

§ 72-6-3. Owner may lease use of water

NM ST § 72-6-3 West's New Mexico Statutes Annotated Chapter 72. Water Law Effective: April 2, 2019 (Approx. 2 pages)

[Chapter 72. Water Law \(Refs & Annos\)](#)

[SuperBrowse Article 6. Water-Use Leasing \(Refs & Annos\)](#)



Proposed Legislation

Effective: April 2, 2019

N. M. S. A. 1978, § 72-6-3

§ 72-6-3. Owner may lease use of water

Currentness

A. An owner may lease to any person all or any part of the water use due the owner under the owner's water right, and the owner's water right shall not be affected by the lease of the use. The use to which the owner is entitled under the owner's right shall, during the exercise of the lease, be reduced by the amount of water so leased. Upon termination of the lease, the water use and location of use subject to the lease shall revert to the owner's original use and location of use.

B. The lease may be effective for immediate use of water or may be effective for future use of the water covered by the lease; however, the lease shall not be effective to cumulate water from year to year or to substantially enlarge the use of the water in such manner that it would injure other water users. The lease shall not toll any forfeiture of water rights for nonuse, and the owner shall not, by reason of the lease, escape the forfeiture for nonuse prescribed by law; provided, however, that the state engineer shall notify both the owner and the lessee of declaration of nonuser as provided in [Sections 72-5-28](#) and [72-12-8 NMSA 1978](#). The initial or any renewal term of a lease of water use shall not exceed ten years, except as provided in Subsections C and D of this section.

C. A water use may be leased for forty years by municipalities, counties, state universities, special water users' associations, public utilities supplying water to municipalities or counties and member-owned community water systems as lessee and shall be entitled to the protection of the forty-year water use planning period as provided in [Section 72-1-9 NMSA 1978](#).

D. A water use deriving from an acequia or community ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, whether owned by a water right owner under the acequia or community ditch or by the acequia or community ditch, may be leased for a term not to exceed ten years; provided that pursuant to the rules or bylaws duly adopted by its members, an acequia or community ditch may require that any water use lease of a water right served by the acequia or community ditch, or any water use lease in which a water right is moved into and then served by the acequia or community ditch, shall be subject to approval by the commissioners of the acequia or community ditch in accordance with the procedures for approval of changes in point of diversion or place or purpose of use as provided in [Subsection E of Section 73-2-21 NMSA 1978](#) and [Sections 72-5-24.1](#) and [73-3-4.1 NMSA 1978](#).

E. A water use due under an adjudicated water right secured to a pueblo pursuant to the settlement agreements approved in Title 5 and Title 6 of the federal Claims Resolution Act of 2010, [P.L. No. 111-291](#), Sections 501-626, or in the partial final judgments and decrees entered pursuant to those settlement agreements, may be leased for a term, including all renewals, not to

exceed the term specifically authorized in that act; provided that this subsection shall not apply to any water use due under any state-law based water rights acquired by a pueblo or by the United States on behalf of a pueblo.

N. M. S. A. 1978, § 72-6-4

§ 72-6-4. Lessee's application

[Currentness](#)

Prior to his use of such water, the lessee shall apply to the state engineer requesting approval for the use and location of use to which such water will be put. The engineer shall prescribe the form of such application and may require any information pertinent to the matter.

N. M. S. A. 1978, § 72-6-5

§ 72-6-5. Approval

[Currentness](#)

A. The state engineer shall approve the application if the applicant has reasonably shown that his proposed use and location of use is a beneficial use and:

(1) will not impair any existing right to a greater degree than such right is, or would be, impaired by the continued use and location of use by the owner; and

(2) will not be contrary to the conservation of water within the state or detrimental to the public welfare of the state.

B. In the case of annual allotments of project water leased to a special water users' association from an irrigation district organized pursuant to Chapter 73, Article 10 NMSA 1978, if the state engineer determines that the proposed changes in place and purpose of use and point of diversion comply with the rules established pursuant to [Subsection G of Section 73-10-48 NMSA 1978](#), the board of directors of the irrigation district may approve the application in accordance with the provisions of [Section 73-10-48 NMSA 1978](#).

Effective: July 1, 2019

N. M. S. A. 1978, § 72-6-6

§ 72-6-6. Application; notice; protest; hearing

[Currentness](#)

A. Upon the filing of an application by a lessee, the state engineer shall proceed in accordance with the provisions of Section 1 of this 2019 act regarding notice of the application.

