

# LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

## MINUTES

### REGULAR BOARD OF DIRECTORS MEETING

10:00 a.m. Wednesday, June 15, 2011 at the Vado Office, 325 Holguin Road

{NOTE: Minutes are a DRAFT until approved and signed by the Board}

**I. Sign in, establish quorum, call meeting to order:**

Sign in sheet and agenda are attached. Board Members present were Chairman Robert "Marty" Nieto, Vice-Chairman John Holguin, Secretary Santos Ruiz Director Rosaura Pargas. Staff members present were General Manager Martin Lopez, Projects Manager Karen Nichols, Operations Manager Mike Lopez and HR/Payroll Specialist, Connie Garcilazo. Also present was Espie Holguin. With quorum establish, Mr. Nieto called the meeting to order at 10:06 a.m.

**II. Approval of agenda:**

Mr. Holguin made a motion to approve the Agenda with items VI.B postponed, VII. A 1 & 2 tabled and item VII. B postponed until the individual gets to meeting. Mr. Ruiz seconded, and it carried on a vote of 4-0. { : 29}

**III. Approval of Minutes of 6/1/11:**

Mr. Holguin made a motion to approve the minutes with one correction on item IX to remove the letter "a" after the words "paid and", Mr. Ruiz seconded the motion and it carried on a vote of 4-0. {3:32}

**IV. Guest Presentations – NONE {5:45}**

**V. Public Input – 15 minutes total allotted for this item, 3 minute time limit per person, may be continued after Item VIII by board action:** Ms. Holguin asked about our CDBG application, and Mr. Lopez replied that we have a pending planning grant application and have to apply through the county for the regular program unless there is a rule change. {5:51}

**VI. General Manager's Reports:**

**A. Management Report:** The General Manager's Martin Lopez written report was in the board packet (attached) and he discussed it with the Board. {7:17}

**B. Finance Report:** Postponed

**VII. Unfinished Business:**

**A. Closed Session:**

1. Pursuant to NMSA 1978 10-15-1 (H(7) regarding threatened or pending litigation – Tabled

2. Motion to resume the open meeting - Tabled

**B. Appointment of New Director for the La Mesa area:**

Ms. Blanca Martinez from La Mesa arrived at this point in the meeting. Mr. Holguin made a motion to appoint Ms. Martinez as new director for the La Mesa area until elections are held. Mr. Nieto verified that Ms. Martinez met the criteria for becoming a board representative. Mr. Nieto and Mr. Lopez explained board duties and Mr. Nieto offered Ms. Martinez the position on the Board to represent the La Mesa community. Ms. Martinez agreed to accept the position. Mr. Ruiz seconded motion and it carried on a vote of 4-0. {16:45}

**VIII. New Business:**

**A. NM-OSE Rule Change re: Domestic Well – LRG comments:**

Mr. Lopez explained the proposed changes (attached) and discussed potentially submitting comments to include the Authority as an eligible entity. He said that he and Ms. Nichols have reviewed it, and the attorney is looking at it now. Mr. Huguin made a motion to authorize travel to Santa Fe to submit comments on behalf of the LRGWWA regarding the issue of transferring water rights from domestic wells. Mr. Ruiz seconded the motion, and it carried on a vote of 5-0. {26:42}

**B. Resolution 2011-17 Adoption of Required CDBG Policies:** Ms. Pargas made a motion to adopt Resolution 2011-17 Adoption of Required CDBG Policies, Mr. Ruiz seconded and it carried on a vote of 5-0. {33:27}

**IX. Other discussion and agenda items for next meeting:** The next meeting is 7/20/11 at 9:00 a.m., Mr. Lopez noted that the agenda will include a Vision 2040 presentation by Paul Michaud & staff, and that our comments have been submitted to him. Mr. Lopez also notified the Board that staff member Jose Lopez's father passed away and he authorized staff to attend the services on Monday June 13, 2011. Mr. Mike Lopez invited the Board of Directors to attend a Staff/Board event on June 15, 2011 at Wet N Wild and stated that the expenses will be covered by operations staff, not the Authority. {35:30}

**X. Adjourn:** Mr. Holguin made a motion to adjourn the meeting, Mr. Ruiz seconded, and it carried on a vote of 5-0. Mr. Nieto declared the meeting adjourned at 10:55 a.m. {48:39}

Date Minutes Approved: \_\_\_\_\_

Directors Present:

\_\_\_\_\_  
Chairman Roberto M. Nieto

\_\_\_\_\_  
Vice- Chairman John Holguin

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Secretary Santos Ruiz

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Director Rosaura Pargas

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Director Blanca Martinez

# Lower Rio Grande Public Waterworks Authority

## Sign In Sheet

Date: 6/15/11

Time: 10:00 AM

Place: Vado Office

Meeting Type: Regular

Name, Title - Print	Company or Agency Represented	Mailing Address	Telephone	Email
Michael Lopez	LRG PWWA	P.O. Box 703 Wadsworth	635-3927	mieloz@lrgauthority.org
Michael Lopez	LRG PWWA	STPA		
Robert M. Nicks	LRG PWWA		575-621-9697	
<del>Rosaura Pargas</del>	LRG PWWA	P.O. Box 100 Beringe, NM	882-5937	
Rosaura Pargas	LRG PWWA	P.O. Box 343 Anthony, NM 88001	882-31210	
Donnie Garcia-Rizo	LRG PWWA	P.O. Box 20110 Albuquerque, NM	882-5072	donnie.garcia@lrgauthority.org
Esperanza Holguin	LRG PWWA	3507 N. Alameda Las Cruces 88001	575-635-1289	Esperanza.Holguin@lrgauthority.org
Karen Nicks	LRG PWWA	P.O. Box 2646 Anthony, NM	505-203-2037	Karen.Nicks@lrgauthority.org
Stanley		Wagon San Jose	575-233-4316	stanley@lrgauthority.org

**LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY**  
**MEETING NOTICE & AGENDA**  
**REGULAR BOARD OF DIRECTORS MEETING**

**10:00 a.m. Wednesday, June 15, 2011 at the Vado Office, 325 Holguin Road**

Agendas are final 24 hours prior to the meeting and may be obtained at any LRGPWWA Office – call 575-233-3947 for information

- I. Sign in, establish quorum, call meeting to order
- II. Approval of agenda
- III. Approval of Minutes of 6/1/11
- IV. Guest Presentations –
- V. Public Input – 15 minutes total allotted for this item, 3 minute time limit per person, may be continued after Item VIII by board action:
- VI. General Manager's Reports:
  - A. Management Report
  - B. Finance Report
- VII. Unfinished Business:
  - A. Closed Session:
    1. Motion to convene in closed session pursuant to NMSA 1978 10-15-1 (H)(7) regarding threatened or pending litigation – Roll Call Vote
    2. Motion to resume the open meeting and statement by the Chair that affirming that the matters discussed in the closed meeting were limited to those stated in the motion to
  - B. Appointment of new Director for the La Mesa area
- VIII. New Business:
  - A. NM-OSE Rule Change re: Domestic Well – LRG comments
  - B. Resolution 2011-17 Adoption of Required CDBG Policies
- IX. Other discussion and agenda items for next meeting – Next meeting 7/20/11 at 9:00 a.m., Vision 2040 presentation by Paul Michaud & staff
- X. Adjourn

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aide or service to attend or participate in the hearing or meeting, please contact the LRG PWWA office at 575-233-3947, 325 Holguin Rd, Vado NM 88072 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the LRGPWWA office if a summary or other type of accessible format is needed.

