

**TITLE 19                    NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 25                ADMINISTRATION AND USE OF WATER - GENERAL**  
**PROVISIONS**  
**PART XX                    NAMBÉ-POJOAQUE-TESUQUE WATER MASTER DISTRICT:**  
**ACTIVE WATER RESOURCE MANAGEMENT**

**19.25.XX.1    ISSUING AGENCY:** Office of the State Engineer.

**19.25.XX.2    SCOPE:** This rule shall be read in conjunction with the settlement agreement and as a supplement to 19.25.13 NMAC, and shall apply to all administrable surface water and groundwater rights within the Nambé-Pojoaque-Tesuque water master district.

**19.25.XX.3    STATUTORY AUTHORITY:** This rule is established pursuant to constitutional authority set forth in Article 16 of the Constitution of New Mexico, and statutory authority enumerated in Chapter 72, including, but not limited to, Sections 72-1-1 (1941); 72-1-2 (1907); 72-2-6 (1965); 72-2-8 (1976); 72-2-9 (1907); 72-2-9.1 (2003); 72-2-18 (2007); 72-3-1 (1919); 72-3-2 (2007); 72-3-3 (1953); 72-3-4 (1965); 72-3-5 (1941); 72-5-3 (1941); 72-5-4 (1941) 72-5-5 (1965); 72-5-18 (2007); 72-5-20 (1941); 72-5-22 (1907); 72-5-23 (1986); 72-5-24 (1985); 72-5-25 (1971); 72-5-28 (2002); 72-5-39 (1965); 72-6-1 - 72-6-7 (2014); 72-7-1 (1971); 72-8-1 (1907); 72-9-2 (1907); 72-12-1 (2003); 72-12-2 (1931); 72-12-8 (D) (2002); 72-12-15 (1949); 72-12-16 (1949); 72-12-18 (1953); 72-12-24 (1959); 72-12-27 (1967) NMSA 1978 and the authority provided under the settlement agreement in *State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66cv6639 (D.N.M.) (dated April 19, 2012).

**19.25.XX.4    DURATION:** Permanent.

**19.25.XX.5    EFFECTIVE DATE:** \_\_\_\_\_

**19.25.XX.6    OBJECTIVE:** The objective of this rule is to provide for the distribution and administration of the available water supply and administrable water rights in the NPT basin, including the prevention of illegal diversions, waste and over-diversions, and to implement the terms and conditions of the settlement agreement and the final decree entered in *State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66cv6639 (D.N.M.).

**19.25.XX.7    DEFINITIONS:** Unless otherwise defined below or in 19.25.13.7 NMAC, all words herein shall be given their customary and accepted meanings. All uses of masculine pronouns or possessives shall be held to include the feminine.

**A.            “Aamodt case”** means the civil action filed in the United States District Court for the District of New Mexico in *State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de*

*Tesuque v. R. Lee Aamodt, et al.*, No. 66cv6639 (D.N.M.) (the general adjudication of water rights of the Nambé-Pojoaque-Tesuque stream system).

**B.** “**Aamodt Litigation Settlement Act**” means the Claims Resolution Act of 2010, Pub. L. No. 11-291, tit. VI, §§ 601, 626, 124 Stat. 3064, 3134-56 (2010).

**C.** “**Acequia**” means a community ditch under the laws of New Mexico and Section 73-2-27 NMSA 1978.

**D.** “**Administrable water right**” or “**water right**” means a right to the use of water or a right to impound, store or release water determined by the decree court in subfile orders, the PFD, or the final decree, or a right established pursuant to a permit issued by the state engineer or recognized by a license issued by the state engineer.

**E.** “**Administration**” is defined in Subsection C of 19.25.13.7 NMAC. Administration includes:

- (1) direct flow administration,
- (2) storage water administration,
- (3) depletion limit administration, and
- (4) alternative administration. Alternative administration includes, but is not limited to, Pueblo alternative administration, defined in Subsection LL of 19.25.xx.7 NMAC and Tesuque alternative administration, set forth in 19.25.xx.122 NMAC.

**F.** “**AFY**” means acre-feet of water per year.

**G.** “**Agricultural use**” means the use of surface or groundwater for cultivating the soil and growing crops or irrigating pasture for livestock grazing. Agricultural uses do not include domestic, community, commercial, industrial or livestock uses.

**H.** “**CIR**” or “**consumptive irrigation requirement**” means 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.

**I.** “**Commercial or industrial use**” means the diversion and consumption of water in connection with any activity that provides, or offers to provide, goods or services for consideration, not including domestic uses incidental to a commercial or industrial facility.

**J.** “**Compliance order**” means a written order issued by the state engineer pursuant to Section 72-2-18 NMSA 1978 or the settlement agreement to an owner of record or person making an illegal diversion, violating a requirement or prohibition of Chapter 72 NMSA 1978, a regulation, code, order or special order adopted by the state engineer pursuant to Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer pursuant to law, an order entered by the decree court adjudicating a water right, or the terms of the settlement agreement, partial final decree or final decree.

**K.** “**Connection fund**” or “**Pojoaque valley water utility connect fund**” means the Pojoaque valley water utility connection fund administered by Santa Fe county to pay the cost of connecting well water right owners to the county water utility.

**L.** “**County water utility**” or “**CWU**” means the water utility organized by the county to do the following:

- (1) receive water distributed by the regional water authority (“RWA”);

(2) provide the water received under Subparagraph (1) to customers on non-Pueblo land in the NPT basin; and carry out any other activities in accordance with the Aamodt Litigation Settlement Act.

**M. “Curtailment order”** means a verbal or written order from the water master directing an owner of record or person diverting water to immediately curtail such diversion, in whole or in part.

**N. “Decree court”** means the United States District Court for the District of New Mexico in the Aamodt case.

**O. “Domestic use”** means the use of water for indoor and outdoor household purposes, including water used for drinking, sanitation, the irrigation of not to exceed one acre of noncommercial trees, lawn, garden, or landscaping, the care and feeding of household pets, and such uses of water incidental to a governmental, commercial or non-profit facility. Domestic uses do not otherwise include the use of water for agricultural purposes, and do not include any use of water for commercial, industrial, community or livestock watering purposes.

**P. “Election” or “elect”** means a choice to connect or not connect to the county water utility under the terms of the settlement agreement.

**Q. “FDR” or “farm delivery requirement”** means the quantity of water, exclusive of effective rainfall, that is delivered to the farm headgate or is diverted from a source of water that originates on the farm itself, such as a well or spring, to satisfy the CIR of crops grown on the farm during the irrigation accounting year, or as otherwise provided by permit.

**R. “Final decree”** means the *Final Judgment and Decree of the Water Rights of the Nambé, Pojoaque, and Tesuque Stream System* entered by the decree court.

**S. “Household”** means a single or multi-family residence including outbuildings such as guest houses, barns, and sheds.

**T. “Hydrologic model”** means the hydrologic model developed by the state of New Mexico and the United States pursuant to the settlement agreement, as updated and further developed by the state engineer for the administration and use of water in the NPT basin, and for determining the effects of administrative actions subject to the settlement agreement. Any generalized hydrologic analysis adopted by the state engineer for the NPT district shall be based upon the hydrologic model.

**U. “Illegal diversion”** means any of the following:

(1) a diversion that exceeds the quantity of an administrable water right or beneficial use requirements;

(2) a diversion in violation of a rule, statute, license, permit, PFD, final decree, subfile order, or other court order, other than a diversion described in paragraph (1) of this Subsection;

(3) in the case of an acequia or other entity entitled to divert and distribute water on behalf of its membership or constituency, any diversion that exceeds the sum total quantity of all the administrable water rights in that acequia or other entity;

(4) waste;

(5) a diversion in violation of a curtailment order or compliance order;

(6) a diversion that is out-of-priority;

(7) any diversion from an unauthorized point of diversion;

(8) a diversion for conveyance to an unauthorized place of use or for an unauthorized purpose of use;

(9) a re-diversion or re-use of return flow other than reuse specifically provided for in an administrable water right;

(10) a diversion of groundwater in excess of the agreed amount of use pursuant to an election made under the settlement agreement; or

(11) a diversion of surface or groundwater that is contrary to the alternative administration set forth in the settlement agreement.

**V. “Interfere” or “interference”** means a material adverse effect on the quality, divertible quantity, or the cost of diversion of surface water historically used to satisfy surface water rights subject to the settlement agreement.

**W. “Livestock use”** means the diversion and consumption of water for the care and feeding of domestic animals such as cattle or horses. Livestock use does not include the use of water in connection with the operation or maintenance of feedlots or agricultural use of water.

**X. “Mitigation fund”** means the fund created and administered by the state to mitigate impairment to non-Pueblo groundwater rights as a result of a new or changed Pueblo use of water on Pueblo land.

