

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 25 ADMINISTRATION AND USE OF WATER - GENERAL PROVISIONS
PART 13 ACTIVE WATER RESOURCE MANAGEMENT

19.25.13.1 ISSUING AGENCY: Office of the State Engineer.
[19.25.13.1 NMAC - N, 12/30/2004]

19.25.13.2 SCOPE: The state engineer adopts these rules and regulations to undertake the supervision of the physical distribution of water, to prevent waste, and to administer the available supply of water by priority date or by alternative administration, as appropriate. These rules apply to all water rights within the state from all sources of water, surface water and hydrologically connected groundwater.
[19.25.13.2 NMAC - N, 12/30/2004]

19.25.13.3 STATUTORY AUTHORITY: These rules and regulations are established pursuant to constitutional authority set forth in Article XVI of the New Mexico Constitution, and statutory authority enumerated in Sections 72-1-2; 72-2-8; 72-2-9; 72-2-9.1; 72-3-1-5; 72-4-20; 72-5-3 through 5; 72-5-18; 72-5-23; 72-5-24; 72-6-1 through 7; 72-8-1; 72-9-2; 72-12-1; 72-12-2; 72-12-8(D); 72-12-24; 72-13-2; 72-13-4 NMSA.
[19.25.13.3 NMAC - N, 12/30/2004]

19.25.13.4 DURATION: Permanent.
[19.25.13.4 NMAC - N, 12/30/2004]

19.25.13.5 EFFECTIVE DATE: December 30, 2004, unless a later date is cited at the end of a section.
[19.25.13.5 NMAC - N, 12/30/2004]

19.25.13.6 OBJECTIVE: The objective of these rules is to establish the framework for the state engineer to carry out his responsibility to supervise the physical distribution of water to protect senior water right owners, to assure compliance with interstate stream compacts and to prevent waste by administration of water rights. These framework rules employ long-standing statutory mechanisms specified at Section 72-3-1 through Section 72-3-5 NMSA, which describe procedures for the creation of water master districts and the appointment of water masters with certain defined duties and authorities. In addition, these rules fulfill the mandates of Section 72-2-9.1 NMSA, requiring the state engineer to adopt rules for priority administration based on appropriate hydrologic models and expedited marketing and leasing within water master districts subject to priority administration.
[19.25.13.6 NMAC - N, 12/30/2004]

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

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

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

C. Administration: Distribution by a water master of available water supplies within a water master district or sub-district, subject to any legal constraints identified by or imposed on the state engineer, for specific beneficial uses by the owners of administrable water rights that are in-priority. There are four forms of administration available to achieve different objectives. These forms are defined below together with subsidiary definitions. A water master may, based on the applicable district-specific regulations, use any of these forms of administration, depending on the specific legal and physical aspects of the water supplies that are subject to administration and the existence or absence of agreements for alternative administration. Administration may also

combine these forms within a water master district, as the water master finds appropriate or necessary. The specific form of administration, or combination of forms of administration, that will be utilized in each water master district will be established through promulgation of district-specific regulations. Notice of such promulgation will be provided pursuant to Subsection D of 72-2-8 NMSA.

(1) Direct flow administration

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

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

(2) Storage water administration

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

(b) Storage water administration: Administration by a water master of the release from reservoirs and subsequent downstream diversion of storage water in accordance with the requirements of the applicable administrable water rights for such release and diversion. Storage water administration includes both the distribution of storage water released for the benefit of those having rights to its use, and also the protection of storage water releases from diversion by water right owners having only an administrable water right to direct flow water. Conveyance losses that occur as a result of the delivery of storage water shall be borne by the owner of the applicable administrable water right, and storage water administration shall account for those conveyance losses. For purposes of administration, imported water shall be administered in the same manner as storage water; however, imported water is subject to 100% depletion. The beneficial use of imported water is exclusive in the owner of the right to its use and is not subject to priority call in the basin of use, but its diversion from the basin of origin is subject to priority administration in that basin.