*Si es un individuo con una incapacidad esta en necesidad de un lector, amplificador, lenguaje por senas, o cualquier otra forma de asistencia o servicio para atender o participar en las juntas, por favor llame ha la oficina LRG PWWA office at 575-233-3947, 325 Holguin Rd, Vado NM 88072 una semana antes de la junta o en cuanto posible. Documentos públicos, incluyendo la agenda y minutos, están disponibles en varios formatos. Por favor opóngase en contacto con la oficina LRGPWWA si un resumen o otro tipo de forma accesible es necesario*

# LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY

## MINUTES

### REGULAR BOARD OF DIRECTORS MEETING

4:00 p.m. Wednesday, June 1, 2011 at the Vado Office, 325 Holguin Road

{NOTE: Minutes are in DRAFT form until adopted and signed by the Board}

- I. **Sign in, establish quorum, call to order:** Sign in sheet and agenda are attached, Board members present were Chairman Robert (Marty) Nieto, Vice-Chairman John Holguin, Secretary Santos Ruiz, and Director Rosaura Pargas. Staff present were General Manager Martin Lopez, Operations Manager Mike Lopez, Finance Manager Kathi Jackson, Projects Manager Karen Nichols and Payroll/HR Specialist Connie Garcilazo. Mr. Nieto called the meeting to order at 4:00 p.m. {25}
- II. **Approval of agenda:** Mr. Holguin made a motion to approve the agenda and postpone item VII. Mr. Ruiz seconded motion and it carried on a vote of 4-0. {1:15}
- III. **Approval of Minutes of 5/18/11:** Ms. Pargas made a motion to approve the Minutes with corrections on item II changing "Ms. Holguin" to "Mr. Holguin" and on item IX change "Bonestroo Dairy" to "Gonzales Dairy Bonestroo Operation". The motion was seconded by Mr. Ruiz and carried on a vote of 4-0. 4:17
- IV. **Guest Presentations – none:** {4:29}
- V. **Public Input – 15 minutes total allotted for this item, 3 minute time limit per person, may be continued after Item VIII by board action:** A customer from 8428 Hwy 478 had a question regarding the monthly minimum water bill, Mr. Lopez and Mr. Nieto explained about options to avoid paying monthly bill, and he decided to pay this last bill and de-active meter for now. {21:56}
- VI. **General Manager's Reports:**
  - A. **Management Report:** The General Manager's Martin Lopez written report was in the board packet (attached), and he discussed it with the Board of Directors. {26:12}
  - B. **Finance Report:** Will be presented by Ms. Jackson next Board Meeting. {27:44}
  - C. **Operations Report:** Mr. Mike Lopez, Operations Manager handed out written report (attached) and reviewed it with the board. He reported that there are no major problems with the Lower Rio Grande PWWA system. {30:04}
  - D. **Projects Report:** Ms. Karen Nichols reviewed written report (attached) with the Board. {37:15}
- VII. **Unfinished Business:**
  - A. **Closed Session:** Postponed

1. **Motion to convene in closed session pursuant to NMSA 1978 10-15-1 (H)(7) regarding threatened or pending litigation – Roll Call Vote:**
2. **Motion to resume the open meeting and statement by the Chair that affirming that the matters discussed in the closed meeting were limited to those stated in the motion to close:**

**B. Appointment of new Director for the La Mesa area:** Postponed.

**VIII. New Business:**

**A. Resolution FY2011-13 - Open Meetings Act for FY12:** Mr. Lopez discussed the resolution and Ms. Pargas made a motion to adopt Resolution FY 2011-13 - Open Meetings Act for Fiscal Year 2012. Mr. Ruiz seconded motion and it carried on a vote of 4-0. {38:03}

**B. Resolution FY2011-14 - NMFA Desert Sands Vehicle Loan Assumption and Agreement Amendment:** Mr. Holguin made a motion and Mr. Ruiz seconded to adopt Resolution FY 2011-14. Motion carried on a vote of 4-0. {39:52}

**C. Resolution FY2011-15 - NMFA-USDA Refinance Loan No. 2601-PP & Loan Agreement:** Ms. Pargas made a motion to adopt Resolution FY2011-15 - NMFA-USDA Refinance Loan No. 2601-PP and Loan Agreement. Mr. Ruiz seconded the motion and it carried on a vote of 4-0. {41:10}

**D. Resolution FY2011-16 - FY2012 Budget:** Mr. Ruiz made a motion to adopt Resolution FY 2011-16 and Mr. Holguin seconded. The motion carried on a vote of 4-0. {42:11}

**IX. Other discussion and agenda items for next meeting – Next meeting 6/15/11 at 10:00 a.m.:** Mr. Lopez informed the board of the Lower Rio Grande Mutual Board Meeting June 03, 2011. He also mentioned that the Gonzales Dairy bill was paid, and he had a call from a developer considering land near Hwy 478 & Joy. Mr. Mike Lopez stated that Board members uniforms are on back order. {44:02}

**X. Adjourn:** Mr. Holguin made a motion to adjourn, Ms. Pargas seconded and it carried on a vote of 4-0. Mr. Nieto declared the meeting adjourned at 4:50 p.m. {49:52}

Date Minutes Approved: \_\_\_\_\_

Directors Present:

\_\_\_\_\_  
Chairman Roberto M. Nieto

\_\_\_\_\_  
Vice- Chairman John Holguin

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Secretary Santos Ruiz

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Director Rosaura Pargas



**LRG PWWA  
Manager's Report  
June 15, 2011**

Tasks

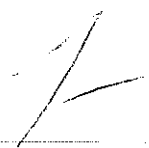
- Transfer of Assets (bank funds) from Associations
  - BLM permits are being processed
  - OSE notification of combine/commingle no hearing date
- Project Funding Applications
  - USDA additional information provide no LOC meeting the Berino-Del Cerro Water Project yet
  - Water Trust Board determined funding on June 23, 2011 (Loan/Grant combination and Match)
  - USDA answer to “Notice of Unfavorable Action” pertaining to the Mesquite sewer project-LOC completion by July 22, 2011, pending items are NMED review of plans and specs (request by RD although NMED does not do if no state funds are involved) and 2009 LOC
  - Sewer Line extension (Mesquite and Brazito) project waiting to meet with DAC prior to having a public meeting
- One Valley, One Vision 2040 Regional Plan
  - Presentation to LRGPWWA on July 20, 2011
  - Comments submitted by Karen
- Dona Ana County
  - Berino: June 29, 2011 at 6:00 pm

**BEFORE THE NEW MEXICO STATE ENGINEER**

IN THE MATTER OF THE APPLICATION BY ) HU No. 11-  
LOWER RIO GRANDE PUBLIC WATER WORKS )  
AUTHORITY FOR A PERMIT TO COMBINE ) OSE File No. LRG-3338, LRG-  
AND/OR COMMINGLE UNDERGROUND ) 5037, LRG-7575, LRG-7595,  
WATER WITHIN THE LOWER RIO GRANDE ) LRG-7644 Combined  
UNDERGROUND BASIN OF THE STATE OF )  
NEW MEXICO )

**REQUEST FOR PRE-HEARING SCHEDULING CONFERENCE**

1. Assigned Hearing Examiner: Hearing Examiner not yet assigned.
2. Type of case: Protested
3. Dates of hearings presently set: None.
4. Special matters to be heard upon this request: A Pre-hearing Scheduling Conference to clarify issues, establish discovery and hearing schedule, and explore settlement or mediation.
5. Estimated total time required: 1 hour.
6. Attached is a separate sheet listing name, firm, capacity, address, and telephone number, if known, of all other parties entitled to notice.

  
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Gabriel Wade  
Administrative Litigation Unit  
Office of the State Engineer  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Telephone: (505) 827-3824  
Facsimile: (505) 827-3520

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Request for Pre-hearing Scheduling Conference was mailed via first-class mail to all parties listed below on this 10th day of June, 2011.