**Y. “Mutual domestic water consumers association” or “MDWCA”** means an association organized under or subject to the provisions of the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

**Z. “Nambé Pojoaque Tesuque basin” or “NPT basin”** means the Nambé-Pojoaque-Tesuque stream system, also known as the Pojoaque basin, which is the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which rainfall and runoff flow into arroyos, drainages, and named tributaries that drain to:

(1) the Rio Pojoaque; or

(2) the two unnamed arroyos immediately south of the Rio Pojoaque; and

(3) the two arroyos (including the Arroyo Alamo) that are immediately to the

north of the confluence of the Rio Pojoaque and the Rio Grande.

The term “NPT basin” includes the San Ildefonso Eastern Reservation recognized by the Act of September 14, 1961, 75 Stat. 505, Sec. 8.

**AA. “Nambé Pojoaque Tesuque water master district” or “NPT district”** is the same geographic area as the NPT basin.

**BB. “Non-Pueblo water right”** means a water right held by a non-Pueblo owner.

**CC. “Offset water”** means any quantity of water provided to offset adverse stream depletion effects caused by a particular diversion of water.

**DD. “Out-of-priority”** is defined under Subsection U of 19.25.13.7 NMAC.

**EE. “Owner of record”** means a person named in a subfile order or in a permit, license, change of ownership form or other documentation filed with the state engineer identified as the current owner of an administrable water right. For purposes of administration by the water master, the term owner of record shall include a lessee or other person authorized to use or manage the use of water, or the representative of an acequia or other entity authorized to divert water on behalf of its membership or constituency. The owner of record may or may not be the legal current owner of the water right.

**FF. “Partial final decree” or “PFD”** means the *Partial Final Judgment and Decree of the Water Rights of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque* entered by the decree court on March 23, 2016 (docket no. 10547).

**GG.** “**PDR**” or “**project diversion requirement**” means the annual quantity of water necessary to be diverted from a source of surface water to satisfy the farm delivery requirement and to account for off-farm ditch conveyance delivery losses during the irrigation accounting year.

**HH.** “**Person**” means an individual, multiple individuals, legal entity, Pueblo or combination thereof.

**II.** “**Post-1982 well agreement**” means the *Post-1982 Domestic Wells Stipulation and Settlement Agreement* (May 27, 1999) (docket no. 5516) adopted and approved by the decree court (Oct. 4, 2001) (docket no. 5549) to provide for the appointment of a water master, metering of domestic wells under well permits issued by the state engineer after January 13, 1983, and agreed-upon amounts of water for domestic use without restriction as to indoor or closed system use.

**JJ.** “**Pre-basin well**” means a well in the NPT basin in existence prior to November 29, 1956.

**KK.** “**Priority administration**” is defined in Subsection 5 of 19.25.13.7 NMAC.

**LL.** “**Pueblo alternative administration**” means the form of alternative administration whereby the Pueblos agree to share water pursuant to section 4 of the settlement agreement.

**MM.** “**Pueblos**” means collectively the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque. “**Pueblo**” means each of the Pueblos of Nambé, Pojoaque, San Ildefonso or Tesuque.

**NN.** “**Pueblo land**” means any real property that is:

- (1) held in trust by the United States for a Pueblo within the NPT basin:
  - (a) prior to March 21, 2016, the date on which the decree court approved the settlement agreement, or
  - (b) on or after March 21, 2016, if the real property is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter 5) or within the exterior boundary of any territory set aside for the Pueblo by law, executive order or court decree;
- (2) owned by a Pueblo within the NPT basin:
  - (a) prior to March 21, 2016, the date on which the decree court approved the settlement agreement, or
  - (b) acquired by a Pueblo on or after March 21, 2016, if the real property is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter 5) or within the exterior boundary of any territory set aside for the Pueblo by law, executive order or court decree;
- (3) owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the NPT basin that is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter 5); or
- (4) within the exterior boundaries of any real property located outside the NPT basin set aside for a Pueblo by law, executive order or court decree if the land is contiguous to land held in trust by the United States for that Pueblo as of January 1, 2005.

**OO.** “**Pueblo water rights**” means the water rights of the Pueblos as determined in the PFD, including the following:

- (1) “**Alternative water**” means an amount of water equivalent to the Pueblo of Pojoaque’s supplemental water rights and which the Pueblo of Pojoaque may receive through the regional water system;

(2) **“Existing basin use rights”** means those water rights as defined in the PFD;

(3) **“First priority rights”** means those water rights as defined in the PFD;

(4) **“Future basin use rights”** means those water rights as defined in the PFD;

(5) **“Reserved water rights”** means those water rights of the Pueblos of Nambé and San Ildefonso to reserved water rights to consumptively use the surface and groundwater of the NPT, to be diverted and used in accordance with the settlement agreement;

(6) **“Supplemental Pueblo right”** means those water rights as defined in the PFD. The Pueblo of Pojoaque has a supplemental right to consumptively use groundwater from wells located on the Pueblo of Pojoaque or surface water allocated to the Pueblos from Nambé Reservoir until such time as an equivalent amount of alternative water is available for delivery to the Pueblo through the regional water system;

**PP. “Red tag”** means a tag affixed to a point of diversion by the water master to notify an owner of record or person that any further diversion of water is illegal.

**QQ. “Regional water authority”** or **“RWA”** means the Pojoaque basin regional water authority organized by the Pueblos and county of Santa Fe to operate and maintain the diversion and treatment facilities, transmission pipelines and other facilities of the regional water system.

**RR. “Regional water system”** means the regional water system as defined in the Aamodt Litigation Settlement Act.

**SS. “Report on anticipated uses”** means the report filed by each Pueblo each year describing the anticipated uses of that Pueblo’s water rights for a calendar year.

**TT. “Section 4 protection”** means the protection provided non-Pueblo water rights during Pueblo alternative administration of the first priority rights of the Pueblos pursuant to section 4 of the settlement agreement.

**UU. “Section 72-12-1 well”** means a well permitted by the state engineer under Sections 72-12-1.1, 72-12-1.2, and 72-12-1.3 NMSA 1978, or their predecessor statutes.

**VV. “Settlement agreement”** means the settlement agreement approved by the decree court on March 21, 2016 (docket no. 10543) and incorporated into the decree court’s partial final decree entered on March 23, 2016 (docket no. 10547), as authorized, ratified and confirmed by Section 602(18) of the Aamodt Litigation Settlement Act.

**WW. “Settlement party”** means any person that signed the settlement agreement or authorized a representative to sign the settlement agreement, and their successors in interest.

**XX. “State engineer”** means the New Mexico state engineer or his designated appointee.

**YY. “Subfile order”** means an order entered by the decree court adjudicating a non-Pueblo water right.

**ZZ. “TBI letter”** means written notice to the water master of the acreage to be irrigated under a ditch during a calendar year.

**AAA. “Tributary”** means the Rio Pojoaque, Rio Cuyamungue, Rio Tesuque, Rio Nambé, Rio Chupadero, or Rio en Medio.

**BBB. “Water master”** means the Nambé-Pojoaque-Tesuque water master or any of the sub-district water masters of the Nambé-Pojoaque-Tesuque water master district.

**19.25.XX.8 CONSTRUCTION:** This rule shall be construed consistent with, and subject to, the authority of the state engineer for the administration of water in the state of New Mexico, and the

authority of the state engineer under the settlement agreement and final decree. This rule shall not be construed as imposing any limitation on the authority of the state engineer to administer water rights created under state law, act on water rights applications pursuant to state law, permit water rights under state law, or order the curtailment, in whole or in part, of the use of water pursuant to state law or under the terms of the settlement agreement or final decree. This rule shall be construed consistent with the settlement agreement and the Constitution of New Mexico.

**19.25.XX.9 SEVERABILITY:** If any provision of this rule is found to be invalid, the remainder shall continue to be in effect.

**19.25.XX.10 KNOWLEDGE OF AND COMPLIANCE WITH STATUTES, RULES, REGULATIONS AND CODES:** It shall be the responsibility of all persons to know of, and comply with, all applicable statutes, rules, regulations and codes.

**19.25.XX.11 through 19.25.16.100 [RESERVED]**

**19.25.XX.101 GENERAL AUTHORITY AND DUTIES OF THE NPT DISTRICT WATER MASTER:**

**A.** The water master has the general authority and duties set out in 19.25.13.16 NMAC and 19.25.13.17 NMAC. In addition, the water master has the authority and duties described in this Section.