(3) Depletion limit administration

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

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

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

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

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

(4) Alternative administration: Administration that is based on water sharing agreement among affected water right owners, and that is acceptable to the state engineer. Such administration may include voluntary shortage sharing such as, but not limited to, percentage division or pro rata allocation, rotation of water use, and reduced diversions. Where there is an existing shortage sharing agreement between acequias or community ditches confirmed on the first Monday of April of each year in accordance with Section 73-2-47 NMSA or thereafter as

necessary, it shall be recognized in the district-specific regulations, but nothing in this section shall be taken to impair the authority of the state engineer and water master to regulate the distribution of water from the various stream systems of the state to the ditches and irrigation systems entitled to water therefrom under the provisions of this article. Alternative administration may be substituted for any of the forms of administration above described.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) **Consumptive irrigation requirement (CIR):** The quantity of irrigation water, expressed as a depth or volume, exclusive of effective rainfall, that is consumptively used by plants or is evaporated from the soil surface during one calendar year. The CIR may be numerically determined by subtracting effective rainfall from the consumptive use.

(2) **Farm delivery requirement:** The quantity of water, exclusive of effective rainfall, that is delivered to the farm head gate or is diverted from a source of water that originates on the farm itself, such as a well or spring, to satisfy the consumptive irrigation requirement of crops grown on a farm during the irrigation accounting year, or as otherwise provided by permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GG. Water master district manager: The state engineer district supervisor is the manager of any water master district within his particular state engineer district and the direct supervisor of the water master. [19.25.13.7 NMAC - N, 12/30/2004]

19.25.13.8 CONSTRUCTION: These rules and regulations shall be construed as consistent with, and subject to, the authorities of the state engineer for the administration of water in the state of New Mexico. These rules and regulations shall not be construed as imposing any limitation on the authority of the state engineer to administer water rights, act on water rights applications, permit water rights, or order the curtailment, in whole or in part, of the use of water under any water right. Subsection H of 72-2-8 NMSA provides that these rules and regulations are presumed to be the correct implementation of the law. [19.25.13.8 NMAC - N, 12/30/2004]

19.25.13.9 USE OF THESE RULES AND REGULATIONS: These rules and regulations provide the framework for the promulgation of specific water master district rules and regulations. [19.25.13.9 NMAC - N, 12/30/2004]

19.25.13.10 STATE ENGINEER ADOPTION OF DISTRICT-SPECIFIC RULES AND REGULATIONS: For every district in which water rights administration is requested, or the state engineer determines in the performance of his duties under Section 72-2-1 NMSA that water rights administration is required for the economical and satisfactory apportionment of water, the state engineer shall adopt rules and regulations, pursuant to Subsection D of 72-2-8 NMSA, specific to the water master district, which incorporate and adapt the provisions of these rules and regulations to the needs of the specific district. [19.25.13.10 NMAC - N, 12/30/2004]

19.25.13.11 STATE ENGINEER AUTHORITY TO CREATE WATER MASTER DISTRICTS AND APPOINT WATER MASTERS: The state engineer may create water master districts and appoint water masters in any drainage areas of the state pursuant to Section 72-3-1 through Section 72-3-5 NMSA and these regulations. The water master district manager shall provide the water master with guidelines for administration, including his determination, for purposes of administration, of all administrable water rights within the water master district. Water master guidelines shall be in the form of a water master manual applicable to each water master district or sub-district. Comments from the public shall be taken and considered prior to finalizing the water master manuals. Notice shall be provided in accordance with Subsection D of 72-2-8 NMSA. The state engineer may administer water rights pursuant to a draft water master manual for a specific period of time, which will be determined in the district-specific regulations, prior to finalizing a manual so that the adopted manual will be based upon actual experience and the collective comments of the water right owners in the district.
[19.25.13.11 NMAC - N, 12/30/2004]

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

- A.** the state engineer finds that the creation of such a water master district is necessary for the economical and satisfactory administration of water;
- B.** the boundaries of the water master districts are in conformity with drainage areas as defined by the state engineer;
- C.** the water master districts are designated by names; and
- D.** as far as possible, the water master districts comprise one or more stream systems or stream reaches, including hydrologically connected groundwater, as defined by the state engineer.