Cleo Castellano  
Administrative Litigation Unit

**APPLICANT**

Martin Lopez, General Manager  
Lower Rio Grande Public  
Water Works Authority  
P.O. Box 2646  
Anthony, NM 88021  
(575) 571-3628

**PROTESTANT**

c/o Dennis J. Rogers, President  
Jornada Water Co.  
225 E. Idaho No. 15  
Las Cruces, NM 88005  
(505) 524-2920



United States Department of Agriculture  
Rural Development  
State of New Mexico

June 7, 2011

Mr. Roberto Nieto, Chairman  
Mesquite MDWCA  
C/O Lower Rio Grande PWWA  
325 Holguin Road  
Vado, NM 88072-7220

Re: Notice of Unfavorable Action – Dated April 22, 2011  
Meeting with Agency (5/11/2011)

Dear Mr. Nieto:

USDA, Rural Development (RD) has carefully considered the information presented at your May 11, 2011 meeting with our Agency. As you are aware, RD had planned to de-obligate all of the unliquidated obligations (loans and grants) on your Wastewater System Improvements Project due to non performance. The original RD letter of Conditions was issued July 2, 2003. All extensions had expired and Lower Rio Grande Public Water Works Authority failed to meet the Letter of Conditions and bring the project to completion. Nearly eight years had elapsed. At the 5/11/2011 meeting, you provided new evidence and assured RD the project could now proceed in a timely manner. Based on this, RD will grant an extension of 45 days from the date of this letter to meet all of the Letter of Conditions for this project. Failure to meet all conditions by July 22, 2011 will result in all funds being de-obligated. No additional extensions will be granted.

If you have any questions, please contact me at (575) 522-8775, Ext. No. 6.

Sincerely,

A handwritten signature in cursive script that reads "Clyde F. Hudson".

CLYDE F. HUDSON  
Area Director  
Rural Development

cc: CP Program Director, RD - Albuquerque, NM  
File

2510 N. Telshor Blvd. • Las Cruces, NM 88011  
575-522-8775, Ext. 6 • Fax – 557-521-8354 • TDD - 505-761-4938

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Washington, DC 20250-9410 or call 800-795-3272 (voice) or 202-720-6382 (TDD)

## NOTICE OF PROPOSED REGULATIONS AND PUBLIC HEARING

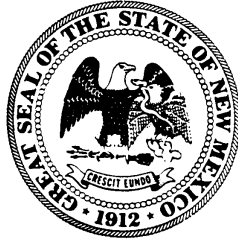
OFFICE OF THE STATE ENGINEER  
P.O. BOX 25102  
SANTA FE, NEW MEXICO 87504-5102  
(505) 827-6120  
[www.ose.state.nm.us](http://www.ose.state.nm.us)

The State Engineer has released proposed amendments to Rules and Regulations Governing the Use of Public Underground Waters for Household or Other Domestic Use (19.27.5 NMAC). The proposed amendments were developed to address the non-advertised transfer of consumptive use water rights to domestic wells within domestic well management areas and changing the point of diversion from a domestic well to a mutual domestic water users association in accordance with NMSA 1978, section 72-12-1.1.

Amendments are proposed to the following sections of the Rules and Regulations Governing the Use of Public Underground Waters for Household or other Domestic Use: (7) Definitions, (9) Application for a 72-12-1.1 Domestic Well Permit, (10) Application for Permit to Transfer a Valid, Existing Water Right Into a 72-12-1.1 Domestic Well Permit - Maximum Diversion of Water from the 72-12-1.1 Domestic Well Not to Exceed Three Acre-Feet Per Annum, (11) Other 72-12-1.1 Domestic Well Permit Applications, (13) Action of the State Engineer, (14) Domestic Well Management Area, and (15) Enforcement.

The proposed regulations are available at the Office of the State Engineer in Santa Fe, Albuquerque, Las Cruces, Roswell, Deming, Aztec, and Cimarron. The proposed regulations are also posted on the Office of the State Engineer web site and may be accessed at [www.ose.state.nm.us/water\\_info\\_rights\\_rules.html](http://www.ose.state.nm.us/water_info_rights_rules.html). Click on the link under Proposed. To request that a copy of the rules and regulations be sent to you in the mail or by email, please contact David Heber at 505-827-6102 or e-mail [david.heber@state.nm.us](mailto:david.heber@state.nm.us).

A public hearing will be held on the above described proposed and amended regulations at the State Capitol (Roundhouse), Santa Fe, New Mexico, on July 21, 2011 beginning at 10:00 am. Any person who is or may be affected by these proposed rules and regulations may appear and testify. Written comments may be submitted at the public hearing. If you are an individual with a disability who is in need of special assistance or accommodation to attend or participate in the hearing, please contact David Heber at (505) 827-6102. The Office of the State Engineer requests ten days advance notice to provide any special accommodation.



**BEFORE THE NEW MEXICO STATE ENGINEER**

**IN THE MATTER OF THE PROPOSED )  
AMENDMENT OF RULES GOVERNING )  
THE USE OF PUBLIC UNDERGROUND )  
WATERS FOR HOUSEHOLD OR OTHER )  
DOMESTIC USE )**

**FINDINGS OF FACT, ORDER  
AND NOTICE OF PROPOSED RULEMAKING**

**COMES NOW** John R. D'Antonio, Jr., P.E., State Engineer of the State of New Mexico, pursuant to NMSA 1978, Section 72-2-8(D), and makes the following **FINDINGS OF FACT**:

1. In accordance with NMSA 1978, Sections 72-2-8, 72-2-12 and 72-2-17, the State Engineer is authorized to adopt regulations, appoint hearing examiners, and conduct hearings on matters that are properly before him. A designated hearing examiner shall have such power as may be delegated by the State Engineer to regulate all proceedings before him, and to perform acts and take all necessary or proper measures for the efficient and orderly conduct of such proceedings.

2. The existing Rules and Regulations Governing the Use of Public Underground Waters for Household or Other Domestic Use adopted by the State Engineer do not adequately address:

a. The issuance of permits and the use of public underground waters as authorized under NMSA 1978, Section 72-12-1.1;

b. The non-noticed transfer of consumptive use water rights to domestic wells within domestic well management areas; or

c. Changing the point of diversion from a domestic well to a mutual domestic water users association.

3. It is necessary and appropriate to provide clear standards and regulations for the use of underground waters for household or other domestic use. Therefore, the existing rules should be amended so that consistent and detailed rules will be in place.

4. The proposed amendments have been reviewed by counsel for the State Engineer.

5. A detailed synopsis of the substantive proposed amendments is attached as Exhibit 1 to this Order.

6. A public hearing should be held on the proposed amendments to existing rules 19.27.5 NMAC (Domestic Wells). Accordingly, the proposed amendments should be made publicly available, and a synopsis of the substantive proposed amendments should be published together with notice of the public hearing.

**WHEREFORE**, the State Engineer hereby **ORDERS**:


A. The proposed amended rules shall be filed for public inspection in the Office of the State Engineer in each District field office on or before May 16, 2011, and notice of the proposed rulemaking and public hearing shall be mailed to each person included in the file of interested persons in the Office of the State Engineer.

B. A synopsis of the substantive proposed amendments shall be published together with notice of public hearing in a minimum of five newspapers of general circulation once a week for two consecutive weeks, and notice shall also be published in the New Mexico Register. Publication shall be completed by June 30, 2011.

C. A public hearing on the proposed amendments shall be held in Santa Fe, New Mexico beginning at 10:00 a.m. on July 21, 2011.

Witness my hand and seal this 6<sup>th</sup> day of May, 2011.



  
John R. D'Antonio, Jr., P.E.  
State Engineer of New Mexico



## EXHIBIT I

### SYNOPSIS OF SUBSTANTIVE PROPOSED AMENDMENTS TO 19.27.5 NMAC (DOMESTIC WELLS)

Following is a synopsis of the sections of the substantive proposed amendments to rules governing the use of public underground waters for household or other domestic use. Proposed procedural amendments are not included in this synopsis.

#### 19.27.5.7 DEFINITIONS

##### 19.27.5.7(C)

The last sentence of subsection C is amended by referencing a “specifically defined geographic area as provided by New Mexico statutes, orders of the court, or the written rules and regulations of the state engineer.” The word “written” has been added for clarity.

##### 19.27.5.7(D)

The following definition is added: “Association: A water users association established under the sanitary projects act (Section 3-29-2(B) NMSA).” This amendment specifies the type of entity that may qualify to change the point of diversion for a domestic well under § 72-12-1.1. Subsequent subsections are renumbered accordingly.