**B.** The water master may, as necessary to effect administration, and implementation of and compliance with the terms and conditions of the settlement agreement, the PFD and the final decree:

- (1) supervise all diversions from surface and underground water sources;
- (2) curtail surface and groundwater diversions to ensure compliance;
- (3) issue verbal or written orders requiring installation, calibration, repair, and replacement of adequate headgates and surface water measurement devices at all surface water diversion works, and all groundwater diversion measuring devices as necessary;
- (4) issue verbal or written orders requiring calibration, repair, replacement or installation of meters in accordance with the requirements of Subsection C of 19.27.5.13 NMAC to measure the amount of water diverted from each well;
- (5) issue or affix to points of diversion curtailment orders or red tags that provide notice of illegal diversions or diversions that are out of priority under priority administration or contrary to those allowed under the settlement agreement or final decree. Once a red tag has been affixed, the owner of record or person shall not divert water until the water master has removed the tag;
- (6) issue verbal or written curtailment orders to owners of record or persons making illegal diversions and document such illegal diversions;
- (7) issue verbal or written orders to achieve the objectives of this rule;
- (8) take any action necessary to close, cap, lock or otherwise temporarily disable any diversion headgate, pump, or equipment to ensure compliance, and affix to the diversion structure a red tag whenever the water master takes such action;
- (9) ensure compliance with applicable state engineer, water master or court orders;

(10) determine whether a new or changed Pueblo use of its first priority rights will interfere with any surface water rights eligible for section 4 protection, and the amount of any offsets required;

(11) determine if the change in point of diversion, purpose or place of use of Pueblo-owned state law water rights within the lands of a Pueblo will impair groundwater rights or interfere with any surface water rights. A determination by the water master of projected hydrologic effects from such changes to state water law rights within a Pueblo shall include consideration of remedies proposed by the Pueblo to reduce groundwater effects below the threshold level of impairment;

(12) enter private, public, or Pueblo lands to inspect, monitor, and maintain all measuring facilities and to operate, close or lock headgates;

(13) with respect to agricultural lands, enter upon private or public lands to verify the irrigability of lands designated by owners of record to be irrigated in a particular season and determine whether and to what extent irrigation occurs;

(14) maintain records, including records of elections made pursuant to the settlement agreement and subsequent compliance with such elections; and

(15) respond in a timely manner to requests for priority administration.

C. The water master may exercise any remedy available to him under applicable law to enforce compliance by owners of record and Pueblos with their obligations under the settlement agreement, the final decree, any election made pursuant to the settlement agreement, and this rule.

#### **19.25.xx.102 WATER MASTER REPORT:**

A. The water master shall by March first of each calendar year submit a report to the state engineer that describes all administrative action taken under or required by this rule in the previous calendar year.

B. The report shall be available to the public for inspection and copying at the office of the state engineer, at the requestor's expense by June first, and will be posted on the office of the state engineer's website.

C. The report shall include the information described in 19.25.13.26 NMAC and shall also include:

(1) the quantity of water diverted through each meter for each quarter and total for the year;

(2) a summary of all notices of alleged violation, and disposition thereof; and

(3) a summary of all other actions taken by the water master during the year,

including:

(a) the number of times each meter was actually inspected to verify proper operation;

(b) actions taken to verify reported meter readings including a description of procedures used for any spot-checking; and

(c) other information as appropriate.

#### **19.25.xx.103 REPORTING OF LANDS TO BE IRRIGATED:**

A. By March first of each year, the mayordomo of each acequia and the members of each private ditch shall notify the water master in writing of the acreage under that ditch to be irrigated (TBI letters) during that calendar year. TBI letters from acequias and members of private ditches shall be accompanied by maps that clearly identify the non-Pueblo lands to be irrigated that



year and the respective acreage of the tracts. Where the ditch serves as a source of irrigation water for both Pueblo and non-Pueblo lands, the TBI letters shall include only information for non-Pueblo lands.

**B.** Pueblo lands intended to be irrigated shall be reported by the Pueblos in their annual report on anticipated uses of water.

**C.** Based upon the information provided, the water master shall determine the maximum diversion rate for each ditch in the stream system required to meet the total projected demand that year, including the demand associated with valid impoundments under each ditch for livestock uses, if any. The water master shall notify the mayordomos of each acequia, the members of each private ditch, and the Pueblos of the maximum diversion rates for all ditches and post the maximum diversion rate for each ditch at the point of diversion or headgate of the ditch.

**19.25.xx.104 DISTRIBUTION OF WATER BY ACEQUIAS:** The water master shall regulate the rate and annual volume of diversions from the tributaries in the NPT basin by acequias in accordance with this rule. This rule shall not be construed to affect the internal management of acequias and the distribution of water by acequias in accordance with Section 72-9-2 NMSA 1978.

**19.25.xx.105 GENERAL PRINCIPLES FOR USE AND ADMINISTRATION OF SURFACE WATER AND GROUNDWATER:** These general principles apply to the administration of all surface water rights and groundwater rights in the NPT basin.

**A.** The NPT basin is fully appropriated and there shall be no new appropriations of surface or groundwater.

**B.** No surface or groundwater diverted within the NPT basin may be delivered for use outside the NPT basin other than for Pueblo use on Pueblo land.

**C.** Diversions from the Rio Grande shall not be considered to be diversions within the NPT basin.

**D.** Any water rights diverted by the regional water authority within the NPT basin, whether based on state or federal law, including contractual rights to water, shall be administered at the point of diversion in accordance with state law and regulation.

**E.** For agricultural uses, the amount of water shall not exceed 4.65 AFY per acre diverted by the ditch at the point of diversion from the source of surface water (PDR), or 3.35 AFY per acre delivered at the farm headgate or well head (FDR), or a consumptive irrigation requirement of 1.84 AFY per acre (CIR), whichever is less.

**F.** For non-agricultural uses, the consumptive use amount shall be deemed to be equal to the amount of the diversion. The diversion amount shall not exceed the consumptive use amount unless a return flow plan is approved by the state engineer.

**G.** The priority and amount of water for all surface water rights is the priority and amount of water adjudicated in the final decree.

**H.** The point of diversion, purpose or place of use of non-Pueblo water rights may only be changed in accordance with state law and this rule.

**I.** After March 21, 2016, permits for new groundwater points of diversion in the NPT basin may only be issued on the condition that the diversion be metered and only as set forth in this rule.

**J.** The replacement, repair or deepening of a well pursuant to a permit from the state engineer shall not be considered a change in point of diversion, purpose or place of use.

**K.** 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 1978 or Sections 73-3-1 through 73-3-11 NMSA 1978 shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA 1978.

**19.25.xx.106 METERING OF NON-PUEBLO AND PUEBLO WELLS:**

**A.** Pursuant to the well metering order for the NPT basin issued by the state engineer, each well owner of record shall install a totalizing meter in accordance with the requirements of Subsection C of 19.27.5.13 NMAC and any additional requirements of the state engineer, to measure the amount of water diverted from each well.

**B.** Each Pueblo shall install a totalizing meter to measure the amount of water diverted from each well located on Pueblo land, consistent with the well metering order for the NPT basin issued by the state engineer.

**C.** Each well owner of record shall file a meter installation and inspection report with the state engineer in accordance with the requirements of Subsection C of 19.27.5.13 NMAC and any additional requirements of the state engineer. Pursuant to the settlement agreement and the final decree, each Pueblo shall file a report with the state engineer consistent with the requirements of Subsection C of 19.27.5.13 NMAC .

**D.** Each well owner of record shall submit meter readings to the state engineer in accordance with the requirements of Subsection C of 19.27.5.13 NMAC and any additional requirements of the state engineer. Pursuant to the settlement agreement and the final decree, each Pueblo shall file a report with the state engineer consistent with the requirements of Subsection C of 19.27.5.13 NMAC.

**E.** The requirements of this Section shall also apply to all new wells drilled on Pueblo land after the effective date of this rule and a meter shall be installed on such wells at the time the well is drilled.

**19.25.xx.107 DIVERSION, USE, AND ADMINISTRATION OF SURFACE WATER FOR NON-PUEBLO WATER RIGHTS:** Diversion, use, and administration of surface water for non-Pueblo water rights shall be subject to the following provisions.

**A. Change in point of diversion from surface water to groundwater for agricultural uses.** The state engineer may issue permits to change the point of diversion of a water right for agricultural use from surface water to groundwater, provided:

(1) Water rights from within the NPT basin are moved to the new point of diversion in accordance with state law and this rule;

(2) The priority and amount of the water rights that may be moved shall be determined under state law and shall be reduced in amount to account for historic supply at the original surface point of diversion.

**B. Change in point of diversion, purpose or place of use of surface water.**

(1) Section 4 protection and offset requirements for interference shall only apply to the amount of water that is determined to be the current use of water under a surface water right. The current use of water under a surface water right is the calculated average yearly use of water under the right for the five-year period immediately preceding any application to change the point of diversion, purpose or place of use of that right.

**19.25.xx.108 DIVERSION, USE, AND ADMINISTRATION OF GROUNDWATER FOR NON-PUEBLO WATER RIGHTS:**

**A. Determination of priority and amount.**

(1) The priority and the diversion amount for a Section 72-12-1 well, a pre-basin well or well drilled under a permit from the state engineer shall be the priority and amount adjudicated in the final decree or authorized in a subsequent permit or license issued by the state engineer, unless the use is limited by the terms of an election under the settlement agreement.