B. Any owner who believes the owner's water rights will be adversely affected by the granting of the application may file a protest. The protest shall be specific as to how the granting of the application will adversely affect the owner's water rights. The protest shall be filed in writing with the state engineer and a copy sent to the applicant by certified mail.

C. If a protest is timely filed, the state engineer shall hold a hearing on the granting of the application, and the applicant and protestants shall be notified by the state engineer as to the date and place of the hearing.

D. If no objections are filed, the state engineer may grant the application without hearing. If no objections are filed and the state engineer denies the application, the state engineer shall hold a hearing if requested to do so by the applicant. The request shall be filed with the state engineer within ten days after the denial of the application.

E. If the state engineer grants the application but allows the applicant to use less water than the amount of water the owner would be allowed to use, the state engineer shall hold a

hearing on the matter if requested to do so by the applicant. The request shall be filed with the state engineer within ten days after the granting of the application.

F. In a hearing before the state engineer, a full record and transcript of the proceeding shall be kept by the state engineer.

G. The provisions of this section do not apply to leases approved pursuant to [Section 73-10-48 NMSA 1978](#).

19.26.2 NMAC

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.

19.25.13. ACTIVE WATER RESOURCE MANAGEMENT



1. **Unconstitutional or Preempted** Negative Treatment Reconsidered by [Tri-State Generation and Transmission Ass'n, Inc. v. D'Antonio](#) N.M. Nov. 01, 2012

[Code of New Mexico Rules Currentness](#)

[Title 19. Natural Resources and Wildlife](#)

[SuperBrowse Chapter 25. Administration and Use of Water - General Provisions](#)

[SuperBrowse Part 13. Active Water Resource Management \(Refs & Annos\)](#)

N.M. Admin. Code 19.25.13

19.25.13. ACTIVE WATER RESOURCE MANAGEMENT

19.25.13.1 ISSUING AGENCY: Office of the State Engineer.

[19.25.13.1 NMAC - N, 12/30/2004]

19.25.13.2 SCOPE: The state engineer adopts these rules and regulations to undertake the supervision of the physical distribution of water, to prevent waste, and to administer the available supply of water by priority date or by alternative administration, as appropriate. These rules apply to all water rights within the state from all sources of water, surface water and hydrologically connected groundwater.

[19.25.13.2 NMAC - N, 12/30/2004]

19.25.13.3 STATUTORY AUTHORITY: These rules and regulations are established pursuant to constitutional authority set forth in Article XVI of the New Mexico Constitution, and statutory authority enumerated in Sections 72-1-2; 72-2-8; 72-2-9; 72-2-9.1; 72-3-1-5; 72-4-20; 72-5-3 through 5; 72-5-18; 72-5-23; 72-5-24; **72-6-1** through 7; 72-8-1; 72-9-2; 72-12-1; 72-12-2; 72-12-8(D); 72-12-24; 72-13-2; [72-13-4 NMSA](#).

[19.25.13.3 NMAC - N, 12/30/2004]

Credits

19.25.13.4 DURATION: Permanent.

[19.25.13.4 NMAC - N, 12/30/2004]

19.25.13.5 EFFECTIVE DATE: December 30, 2004, unless a later date is cited at the end of a section.

[19.25.13.5 NMAC - N, 12/30/2004]

19.25.13.6 OBJECTIVE: The objective of these rules is to establish the framework for the state engineer to carry out his responsibility to supervise the physical distribution of water to protect senior water right owners, to assure compliance with interstate stream compacts and to prevent waste by administration of water rights. These framework rules employ long-standing statutory mechanisms specified at [Section 72-3-1](#) through [Section 72-3-5 NMSA](#), which describe procedures for the creation of water master districts and the appointment of water masters with certain defined duties and authorities. In addition, these rules fulfill the mandates of [Section 72-2-9.1 NMSA](#), requiring the state engineer to adopt rules for priority administration based on appropriate hydrologic models and expedited marketing and leasing within water master districts subject to priority administration.

[19.25.13.6 NMAC - N, 12/30/2004]

19.25.13.7 DEFINITIONS: Unless defined below in a specific section of these rules, all words used herein shall be given their customary and accepted meanings. All uses of masculine pronouns or possessives shall be held to include the feminine.