##### 19.27.5.7(J)

The following definition is added: “Infrastructure capacity area: An area defined by the association, based on factors determining the capacity to provide water, including, but not limited to, the location of existing lines, adequacy of existing infrastructure, the availability of water and water rights, and as reviewed by and then filed with the state engineer.” This amendment specifies that an “infrastructure capacity area” is an area defined by an association based on factors that determine the capacity to provide water. See 19.27.5.11(E)(2).

### **19.27.5.9 APPLICATION FOR A 72-12-1.1 DOMESTIC WELL PERMIT**

The introduction removes the State Engineer's express authority to impose additional or more restrictive limitations on domestic wells. The State Engineer should not have cause to impose further limitations, in light of the proposed amendments.

#### **19.27.5.9(D)**

The introduction to subsection (D) removes the State Engineer's express authority to impose additional or more restrictive limitations on domestic wells. The State Engineer should not have cause to impose further limitations, in light of the proposed amendments.

#### **19.27.5.9(D)(1)**

The existing rule limits a household to diverting 1.0 acre foot per annum from a domestic well. The amendment would allow a household up to 3.0 acre feet per annum, if the applicant can demonstrate to the satisfaction of the state engineer that the combined diversion from domestic wells would not impair existing water rights. If the applicant cannot meet this burden, then the permitted diversion shall be limited to 1.0 acre feet per annum. The purpose of this amendment is to allow a household to divert additional water, under limited circumstances.

#### **19.27.5.9(D)(4)**

This amendment cites the statutory authority for transferring water rights into a domestic well permit. Because only valid, existing consumptive use water rights may be transferred, there is no limitation as to the transferable quantity.

### **19.27.5.10 RESERVED**

The section titled Application for Permit to Transfer a Valid, Existing Water Right Into a 72-12-1.1 Domestic Well Permit – Maximum Diversion of Water From the 72-12-1.1 Domestic Well

Not to Exceed Three Acre Feet Per Annum was transferred to 19.27.5.14(E). The amendments are explained at 19.27.5.14(E), below.

**19.27.5.11 OTHER 72-12-1.1 DOMESTIC WELL PERMIT APPLICATIONS**

Introductory language stating that water rights developed under domestic well permits are limited was deleted as being extraneous.

**19.27.5.11(E)**

The introduction to this subsection clarifies that only a point of diversion or alternate point of diversion may be changed.

**19.27.5.11(E)(1)**

This amendment would generally allow a domestic well owner to file an application with the state engineer to change the point of diversion of his or her domestic well pursuant to a settlement.

**19.27.5.11(E)(2)**

Subsection 19.27.5.11(E)(2) addresses a change in the point of diversion of a domestic well that is located within an association's infrastructure capacity area to the point of diversion of a well that is owned and operated by the association.

**19.27.5.13 ACTION OF THE STATE ENGINEER**

**19.27.5.13(B)**

This amendment limits the conditions of approval that may be attached to a domestic well permit to those specifically enumerated.

**19.27.5.13(B)(8)**

This amendment reinstates certain uses, provided that the applicant does not exceed his or her diversion right and the uses are not prohibited by court order.

**19.27.5.14 DOMESTIC WELL MANAGEMENT AREA**

**19.27.5.14(A) & (C)**

These amendments would remove the requirement that a valid existing water right be transferred in order for an applicant to drill a new domestic well within a domestic well management

area.**19.27.5.14(D)**

This amendment reflects the renumbering of sections only.

**19.27.5.14(E)**

In order to expedite the transfer of valid existing water rights to a domestic well within a domestic well management area, public notice is not required and protest is not allowed so long as the increased maximum diversion would not exceed one acre-foot per annum. This amendment would also reduce the increased maximum diversion from three acre-feet per annum to one acre-foot per annum, except as provided at 19.27.5.9(D)(1).

**19.27.5.15 ENFORCEMENT**

**19.27.5.15(B)**

This amendment promotes the public health by indicating that the state engineer will not enforce a priority call against indoor domestic uses.

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 27   UNDERGROUND WATER**  
**PART 5        THE USE OF PUBLIC UNDERGROUND WATERS FOR HOUSEHOLD OR OTHER**  
**DOMESTIC USE IN ACCORDANCE WITH SECTION 72-12-1.1 NMSA**

**19.27.5.1      ISSUING AGENCY:** State Engineer.  
[19.27.5.1 NMAC - N, 8-15-2006]

**19.27.5.2      SCOPE:** The requirements for the use of public underground waters in accordance with Section 72-12-1.1 NMSA.  
[19.27.5.2 NMAC - N, 8-15-2006]

**19.27.5.3      STATUTORY AUTHORITY:** Section 72-12-1 NMSA provides that the water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, is declared to belong to the public and to be subject to appropriation for beneficial use. Section 72-12-1 NMSA further provides for the limited use of relatively small amounts of public underground waters in the irrigation of not to exceed one acre of noncommercial trees, lawn or garden, and for household or other domestic use. Section 72-12-1.1 NMSA sets out the requirements for the filing of applications and the issuance of permits for the use of public underground waters for the irrigation of not to exceed one acre of noncommercial trees, lawn or garden, and for household or other domestic use. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations to implement and enforce any provision of any law administered by him.  
[19.27.5.3 NMAC - N, 8-15-2006]

**19.27.5.4      DURATION:** Permanent.  
[19.27.5.4 NMAC - N, 8-15-2006]

**19.27.5.5      EFFECTIVE DATE:** August 15, 2006, unless a later date is cited at the end of a section.  
[19.27.5.5 NMAC - N, 8-15-2006]

**19.27.5.6      OBJECTIVE:** To update the existing regulations and establish new regulations for the use of public underground waters for household or other domestic use in accordance with Section 72-12-1.1 NMSA.  
[19.27.5.6 NMAC - N, 8-15-2006]

**19.27.5.7      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.      72-12-1.1 domestic well permit:** A permit issued for domestic use in accordance with Section 72-12-1.1 NMSA or its predecessor statutes. Included in this definition are 72-12-1.1 domestic well permits that have been adjudicated.

**B.      72-12-1.1 domestic well:** The point of diversion authorized under a 72-12-1.1 domestic well permit.

**C.      Administrative guidelines:** A compilation of policies and procedures intended to provide guidance to office of the state engineer personnel for processing pending and future water rights applications in a specifically defined geographic area. The administrative guidelines shall not limit the state engineer's authority to take alternative or additional actions relating to the management of the water resources of the specifically defined geographic area as provided by New Mexico statutes, orders of the court, or the written rules and regulations of the state engineer.

**D.      Association:** A water users association established under the Sanitary Projects Act (Section 3-29-2(B) NMSA).

**[D.] E.      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.

**[E-] F. Domestic use:** The use of water for household purposes or for the irrigation of not to exceed one acre of noncommercial trees, lawn, garden, or landscaping. Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility are included in this definition. This definition does not include the use of underground water from a well used primarily for livestock watering as provided for under Section 72-12-1.2 NMSA.

**[F-] G. Domestic well management area:** A bounded area overlying a stream-connected aquifer, specifically described by section, township and range, or by other land survey descriptions, that requires special water resource protection as determined by the state engineer.

**[G-] H. Household:** A single-family residence including outbuildings such as guesthouses, barns, and sheds.

**[H-] I. Hydrologic unit:** A physically definable, continuous and interconnected surface water ~~and/or~~ or groundwater system. A hydrologic unit may consist of an aquifer, a group of interconnected aquifers, and any hydrologically connected springs, streams, rivers, lakes or other surface water bodies.