(2) If no amount is set forth in the final decree or in a subsequent permit or license, then the amount shall be the amount of historic beneficial use of water from the well.

**B. Determination of historic beneficial use.**

(1) If no specific amount of water is set forth in the final decree or in a subsequent permit or license, then the amount of historic beneficial use per household shall be presumed to be the following:

(a) 0.7 afy for pre-basin wells;

(b) 0.7 afy for Section 72-12-1 wells permitted before January 13, 1983;

(c) 0.7 afy for Section 72-12-1 wells permitted after January 13, 1983 that entered into the post-1982 well agreement;

(d) 0.5 afy for Section 72-12-1 wells permitted after January 13, 1983 that did not enter into the post-1982 well agreement.

(2) In no event shall the total diversion amount from a Section 72-12-1 well exceed 3 afy.

(3) Any owner of record seeking to prove an amount of historic beneficial use greater than the amounts set forth in Subsection (B)(1) of this Section shall provide the following information for review and evaluation by the water master:

(a) meter readings for the period of time from entry of the metering order for the NPT basin until three years after the entry of the metering order:

(b) a map of the area of the claimed beneficial use, prepared by either a licensed professional surveyor or licensed professional engineer in the state of New Mexico formatted as required by 19.26.2.24 NMAC; and

(c) any other documentation that demonstrates the history and continuity of historic beneficial use, and may include deeds, survey plats, affidavits or other evidence to substantiate the claim.

(4) The water master will determine the amount based upon evidence of the highest amount of historic beneficial use in one calendar year.

(5) Any historic beneficial use amount less than 0.5 afy is not subject to a reduction under the settlement agreement. An owner of record who elects to reduce historic beneficial use pursuant to an election made under the settlement agreement may be subject to restrictions no sooner than five years after the entry of the well metering order for the NPT basin, but in no event shall an owner of record be required to reduce below 0.5 afy.

**C. Elections relating to the settlement agreement and connection to county water utility.**

(1) An owner of record of a water right from a well used for domestic, commercial or industrial purposes may elect pursuant to the settlement agreement to connect to the county water utility for water service as soon as that service is available.

(2) Except for new groundwater points of diversion for domestic, commercial or industrial uses, an owner of record of a groundwater right shall not be required to connect to the county water utility and shall not be required to cease use of their well.

(3) An owner of record that becomes a settlement party that makes such an election and is in compliance with the terms of the election shall be eligible for protections under sections 4 and 3.1.7 of the settlement agreement.

**D. State engineer permits to replace, repair or deepen a well:**

(1) Section 72-12-1 well:

(a) Permits for replacement wells, or permits to deepen or repair a well, may be issued to Section 72-12-1 well owners of record until such time as those owners connect to the county water utility under the terms of the settlement agreement.

(b) No replacement well permit will be issued to a Section 72-12-1 well owner of record that makes an election to continue use of the well for domestic purposes in perpetuity, or to connect to the county water utility upon transfer of ownership of the property, until such well owner of record has provided documentation of compliance with all applicable county requirements.

(c) If the county water utility is unable to deliver water to an owner of record that has connected to the county water utility for water service, the CWU shall convey title to the water right back to the previous owner of record, who may apply to the state engineer for a permit to recommence diversions from the well or drill a replacement well for the purpose of diverting groundwater in the amount previously conveyed and permitted to the county water utility.

(2) Pre-basin or permitted wells (other than Section 72-12-1 wells): Permits for replacement wells, or permits to repair or deepen a well (other than Section 72-12-1 wells) may be issued in accordance with state law and rules, provided the well is metered and operated in compliance with any conditions of an applicable permit.

**E. New groundwater points of diversion.** Permits for new groundwater points of diversion for domestic, agricultural, commercial or industrial uses, including a permit for a Section 72-12-1 well, may be issued provided:

(1) Water rights from within the NPT basin are moved to the new groundwater point of diversion in accordance with state law and this rule;

(2) The priority and amount of the moved rights shall be determined under state law and reflect reductions in amount to account for historic supply; and

(3) The permitted diversions shall cease and the well owner of record shall connect to the county water utility as soon as water service is available.

(4) Existing mutual domestic water consumers associations and existing commercial users shall be required to cease the newly permitted diversion and connect to the county water utility once water service is available, unless they made an election to continue such water use under the terms of the settlement agreement and this rule.

(5) 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 1978 or Sections 73-3-1 through 73-3-11 NMSA 1978 shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA 1978.

**F. Change in point of diversion, purpose or place of use of groundwater.**

(1) The point of diversion, purpose or place of use of groundwater rights from a pre-basin well or well drilled under a permit from the state engineer, other than wells permitted under Section 72-12-1, may be changed in accordance with state law and this rule. The point of diversion, purpose or place of use of groundwater rights from a well permitted under Section 72-12-1 may only be changed in accordance with 19.25.XX110 NMAC.

(2) Upon any such change, section 4 protection shall not apply unless the new diversion is metered and operated in compliance with any applicable permit conditions and consistent with the terms of the settlement agreement.

**G. Supplemental groundwater points of diversion.**

(1) Permits for a supplemental point of diversion from groundwater for an agricultural use may be issued, provided:

(a) The total diversion from surface and groundwater is limited to the historic supply of the surface water diversion.

(b) If a surface water diversion is permitted to continue and is not metered, the acreage served by the supplemented and supplemental points of diversion is reduced by the percentage of deficiency in the historic supply.

(c) If a groundwater point of diversion is used to supplement another groundwater point of diversion, both diversions shall be metered.

**19.25.xx.109 CONVEYANCE OF OWNERSHIP OF GROUNDWATER RIGHTS FOR DOMESTIC USE TO THE COUNTY WATER UTILITY:**

**A. General Provisions.**

(1) Ownership of water rights for domestic use from a Section 72-12-1 well or a pre-basin well may be conveyed to the county water utility for the full or partial amount of the water right

(2) The CWU may change the point of diversion, place and purpose of use of the water rights by application to the state engineer.

**B. Section 72-12-1 wells.** The amount of the water right to be conveyed to the county water utility per household from each Section 72-12-1 well shall be limited to one of the following options:

(1) **Full amount for single household wells.** If a household elects to connect to the CWU and to no longer divert water from a Section 72-12-1 well, ownership of the full amount adjudicated shall be conveyed to the CWU. If no amount is specified in the final decree or determined pursuant to Subsection (B) of 19.25.XX.108 NMAC, the amount shall be presumed to be 0.5 afy per household.

(2) **Partial amount for single household wells.** If a household elects to connect to the CWU for indoor uses and to continue to divert a portion of its water right from a Section 72-12-1 well for outdoor use only, the household shall convey ownership of 0.3 afy to the CWU, as follows:

(a) A household with a water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right in the well from the Section 72-12-1 well for outdoor use only.

(ii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and if allowed, livestock watering.

(b) A household with an adjudicated water right for a single household that does not define a specific amount of water shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert up to 0.2 afy from the Section 72-12-1 well for outdoor use only.

(ii) The amount that may be diverted may exceed 0.2 afy per household based upon a determination of greater historic beneficial use by the water master pursuant to Subsection (B) of 19.25.XX.108 NMAC.

(iii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and, if allowed, livestock watering.

(3) **Full amount for multiple household wells.** If a household with a water right from a multiple household Section 72-12-1 well elects to connect to the CWU and to no longer divert water from the well, ownership of the full amount per household adjudicated shall be conveyed to the CWU. If no specific amount is defined in the final decree or determined pursuant to Subsection (B) of 19.25.XX.108 NMAC, the amount is presumed to be 0.5 afy per household (or as limited by the maximum amount for all households combined from the Section 72-12-1 well).

(4) **Partial amount for multiple household wells.** If a household with a water right from a multiple household Section 72-12-1 well elects to connect to the CWU for indoor uses and to continue to divert a portion of its water right from the well for outdoor use only, the household shall convey ownership of 0.3 afy to the CWU, as follows:

(a) A household with water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right in the well for outdoor use only (limited by the maximum amount for all households combined from the Section 72-12-1 well).

(ii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and if allowed, livestock watering.

(b) A household with an adjudicated water right from a multiple household Section 72-12-1 well that does not define a specific amount of water shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert up to 0.2 afy from the Section 72-12-1 well for outdoor use only (limited by the maximum amount for all households combined from the Section 72-12-1 well).

(ii) The amount that may be diverted may exceed 0.2 afy per household based upon a determination of greater historic beneficial use by the water master pursuant to Subsection (B) of 19.25.XX.108 NMAC.

(iii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and, if allowed, livestock watering.

