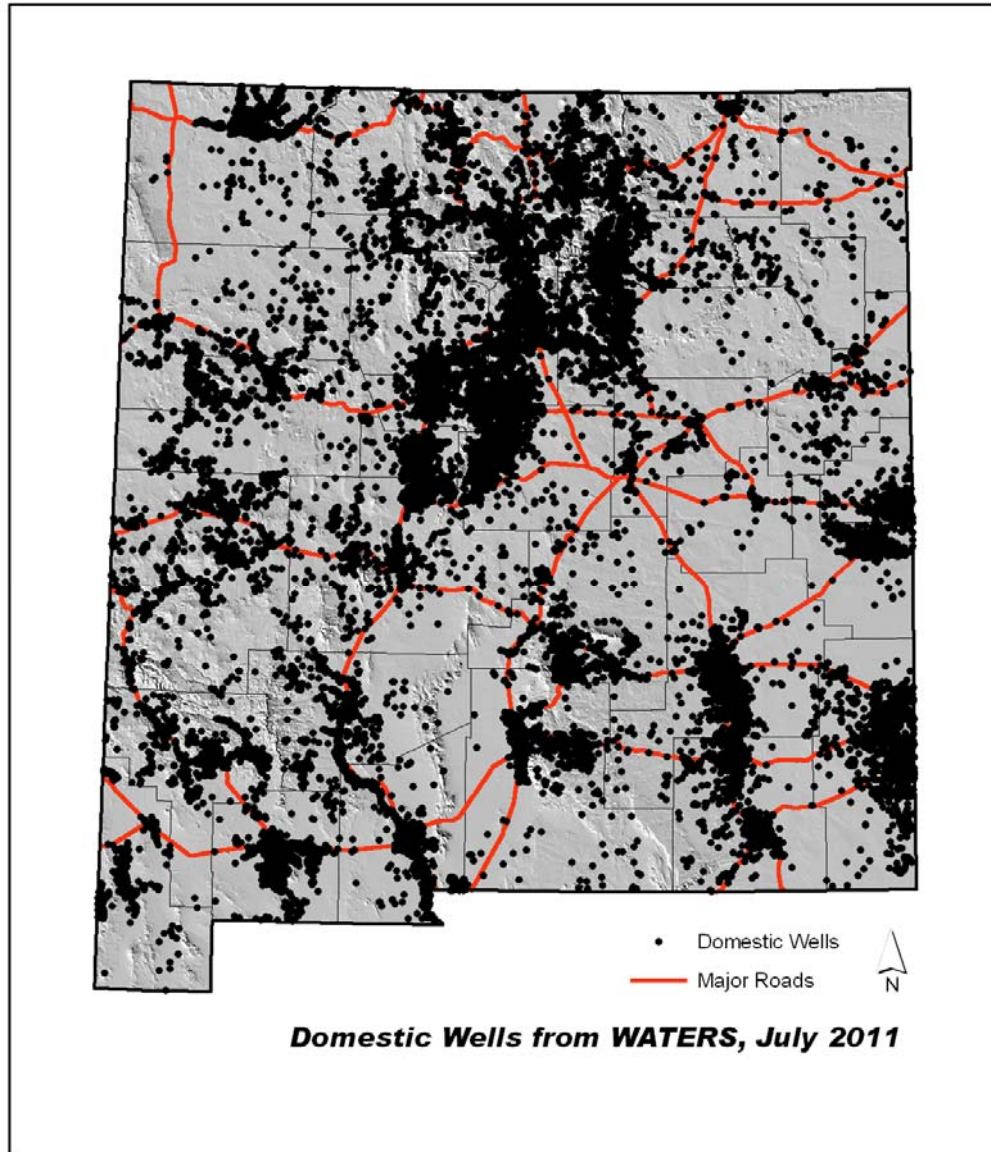


RULES AND REGULATIONS GOVERNING THE USE OF PUBLIC UNDERGROUND WATERS FOR HOUSEHOLD OR OTHER DOMESTIC USE



Adopted October 31, 2011

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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).

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.

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.

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.

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

I. Hydrologic unit: A physically definable, continuous and interconnected surface water 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, 10-31-2011]

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.

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. 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 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 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.

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, 10-31-2011]

19.27.5.10 [RESERVED]

[19.27.5.10 NMAC - N, 8-15-2006; A, 10-31-2011]

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. 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 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) 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;

(d) 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; exceptions will be considered only if necessitated by public health, safety and welfare concerns;

(e) an association shall be listed as co-applicant on the application.

[19.27.5.11 NMAC - N, 8-15-2006; A, 10-31-2011]

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 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) 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.

(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.

(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.

(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.

(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 10th 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 subsection E of 19.27.5.14 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, 10-31-2011]

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 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.

(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 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. 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, 10-31-2011]

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 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, 10-31-2011]

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.