A. Adjudication: A comprehensive court proceeding to establish the elements of each water right for all water right owners on a stream system with respect to the state of New Mexico and as among each other, including the priority, amount, purpose, periods and place of use and the specific tracts of land to which the water right is appurtenant, as provided by [Section 72-4-19 NMSA](#).

B. Administrable water right: A water right or right to impound, store or release water, the elements of which have been determined by a court of competent jurisdiction or determined on an interim basis by the state engineer under these rules and regulations. The state engineer may make determinations of the elements of a water right for purposes of administration prior to the commencement or completion of, and during the pendency of, a water rights adjudication. State engineer determinations made for purposes of administration are subject to review by any court of competent jurisdiction and are not binding on that court. Such determinations are subject to the decrees of an adjudication court of competent jurisdiction, and are not binding on such an adjudication court.

C. Administration: Distribution by a water master of available water supplies within a water master district or sub-district, subject to any legal constraints identified by or imposed on the state engineer, for specific beneficial uses by the owners of administrable water rights that are in-priority. There are four forms of administration available to achieve different objectives. These forms are defined below together with subsidiary definitions. A water master may, based on the applicable district-specific regulations, use any of these forms of administration, depending on the specific legal and physical aspects of the water supplies that are subject to administration and the existence or absence of agreements for alternative administration. Administration may also combine these forms within a water master district, as the water master finds appropriate or necessary. The specific form of administration, or combination of forms of administration, that will be utilized in each water master district will be established through promulgation of district-specific regulations. Notice of such promulgation will be provided pursuant to [Subsection D of 72-2-8 NMSA](#).

(1) Direct flow administration

(a) Direct flow water: All the flow of a stream, including storage reservoir inflows that are legally bypassed through that reservoir, but excluding sources of flow augmentation such as storage water releases or imported water.

(b) Direct flow administration: Distribution of direct flow water by a water master for diversion and beneficial use, or for diversion and storage in a reservoir, in accordance with the affected administrable water rights. Direct flow administration consists of both protection of available direct flow water for diversion and use by in-priority administrable water rights, and protection of direct flow water from out-of-priority diversion. Direct flow administration may incorporate changes to the water master's determination of which water rights are in-priority and which are out-of-priority on a daily basis, depending on the currently available direct flows.

(2) Storage water administration

(a) Storage water: Water stored in a reservoir in-priority and in accordance with the conditions of an administrable water right and subsequently released from storage. Storage water does not include direct flow water that is bypassed through a reservoir.

(b) Storage water administration: Administration by a water master of the release from reservoirs and subsequent downstream diversion of storage water in accordance with the requirements of the applicable administrable water rights for such release and diversion. Storage water administration includes both the distribution of storage water released for the benefit of

those having rights to its use, and also the protection of storage water releases from diversion by water right owners having only an administrable water right to direct flow water. Conveyance losses that occur as a result of the delivery of storage water shall be borne by the owner of the applicable administrable water right, and storage water administration shall account for those conveyance losses. For purposes of administration, imported water shall be administered in the same manner as storage water; however, imported water is subject to 100% depletion. The beneficial use of imported water is exclusive in the owner of the right to its use and is not subject to priority call in the basin of use, but its diversion from the basin of origin is subject to priority administration in that basin.

(3) Depletion limit administration

(a) Depletion limit: The amount of surface water that is available for depletion by both surface water rights and hydrologically connected groundwater rights within a water master district or sub-district, taking into account interstate stream compact compliance requirements. Taking into account the conjunctive nature of surface and groundwater, the depletion limit may be greater than, or less than, the physically available surface water supply.

(b) Administration date[s]: A date, or dates, to be determined by the state engineer, where administration within a specific water master district is to be in effect for a period of time to be determined by the state engineer for interstate stream compact compliance purposes, or to address substantial long-term groundwater effects on surface supply, as expressed in a depletion limit. If an administration date is determined and published for a district, no water rights with priority dates later than the administration date shall be exercised in the absence of a replacement plan approved by the state engineer.

(c) Depletion limit administration: Administration by a water master to curtail water rights with priority dates junior to an administration date. Such out-of-priority rights shall not use water in the absence of a replacement plan approved by the state engineer.

(d) Replacement water: Water acquired temporarily by an out-of-priority administrable water right from an in-priority administrable water right pursuant to a replacement plan for the purpose of offsetting surface water depletions attributable to an out-of-priority administrable water right and preventing impairment of in-priority administrable water rights.