**C. Pre-Basin Wells. Ownership of domestic use water rights from pre-basin wells may be conveyed to the CWU. The CWU may change the point of diversion, place and purpose of use of the water right by application to the state engineer. The amount of the water right to be conveyed to the county water utility from each pre-basin well shall be limited to one of the following options chosen by the owner of record:**

(1) **Full amount for single household wells.** If a household elects to connect to the CWU and to no longer divert water from a pre-basin well, the household shall convey ownership

of the full amount adjudicated to the CWU. For pre-basin wells that have not been adjudicated a specific amount of water in the final decree or determined pursuant to Subsection B) of 19.25.XX.108 NMAC, the amount is presumed to be 0.7 afy per well.

(2) **Partial amount for single household wells.** If a household elects to connect to the CWU and to continue to divert water from a pre-basin well for outdoor or other adjudicated uses only, the household shall convey ownership of 0.3 afy to the CWU as follows:

(a) A household with an adjudicated water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right in the well for outdoor or other adjudicated uses only.

(ii) The well shall be metered, not interconnected with the CWU water system, and unless otherwise adjudicated, the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden.

(b) For pre-basin wells that have not been adjudicated a specific amount of water, the amount of water conveyed to the CWU shall be 0.3 afy.

(i) The household may continue to divert up to 0.4 afy from the pre-basin well for outdoor or other adjudicated uses only.

(ii) The amount of the retained water right may exceed 0.4 afy per based upon a determination of greater historic beneficial use by the water master pursuant to Subsection B) of 19.25.XX.108 NMAC, reduced by the total amount of the water right conveyed to the CWU from the well.

(iii) The well shall be metered, not interconnected with the CWU water system, and unless otherwise adjudicated, the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden.

(3) **Full amount for multiple household wells.** If a household with a water right from a multiple household or shared pre-basin well elects to connect to the CWU and to no longer divert water from the well, ownership of the full amount per household adjudicated in the final decree shall be conveyed to the CWU. If no specific amount is defined in the final decree or determined pursuant to Subsection B) of 19.25.XX.108 NMAC, the amount is presumed to be 0.5 afy per household (or as limited by the maximum amount for all households combined from the pre-basin well).

(4) **Partial amount for multiple household wells.** If a household with a water right from a multiple household or shared pre-basin well elects to connect to the CWU for indoor uses and to continue to divert a portion of its water right from the well for outdoor or other adjudicated uses only, the household shall convey ownership of 0.3 afy to the CWU, as follows:

(a) A household with an adjudicated water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right in the well for outdoor or other adjudicated uses only (limited by the maximum amount for all households combined from the pre-basin well).

(ii) The well shall be metered, not interconnected with the CWU water system, and unless otherwise adjudicated, the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden.

(b) A household with an adjudicated water right from a multiple household pre-basin well that does not define a specific amount of water shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert up to 0.2 afy from the pre-basin well for outdoor or other adjudicated uses only (limited by the maximum amount for all households combined from the pre-basin well).

(ii) The amount that may be diverted may exceed 0.2 afy per household based upon a determination of greater historic beneficial use by the water master pursuant to Subsection B) of 19.25.XX.108 NMAC.

(iii) The well shall be metered, not interconnected with the CWU water system, and unless otherwise adjudicated, the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden.

**D. Subsequent conveyance of ownership of the remaining amount to CWU.** A household that elected a partial conveyance of ownership may subsequently convey ownership of the remaining amount of the domestic use water right to the CWU. The CWU may change the point of diversion, place and purpose of use to the CWU by application to the state engineer.

#### **19.25.xx.110 EXPEDITED MARKETING AND LEASING AND EXPEDITED PERMIT PROCEEDINGS:**

**A. New Domestic Well Points of Diversion.** Permits for new groundwater points of diversion for domestic uses, including a permit for a Section 72-12-1 well, may be issued provided:

(1) Water rights from within the same hydrologic unit in the NPT basin are moved to the new groundwater point of diversion in accordance with this rule;

(2) The priority and amount of the moved rights shall be determined under state law and reflect reductions in amount to account for historic supply; and

(3) Any permitted diversions shall cease and the household shall connect to the county water utility as soon as water service is available.

**B. Expedited change of a valid, existing water right to a Section 72-12-1 domestic well permit.** The applicant for a new Section 72-12-1 domestic well permit or the owner of an existing Section 72-12-1 domestic well water right may apply to change the point of diversion, place and purpose of use of a valid, existing consumptive use water right, other than a Section 72-12-1 water right, from the same hydrologic unit within the NPT basin into the Section 72-12-1 domestic well.

(1) **Application form and content.** Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information:

- (a) the name and address of applicant,
- (b) the pertinent state engineer file number(s),
- (c) the source of water supply for the move-from point of diversion,
- (d) the source of water supply for the move-to point of diversion,
- (e) the priority date of the water right,
- (f) the diversion amount to be retired,
- (g) the consumptive use amount to be moved,
- (h) the move-from purpose of use,
- (i) the legal description of the move-from place of use,
- (j) the location of the move-from point of diversion,



- (k) the location of move-to point of diversion, and
- (l) other information the state engineer deems necessary.

(2) **Process.** Consistent with the issuance of a Section 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor is protest allowed for an application for permit to change a valid, existing consumptive use water right to a Section 72-12-1 domestic well permit.

**C. Expedited change of point of diversion, place and purpose of use of groundwater rights for domestic use to the county water utility.**

The CWU may file one or more applications to the state engineer for permit to change the point of diversion, place and purpose of use of groundwater rights for domestic use whose ownership is conveyed to the CWU, including Section 72-12-1 domestic well water rights. The application may include multiple water rights. The CWU may consumptively use the full amount of the water right changed to the CWU.

(1) **Application form and content.** Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information:

- (a) the name and address of applicant,
- (b) the pertinent state engineer file number(s),
- (c) the source of water supply for the move-from point of diversion,
- (d) the source of water supply for the move-to point of diversion,
- (e) the consumptive use amount to be moved,
- (f) the location of the move-to point of diversion, and
- (g) other information the state engineer deems necessary.

(2) **Process.** The state engineer may adopt a generalized hydrologic analysis based upon the hydrologic model setting out guidelines for the expedited processing of applications filed pursuant to this Subsection.

- (a) If the state engineer has adopted such a generalized hydrologic analysis, and if the CWU agrees to the use of the generalized hydrologic analysis in the review of the application, then the state engineer shall expedite the processing of the application as provided in the generalized hydrologic analysis.
- (b) If the state engineer does not adopt such a generalized hydrologic analysis, or if the CWU does not agree to the use of the generalized hydrologic analysis, then notice of the application shall be published as provided under 19.26.2.12 and 19.27.1.30 NMAC, except that only the OSE file number or subfile number of the move-from water rights need be provided in the notice of the application. The notice shall provide that the full legal description of the water rights being moved is available in the final decree posted on the state engineer's website and available in the district office.

D. Water rights served by an acequia or community ditch may not be moved under this Section.

**19.25.xx.111 CONNECTION FUND:**

A. An owner of record of a water right from a well used for domestic, commercial or industrial purposes that elects pursuant to the settlement agreement to connect to the county water utility for water service as soon as that service is available shall be entitled to payment from the

connection fund, as administered by Santa Fe county, for the expense of connecting to the county water utility. The county shall notify owners of record when service is available.

**B.** No water right owner of record electing to connect to the county water utility shall be required to cease use of their well and connect to the county water utility until such expenses have been paid by the connection fund or other third party.

**C.** If service is not available to an owner that elected to connect because Santa Fe county determines that the expense of connection exceeds the allowed connection expenses, the owner may pay the additional expenses so that the expenses of connection will be covered and service made available.

**19.25.xx.112 DIVERSION, USE, AND ADMINISTRATION OF SURFACE WATER AND GROUNDWATER BY PUEBLOS:** Diversion, use, and administration of surface water and groundwater by the Pueblos under this rule shall be subject to, and in accordance with, the settlement agreement, the PFD and the final decree.

**A. General principles.**

(1) The Pueblos have decreed first priority water rights to consumptively use the surface and groundwater of the NPT basin for agricultural, community, domestic, livestock, commercial or industrial purposes in the amounts defined in the partial final decree. The Pueblos' first priority rights are designated as existing basin use rights or future basin use rights. The Pueblos' first priority rights are not subject to forfeiture, abandonment or loss by non-use.

(2) A Pueblo may lease, for any term up to 99 years, any portion of its first priority rights to another Pueblo or another water user for use within the NPT basin.

(3) For agricultural uses of a Pueblo's first priority rights, the amount of water shall not exceed 4.65 AFY per acre diverted by the ditch at the point of diversion from the surface source of water (PDR), or 3.35 AFY per acre delivered to the farm headgate or diverted at the well head (FDR), or a CIR of 1.84 AFY per acre, whichever is less.

(4) For non-agricultural uses, the consumptive use amount shall be deemed to be equal to the amount of the diversion. The diversion amount shall not exceed the consumptive use amount unless a return flow plan is approved by the state engineer.

(5) The provision of offset water by a Pueblo shall not constitute use of that Pueblo's first priority rights.