**J. Infrastructure capacity area:** An area defined by an association, based on factors determining the capacity to provide water, including, but not limited to, the location of existing lines, adequacy of existing infrastructure, the availability of water and water rights, and as reviewed by and then filed with the state engineer. [19.27.5.7 NMAC - N, 8-15-2006; A, xx-xx-2011]

**19.27.5.8 FEE SCHEDULE:** An application for permit shall be accompanied by one of the following filing fees:

- A.** \$125 for an application for a 72-12-1.1 domestic well permit.
- B.** \$75 for an application for permit for replacement 72-12-1.1 domestic well.
- C.** \$125 for an application for permit for supplemental 72-12-1.1 domestic well.
- D.** \$75 for an application for permit to repair or deepen a 72-12-1.1 domestic well.
- E.** \$75 for an application for permit to amend the type of domestic use authorized under a 72-12-1.1 domestic well permit.
- F.** \$200 for an application for permit to transfer a valid, existing water right into a 72-12-1.1 domestic well permit pursuant to 19.27.5.10 NMAC. [19.27.5.8 NMAC - N, 8-15-2006]

**19.27.5.9 APPLICATION FOR A 72-12-1.1 DOMESTIC WELL PERMIT:** The following requirements apply to applications filed for 72-12-1.1 domestic well permits. In addition to the requirements listed in this section and part, the drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restrictive limitations imposed by a court, or by lawful municipal or county ordinance ~~[, or by the state engineer, such as but not limited to by state engineer order or administrative guidelines].~~

**A. Form - content:** An application for a 72-12-1.1 domestic well permit shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and mailing address of the applicant, the type of domestic use being applied for, the number of households to be served, the location of the proposed well, the name of the owner of the land on which the well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the well, the outside diameter of the well casing, and other information the state engineer deems necessary. The state engineer may require an application to be accompanied by a deed or purchase contract and plat of survey on file with the appropriate county.

**B. Well location:** The well location shall be described using universal transverse mercator (NAD 83), latitude and longitude, or the New Mexico state plane coordinate system. In addition, the well location shall be described by the lot and block number of the lot where the well is to be located (if applicable). An application to drill a well on land owned by another person, the state of New Mexico, the federal government, or another entity shall be accompanied by written consent of the landowner.

**C. Multiple use well:** A 72-12-1.1 domestic well permit may be conditioned to allow the diversion of water from an existing well previously permitted for livestock, irrigation, or any other beneficial purpose of use other than domestic use. The diversion of water from a multiple use well made pursuant to a 72-12-1.1 domestic well permit shall be separately metered.

**D. Amount of water:** The drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restrictive limitations imposed by a court, or by lawful municipal or county ordinance ~~[, or by the state engineer, such as but not limited to by state engineer order or administrative guidelines].~~ The maximum permitted diversion of water from a 72-12-1.1 domestic well that is not subject to additional or more restrictive limitations shall be as follows:

(1) **Single household:** The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall ~~[not exceed 1.0 acre-foot per annum]~~ be 1.0 acre-foot per annum, except in hydrologic units where applicant can demonstrate to the satisfaction of the state engineer that the combined diversion from domestic wells will not impair existing water rights, then the maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall be 3.0 acre-foot per annum.

(2) **Multiple households:** The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 1.0 acre-foot per annum per household served. The maximum combined diversion from a 72-12-1.1 domestic well serving three or more households shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) **Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility:** The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 1.0 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of 72-12-1.1 domestic well permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or the irrigation of crops grown for commercial sale.

(4) **Transfer of a valid, existing water right into a 72-12-1.1 domestic well permit:** The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with ~~[19.27.5.10 NMAC] Sections 72-5-23, 72-5-24, 72-12-3, and 72-12-7 NMSA, as applicable,~~ for the purpose of increasing the permitted diversion from the 72-12-1.1 domestic well ~~[up to a maximum of three acre feet per annum].~~

**E. Multiple 72-12-1.1 domestic well permits on a legal lot of record:** An application for a new 72-12-1.1 domestic well permit where the proposed point of diversion is to be located on the same legal lot of record as an operational 72-12-1.1 domestic well shall be treated as an application for a supplemental well pursuant to Subsection B of 19.27.5.11 NMAC. A legal lot of record is a parcel of land that is created in a manner consistent with the zoning and planning laws in place at the time the parcel is created.

**F. 72-12-1.1 domestic well permit to accompany a house or other dwelling constructed for sale:** A person or other entity planning to construct and sell a house or other dwelling may apply for a 72-12-1.1 domestic well permit to provide water to the dwelling. The permit holder may use water under a 72-12-1.1 domestic well permit for activities directly related to the construction of the dwelling only if the 72-12-1.1 domestic well permit is specifically conditioned to allow such use of water from the well. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. At any one time, a person or other entity may not hold more than ten 72-12-1.1 domestic well permits for a well to accompany a house or other dwelling constructed for sale. If a person or other entity holds ten or more such 72-12-1.1 domestic well permits, additional 72-12-1.1 domestic well permits will be issued as written notices are filed on existing permits that reduce the number of such permits held by the person or entity to less than ten.

[19.27.5.9 NMAC - N, 8-15-2006; A, xx-xx-2011]

**19.27.5.10** ~~[APPLICATION FOR PERMIT TO TRANSFER A VALID, EXISTING WATER RIGHT INTO A 72-12-1.1 DOMESTIC WELL PERMIT— MAXIMUM DIVERSION OF WATER FROM THE 72-12-1.1 DOMESTIC WELL NOT TO EXCEED THREE ACRE FEET PER ANNUM: The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed three acre feet per annum. The water right to be transferred shall be from the same hydrologic unit that will be impacted by the diversion of water from the 72-12-1.1 domestic well. The determination of whether a proposed transfer of a water right is occurring within the same hydrologic unit shall be made by the office of the state engineer. For a 72-12-1.1 domestic well permit located within a domestic well management area or other geographic area specifically defined in a state engineer order or administrative guidelines,~~

~~only a valid, existing consumptive use water right located within the domestic well management area or other specifically defined geographic area may be transferred.~~

~~**A. Form content:** Applications shall be prepared 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 number(s), 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 to be retired, the consumptive use amount to be transferred, the move from purpose of use, the legal description of the move from place of use, the location of the move from point of diversion, the location of move to point of diversion, and other information the state engineer deems necessary. An application for a 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 NMSA or 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.~~

~~**B. Well location:** The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC.~~

~~**C. Transfer process:** Consistent with the issuance of a 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor protest allowed for an application for permit to transfer a valid, existing consumptive use water right into a 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed three acre feet per annum. In all other respects, the application for such a transfer shall be processed in a manner consistent with Section 72-12-3 NMSA and no change may be made to the point of diversion, place of use, or purpose of use authorized under such a permit except as provided for in Subsection E of 19.27.5.11 NMAC.] [RESERVED]~~

~~[19.27.5.10 NMAC - N, 8-15-2006; Repealed, xx-xx-2011]~~

**19.27.5.11 OTHER 72-12-1.1 DOMESTIC WELL PERMIT APPLICATIONS:** Other 72-12-1.1 domestic well permit applications may be made only as specifically provided for in this section. Permit applications made in accordance with this section require an existing 72-12-1.1 domestic well permit in good standing. Applications shall be prepared on a form prescribed by the state engineer and the applicant shall be the owner of record of the 72-12-1.1 domestic well permit. The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC. The publication of a legal notice is not required for a permit application made in accordance with Subsection A, B, C, or D of this section. A permit issued pursuant to Subsections A, B, or C of this section for an existing 72-12-1.1 domestic well permit in good standing will not affect the maximum authorized diversion amount from the 72-12-1.1 domestic well. ~~[Because 72-12-1.1 domestic well permits are issued without public notice and opportunity for protests, the rights developed there under are limited and no]~~ No change may be made to the point of diversion, place of use, or purpose of use authorized under a 72-12-1.1 domestic well permit except as provided for in Subsection E of this section.

**A. Application for permit to replace a 72-12-1.1 domestic well:** A permit from the state engineer is required to drill a replacement 72-12-1.1 domestic well. The state engineer shall require the well being replaced to be plugged or capped in accordance with the regulations of the office of the state engineer. The replacement well shall be permitted by the state engineer to serve the same authorized legal lot(s) of record and to serve the same type of domestic use as the 72-12-1.1 domestic well being replaced. An application shall include the file number of the well to be replaced, the name and mailing address of the applicant, the type of domestic use, the location of the existing well, the proposed location of the replacement well, the name of the owner of the land on which the replacement well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the replacement well, the outside diameter of the replacement well casing, the reason for replacing the well, and other information the state engineer deems necessary. The state engineer may require a meter on a replacement 72-12-1.1 domestic well as a condition of the new permit.