(e) Replacement plan: A plan submitted by the owner(s) of administrable water rights, and approved by the state engineer for no more than two consecutive years, subject to renewal, for the purpose of offsetting depletions attributable to out-of-priority administrable water rights.

(4) Alternative administration: Administration that is based on water sharing agreement among affected water right owners, and that is acceptable to the state engineer. Such administration may include voluntary shortage sharing such as, but not limited to, percentage division or pro rata allocation, rotation of water use, and reduced diversions. Where there is an existing shortage sharing agreement between acequias or community ditches confirmed on the first Monday of April of each year in accordance with [Section 73-2-47 NMSA](#) or thereafter as necessary, it shall be recognized in the district-specific regulations, but nothing in this section shall be taken to impair the authority of the state engineer and water master to regulate the distribution of water from the various stream systems of the state to the ditches and irrigation systems entitled to water therefrom under the provisions of this article. Alternative administration may be substituted for any of the forms of administration above described.

D. Administration date[s]: See definition under Subsection C of 19.25.13.7 NMAC.

E. Consumptive irrigation requirement: See definition under Subsection S of 19.25.13.7 NMAC.

F. Consumptive use: The quantity of water beneficially consumed during the application of water to beneficial use.

G. Conveyance loss: The quantity of water that is effectively removed from a stream system due to seepage or evapotranspiration as calculated between a measurement device used to measure the available water supply and a downstream point of diversion for an administrable water right or a downstream point of delivery.

H. Depletion: That consumptively used portion of a diversion that has been evaporated, transpired, incorporated into crops or products or used by livestock, or man-made consumptive uses such as, but not limited to, municipal, industrial and domestic uses, or otherwise removed from, and not returned to, the available water supply, including all incidental depletions associated with the beneficial use. Depletions shall include, but not be limited to:

(1) any increase in depletions resulting from construction projects for the restoration and maintenance of fish and wildlife habitat that result in increased depletion of water over that amount that would have been depleted had there been no restoration; such projects are subject to the permitting authority of the state engineer;

(2) any increase in depletions resulting from changes in reservoir operations that increase the amount of water depleted over that amount which would have been depleted had there been no change in the reservoir's operations; such as, but not limited to, changes in historic release patterns; such changes are subject to the permitting authority of the state engineer.

I. Depletion limit: See definition under Subsection C of 19.25.13.7 NMAC.

J. Depletion limit administration: See definition under Subsection C of 19.25.13.7 NMAC.

K. Direct flow administration: See definition under Subsection C of 19.25.13.7 NMAC.

L. Direct flow water: See definition under Subsection C of 19.25.13.7 NMAC.

M. District: When used in these regulations, means water master district.

N. Diversion: The quantity of water taken from a ground or surface water source by a constructed structure or project to supply a beneficial use.

O. Expedited marketing and leasing: Any process within a district in which water rights are subject to priority administration whereby changes in use or place of use of water may be effected so as to minimize costly and time-consuming administrative procedures. Expedited marketing and leasing processes may include, but are not limited to, expedited permit proceedings before the state engineer through the use of the appropriate hydrologic models adopted by the state engineer for the district. [Subsection C of 72-2-9.1 NMSA](#) expressly provides that rules and regulations concerning expedited marketing and leasing “shall not apply to acequias or community ditches or to water rights served by an acequia or community ditch.”

P. Farm delivery requirement: See definition under Subsection S of 19.25.13.7 NMAC.

Q. Imported water: Water removed from, and not returned to, its hydrologic basin of origin delivered for use in a different basin or drainage.

R. In-priority: If the currently available direct flow water is sufficient for distribution to a specific use administrable water right, then that right is in-priority. If a water right has a priority date that is senior to the applicable administration date, that water right is in-priority. In the case of storage water, that amount of the total inflow to a reservoir that exceeds the volume of water that must flow through the dam to serve senior administrable water rights to direct flow water is in-priority for storage.

S. Irrigation water requirements: Irrigation water requirements can be expressed in several ways, depending on circumstances:

(1) 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 CIR may be numerically determined by subtracting effective rainfall from the consumptive use.

(2) Farm delivery requirement: The quantity of water, exclusive of effective rainfall, that is delivered to the farm head gate 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 during the irrigation accounting year, or as otherwise provided by permit.

(3) Project diversion requirement: The annual quantity of water necessary to be diverted from a source of water to satisfy the farm delivery requirement and to account for off-farm ditch conveyance delivery losses during the irrigation accounting year.

