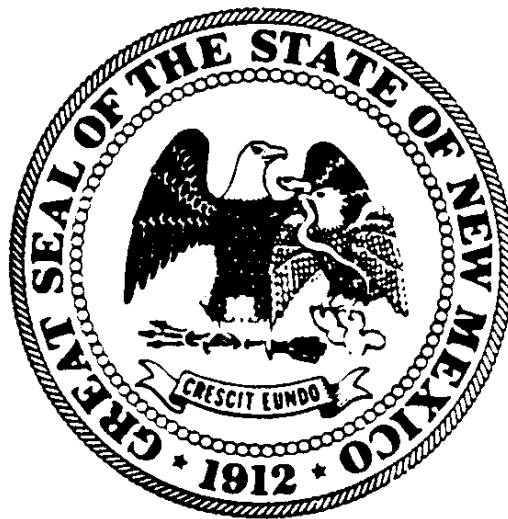


**MIDDLE RIO GRANDE ADMINISTRATIVE AREA
GUIDELINES FOR REVIEW OF WATER RIGHT
APPLICATIONS**

**PREPARED BY
THE OFFICE OF THE NEW MEXICO STATE ENGINEER
FOR INTERNAL USE**



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OFFICE OF THE STATE ENGINEER

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INTRODUCTION

In New Mexico, the surface waters of the Rio Grande have been considered fully appropriated since the Rio Grande Compact was consummated. Accordingly, the State Engineer does not allow new Rio Grande surface water appropriations. The aquifer consisting of Santa Fe Group and younger alluvial deposits is known to be hydrologically connected to the Rio Grande surface water system. Since groundwater diversions from aquifers hydrologically connected to the Rio Grande affect the fully appropriated surface flow, the state engineer conjunctively manages the water resources within the Rio Grande Basin to protect existing water rights and to ensure New Mexico's compliance with the Rio Grande Compact. The State Engineer hereby defines the Middle Rio Grande Administrative Area (MRGAA), as the area shown in Figure 1, which includes the areal extent of the alluvial aquifer known to be in hydrologic connection with the Rio Grande in the Middle Rio Grande basin.

These guidelines embody the Water Rights Division's current practice for evaluating pending and future applications for permits for groundwater use in the MRGAA, so as to ensure compliance with the Rio Grande Compact, to prevent impairment to existing rights, to limit the rate of decline of groundwater levels so that the life of the aquifer is extended, and to minimize land subsidence. The stream system

within the MRGAA is that stretch of the Rio Grande stream system between Cochiti Dam and San Acacia Dam, which includes the Rio Grande main stem, all tributaries to and aquifers underlying, irrigation canals and laterals within, and drains and wasteways within, that stretch of the Rio Grande.

Since the declaration of the Rio Grande Underground Water Basin, which includes the area now designated as the MRGAA, groundwater permittees have been required to obtain valid water rights in an amount sufficient to offset the effects of their diversions on the surface flows of the Rio Grande stream system. This requirement protects the surface flows of the Rio Grande stream system from being depleted or reduced by groundwater diversions.

Offsetting the effects of groundwater diversions is critical to the conjunctive management of the water resources within the Rio Grande stream system. Any existing permittee requiring surface water rights for offset purposes is confronted with finding a seller of valid surface water rights and obtaining a permit from the State Engineer to transfer the surface water rights. The transfer of surface water rights within the Rio Grande stream system is a complicated and often lengthy process due to the complex interrelationship between the surface and ground waters, the numerous existing appropriations to be protected, and the diversity of the numerous interests having standing to participate in the administrative process for an application for permit. Because a transfer application can be denied or approved and the decision appealed to the district court, the court of appeals and the state supreme court, the final decision may be far removed from the time the application was filed.

The public welfare of the state is promoted only if there is certainty that a permittee will be able to obtain and transfer all necessary valid surface water rights to prevent adverse effects upon the flow of the Rio Grande. Accordingly, the public welfare is best served by limiting actual groundwater diversions within the MRGAA to the amount of valid surface water rights transferred or otherwise held by the permittee, plus the amount of water the permittee returns directly to the river.

ADMINISTRATIVE GUIDELINES

1. WATER RIGHTS APPLICATIONS.

- a. Applications filed after the adoption date of these guidelines to appropriate water within the MRGAA, other than those permitted under NMSA 1978, Section 72-12-1 (1998), will be rejected.
- b. Pending water rights applications within the MRGAA, which have been filed prior to the adoption of these guidelines but not acted upon, will be evaluated using the applicable guidelines described in Paragraphs 2-15 below.
- c. Applications filed after the adoption date of these guidelines to change the place and purpose of use of surface water rights will be evaluated using the guidelines described in Paragraphs 2-15 below.
- d. The transfer of groundwater rights, and other adjustments to groundwater permits, will be processed on a case-by-case basis with due consideration of other applicable guidelines, including Paragraphs 7-15 below, and the policies, rules and regulations of the State Engineer.
- e. Groundwater diversion associated with permits approved before adoption of the MRGAA guidelines shall continue to be limited by the conditions set forth in the existing permit. If a permittee requests State Engineer action concerning a specific permit, then the MRGAA guidelines will be used, as deemed appropriate by the State Engineer, in acting on the request.

2. ABILITY TO ACQUIRE AND HOLD WATER RIGHTS.

Municipalities, counties, state universities, member owned community water systems, and public utilities supplying water to municipalities or counties shall be allowed a water use planning period not to exceed forty years. Water rights for municipalities, counties, state universities and public utilities supplying water to such municipalities or counties shall be based upon a water development plan the implementation of which shall not exceed a forty-year period from the date of the application for a change of place or purpose of use. A water development plan or for preservation of a municipal, county member owned community or state university water supply must be based upon reasonably projected additional needs within forty years.