**B. Application for permit for supplemental 72-12-1.1 domestic well:** A permit from the state engineer is required to drill a supplemental 72-12-1.1 domestic well. The total combined diversion from the 72-12-1.1 domestic well and the supplemental well shall not exceed the maximum diversion amount authorized under the 72-12-1.1 domestic well permit. An application shall include the name and mailing address of the applicant, the type of domestic use, the state engineer file number, the location of the existing well, the authorized maximum diversion amount of the domestic well to be supplemented, the existing capacity of the well to be supplemented, the proposed location of the supplemental well, the name of the owner of the land on which the supplemental well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the supplemental well, the outside diameter of the supplemental well casing, and other information the state engineer deems necessary. The



state engineer shall require the installation of a meter on both the supplemental well and the 72-12-1.1 domestic well being supplemented as a condition of the new permit.

**C. Application for permit to repair or deepen a 72-12-1.1 domestic well:** A permit from the state engineer is required to repair or deepen a 72-12-1.1 domestic well. A permit to repair a 72-12-1.1 domestic well is required for any type of repair work involving the use of a drill rig. A permit is not required for work on pumping equipment. An application shall include the state engineer file number of the 72-12-1.1 domestic well to be deepened or repaired, the name and mailing address of the permit holder, the location of the well, the name and license number of the well driller (if known), a description of the work to be performed, the proposed depth (if the application is for deepening the well), and other information the state engineer deems necessary. The state engineer may require a meter on a 72-12-1.1 domestic well to be repaired or deepened as a condition of the new permit.

**D. Application for permit to amend the type of domestic use of a 72-12-1.1 domestic well permit:** A permit from the state engineer is required to amend the type of domestic use between single household, multiple household, or drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility. An application shall include the state engineer file number of the 72-12-1.1 domestic well permit, the name and mailing address of the applicant, the current authorized type of domestic use, the proposed type of domestic use, and other information deemed necessary by the state engineer. The state engineer may require a meter on a 72-12-1.1 domestic well as a condition of the new permit when the type of domestic use is changed.

**E. ~~[Change point of diversion and place and purpose of use: The point of diversion and place and purpose of use permitted under or adjudicated for a 72-12-1.1 domestic well permit may be changed only for those wells drilled prior to the date specified, and in a manner specifically authorized, in either:]~~ Change in point of diversion or alternate point of diversion: The point of diversion of a permitted, declared, or adjudicated 72-12-1.1 domestic well may be changed only:**

**(1)** pursuant to a water rights settlement approved by the state engineer and a court, for those wells drilled prior to a date specified and in a manner specifically authorized by the settlement, where such settlement requires the plugging of each 72-12-1.1 domestic well for which the point of diversion is changed and prohibits the drilling of new 72-12-1.1 domestic wells within the specifically described exclusive service area; or

~~**(2)**—a state engineer order issued to a mutual domestic water consumers association for the purpose of promoting the development of a regional water supply system; the mutual domestic water consumers association shall demonstrate that it has complied with all applicable laws governing its reorganization as a regional water supply system; the state engineer order shall require the plugging of each 72-12-1.1 domestic well for which the point of diversion is changed and prohibit the drilling of new 72-12-1.1 domestic wells within the exclusive service area specifically described in said state engineer order.]~~

**(2)** pursuant to 72-12-7 NMSA by an owner of a 72-12-1.1 domestic well located within the infrastructure capacity area of an association, to change the point of diversion into a well owned and operated by an association in accordance with the following provisions:

**(a)** the change in point of diversion shall be made upon application to the state engineer and upon a showing that the change will not impair existing rights and will not be contrary to conservation of water within the state and will not be detrimental to the public welfare of the state; the application may be granted only after notice and opportunity for hearing are provided as prescribed by Subsection D of Section 72-12-3 NMSA;

**(b)** an association that allows the point of diversion of a domestic well to be changed to that of an association's well shall file with the state engineer at the time of application a map depicting the boundaries of the association's infrastructure capacity area and updated maps of any expansion of the boundaries of the association's infrastructure capacity area, if not already on file;

**(c)** only domestic wells located within the boundaries of the infrastructure capacity area of the association that were permitted prior to the time the association files its infrastructure capacity area boundaries or an update of those boundaries with the state engineer may have their points of diversion changed to the association's point of diversion; once the association files its infrastructure capacity area map or updated map with the state engineer, the state engineer shall issue permits only for new domestic wells to be located on property from which no domestic well point of diversion has been previously changed.

[19.27.5.11 NMAC - N, 8-15-2006; A, xx-xx-2011]

**19.27.5.12 CHANGE OF OWNERSHIP:** In the event of any change of ownership of a 72-12-1.1 domestic well permit the new owner shall file a change of ownership form with the state engineer in accordance with Section 72-1-2.1 NMSA. If the new owner fails to file a change of ownership in a timely manner the state engineer may

cancel the 72-12-1.1 domestic well permit. The state engineer may provide written notice to a new owner of a 72-12-1.1 domestic well permit of the requirement to file change of ownership.  
[19.27.5.12 NMAC - N, 8-15-2006]

**19.27.5.13 ACTION OF THE STATE ENGINEER:** The state engineer shall act on all applications that are properly filed.

**A. Rejection of application:** The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area where a restriction on the use of water or the drilling of new wells has been imposed by a court. The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area of water quality concern where a prohibition on or a recommendation against the drilling of new wells has been established by a government entity.

**B. Approval of application - conditions of approval:** The state engineer may set forth conditions of approval for a 72-12-1.1 domestic well permit, which may include ~~[but shall not be limited to the following]~~ any of the following:

(1) The casing shall not exceed 7 inches outside diameter except under specific conditions in which reasons satisfactory to the state engineer are shown.

(2) The well shall be set back a minimum of 50 feet from any existing well of other ownership.

(3) If artesian water is encountered, all rules and regulations pertaining to the drilling and casing of artesian wells shall be complied with except under specific conditions in which reasons satisfactory to the state engineer are shown.

(4) The well shall be constructed by a driller licensed in the state of New Mexico. A licensed driller shall not be required for the construction of a driven well when the outside diameter of the casing does not exceed two and three-eighths ( $2\frac{3}{8}$ ) inches.

(5) Pursuant to Section 72-8-1 NMSA, the permittee shall allow the state engineer and his representatives entry upon private property for the performance of their respective duties, including access to the well for meter reading and water level measurement.

(6) The drilling of the well and amount and uses of water permitted are subject to such limitations as may be imposed by the courts or by lawful municipal and county ordinances which are more restrictive than the conditions of this permit and applicable state engineer regulations.

(7) This permit authorizes the drilling of a well to accompany a house or other dwelling being constructed for sale. Water may only be diverted for activities directly related to the construction of the dwelling that the well will serve. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. This condition shall automatically expire when the office of the state engineer accepts a change of ownership for filing in the name of the new owner intending to divert water from the well. No water may be diverted from the 72-12-1.1 domestic well by the new owner until a change of ownership has been recorded at the office of the state engineer.

~~[(8) Use shall be limited strictly to household, drinking and sanitary purposes; water shall be conveyed from the well to the place of use in a closed conduit and the effluent returned to the underground so that it will not appear on the surface. No irrigation of lawns, gardens, trees or use in any type of pool or pond is authorized under this permit.]~~

~~[(9)]~~ (8) The permit holder shall ensure that a well record has been filed with the state engineer no later than twenty days after the completion of the well drilling.

~~[(10)]~~ (9) Any diversion of water made in excess of the authorized maximum diversion amount in any calendar year shall be repaid with twice the amount of the over-diversion during the following calendar year. Repayment shall be made by either: (a) reducing the diversion during the following calendar year from the 72-12-1.1 domestic well that is the source of the over-diversion; or (b) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year. The plan for the proposed repayment shall be on a form prescribed by the state engineer.

