water rights have been transferred from a well but the owner thereof desires to retain the well for the purposes of Article 1-15 [now 19.27.1.22 NMAC], an application must be filed as required by that article. Prior to approval, the state engineer shall determine whether the subject well can be retained in use without causing waste.  
[SE-66-1 Article 1-16, Recompiled 12/31/01]

**19.27.1.24 CHANGE OF WELL LOCATION AND PLACE AND/OR PURPOSE OF USE; SUPPLEMENTAL WELLS; EXTENSIONS OF TIME; PREREQUISITES FOR DRILLING; DEEPENING AND REPAIRING:**

A. Change of location of well: The owner of a water right within a declared underground water basin cannot change the location of his well without the approval of the state engineer except as otherwise provided in Section 75-11-23 [72-12-23 NMSA 1978].

B. Replacement well within one hundred feet of original well: The owner of a water right may drill and use a replacement well within one hundred (100) feet of the original well prior to application, publication, and hearing, if:

- (1) The well is drilled in the same, and only the same, underground source; and
- (2) The appropriation is of the same amount of water allowed by his water right in the original well;

and

(3) An emergency situation exists which would result in serious economic loss if application, publication and hearing were required; and

(4) The owner notifies the state engineer office of these facts and of the location of the proposed well by registered letter prior to drilling; provided he files application for a permit within thirty (30) days after drilling begins.

(5) The owners of other water rights claiming injury by the drilling of a replacement well under these circumstances may not enjoin the drilling of such well or the use of the water from the well but are limited to an action at law to recover damages and to their right to protest the granting of a permit.

C. Replacement well over one hundred feet from original well: The owner of a water right may drill and use a replacement well over one hundred (100) feet from his original well upon making application without waiting for the completion of publication and hearing, if:

- (1) The well is drilled in the same and only the same underground source; and
- (2) The appropriation is of the same amount of water allowed by his water right in the original well;

and

(3) An emergency situation exists which would result in serious economic loss if publication and hearing were required; and

(4) The state engineer after preliminary investigation finds that the change does not impair existing water rights and grants him a permit authorizing the drilling and use of the replacement well prior to publication and hearing;

(5) When preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a replacement well may impair existing rights then no permit shall be issued until after publication and hearing.

[SE-66-1 Article 2-1, Recompiled 12/31/01]

**19.27.1.25 CHANGE OF PLACE AND/OR PURPOSE OF USE:** The owner of a water right within a declared underground water basin cannot change the place or purpose of use of the right without the approval of the state engineer. Such approval will be granted only after proper application is made and the state engineer determines that the proposed move would not impair existing water rights.

[SE-66-1 Article 2-2, Recompiled 12/31/01]

**19.27.1.26 FORM OF APPLICATION:** Application to change the place or purpose of use and an application to change the location of a well may be combined in one application. Applications must be submitted to the state engineer in triplicate with the fee set out in Article 6 [now 19.25.5 NMAC].

[SE-66-1 Article 2-3, Recompiled 12/31/01]

**19.27.1.27 SUPPLEMENTAL WELL:** The owner of a right to appropriate underground water may make application to drill a well to supplement his supply up to the amount of his existing right. Such application shall be filed on forms provided by the state engineer.

A. Supplemental well - emergency conditions: The owner of a water right may drill and use a supplemental well upon making application but prior to publication and hearing, if (Section 75-11-25) [72-12-24 NMSA 1978]:

- (1) The well is drilled in the same, and only the same, underground source; and
- (2) The supplemental well does not increase the appropriation of water to an amount above the existing water rights; and

(3) An emergency situation exists which would result in serious economic loss if publication and hearing were required; and

(4) The state engineer after preliminary investigation advises that the supplemental well does not impair existing water rights and grants him a permit authorizing the drilling and use of the supplemental well prior to publication and hearing.

B. If the preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a supplemental well may impair existing rights then no permit shall be issued until after publication and hearing.

[SE-66-1 Article 2-4, Recompiled 12/31/01]

**19.27.1.28 DESCRIPTION OF WELL LOCATION AND PLACE OF USE:** The legal description of both the present and the proposed well location must be set out in an application. Well description shall be to the nearest forty (40) acre subdivision, unless otherwise prescribed by the state engineer. If the use is for irrigation, the lands from which water rights are transferred and the lands to which water rights are transferred shall be described by legal subdivision in the application. Where the use is for other than irrigation, the place of use shall be described by legal subdivision.