3. PERMIT LIMIT ON ACTUAL DIVERSION.

A permit to divert ground water shall be conditioned to limit the actual groundwater diversion to the valid consumptive use surface water rights held and designated for offset purposes by the permittee plus any State Engineer approved flow returned directly to the Rio Grande (examples calculations shown in Figures 2 through 5). Consideration shall be given to established pre-basin groundwater rights previously incorporated into a permit. Approval of return flow can only be obtained by application and subsequent notice and publication. Permits may be conditioned to require a return flow plan showing the method of determination or measuring of the return flow as it is transported directly to the Rio Grande. Indirect return flow, or return flow to the aquifer, shall be considered in accordance with the policies, rules and regulations of the State Engineer, as appropriate.

4. VALID SURFACE RIGHTS.

Valid surface rights shall include:

- a. surface water rights transferred to ground water under an existing State Engineer permit;
- b. other valid water rights, including contracts for San Juan Project water, deemed acceptable to the State Engineer.

5. OFFSET REQUIREMENTS .

Valid consumptive use surface water rights as described in 4. above shall be obtained and designated by the permittee to offset the greater of either:

- a. total well diversions less any flow returned directly to the Rio Grande on a yearly basis; or
- b. the net surface water depletion associated with past and present use including consideration of residual effects of past diversions, on a time schedule approved by the State Engineer.

6. LEASE OF WATER RIGHTS.

Valid consumptive use water rights held by the permittee for the purpose of offsetting future depletions may be leased for other purposes as provided by Section 72-6-3 (NMSA), until necessary to offset the surface water depletions caused by the permitted groundwater diversion. The determination of the quantities of water available for lease shall be obtained using the 1999 interim state engineer MRGAA model and will include consideration of approved offset return flow directly returned to the Rio Grande (example shown in Figures 2 through 5).

7. MRGAA RESTRICTIONS.

Applications for well permits, other than those under Section 72-12-1 (NMSA), shall be evaluated using the interim MRGAA model to ensure resulting groundwater level decline rates do not exceed an average rate of 2.75 feet per year in non-critical areas (as defined below). Such applications may be approved unless:

- The state engineer finds that the granting of the application will impair existing water rights, be contrary to water conservation within the state, or be detrimental to the public welfare of the state; or
- The proposed appropriation combined with the exercise of existing water rights will cause total water level declines in any Critical Management Area model cell to exceed 250 feet from predevelopment conditions to the year 2040.

8. CRITICAL MANAGEMENT AREAS.

An area with excessive water level decline rates shall be closed to additional appropriations and shall be defined as a Critical Management Area (CMA). A CMA shall generally include areas in which the model-predicted water level declines, due to exercise of existing permits, exceed an average rate of 2.50 feet per year through the year 2040; and those areas in which the current observed rate of water level declines exceeds an average of 2.50 feet per year. The current CMA boundary is shown in Figure 6a and 6b. The state engineer will modify the boundaries of the CMA as deemed necessary to account for the effects of newly permitted groundwater diversions.

9. CRITICAL MANAGEMENT AREA RESTRICTIONS.

No applications will be accepted in a CMA except for applications to replace, repair, deepen, or supplement an original well or for wells under Section 72-12-1 (NMSA). The amount of water previously placed to beneficial use under an existing given permit will be the limit for any new permits to replace, repair, or deepen wells within the CMA. Supplemental well applications may be considered if the combined diversion from the supplemental well and primary well does not exceed the maximum amount of water previously placed to beneficial use from the primary well. No alternate points of diversion (i.e. additional or new wells) necessary to appropriate the maximum permitted amount of water will be permitted in the CMA. Owners of declared water rights within a CMA will not be granted any permits to increase their diversion beyond the amount of ground water already placed to beneficial use.

10. CALCULATION OF WATER LEVEL DECLINE RATES.

Decline rate calculations shall be made by simulating full production of proposed wells beginning in the year the application was filed, through the beginning of year 2040, unless the application includes a pumping schedule. If a schedule has been provided, simulations will be performed in accordance with the schedule. The proposed stresses and full exercise of existing permits will be assumed, including reasonable use of 72-12-1 wells, through the year 2040. Computed decline rates through the year 2040, from existing and proposed uses, shall be divided by the number of years used in the predictive scenario to obtain the average decline rate. If a pumping schedule has been provided then

the permit shall be conditioned to limit pumpages in accordance with the schedule. The interim model will be updated to include the new permits so that the cumulative effects are considered in the evaluation of subsequent applications. Any model cell which reaches a predicted average decline of 2.50 feet per year or more due to existing permits and subsequently approved applications, and all cells directly above and below that cell, will be designated as a CMA.

11. NON-CRITICAL AREAS.

'Non-critical' areas are defined as those areas that do not fall within any CMA.

12. SECTION 72-12-1 WELL RESTRICTIONS.

New wells within a CMA permitted under Section 72-12-1 (NMSA) shall be conditioned to require metering.

13. WATER LEVEL MONITORING.

Permits may be conditioned to require monitoring as deemed necessary by the state engineer.

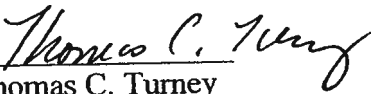
14. OTHER CONSIDERATIONS.

The state engineer will deny any application if it is found that the granting of the application would be contrary to statute.

15. PERMIT CANCELLATION.

A permit approved to divert water will be conditioned to allow the State Engineer to cancel the permit if the conditions of approval are not met or if the actions of the permittee are not in accordance with the permit.

Adopted this 22nd day of Sept, 2000.


Thomas C. Turney
State Engineer