~~[(11)]~~ (10) The permit is subject to cancellation for non-compliance with the conditions of approval or if otherwise not exercised in accordance with the terms of the permit.

~~[(12)]~~ (11) The right to divert water under this permit is subject to curtailment by priority administration as implemented by the state engineer or a court.

~~(13)~~ **(12)** A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit.

**C. Metering requirements:** When a metering device is required by the state engineer on a 72-12-1.1 domestic well, the totalizing meter shall be installed before the first branch of the discharge line from the well. The meter installation shall be in accordance with the specifications adopted by the state engineer. The holder of the 72-12-1.1 domestic well permit shall file a meter installation and inspection report with the office of the state engineer, documenting the make, model, serial number, date of installation, and initial reading of the meter prior to diversion of water. Pumping records for the 3 preceding calendar months shall be submitted to the appropriate state engineer district office on or before the 10<sup>th</sup> of January, April, July, and October of each year unless a different reporting period has been established in the conditions of approval of the permit.

(1) The state engineer shall require a meter on each new 72-12-1.1 domestic well permitted:

- (a) within a domestic well management area;
- (b) when a metering requirement is imposed by the courts;
- (c) for drinking and sanitary domestic use that is incidental to the operations of a governmental, commercial, or non-profit facility;

(d) for multiple households domestic use;

(e) as a supplemental 72-12-1.1 well; the 72-12-1.1 domestic well being supplemented shall also require a meter; and

(f) as a multiple use well such that the diversion of water for domestic use is separately metered.

(2) The state engineer may require a meter on a new 72-12-1.1 domestic well:

- (a) permitted for single household domestic use;
- (b) permitted to accompany a residence or other dwelling constructed for sale;
- (c) as a condition of a permit to repair or deepen a 72-12-1.1 domestic well;
- (d) as a condition of a permit to amend the type of domestic use of a 72-12-1.1 domestic well permit; or

(e) as a condition of a permit to transfer a valid, existing water right to a 72-12-1.1 domestic well permit in accordance with 19.27.5.10 NMAC.

**D. Well setbacks:** All new 72-12-1.1 domestic wells shall be set back a minimum of 50 feet from an existing well of other ownership unless a variance has been granted by the state engineer. The state engineer may grant a variance for a replacement well or to allow for maximum spacing of the well from a source of groundwater contamination. All 72-12-1.1 domestic wells shall be set back from potential sources of contamination in accordance with the rules and regulations of the New Mexico environment department.

**E. Well identification tag:** The state engineer may require that a 72-12-1.1 domestic well be tagged with a well identification tag. If a well tag is required, the tag shall be affixed in plain view and the permit holder shall be responsible for maintaining the well identification tag.

**F. Permit expiration:** Each 72-12-1.1 domestic well permit shall be conditioned by the state engineer to require the 72-12-1.1 domestic well be completed and a well record be filed with the state engineer within one year of the date of issuance of the permit. A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit. No extension of time shall be granted by the state engineer, and if a 72-12-1.1 domestic well permit expires, a new permit shall be obtained and the appropriate fee paid.

**G. Well record:** The well driller shall keep a record of each well drilled as the work progresses. The well driller shall file a complete well record with the state engineer and the permit holder no later than twenty (20) days after completion of the well drilling. A well log shall be filed for each hole drilled, including a drill hole that does not encounter water. It is the responsibility of the permit holder to ensure that the well record for the 72-12-1.1 domestic well has been properly filed with the state engineer.

[19.27.5.13 NMAC - N, 8-15-2006; A, xx-xx-2011]

**19.27.5.14 DOMESTIC WELL MANAGEMENT AREA:** As hydrologic conditions require, the state engineer may declare all or part of a stream connected aquifer as a domestic well management area to prevent impairment to valid, existing surface water rights. The additional protection of mined aquifers is managed by the state engineer through the declaration of a critical management area and the development of administrative guidelines for the critical management area.

**A. Administrative guidelines:** The state engineer shall develop administrative guidelines for each declared domestic well management area. The administrative guidelines will be based on the hydrologic conditions

of the domestic well management area and the valid, existing water rights located therein. The administrative guidelines shall set forth the maximum diversion amounts and other additional restrictions~~[, including any requirement for the transfer of a valid, existing consumptive use water right,]~~ that will be conditioned on new 72-12-1.1 domestic well permits issued within the management area. Administrative guidelines for a domestic well management area and accompanying maps shall be available at each district office of the state engineer. The administrative guidelines shall also be posted on the office of the state engineer web-site (www.ose.state.nm.us).

**B. Declaration of domestic well management area:** The state engineer shall hold a public meeting within the geographic area of a proposed domestic well management area before he declares the area and adopts the administrative guidelines. Notice of the public meeting and a copy of the draft administrative guidelines for the domestic well management area shall be posted at the appropriate district office a minimum of 30 days prior to the date of the meeting. Notice of the public meeting and of the draft administrative guidelines will be published in a newspaper of general circulation in the area being declared once a week for three consecutive weeks, with final publication occurring not less than 10 days before the date of the public meeting. Persons who are or may be affected by the proposed declaration of the domestic well management area may appear and comment. Written public comments on the proposed domestic well management area and the administrative guidelines shall be filed with the office of the state engineer on or before the date of the public meeting. The additional restrictions and maximum diversion amounts established for new 72-12-1.1 domestic well permits in the draft administrative guidelines shall be adopted by the state engineer on an interim basis. The interim period shall start on the day the draft administrative guidelines are posted for public inspection and shall end on the day the state engineer adopts the administrative guidelines or otherwise signs an order canceling the interim period. Any changes made to the administrative guidelines during the interim period, including a change in the geographic area of a domestic well management area, shall be applied retroactively to each new 72-12-1.1 domestic well permit issued within the domestic well management area during the interim period.

**C. Amount of water:** Except as otherwise provided or restricted in Paragraph (2) of Subsection C, and Subsections D and E of this section, the maximum diversion of water from a new 72-12-1.1 domestic well within a domestic well management area shall not exceed 0.25 acre-foot per annum. The state engineer may establish a maximum diversion amount for a new 72-12-1.1 domestic well in a domestic well management area that is less than 0.25 acre-foot per annum. ~~[As a condition of approval of a new 72-12-1.1 domestic well permit within a domestic well management area, the state engineer may require an applicant to transfer a valid, existing consumptive use water right to the proposed 72-12-1.1 domestic well in accordance with 19.27.5.10 NMAC.]~~

(1) **Single household:** The maximum permitted diversion of water from a new 72-12-1.1 domestic well permitted to serve one household shall not exceed 0.25 acre-foot per annum.

(2) **Multiple household:** The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 0.25 acre-foot per annum per household served. The maximum combined diversion from such a 72-12-1.1 domestic well shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) **Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility:** The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 0.25 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or irrigation of crops grown for commercial sale.

**D. Transfer of a valid, existing water right to a 72-12-1.1 domestic well permit:** The applicant for a new 72-12-1.1 domestic well permit or the holder of an existing 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with ~~[19.27.5.10 NMAC]~~ Subsection E of 19.27.5.14 NMAC. Only a valid, existing, consumptive use water right located within the domestic well management area may be transferred.