**B. First priority rights: existing basin use rights.**

(1) The current points of diversion, purposes and places of use of the Pueblos' existing basin use rights are set forth in appendices one through four of the partial final decree. For the purposes of administering the mitigation fund, the exercise by the Pueblos of their existing basin use rights for the purposes and at the points of diversion and places of use set out in the PFD shall be presumed to not impair non-Pueblo groundwater rights.

(3) If a Pueblo consumes water in excess of the quantity designated in the PFD as the Pueblo's existing basin use rights, the excess consumption shall be deemed to be an exercise of that Pueblo's available supplemental or future basin use rights.

(4) No notice or other administrative process is required for the Pueblos to use water under such rights for the purposes and at the points of diversion and places of use set forth in appendices one through four of the PFD.

**C. First priority rights: future basin use rights on Pueblo land.**

(1) **Community, domestic and livestock uses.**

(a) A Pueblo may exercise its future basin use rights to divert and consumptively use groundwater on that Pueblo's lands for new community or domestic uses by Pueblo members or their households or livestock uses.

(b) Surface water may be diverted and used for such uses subject to the provisions in section 4 of the settlement agreement.

(c) The owner of record of a non-Pueblo groundwater right that suffers impairment as a result of a Pueblo's exercise of its future basin use right for new community, domestic and livestock uses may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.XX.117 NMAC.

(2) **Agricultural uses from loss of section 4 protection for non-Pueblo agricultural uses (Pueblo section 4 agricultural uses).**

(a) A Pueblo may exercise its future basin use rights to divert and consumptively use surface or groundwater on that Pueblo's land for new agricultural uses to the extent that non-Pueblo agricultural water rights are determined to be no longer eligible for section 4 protection under 19.25.XX.23 NMAC.

(b) Any increase in a Pueblo's exercise of future basin use rights for agricultural uses implemented pursuant to this paragraph shall divert water from the same tributary from which water was diverted to irrigate the non-Pueblo water rights acreage that is no longer eligible for section 4 protection.

(3) **Commercial and industrial uses and other new agricultural uses.**

(a) A Pueblo may exercise its future basin use rights to divert and consumptively use surface or groundwater on that Pueblo's land for new commercial or industrial uses or new agricultural uses on that Pueblo's land in addition to those described above at Subsection C.(2)(a) of 19.25.XX.112 NMAC

(b) The owner of record of a non-Pueblo groundwater right that suffers impairment as a result of the Pueblo's exercise of its future basin use rights for new commercial, industrial or other agricultural uses may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.XX.118 NMAC.

(c) The Pueblo shall offset any interference with non-Pueblo surface water rights caused by the new use in an amount determined by the water master in accordance with 19.25.XX.115 NMAC.

(d) Non-Pueblo water rights eligible for section 4 protection shall not be curtailed to provide water for the new commercial, industrial or other agricultural use under Pueblo alternative administration.

**D. Reserved water rights.** The reserved water rights of the Pueblo of Nambé may be exercised in the NPT basin provided that:

(1) The exercise shall not impair Pueblo or non-Pueblo water rights,

(2) Non-Pueblo water rights shall not be curtailed to provide water for the exercise of these rights, nor shall the exercise of these rights be curtailed under priority administration or Pueblo alternative administration.

(3) Any interference with any surface water rights resulting from the use of the reserved water rights of the Pueblo of Nambé shall be offset by the United States or the regional water authority in an amount determined by the state engineer in accordance with 19.25.XX.115 NMAC.

**E. Supplemental Pueblo rights.**

(1) Until alternative water is available for delivery to the Pueblo of Pojoaque, the Pueblo of Pojoaque has the right to divert the entirety of its supplemental Pueblo rights from wells located on Pueblo of Pojoaque lands, The Pueblo shall not divert its supplemental Pueblo rights to the extent alternative water is available for Pueblo use from the regional water system.

(2) Until alternative water is available for delivery to the Pueblo of Pojoaque, the Pueblo of Pojoaque and the Pueblo of San Ildefonso shall maintain in effect a forbearance agreement for the exercise of at least 475 AFY of the Pueblo of San Ildefonso's first priority rights. During the tenure of the forbearance agreement the Pueblo of San Ildefonso shall forgo the exercise of 475 AFY of its first priority rights in accordance with the terms of the settlement agreement.

(3) Until alternative water is available for delivery to the Pueblo of Pojoaque, the Pueblo may divert all or a part of its supplemental Pueblo rights from surface water allocated to the Pueblos and released from Nambé reservoir, provided the other Pueblos and the Pojoaque Valley irrigation district agree after consultation with the United States and the United States bureau of reclamation.

(4) The owner of record of any non-Pueblo groundwater right that suffers impairment as a result of the Pueblo of Pojoaque's exercise of its supplemental Pueblo rights may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.XX.118 NMAC.

**F. Water rights acquired under state law.**

(1) A Pueblo may acquire water rights in addition to the rights set forth in the PFD in accordance with, and subject to, state law and regulation. These rights shall be subject to priority administration in accordance with state law, and shall be eligible for section 4 protection.

(2) Water rights acquired by the Pueblos under state law after March 21, 2016 by or for the benefit of a Pueblo shall not be subject to forfeiture, abandonment or loss by non-use as long as the title to the water rights remains in the Pueblo or the United States acting as trustee for the Pueblo.

**19.25.xx.113 PUEBLO REPORTING OF PUEBLOS' USES OF WATER UNDER THEIR FIRST PRIORITY RIGHTS; NOTICE OF OTHER PROPOSED ACTIONS.**

**A. Annual reports of anticipated uses.**

1. By December 31 of each year, each Pueblo shall submit to the water master a report on its anticipated uses of water under its first priority rights from groundwater for the next calendar year. By March first of each year, each Pueblo shall submit to the water master a report on its anticipated uses of water under its first priority rights from surface water for that calendar year. These reports on anticipated uses shall include the anticipated annual diversion and consumptive use amounts, points of diversion, and purposes and places of use of the Pueblos' first priority rights for each anticipated use for the calendar year.

2. Pueblo lands intended to be irrigated shall be reported by the Pueblos in their annual reports on anticipated uses.

3. For purposes of administration, the anticipated diversion and consumptive use amounts, points of diversion, and purposes and places of use of the Pueblo of Pojoaque's supplemental Pueblo rights for the next calendar year shall also be reported to the water master by December 31 and March first each year in the Pueblo's reports on anticipated uses.

**B. Notice of proposed actions.**

A Pueblo intending to take the following actions shall advise the water master, in writing, of any such proposed action at least 60 days in advance of implementing the proposed action.

- (1) any change in the point of diversion, place or purpose of use of existing basin use rights of a Pueblo on that Pueblo's land; or
- (2) any new or changed exercise of Pueblo future basin use water rights on that Pueblo's lands;
- (3) any exercise of Pueblo of Pojoaque's supplemental water right from groundwater;
- (4) any change in the point of diversion, place or purpose of use of water rights acquired under state law on that Pueblo's land.

**19.25.xx.114 CHANGES TO POINT OF DIVERSION, PURPOSE OR PLACE OF USE OF PUEBLO WATER RIGHTS ON THAT PUEBLO'S LANDS:**

A. A Pueblo may change the point of diversion, purpose or place of use of its first priority water rights for use on that Pueblo's land as provided below.

1. Prior consultation with the state engineer or the water master is not required for such changes.
2. Changes shall be reported to the water master in the annual report of anticipated uses or at least 60 days prior to making any such change.
3. After receiving the report, the water master shall determine whether any change in use will impair non-Pueblo groundwater rights in accordance with 19.25.XX.11 NMAC.
4. The owners of record of any such rights may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.XX.11 NMAC.
5. A Pueblo making a change in the exercise of its future basin use rights shall offset any resulting interference with non-Pueblo surface water rights in an amount determined by the water master in accordance with 19.25.XX.11 NMAC.
6. Non-Pueblo water rights eligible for section 4 protection shall not be curtailed to provide water for changes to the uses of water under future basin use rights for new commercial, industrial or agricultural uses under Pueblo alternative administration.
7. Future basin use rights for domestic, community or livestock uses may not be changed. A Pueblo discontinuing uses of water under such rights may make new uses of water under its future basin use rights.

B. A Pueblo may change the point of diversion, purpose or place of use of any water rights acquired under state law for use on that Pueblo's land as provided below.

1. Changes shall be reported to the water master at least 60 days prior to making any such change.
2. The water master shall determine if the proposed change will impair any Pueblo or non-Pueblo groundwater rights, and consider any remedies proposed by the Pueblos to reduce the impacts resulting from the proposed change on groundwater rights to below the threshold for impairment.
3. The water master shall determine if the proposed use will cause interference with any Pueblo or non-Pueblo surface water rights.
4. An application shall be denied if the proposed change will cause interference with any Pueblo or non-Pueblo surface water rights or will impair any Pueblo or non-Pueblo

groundwater rights and remedies are not available to offset or mitigate the interference or to reduce groundwater effects below the level of impairment.