T. Measuring devices: Gauging or metering devices, installed and operated as required by the state engineer.

U. Out-of-priority: If the currently available direct flow water is insufficient to serve all administrable water rights, and therefore an administration date is adopted or a priority call placed, then those administrable water rights are out-of-priority that have a priority date junior to the applicable administration date or are junior to the priority of the water right placing the priority call. In the case of storage water, if the inflow to a reservoir is equal to, or less than, the quantity of water necessary to serve downstream senior Administrable water rights from the direct flow, then such direct flow must be bypassed and the right to impound and store water in that reservoir is out-of-priority. Water that was stored in-priority is not available for use except by those with administrable water rights to the use of the storage water.

V. Priority administration: All the forms of administration defined under administration are methods of priority administration. Priority administration involves any administrative scheme implemented by a water master in accordance with the priority dates of administrable water rights, including direct flow, storage water and depletion limit administration. See, generally, administration.

W. Project: Any man-made works intended physically to control or to use water for a beneficial purpose of use.

X. Replacement water: See definition under Subsection C of 19.25.13.7 NMAC.

Y. Replacement plan: See definition under Subsection C of 19.25.13.7 NMAC.

Z. Return flow: That amount of diverted water returned to the available water supply.

AA. State engineer: The New Mexico state engineer, or his designated appointee.

BB. Storage water: See definition under Subsection C of 19.25.13.7 NMAC.

CC. Storage water administration: See definition under Subsection C of 19.25.13.7 NMAC.

DD. Waste: Diversion of water in excess of that amount reasonably necessary to supply a beneficial use in accordance with accepted water use practices that are consistent with considerations of water conservation.

EE. Water master: An official duly appointed by, and under the general supervision of, the state engineer, pursuant to [Section 72-3-2 NMSA](#), who shall have immediate charge of the diversions and distribution of waters in the water master district.

FF. Water master district: An area designated as a water district or sub-district by the state engineer for purposes of administration, as provided in [Section 72-3-1 NMSA](#).

GG. Water master district manager: The state engineer district supervisor is the manager of any water master district within his particular state engineer district and the direct supervisor of the water master.

[19.25.13.7 NMAC - N, 12/30/2004]

19.25.13.8 CONSTRUCTION: These rules and regulations shall be construed as consistent with, and subject to, the authorities of the state engineer for the administration of water in the state of New Mexico. These rules and regulations shall not be construed as imposing any limitation on the authority of the state engineer to administer water rights, act on water rights applications, permit water rights, or order the curtailment, in whole or in part, of the use of water under any water right. [Subsection H of 72-2-8 NMSA](#) provides that these rules and regulations are presumed to be the correct implementation of the law.

[19.25.13.8 NMAC - N, 12/30/2004]

19.25.13.9 USE OF THESE RULES AND REGULATIONS: These rules and regulations provide the framework for the promulgation of specific water master district rules and regulations.

[19.25.13.9 NMAC - N, 12/30/2004]

19.25.13.10 STATE ENGINEER ADOPTION OF DISTRICT-SPECIFIC RULES AND REGULATIONS: For every district in which water rights administration is requested, or the state engineer determines in the performance of his duties under [Section 72-2-1 NMSA](#) that water rights administration is required for the economical and satisfactory apportionment of water, the state engineer shall adopt rules and regulations, pursuant to [Subsection D of 72-2-8 NMSA](#), specific to the water master district, which incorporate and adapt the provisions of these rules and regulations to the needs of the specific district.

[19.25.13.10 NMAC - N, 12/30/2004]

19.25.13.11 STATE ENGINEER AUTHORITY TO CREATE WATER MASTER DISTRICTS AND APPOINT WATER MASTERS: The state engineer may create water master districts and appoint water masters in any drainage areas of the state pursuant to [Section 72-3-1](#) through [Section 72-3-5 NMSA](#) and these regulations. The water master district manager shall provide the water master with guidelines for administration, including his determination, for purposes of administration, of all administrable water rights within the water master district. Water master guidelines shall be in the form of a water master manual applicable to each water master district or sub-district. Comments from the public shall be taken and considered prior to finalizing the water master manuals. Notice shall be provided in accordance with [Subsection D of 72-2-8 NMSA](#). The state engineer may administer water rights pursuant to a draft water master manual for a specific period of time, which will be determined in the district-specific regulations, prior to finalizing a manual so that the adopted manual will be based upon actual experience and the collective comments of the water right owners in the district.