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

19.25.13.13 CHANGING A WATER MASTER DISTRICT: Water master districts may be changed from time to time, as may be necessary in the opinion of the state engineer, for the economical and satisfactory apportionment of water.
[19.25.13.13 NMAC - N, 12/30/2004]

19.25.13.14 CREATION OF WATER MASTER SUBDISTRICTS: When, in his opinion, it shall be in the best interests of the state and the owners of water rights within any stream system within the state, the state engineer may divide water master districts further into sub-districts, each of which shall be designated by a distinct name.
[19.25.13.14 NMAC - N, 12/30/2004]

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

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

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

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

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

- B.** implement administration of the storage, diversion, and use of the waters of the water master district in accordance with the administrable water rights;
- C.** administer the diversion of the waters of the water master district in priority or under an alternative administration;
- D.** administer diversions of the waters of the water master district in accordance with any administration date declared by the state engineer;
- E.** facilitate the formation and operation of water right owner groups to, among other things, improve the management of water supplies, water conservation, cooperation among water right owners and administration;
- F.** facilitate the negotiation and implementation of alternative administration agreements, including cooperative agreements, for sharing available water supplies;
- G.** adjust headgates and restrict diversions or pumping as required to administer water in accordance with principles of prior appropriation and beneficial use, to prevent the illegal use of water, and to prevent waste; and
- H.** exercise all such authority as is required to accomplish effective water rights administration.

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

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

- A.** determine the physical capacity of diversion and delivery structures for each point of diversion expressed as a maximum rate of flow in cubic feet per second (cfs);
- B.** determine the maximum rate of flow, expressed in cfs, required to meet the total demand for administrable water rights served by that point of diversion;
- C.** take into account water needed to provide for adequate hydraulic pressure to ensure maximum irrigation efficiency and charge of the system;
- D.** take into account water needed for additional uses such as, but not limited to, silt-flushing;
- E.** during times of high stream flow, when there are no legal constraints imposed upon the physical administration of the available water supply, relax limits on the amount of water that may be diverted in order that the delivery system might operate more efficiently, except that under no circumstances may the total CIR of water rights served from the project increase;
- F.** with respect to all agricultural uses, require the designation by the water right owner of land to be irrigated in a particular season and verify the irrigability of that land;
- G.** ensure that water diversions do not exceed the amount needed to serve administrable water rights, except as provided in Subsections C through E, above;
- H.** administer direct flow water for delivery to in-priority administrable water rights, curtail diversions by out-of-priority administrable water rights, ensure the delivery of storage water to those having rights to its use, and protect storage water releases from diversion by those without rights to its use;
- I.** establish protocols for communication and exchange of information with water right owners as required for administration;
- J.** maintain accurate records of all administration activities, including meter readings, and establish a protocol for the inspection and copying of such records, at the requestor's expense;
- K.** identify waste and illegal use of water, including re-diversion and reuse of return flows other than as specifically provided for in an administrable water right;
- L.** upon a determination that a use is illegal or constitutes waste, cap, lock or otherwise temporarily disable any mechanism for illegal diversion; no permanent disablement may occur without hearing before the state engineer;
- M.** where he has determined that a facility must be permanently disabled, issue an order directing that the diversion be permanently disabled, which order shall be heard by the state engineer as provided below; pending review of the water master's order, the temporary disablement of the disputed diversion shall remain in place;
- N.** perform all such duties as are required to accomplish administration.

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

19.25.13.18 NO CHANGE IN DITCH SYSTEM MANAGEMENT: Except as required in the performance of the water master's duties to regulate the distribution of water from the various stream systems of the state to the points of diversion of ditches and irrigation systems entitled to water therefrom, these rules and regulations shall not

be construed to affect the internal management of projects, including acequias or community ditches and other water delivery systems, in accordance with Section 72-9-2 NMSA, which provides for the distribution of water from the ditches and acequias according to local or community customs, rules and regulations that have been properly adopted. The state engineer's authority, and that of his water master, to regulate the diversion of water from the source to a ditch or acequia is unaffected by either Section 72-9-2 NMSA or this provision.

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

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

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

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

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

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

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

19.25.13.22 FARM DELIVERY AND PROJECT DIVERSION REQUIREMENT

DETERMINATIONS: In the absence of applicable court orders or adjudication decrees, the state engineer shall, prior to administration, make a determination of farm delivery and project diversion requirements in water master districts that are subject to administration. The project diversion requirement may be expressed as a maximum rate of diversion, an annual maximum diverted volume of water for a specified use, or both. The state engineer may modify these determinations based on new information, including field experience of the water master. None of the requirements of this provision shall apply if a determination adequate for effective water administration has been made by a court of competent jurisdiction.