**19.25.xx.115 WATER MASTER DETERMINATION OF INTERFERENCE AND OFFSETS TO SURFACE WATER RIGHTS FROM EXERCISE OF PUEBLO WATER RIGHTS ON PUEBLO LANDS:**

**A.** A Pueblo seeking the following actions shall advise the water master, in writing, of any such proposed action at least 60 days before implementing the proposed action.

(1) a new or changed use of water under Pueblo future basin use water rights on that Pueblo's lands; or

(2) a new use of water under Pueblo supplemental water rights.

Within 30 days of receiving notice of such a proposed action (or report of anticipated uses of water) under 19.25.XX.114 NMAC, the water master shall determine and advise the Pueblo and other affected Pueblos and owners of record whether the proposed action interferes with Pueblo surface water rights or non-Pueblo surface water rights and the amount of any offsets that may be required to avoid interference. In making these determinations, the water master shall use the hydrologic model developed by the state of New Mexico and the United States.

**B.** A Pueblo whose proposed action is determined to cause interference shall offset the interference in the amount determined by the water master. Prior to implementing the proposed action, the Pueblo causing the interference shall notify the water master how it will offset any interference. Within 10 days of receiving such notification, the water master shall notify that Pueblo and any affected owners of record and other affected Pueblos whether the proposed actions are sufficient to offset any interference. The Pueblo shall not implement the proposed action until the water master determines that the amount of the offset and the delivery method are sufficient to offset any interference.

**C.** The water master may work with the affected parties to resolve such matters either formally or informally and may discuss matters with one or more affected parties without the need to have all parties present.

**D.** If the hydrologic record after implementation of the proposed action does not support the water master's determination of interference and required offsets, an affected Pueblo or water right owner of record may request modification of the offset amounts. The Pueblo implementing the proposed action shall make the previously determined offsets until such time as the water master determines that a different amount is appropriate.

**E.** Provision of offset water by a Pueblo to avoid interference shall not constitute use of water under the Pueblo's first priority water rights. The Pueblos shall offset interference with Pueblo surface water rights and non-Pueblo surface water rights entitled to section 4 protection resulting from a Pueblo's provision of offset water.

**19.25.xx.116 WATER MASTER DETERMINATION OF IMPAIRMENT TO GROUNDWATER RIGHTS FROM EXERCISE OF PUEBLO WATER RIGHTS ON PUEBLO LANDS:**

**A.** Within 60 days of receiving notice of a proposed action (or report of anticipated uses of water) under 19.25.XX.114 NMAC, the water master shall determine if any non-Pueblo groundwater rights will be impaired by a new use or change in use of water under Pueblo water rights on Pueblo lands. In making these determinations, the water master shall utilize the hydrologic model developed by the state of New Mexico and the United States.

**B.** Notice of any projected impairment shall be mailed to the affected owner of record by certified mail. The notice of impairment shall include a description of the factual or technical basis for the determination, and any recommended mitigation action such as drilling a replacement well or obtaining an alternate water supply. The water master shall post a notice of all projected impairments on the office of the state engineer's website, together with the reports on anticipated uses of water submitted by the Pueblos. Notice of all projected impairments shall also be mailed to the Governor of each Pueblo.

**C.** An owner of record that is not identified as being impaired by the uses identified in the Pueblos' reports on anticipated uses of water may at any time request in writing a hearing before the state engineer pursuant to 19.25.XX.116 NMAC to demonstrate that their groundwater rights have been impaired by the Pueblos use of their first priority water rights and may seek reimbursement for the cost of mitigating the impairment from the mitigation fund in accordance with 19.25.XX.118 NMAC.

**D.** The water master may at any time identify owners of record that will be impaired in addition to those identified pursuant to Subsection A of this Section. The water master shall notify any additional affected owners of record and Pueblos in accordance with the provisions of this Section. Owners of record of water rights that are identified pursuant to this Subsection may seek reimbursement for the cost of mitigating the impairment from the mitigation fund in accordance with 19.25.XX.118 NMAC.

**19.25.xx.117 CHANGES TO POINT OF DIVERSION, PURPOSE OR PLACE OF USE OF PUEBLO WATER RIGHTS OR NEW EXERCISES OFF THAT PUEBLO'S LANDS:**

**A.** By application to the state engineer, a Pueblo may change the point of diversion, purpose or place of use of its first priority water rights, including a lease of such rights to non-Pueblos, to a point of diversion, place or purpose of use off that Pueblo's lands within the NPT basin.

1. Applications to the state engineer for use of Pueblo first priority water rights off that Pueblo's lands shall be governed by applicable statutory provisions and administrative rules.

2. The water master shall determine if any Pueblo or non-Pueblo groundwater rights will be impaired by the granting of an application, and consider any remedies proposed by the Pueblos to reduce impacts on groundwater rights below the threshold for impairment.

3. An application shall be denied if the proposed change will impair Pueblo or non-Pueblo water rights and remedies are not available to reduce groundwater effects below the level of impairment.

4. The exercise of a Pueblo's first priority water rights on the lands of another Pueblo is not contrary to the conservation of water within the state or detrimental to the public welfare of the state. The exercise of a Pueblo's first priority water rights on non-Pueblo lands, in and of itself, is not contrary to the conservation of water in the state or detrimental to the public welfare of the state.

5. An approval of a proposed change to a point of diversion, purpose or place of use off a Pueblo's land shall be conditioned to require offsets to avoid interference with Pueblo surface water rights or non-Pueblo surface water rights entitled to section 4 protection.

6. Notice of the approval or denial of an application, and any required offsets, shall be mailed to the Pueblo tribal council or governor by certified mail, and posted on the state engineer's website.

7. Non-Pueblo water rights eligible for section 4 protection shall not be curtailed to provide water for the new or changed exercise of future basin use rights under Pueblo alternative administration.

B. Applications to the state engineer for use of a Pueblo's state law water rights off that Pueblo's lands shall be governed by applicable statutes and administrative rules.

**19.25.xx.118 MITIGATION FUND:**

A. The New Mexico finance authority shall administer the mitigation fund. The unavailability of funds shall not affect the rights of the Pueblos to utilize their water rights.

B. Money in the mitigation fund may only be expended to mitigate the effects of impairment to non-Pueblo groundwater rights as determined in accordance with 19.25.XX.116 NMAC, including reimbursement to non-Pueblo water rights owners of record for the cost to drill a replacement well or to obtain an alternative water supply.

C. An owner of record that is eligible for reimbursement from the mitigation fund pursuant to 19.25.XX.116 NMAC may request reimbursement from the mitigation fund for the costs of mitigating the impairment. To request reimbursement, an owner of record shall:

(1) Within 30 days of the receipt of the notice of impairment or a favorable decision pursuant to 19.25.XX.116 NMAC, notify the state engineer in writing of their intent to request reimbursement.

(2) Within 90 days of the notification to the state engineer of their intent to request reimbursement, submit to the state engineer a proposal for mitigation of the impairment and estimated cost of the mitigation with supporting documentation. The state engineer may grant an extension of time to submit a mitigation proposal and estimated cost for good cause shown. The state engineer may request additional information as needed.

D. Within 60 days of receipt of the mitigation proposal and supporting documentation, the state engineer shall approve or disapprove of the mitigation proposal and estimated cost, and notify the owner of record of the determination by certified mail. The state engineer may rely on the documentation submitted by the owner of record or other information available to the office of the state engineer. If the state engineer disapproves a mitigation proposal or cost estimate, the owner of record may submit a modified proposal or estimate within 60 days of the notice of disapproval.

E. Within 90 days of completion of an approved mitigation proposal, the owner of record shall submit an accounting of the amount paid by the owner to mitigate the impairment of their water right.

F. Within 30 days of receipt of the accounting, the state engineer shall direct the New Mexico finance authority to reimburse the owner of record for the mitigation costs. The state engineer may limit the reimbursement to the amount of the approved estimate.

G. An owner of record that is aggrieved by the state engineer's determination regarding a mitigation proposal or the amount of reimbursement from the mitigation fund may request a hearing in accordance with 19.25.XX.116 NMAC.

H. The New Mexico finance authority shall make expenditures from the fund in accordance with this Section and to pay for the finance authority's reasonable costs of administering the fund.

I. Payments from the mitigation fund shall be contingent upon the New Mexico finance authority receiving sufficient appropriations. Nothing in this rule establishes or creates any liability or responsibility on the part of the state to pay mitigation costs for impairment to non-Pueblo groundwater right owners of record as a result of new or changed Pueblo uses of water from any



source other than the mitigation fund, nor shall the state have any liability or responsibility to make any payments if the balance in the fund is insufficient to cover those costs.