[19.25.13.11 NMAC - N, 12/30/2004]

19.25.13.12 CREATION OF A WATER MASTER DISTRICT: The state engineer may create water master districts within the state, provided that:

A. the state engineer finds that the creation of such a water master district is necessary for the economical and satisfactory administration of water;

B. the boundaries of the water master districts are in conformity with drainage areas as defined by the state engineer;

C. the water master districts are designated by names; and

D. as far as possible, the water master districts comprise one or more stream systems or stream reaches, including hydrologically connected groundwater, as defined by the state engineer.

[19.25.13.12 NMAC - N, 12/30/2004]

19.25.13.13 CHANGING A WATER MASTER DISTRICT: Water master districts may be changed from time to time, as may be necessary in the opinion of the state engineer, for the economical and satisfactory apportionment of water.

[19.25.13.13 NMAC - N, 12/30/2004]

19.25.13.14 CREATION OF WATER MASTER SUBDISTRICTS: When, in his opinion, it shall be in the best interests of the state and the owners of water rights within any stream system within the state, the state engineer may divide water master districts further into sub-districts, each of which shall be designated by a distinct name.

[19.25.13.14 NMAC - N, 12/30/2004]

19.25.13.15 APPOINTMENT OF A WATER MASTER: Where the state engineer has created a water master district, the state engineer shall:

A. appoint a water master for such district upon the written application of a majority of the water right owners of any water master district; or

B. appoint a water master to administer the water master district and sub-districts where the state engineer finds that the public safety or interests of the state or water right owners in any water master district in the state require the appointment of a water master; where a water master has been appointed pursuant to such a finding, he may be appointed on either a temporary or a permanent basis.

[19.25.13.15 NMAC - N, 12/30/2004]

19.25.13.16 GENERAL AUTHORITY OF A WATER MASTER: The water master shall have immediate charge of the administration of waters within a water master district as necessary to protect the public safety and the interests of water right owners in a district or for the economic and satisfactory apportionment of water to all administrable water rights from the available water supply, and shall so regulate and control the waters of the district as to prevent waste. Administration implemented by the water master may be direct flow administration, storage water administration, depletion limit administration, alternative administration, or any combination thereof, as defined by district-specific regulations, depending on the physical and legal circumstances affecting the water resources and administrable water rights of the water master district. The water master may, as necessary, to effect administration:

A. determine the available supply of water from time to time, considering conveyance losses, as appropriate and necessary for effective administration;

B. implement administration of the storage, diversion, and use of the waters of the water master district in accordance with the administrable water rights;

C. administer the diversion of the waters of the water master district in priority or under an alternative administration;

D. administer diversions of the waters of the water master district in accordance with any administration date declared by the state engineer;

E. facilitate the formation and operation of water right owner groups to, among other things, improve the management of water supplies, water conservation, cooperation among water right owners and administration;

F. facilitate the negotiation and implementation of alternative administration agreements, including cooperative agreements, for sharing available water supplies;

G. adjust headgates and restrict diversions or pumping as required to administer water in accordance with principles of prior appropriation and beneficial use, to prevent the illegal use of water, and to prevent waste; and

H. exercise all such authority as is required to accomplish effective water rights administration.

[19.25.13.16 NMAC - N, 12/30/2004]

19.25.13.17 SPECIFIC DUTIES OF A WATER MASTER: Taking into account the available water supply in general and considering conveyance losses, the water master shall implement administration in the district. The water master is authorized to do the following, as may be provided by district-specific rules and regulations and as necessary to effect administration:

A. determine the physical capacity of diversion and delivery structures for each point of diversion expressed as a maximum rate of flow in cubic feet per second (cfs);

B. determine the maximum rate of flow, expressed in cfs, required to meet the total demand for administrable water rights served by that point of diversion;

C. take into account water needed to provide for adequate hydraulic pressure to ensure maximum irrigation efficiency and charge of the system;

D. take into account water needed for additional uses such as, but not limited to, silt-flushing;

E. during times of high stream flow, when there are no legal constraints imposed upon the physical administration of the available water supply, relax limits on the amount of water that may be diverted in order that the delivery system might operate more efficiently, except that under no circumstances may the total CIR of water rights served from the project increase;

F. with respect to all agricultural uses, require the designation by the water right owner of land to be irrigated in a particular season and verify the irrigability of that land;