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

19.25.13.23 OBJECTIONS TO, AND STATE ENGINEER REVIEW OF, WATER MASTER

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

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

19.25.13.24 WATER MASTER ADMINISTRATION OF AN ADMINISTRATION DATE: In the event that the state engineer determines an administration date for a water master district, the water master shall oversee the curtailment of all administrable water rights junior to the administration date. The water master shall not allow out-of-priority use in the absence of a replacement plan approved by the state engineer.
[19.25.13.24 NMAC - N, 12/30/2004]

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

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

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

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

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

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

- A. a partial final decree or a final decree entered by an adjudication court of competent jurisdiction, subject to any state engineer permit issued subsequent to entry of said adjudication decree; or, if no decree has been entered, then;
- B. a subfile order entered by an adjudication court of competent jurisdiction; or, if no subfile order has been entered, then;
- C. an offer of judgment signed by the defendant in a water rights adjudication; or, if no offer of judgment has been signed, then;
- D. a hydrographic survey conducted and filed in accordance with Section 72-4-17 NMSA or Section 72-4-16 NMSA; or, if no hydrographic survey has been filed, then;
- E. a license issued by the state engineer; or, if no license has been issued, then;
- F. a permit issued by the state engineer, accompanied by proof of actual beneficial use; and
- G. a determination made by the state engineer based on the best available evidence, consisting of, where available, any filings with the office of the state engineer, field or documentary evidence of beneficial use associated with the right including historical aerial photography, diversions records of historical diversions, historical studies containing evidence regarding water use, and data regarding irrigation and water delivery system requirements.

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

19.25.13.28 SUPERSESSON BY A COURT: Any determinations made by the state engineer for administration purposes within any district subject to administration in the absence of a completed adjudication shall be subject to any decrees issued by an adjudication court of competent jurisdiction or any court of competent jurisdiction.

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

19.25.13.29 ADMINISTRATION BY ADMINISTRATION DATE: The state engineer may adopt an administration date, based on his best professional judgment of the water supply available for consumptive use by water right owners in the water master district or for depletion within the state of New Mexico as may be appropriate, and the date on which that administration date will be effective, by order in accordance with Paragraph 3 of Subsection B of 72-2-8 NMSA, for any water master district. The state engineer may revise an administration date as necessary to achieve the objectives of these rules and regulations. The state engineer shall publish the adoption or revision of an administration date once a week for two consecutive weeks in two newspapers of general circulation within the water master district affected by such adoption or revision. Upon the effective date of an administrative date, all out-of-priority administrable water rights must cease diversion, except as provided by an approved replacement plan. Determination of an administration date shall be ordered to implement depletion limit administration and shall be specifically provided for by the provisions of district-specific regulations to achieve compliance with an interstate stream compact; or, in the state engineer's performance of his duties under Section 72-2-1 NMSA upon further formal state engineer action pursuant to Section 72-2-8 NMSA for reasons of public safety or the interests of the water right owners in the district.

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

19.25.13.30 OBJECTION TO, AND STATE ENGINEER REVIEW OF, STATE ENGINEER DETERMINATION OF AN ADMINISTRATION DATE: Owners of administrable water rights are encouraged to resolve objections to the state engineer's determination of an administration date informally with the state engineer's district office. If such informal negotiations fail, the state engineer shall hear objections to his determination of an administration date in accordance with Section 72-2-16 NMSA. Filing of an objection to an administration date will not stay the state engineer's administration by administration date, pending resolution of the objection. Appeals from decisions of the state engineer shall be in accordance with Section 72-7-1 NMSA.