**J.** If the New Mexico finance authority determines that the mitigation fund balance is insufficient to reimburse the amount required to mitigate the effects of an impairment, the finance authority shall promptly notify that water right owner of record and the state engineer. Reimbursement shall be paid if and when sufficient amounts are available in the fund, subject to the provisions of this Section.

**K.** Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the mitigation fund and shall be used solely for the purposes set forth in this Section.

**19.25.xx.119 PRIORITY ADMINISTRATION:**

**A.** The water master may implement priority administration in the NPT water master district. Priority administration may be initiated by the state engineer as a result of the state engineer's independent determination that priority administration is necessary, as provided by 19.25.13.43 NMAC, and in response to a request for priority administration by a water right owner of record, Pueblo, the United States as trustee for the Pueblos, or the interstate stream commission.

**B.** The forms of priority administration applicable in the NPT are described in Subsection C of 19.5.13.7 NMAC, which include direct flow administration, storage water administration, depletion limit administration, and alternative administration. Depletion limit administration and alternative administration are the two forms of administration applicable when the exercise of groundwater rights is causing a surface water owner of record to not receive the water to which the surface water right owner of record is entitled.

**C.** Sections 2.4.4.5, 3.1.7.2 and 4 of the settlement agreement constitute Pueblo alternative administration that has been accepted by the state engineer as between the Pueblos' first priority rights and the water rights of the non-Pueblo settlement parties. Section 4.1.2 of the settlement agreement constitutes alternative administration that has been accepted by the state engineer of the Pueblo of Tesuque's existing basin use rights.

**D.** Non-settlement parties' water rights shall only be curtailed under Pueblo alternative administration to the extent such curtailment would occur without the settlement agreement.

**E.** Non-settlement parties seeking priority administration shall have the same rights and benefits that would be available without the settlement agreement.

**19.25.xx.120 ESSENTIAL INDOOR HOUSEHOLD USES NOT SUBJECT TO CURTAILMENT:** Essential indoor household uses from domestic wells shall not be curtailed under priority or Pueblo alternative administration. Essential indoor household uses include drinking, cooking, indoor cleaning, sanitary, and cooling purposes, and exclude all uses made outside of a building.

**19.25.xx.121 ALTERNATIVE ADMINISTRATION OF THE PUEBLO OF TESUQUE'S EXISTING BASIN USE RIGHTS:**

**A.** Under alternative administration of the first priority of the Pueblo of Tesuque's existing basin use rights, the curtailment of non-Pueblo surface water rights entitled to protection under section 4 of the settlement agreement whose points of diversion on the Rio Tesuque are upstream from the Pueblo of Tesuque's southern boundary ("upstream acequias"), shall be limited to the extent necessary to provide a diversion amount by the Pueblo of Tesuque from the Rio Tesuque

for irrigation of 71 acres of Pueblo land (71 acres x 4.65 AFA/Y=330.15 AFY). To ensure that the Pueblo of Tesuque receives the 330.15 AFY, the Pueblo of Tesuque and the upstream acequias have agreed that:

(1) Upstream acequias may proceed with lawful diversions if, for a period of more than 48 hours:

(a) the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of 3 cubic feet per second (“cfs”) or more, or

(b) the USGS No. \_\_\_\_\_ gage, at or near the Pueblo’s southern boundary, indicates a flow of 1.5 cfs or more.

(2) Upstream acequias shall reduce or cease their diversions as specified by the water master if the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of less than 3 cfs and the USGS No. \_\_\_\_\_ gage, at or near the Pueblo’s southern boundary indicates a flow of less than 1.5 cfs but more than 0.8 cfs.

(3) Upstream acequias will cease all diversions and will allow all water in the Rio Tesuque to flow down to the Pueblo boundary if for a period of 48 hours, the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of less than 1.5 cfs, or the USGS No. \_\_\_\_\_ gage, at or near the Pueblo’s southern boundary, indicates a flow of less than 0.8 cfs.

**B.** Alternative administration of the first priority of the Pueblo of Tesuque’s existing basin use rights shall not be implemented until the amount of irrigated acreage served by the upstream acequias is established to account for:

(1) the amount of acreage on each of the upstream acequias for which the point of diversion of the water right has been moved from that acequia; and

(2) the amount of acreage with appurtenant water rights in adjudicated sub-file orders on each of the upstream acequias which the upstream acequias and the Pueblo of Tesuque agree can no longer be irrigated due to the construction of a permanent structure thereon since the date that the subfile orders were entered.

**19.25.xx.122 IDENTIFICATION AND REPORTING OF NON-PUEBLO IRRIGATED ACREAGE WHICH MAY NO LONGER BE ELIGIBLE FOR SECTION 4 PROTECTION:**

**A.** The water master shall each year compile a list of non-Pueblo lands with surface water irrigation rights that were not irrigated in the past calendar year and that may no longer be eligible for section 4 protection.

**B.** The list shall include the names and addresses of the current owners of record as they are shown in subfile orders and the records of the office of the state engineer, a description of the location and amount of the non-irrigated acreage, and the number of consecutive years that the acreage has not been irrigated.

**C.** This list shall be made available for review on the state engineer’s website and at the district VI office of the water rights division of the office of the state engineer, and shall be provided to each Pueblo and the United States by July 1 of the following year.

**D.** After four consecutive years of non-use, the water master shall mail a notice to the owner of record that the water right may no longer be eligible for section 4 protection if the water right is not put to beneficial use within one year, subject to the exceptions described in Subsection C of 19.25.xx.123 NMAC.

**E.** If the water rights are not put to beneficial use within one year after notice to the owner of record, and the owner of record fails to demonstrate that the nonuse may be excused in accordance with 19.25.xx.121 NMAC, the water master shall notify the owner of record and the Pueblos that the irrigation water rights involved are no longer eligible for section 4 protection.

**19.25.xx.123 VOLUNTARY ALTERNATIVE ADMINISTRATION:**

**A.** In addition to Pueblo alternative administration, voluntary alternative administration may be accepted by the water master if the criteria below are met. Voluntary alternative administration may include shortage sharing, such as, but not limited to, percentage division or pro rata allocation, rotation of water use, and reduced diversions. The owners of record of administrable water rights subject to priority administration may request that the water master implement a voluntary form of alternative administration by submitting a written plan to the water master that includes:

- (1) an agreement by the owners of record to the terms and conditions of the plan;
- (2) the name, address and phone number, and electronic mail address, if applicable, of the person designated as the contact person for the owners of record, or in the case of an acequia, the mayordomo of the ditch;
- (3) a description of the water rights included in the plan, the proposed operation of the plan, the specific steps required of the water master to administer the plan, and requirements for reporting the progress of the plan to the water master; and
- (4) a demonstration, through accurate analysis using analytic tools acceptable to the water master, that the implementation of the plan will:
  - (a) economically and satisfactorily apportion the available water supply among owners of record who have agreed to the alternative administration plan;
  - (b) not impair the administrable water rights of owners of record who are not participating in, or have not agreed to, the alternative administration plan;
  - (c) not be contrary to conservation of water in the State; and
  - (d) not be detrimental to the public welfare of the State.

**B.** The water master shall not implement an alternative administration plan if:

- (1) other owners of record of administrable water rights that may be affected by the alternative administration plan object to its implementation, unless the water master determines that the objection is without merit;
- (2) one or more owners of record of the administrable water rights subject to the plan rescinds his agreement in writing; or
- (3) the water master cannot adequately administer or supervise the alternative administration plan in a manner that ensures that the plan will:
  - (a) economically and satisfactorily apportion the available water supply among owners of record who have agreed to the alternative administration plan;
  - (b) not impair the administrable water rights of owners of record who are not participating in, or have not agreed to, the alternative administration plan;
  - (c) not be contrary to conservation of water in the State; and
  - (d) not be detrimental to the public welfare of the State.

**C.** Periods of time during which non-Pueblo acreage with an appurtenant water right is not irrigated because of the implementation of an alternative administration plan shall not be counted as part of any period of non-use that may support a determination that the water right is no longer eligible for protection under section 4.

**D.** Nothing in this Section prevents the water master from exercising his authority and duties set forth in Section 19.25.xx.101 NMAC.

**19.25.xx.124 APPORTIONMENT OF WATER BY ACEQUIAS:** Upon notice to the water master of an agreement between acequias taking water from the same source or river for the apportionment and distribution of water for their respective ditches in accordance with Section 73-2-47 NMSA 1978, the water master may recognize the agreement as a form of voluntary alternative administration under this rule.

**19.25.xx.125 ALLOCATION OF WATER BY THE BUREAU OF RECLAMATION, POJOAQUE VALLEY IRRIGATION DISTRICT:** Nothing in this rule shall be construed as an assertion by the state engineer of jurisdiction over the process used by the United States bureau of reclamation, the Pojoaque Valley irrigation district, and the Pueblos to allocate storage water prior to release from Nambé reservoir to members of the Pojoaque Valley irrigation district and the Pueblos.