G. ensure that water diversions do not exceed the amount needed to serve administrable water rights, except as provided in Subsections C through E, above;

H. administer direct flow water for delivery to in-priority administrable water rights, curtail diversions by out-of-priority administrable water rights, ensure the delivery of storage water to those having rights to its use, and protect storage water releases from diversion by those without rights to its use;

I. establish protocols for communication and exchange of information with water right owners as required for administration;

J. maintain accurate records of all administration activities, including meter readings, and establish a protocol for the inspection and copying of such records, at the requestor's expense;

K. identify waste and illegal use of water, including re-diversion and reuse of return flows other than as specifically provided for in an administrable water right;

L. upon a determination that a use is illegal or constitutes waste, cap, lock or otherwise temporarily disable any mechanism for illegal diversion; no permanent disablement may occur without hearing before the state engineer;

M. where he has determined that a facility must be permanently disabled, issue an order directing that the diversion be permanently disabled, which order shall be heard by the state engineer as provided below; pending review of the water master's order, the temporary disablement of the disputed diversion shall remain in place;

N. perform all such duties as are required to accomplish administration.

[19.25.13.17 NMAC - N, 12/30/2004]

19.25.13.18 NO CHANGE IN DITCH SYSTEM MANAGEMENT: Except as required in the performance of the water master's duties to regulate the distribution of water from the various stream systems of the state to the points of diversion of ditches and irrigation systems entitled to water therefrom, these rules and regulations shall not be construed to affect the internal management of projects, including acequias or community ditches and other water delivery systems, in accordance with [Section 72-9-2 NMSA](#), which provides for the distribution of water from the ditches and acequias according to local or community customs, rules and regulations that have been properly adopted. The state engineer's authority, and that of his water master, to regulate the diversion of water from the source to a ditch or acequia is unaffected by either [Section 72-9-2 NMSA](#) or this provision.

[19.25.13.18 NMAC - N, 12/30/2004]

19.25.13.19 WATER MASTER SUPERVISION OF MEASUREMENT: In all districts in which water masters are appointed, water masters shall have the authority to supervise the measurement of water in order to conduct administration.

[19.25.13.19 NMAC - N, 12/30/2004]

19.25.13.20 HEADGATES AND MEASURING DEVICES REQUIRED: The state engineer shall determine those points of diversion from, and return flow discharge to, the stream system where measuring devices are necessary for the efficient administration of water within the water master district. The owners of private ditches, the commissioners of acequias or community ditches, the boards of irrigation and conservancy districts, and all other owners of administrable water rights and operators of projects that are notified by the water master of the need to comply with this rule shall cause to be installed and maintained headgates and measuring devices of types and at locations acceptable to the water master, as may be provided by district-specific rules and regulations, once promulgated and adopted by the state engineer and ordered by the state engineer, or as otherwise ordered pursuant to [Paragraph 3 of Subsection B of Section 72-2-8 NMSA](#).

[19.25.13.20 NMAC - N, 12/30/2004]

19.25.13.21 WATER TO BE DIVERTED OR DELIVERED THAT WILL BE PLACED TO ACTUAL BENEFICIAL USE; ESTABLISHING BENEFICIAL USE REQUIREMENTS: If a particular water right is in-priority, the water master shall allow the diversion or delivery of water that will be put to actual beneficial use without waste. The water master shall make such investigations, including inspections of lands, well records, diversion records and municipal records, as are necessary to determine, for purposes of administration, the current beneficial use needs for all types of water uses under administrable water rights during periods of priority administration. Water deliveries for irrigation uses shall not be made unless the land on which water will be used has an administrable water right as determined by the state engineer. Nothing in this provision shall be construed to allow the water master to prefer some beneficial uses to other beneficial uses on any grounds other than priority, unless he is doing so pursuant to local agreements through alternative administration. Such determination shall not affect the maximum legal entitlement to water.

[19.25.13.21 NMAC - N, 12/30/2004]

19.25.13.22 FARM DELIVERY AND PROJECT DIVERSION REQUIREMENT DETERMINATIONS: In the absence of applicable court orders or adjudication decrees, the state engineer shall, prior to administration, make a determination of farm delivery and project diversion requirements in water master districts that are subject to administration. The project diversion requirement may be expressed as a maximum rate of diversion, an annual maximum

diverted volume of water for a specified use, or both. The state engineer may modify these determinations based on new information, including field experience of the water master. None of the requirements of this provision shall apply if a determination adequate for effective water administration has been made by a court of competent jurisdiction.