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

19.25.13.31 APPLICATION FOR APPROVAL OF REPLACEMENT PLANS: Replacement plans are available only during state engineer priority administration of the available water supply to prevent serious and imminent economic harm in response to, and only until water rights are permanently transferred, if necessary. The state engineer may approve replacement plans based on the adopted generalized hydrologic analysis that, in his professional judgment, provide sufficient replacement water to fully offset depletions to surface waters caused by out-of-priority diversions in order to prevent impairment of senior water right owners by the junior water right owner that would otherwise be out-of-priority. Replacement plans may be approved temporarily until permanent transfer of water is effected for water right owners who are likely to face permanent curtailment, or for limited periods when a water right owner is not likely to face permanent curtailment. The owner of an out-of-priority administrable water right that is subject to administration in a water district may submit to the state engineer an application for approval of a replacement plan. The application shall contain the following information:

- A. the name and address of the applicant;
- B. the location, amount and priority date of applicant's existing administrable water right;
- C. each source of replacement water and the amount of historic consumptive use related to the water right that is the source of replacement water, to be established by documentation satisfactory to the state engineer;
- D. an estimate of the amount of water to be diverted by the applicant;
- E. a map acceptable to the state engineer showing the source and point of diversion of the replacement water and the location of the proposed use;
- F. a copy of any agreement between the applicant and the owner of water to be used as replacement water, or other documentation demonstrating to the state engineer's satisfaction that the applicant has a legal entitlement to a source of water to be used as replacement water;
- G. the expected duration of the plan; and
- H. any other information the state engineer deems necessary.

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

19.25.13.32 GENERALIZED HYDROLOGIC ANALYSIS: The state engineer will develop a generalized hydrologic analysis for a water master district subject to administration as the basis for the development, review and approval of replacement plans within that water master district. The generalized hydrologic analysis will be based upon, and obtained from, the best available hydrologic model or models designated by the state engineer for the water master district. The hydrologic models based upon the best available hydrogeologic data will take into account existing surface and groundwater diversions and the combined effect of groundwater and surface water uses on the basin groundwater and surface water system. Adoption of a generalized hydrologic analysis shall be undertaken in conjunction with the public rule-making process for district-specific regulations pursuant to Subsection D of 72-2-8 NMSA. The generalized hydrologic analysis shall include guidelines for the approval of applications. If an applicant agrees to the use of the generalized hydrologic analysis in the review of his application, the state engineer shall expedite his review of the application on that basis. The generalized hydrologic analysis may be adopted as part of basin-specific regulations developed by the state engineer for a specific water master district, or subsequent thereto. A generalized hydrologic analysis shall not be adopted in the absence of proposed district-specific regulations for administration. After consideration of public comment on a proposed generalized hydrologic analysis, the state engineer may adopt a generalized hydrologic analysis for use to evaluate replacement plans pertinent to administration within the water master district. In order to adopt a generalized hydrologic analysis, the state engineer shall find that it is sufficiently conservative to assure that any replacement plan that is approved:

A. will not impair in-priority administrable water rights and by limiting diversions under the replacement plan to no more than the average of recent historical beneficial use will be a sufficient basis for such a finding; and

B. will not result in any increase in depletions within the water master district; accepting an applicant's assurance that no water shall be diverted under that portion of the in-priority administrable water right that is committed to the replacement plan, and finding that foregone average historic depletions associated with the temporarily transferred in-priority water right are at least 10 percent greater than the average historic depletions associated with the out-of-priority administrable water right, are together a sufficient basis for such a finding.

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

19.25.13.33 APPROVAL OF REPLACEMENT PLANS: The state engineer shall determine the adequacy of each source of water proposed for use as replacement water based upon the generalized hydrologic analysis adopted by the state engineer. Replacement plans shall be approved for a period not to exceed two years but may be renewed upon application. Upon finding that the approval of a replacement plan meets the criteria of Section 19.25.13.32 NMAC, is necessary to prevent crop loss or other serious economic harm to the owner of an out-of-priority administrable water right, and is not contrary to conservation of water or the public welfare of the state, the state engineer shall approve the replacement plan. The state engineer may require such terms and conditions for the approval of a replacement plan as he deems to be necessary, including time limitations on the duration of the replacement plan. State engineer approvals of replacement plans shall be presumed to be in proper implementation of the provisions of the water laws administered by him as provided by Subsection H of 72-2-8 NMSA. Any approved replacement plan shall continue in effect during the course of objections and appeals proceedings.