[SE-66-1 Article 2-5, Recompiled 12/31/01]

**19.27.1.29 DECLARATION PRIOR TO CHANGE:** A right not of record in the state engineer office must first be declared before an application to move it or change its use can be considered (Article 1-1) [now 19.27.1.8

NMAC]. Such declarations shall be accompanied by maps showing well locations and place of use and conforming with requirements of Article 5 [now 19.25.3 NMAC].  
[SE-66-1 Article 2-6, Recompiled 12/31/01]

**19.27.1.30 PUBLICATION; HEARING PROCEDURE:** The applicant must publish notice of the application the same as if it were an application to appropriate (Article 1-5) [now 19.27.1.12 NMAC]. Protest and hearing procedures are the same as for an application to appropriate (Article 1-7 and 1-8) [now 19.27.1.14 NMAC and 19.27.1.15 NMAC].  
[SE-66-1 Article 2-7, Recompiled 12/31/01]

**19.27.1.31 PERMIT - GRANTING OF, LIMITATIONS, CANCELLATION:** When the state engineer determines that the proposed change will not impair the existing rights of others, a permit shall be granted. The permit may be subject to limitations and failure of the applicant to comply with the limitations may result in cancellation of the permit.  
[SE-66-1 Article 2-8, Recompiled 12/31/01]

**19.27.1.32 REQUIREMENTS AFTER COMPLETION OF WELL:** As soon as practicable after completing a supplemental or replacement well, the permittee shall file "proof of completion of well" in triplicate on forms provided by the state engineer.  
[SE-66-1 Article 2-9, Recompiled 12/31/01]

**19.27.1.33 REQUIREMENT FOR LICENSE FOR CHANGE OF PLACE AND/OR PURPOSE OF USE:** The requirements for a license for change of place or purpose of use are the same as for a new appropriation (Article 1) [now 19.27.1 NMAC]. Provided that, with respect to irrigation rights, if only a portion of an irrigation right is transferred for the irrigation of other lands, then both the lands from which water rights are transferred and the lands to which water rights are transferred must be surveyed and maps prepared showing these lands. If the portion of an irrigation right moved is transferred to purposes other than irrigation, only the move-from area need be mapped. Such maps shall be included in the final inspection and report.  
[SE-66-1 Article 2-10, Recompiled 12/31/01]

**19.27.1.34 LICENSE - WHEN ISSUED:** When all the required documents have been filed, the license to appropriate water for the new place or purpose of use shall be issued. No license will be issued where only a change of location of well (replacement well) or supplemental well is involved.  
[SE-66-1 Article 2-11, Recompiled 12/31/01]

**19.27.1.35 MOVE-FROM AREA - TERMINATION OF WATER USAGE:** When a permit to change the place of use is granted, use of water at the move-from location shall immediately cease unless otherwise specified in the permit.  
[SE-66-1 Article 2-12, Recompiled 12/31/01]

**19.27.1.36 WELL PLUGGING:** Wells from which all water rights have been removed shall be plugged in accordance with Article 4-14 and 4-19.1 [now 19.27.4.21 NMAC and 19.27.4.26 NMAC].  
[SE-66-1 Article 2-13, Recompiled 12/31/01]

**19.27.1.37 DISCREPANCIES BETWEEN LANDS PERMITTED AND LANDS IRRIGATED:** The state engineer will not require application for change of place of use of underground waters when the description of the land actually irrigated varies slightly from the description shown on the original application.  
[SE-66-1 Article 2-14, Recompiled 12/31/01]

**19.27.1.38 APPLICATIONS FOR EXTENSIONS OF TIME:** Applications for extensions of time permitted by Section 75-11-8 [72-12-8 NMSA 1978] shall be filed in triplicate, accompanied by the proper filing fee and shall state the reasons why additional time is required. Such applications shall fully describe the well and work already completed, the lands irrigated or the extent to which water has otherwise been placed to beneficial use and shall be accompanied by a plan setting forth dates when the well will be completed and equipped and the water applied to use under the permit. Financial inability to proceed shall not be deemed sufficient reason for granting extensions of time.

[SE-66-1 Article 2-15, Recompiled 12/31/01]

**19.27.1.39 PREREQUISITES OF DRILLING, DEEPENING, REPAIRING:** A licensed well driller may drill, deepen, repair or clean a well within a declared underground basin only when the owner of such well has a valid permit from the state engineer for the work to be performed; or when the laws have been met which cover emergency well drilling (Article 4-8) [now 19.27.4.15 NMAC].

[SE-66-1 Article 2-16, Recompiled 12/31/01]

**HISTORY OF 19.27.1 NMAC:**

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives.

SE-66-1, Rules And Regulations Governing Drilling Of Wells And Appropriation And Use Of Ground Water In New Mexico, Articles 1 and 2, originally filed with the Supreme Court Law Library 11/1/66. Filed with the State Records Center 6/27/91.

History of Repealed Material: [RESERVED]