[19.25.13.22 NMAC - N, 12/30/2004]

19.25.13.23 OBJECTIONS TO, AND STATE ENGINEER REVIEW OF, WATER MASTER DECISIONS: Objections to any act or failure to act of a water master shall be made in the first instance informally, or in writing, to the water master who shall take prompt action on the objection if he determines that any action is warranted. If the water master fails to resolve the objection, further objections shall be made to the state engineer, who shall hear the matter in accordance with [Section 72-3-3 NMSA](#). Streamlined processes for the prompt hearing of appeals from water master decisions shall be set up for each water master district. Filing of an objection to an act or failure to act by the water master will not stay the water master's action or failure to act, or his authority to administer the water right, pending resolution of the objection.

[19.25.13.23 NMAC - N, 12/30/2004]

19.25.13.24 WATER MASTER ADMINISTRATION OF AN ADMINISTRATION DATE: In the event that the state engineer determines an administration date for a water master district, the water master shall oversee the curtailment of all administrable water rights junior to the administration date. The water master shall not allow out-of-priority use in the absence of a replacement plan approved by the state engineer.

[19.25.13.24 NMAC - N, 12/30/2004]

19.25.13.25 WATER MASTER ENTRY ON PRIVATE OR PUBLIC LAND: Pursuant to [Section 72-8-1 NMSA](#), the water master shall have the right to enter private or public lands in order to:

- A. install, inspect, read, and adjust measuring devices and require the replacement or repair of such measuring devices;
- B. inspect and adjust headgates or require the repair of such headgates;
- C. make seepage evaluations;
- D. conduct inspections of canals, wells, wasteways or sluiceways;
- E. prevent waste and prevent illegal water use;
- F. cap, lock or otherwise temporarily disable any mechanism for illegal diversion; and
- G. perform such other duties as are required to accomplish administration.

[19.25.13.25 NMAC - N, 12/30/2004]

19.25.13.26 WATER MASTER REPORTS: Annually, the water master shall submit a report including a record of total diversions and deliveries of direct flow water and storage water, as applicable, a statement of expenditures, a list of infrastructure and metering improvements needed or performed, problems encountered, and any other pertinent issues or aspects of administration. The report shall also address the amount of water needed to supply the requirements of the water master district, the amount available, the works which are without their proper supply, the supply required during the period preceding the water master's next regular report and such other information as the state engineer may require. The report shall be submitted to the state engineer and be publicly available for inspection and copying, at the requestor's expense.

[19.25.13.26 NMAC - N, 12/30/2004]

19.25.13.27 ADMINISTRABLE WATER RIGHTS: The water master district manager for each water master district will define each administrable water right by its elements as set

forth in Subsections A through G below. In all instances where the state engineer makes determinations of priority based on best available evidence as set forth in Subsections A through G below, he shall publish a list of his determination of the water rights in the water master district for review and provide opportunity to affected water right owners to informally present evidence. The state engineer shall hear objections to the water master district manager's determination of an administrable water right in accordance with [Section 72-2-16 NMSA](#). Filing of an objection to the water master district manager's determination of an administrable water right will not stay the state engineer's administration based upon that determination, pending resolution of the objection. Appeals from decisions of the state engineer shall be in accordance with [Section 72-7-1 NMSA](#). The water master district manager for each water master district will define each administrable water right by its elements as set forth in:

A. a partial final decree or a final decree entered by an adjudication court of competent jurisdiction, subject to any state engineer permit issued subsequent to entry of said adjudication decree; or, if no decree has been entered, then;

B. a subfile order entered by an adjudication court of competent jurisdiction; or, if no subfile order has been entered, then;

C. an offer of judgment signed by the defendant in a water rights adjudication; or, if no offer of judgment has been signed, then;

D. a hydrographic survey conducted and filed in accordance with [Section 72-4-17 NMSA](#) or [Section 72-4-16 NMSA](#); or, if no hydrographic survey has been filed, then;

E. a license issued by the state engineer; or, if no license has been issued, then;

F. a permit issued by the state engineer, accompanied by proof of actual beneficial use; and

G. a determination made by the state engineer based on the best available evidence, consisting of, where available, any filings with the office of the state engineer, field or documentary evidence of beneficial use associated with the right including historical aerial photography, diversions records of historical diversions, historical studies containing evidence regarding water use, and data regarding irrigation and water delivery system requirements.