~~[E. — Requirement to transfer water right: As a condition of approval of a new 72-12-1.1 domestic well permit within a domestic well management area, the state engineer may require an applicant to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with 19.27.5.10 NMAC. Only a valid, existing consumptive use water right located within the domestic well management area may be~~

~~transferred. The consumptive use amount transferred shall be considered as the maximum diversion amount that may be permitted from the new 72-12-1.1 domestic well. In a domestic well management area where the state engineer has established a transfer requirement, the state engineer shall reject any application for a new 72-12-1.1 domestic well permit if such application is not accompanied by an application or permit to transfer a valid, existing consumptive use water right to the proposed 72-12-1.1 domestic well.]~~

**E. Application for permit to transfer a valid, existing water right into a 72-12-1.1 domestic well permit - maximum diversion of water from the 72-12-1.1 domestic well not to exceed one acre-foot per annum:**

~~The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed one acre-foot per annum. The water right to be transferred shall be from the same hydrologic unit that will be impacted by the diversion of water from the 72-12-1.1 domestic well. The determination of whether a proposed transfer of a water right is occurring within the same hydrologic unit shall be made by the office of the state engineer. For a 72-12-1.1 domestic well permit located within a domestic well management area or other geographic area specifically defined in a state engineer order or administrative guidelines, only a valid, existing consumptive use water right located within the domestic well management area or other specifically defined geographic area may be transferred.~~

~~(1) **Form - content:** Applications shall be prepared 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 number(s), 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 to be retired, the consumptive use amount to be transferred, the move-from purpose of use, the legal description of the move-from place of use, the location of the move-from point of diversion, the location of move-to point of diversion, and other information the state engineer deems necessary. An application for a 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 NMSA or 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.~~

~~(2) **Well location:** The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC.~~

~~(3) **Transfer process:** Consistent with the issuance of a 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor protest allowed for an application for permit to transfer a valid, existing consumptive use water right into a 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed one acre-foot per annum. However, with such transfer applications, documentation shall be provided by the applicant, pursuant to Section 72-5-24.1 NMSA. In all other respects, the application for such a transfer shall be processed in a manner consistent with Section 72-12-3 NMSA and no change may be made to the point of diversion, place of use, or purpose of use authorized under such a permit except as provided for in Subsection E of 19.27.5.11 NMAC.~~

~~[19.27.5.14 NMAC - N, 8-15-2006; A, xx-xx-2011]~~

**19.27.5.15 ENFORCEMENT:** The holder of a 72-12-1.1 domestic well permit is subject to possible fines and remedial action including cancellation of the permit for any failure to comply with the terms and conditions of the 72-12-1.1 domestic well permit or any applicable provision of 19.27.5 NMAC or Chapter 72 NMSA.

**A. Diversion of water in excess of the authorized maximum diversion amount:** The holder of a 72-12-1.1 domestic well permit who diverts water in excess of the authorized maximum diversion amount in any calendar year shall repay twice the amount of the over-diversion during the following calendar year. Repayment shall be made by either:

(1) reducing diversions during the following calendar year from the 72-12-1.1 domestic well that is the source of the over-diversion; or

(2) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year on a form prescribed by the state engineer; such repayment water shall be derived from either:

(a) reduction of the consumptive use associated with the actual average historic use of a valid, existing water right with an irrigation purpose of use, by fallowing of a specific tract of land that has been consistently historically irrigated; or

(b) reduction of the diversion and associated historical average consumptive use of a valid water right with a purpose of use other than irrigation.



**B. Active water resource management:** ~~[In any stream system where the state engineer has appointed a water master, the water master shall have authority to administer all 72-12-1.1 domestic well permits. All 72-12-1.1 domestic well permits shall be subject to all applicable provisions of district specific active water resource management regulations, including all enforcement provisions.]~~ In any water district or subdistrict declared by the state engineer in accordance with Section 72-3-2 NMSA, and for which district or subdistrict the state engineer has adopted final district specific regulations in accordance with 19.25.13.10 and 19.25.13.23 NMAC, the water master shall have authority to curtail out-of-priority outdoor domestic uses consistent with the district or subdistrict specific rules.

**C. Cancellation of permit:** The state engineer may cancel a 72-12-1.1 domestic well permit upon failure of a permit holder to comply with any permit condition of approval or any applicable provision of 19.27.5 NMAC or Chapter 72 NMSA. The state engineer may cancel a 72-12-1.1 domestic well permit and proceed with enforcement action if a permit holder diverts water in excess of the authorized maximum amount and fails to repay the over-diversion in a time and manner acceptable to the state engineer.  
[19.27.5.15 NMAC - N, 8-15-2006; A, xx-xx-2011]

**19.27.5.16 APPEAL PROCESS:** In accordance with Section 72-2-16 NMSA, if, without holding a hearing, the state engineer enters a decision, any person aggrieved by the decision is entitled to a hearing, if a request for a hearing is made in writing within thirty days of receipt of notice of the decision from the state engineer. Hearings shall be held before the state engineer or his appointed examiner pursuant to 19.25.2 NMAC. No appeal shall be taken to the district court until the state engineer has held a hearing and entered his decision in the hearing.  
[19.27.5.16 NMAC - N, 8-15-2006]

**19.27.5.17 LIBERAL CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.  
[19.27.5.17 NMAC - N, 8-15-2006]

**19.27.5.18 SEVERABILITY:** If any portion of 19.27.5 NMAC is found to be invalid, the remaining portion of 19.27.5 NMAC shall remain in force and not be affected.  
[19.27.5.18 NMAC - N, 8-15-2006]

#### **HISTORY OF 19.27.5 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, Article 1-15, Applications Not Requiring Publication and Notice - Domestic and Livestock Use - Amount; Article 1-16, Retention of Old Well for Domestic Use - Requirements, originally filed with the Supreme Court Law Library 11/1/66. Filed with the State Records Center 6/27/91.

Amendment 21 to SE-66-1, Article 1-15, Applications Not Requiring Publication of Notice; 1-15.1, Qualified Applicant; 1-15.2, Amount of Water; 1-15.3, Purpose of Use; 1-15.4, Multiple Residential Use; 1-15.5, Well to be Drilled for Buildings or Dwelling Units Constructed For Sale; 1-15.7, Permits Requiring Installation of a Meter; 1-15.8, Limitations Under Court Decrees; Article 1-16, Retention of Old Well for Domestic Use - Requirements; filed with the State Records Center 7/29/83.

#### **History of Repealed Material:**

SE-66-1, Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico, Article 1-15, Applications Not Requiring Publication of a Notice; 1-15.1, Qualified Applicant; 1-15.2, Amount of Water; 1-15.3, Purpose of Use; 1-15.4, Multiple Residential Use; 1-15.5, Well to be Drilled for Buildings or Dwelling Units Constructed For Sale; 1-15.7, Permits Requiring Installation of a Meter; 1-15.8, Limitations Under Court Decrees; Article 1-16, Retention of Old Well for Domestic Use - Requirements, filed 7/29/83 - Repealed 8/15/2006.



# LOWER RIO GRANDE

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## Public Water Works Authority

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325 Holguin Road Vado, New Mexico 88072 (575) 571-3628

### **RESOLUTION 2011-17 ADOPTION OF REQUIRED COMMUNITY DEVELOPMENT BLOCK GRANT POLICIES**

**WHEREAS**, municipalities or other entities that accept Community Development Block Grant (CDBG) Funds must adopt certain federal policies mandated by the US Department of Housing and Urban Development Small Cities CDBG Program; and

**WHEREAS**, the Lower Rio Grande Public Water Works Authority wishes to apply for CDBG funds; and

**WHEREAS**, the Lower Rio Grande Public Water Works Authority wishes to ensure compliance with federal CDBG Small Cities funding guidelines by adopting the following required policies:

- Citizen Participation Plan -** encourages citizen participation with particular emphasis on low and moderate income persons; outlines the objectives and plan to implement those objectives
- Fair Housing Plan -** affirms commitment to further the efforts of Fair Housing which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status or national origin
- Residential Anti-Displacement & Relocation Assistance Plan -** certifies that it will replace all occupied and vacant occupiable low/moderate-income dwelling unites demolished or converted to a use other than as a low/moderate income housing as a direct result of activities assisted with Housing and Community Development Funds
- Section 3 Plan -** encourages the use of small local businesses and the hiring of low income residents of the community

**NOW, THEREFORE, BE IT RESOLVED**, that the Lower Rio Grande Public Water Works Authority Board of Directors adopts the above four CDBG policies which will have to be re-adopted annually.

**PASSED, APPROVED, SIGNED AND ADOPTED** at a duly called and convened  
regular meeting of

the governing body of the Lower Rio Grande Public Water Works Authority in Vado,  
New Mexico this 15th day of June, 2011.

*Seal:*

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Chairman Roberto M. Nieto

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Vice- Chairman John Holguin

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Secretary Santos Ruiz

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Director Rosaura Pargas

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Director - VACANT