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

19.25.13.34 AMENDMENT AND RENEWAL OF REPLACEMENT PLANS: The holder of a replacement plan may submit an application to the state engineer at any time during the term of the replacement plan to amend or renew the replacement plan. Upon state engineer determination that the permanent acquisition of a senior water right to replace the depletions caused by the exercise of an out-of-priority water right is not required, or upon a showing of a good faith effort to permanently acquire a senior water right in the absence of such a determination, the state engineer may approve the renewal or amendment of a replacement plan in the same manner as set forth in Section 19.25.13.33 NMAC, after a review of any new information or evidence of changed conditions submitted in support of the application.

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

19.25.13.35 ACCURACY OR SUFFICIENCY OF INFORMATION; MODIFICATION: Each applicant for, or holder of, a replacement plan is responsible for the accuracy and sufficiency of all material information provided in support of the application to the state engineer before or after approval of the replacement plan. If an approved replacement plan proves to be insufficient to replace depletions, the state engineer may require the holder

of a replacement plan to provide additional replacement water at any time during the term of the replacement plan or within a reasonable period after the term of the replacement plan if necessary to offset cumulative impacts.
[19.25.13.35 NMAC - N, 12/30/2004]

19.25.13.36 REVOCATION OF REPLACEMENT PLANS: The state engineer may revoke approval of a replacement plan, in whole or in part, where material information provided by the applicant for, or the present holder of, the replacement plan is inaccurate; for non-compliance with the terms and conditions of the replacement plan; or for non-compliance with these rules. Upon revocation of a replacement plan, to the extent of the revocation, all diversions authorized by the revoked portion of the replacement plan must cease and the holder of the replacement plan must, within a reasonable period after revocation of the replacement plan, replace the diversion and depletion overruns incurred, if any.
[19.25.13.36 NMAC - N, 12/30/2004]

19.25.13.37 FALLOWING AND NON-USE REQUIREMENTS: Water once committed to a replacement plan cannot be used for any other purpose during the term of the replacement plan. In the event that the source of replacement water is irrigated land, the land to which the water right being used for replacement water is appurtenant shall be fallowed. Fallowed land shall not be irrigated from any source, including domestic and supplemental wells, without written approval by the state engineer. Fallowed land shall be specifically identified by map or survey, or by other means acceptable to the state engineer. Without written approval by the state engineer, no water shall be diverted on, or delivered to, fallowed land during the period in which the water is being used as replacement water. In the event the source of replacement water is not irrigated land, the use to which the owner of the water right that is the source of replacement water is entitled under his right shall, during the term of the replacement plan, be reduced by the amount of water committed to the replacement plan.
[19.25.13.37 NMAC - N, 12/30/2004]

19.25.13.38 FORMATION OF WATER RIGHT OWNER GROUPS: Water right owners are encouraged to form water right owner groups for the purpose of discussion and negotiation among themselves, with other water right owners, or with the water master, regarding the possibility of shortage sharing agreements and other forms of alternative administration and joint application for replacement plans. Subject to the exemption for acequias and community ditches under Subsection C of 72-2-9.1 NMSA, in the event that water right owner groups, aided by the water master, attempt to reach an agreement for Alternative administration, such efforts by the water right owner groups and the water master shall constitute promotion of expedited marketing and leasing as required by that statute.
[19.25.13.38 NMAC - N, 12/30/2004]

19.25.13.39 REPLACEMENT PLANS BY WATER RIGHT OWNER GROUPS: Water right owners may, individually or collectively, submit applications for replacement plans as described above. Except as may be limited by a specific regulation or order, water conservancy districts, irrigation districts, municipalities, or other entities may initiate and submit plans in accordance with these rules. Water right owner groups operating under an approved replacement plan shall notify the state engineer of any plan participant who is not in compliance with the replacement plan.
[19.25.13.39 NMAC - N, 12/30/2004]

19.25.13.40 OBJECTIONS TO, AND APPEALS FROM, APPROVALS, DENIALS AND REVOCATIONS OF REPLACEMENT PLANS: Within thirty days after approval of a replacement plan, the state engineer shall cause to be published a summary of the approved replacement plan providing for the opportunity to appeal the approval, denial or revocation of a replacement plan pursuant to Section 72-2-16 NMSA. The state engineer shall hear objections to his approval, denial or revocation of all part of a replacement plan in accordance with Section 72-2-16 NMSA but shall endeavor to hear such objections in the same prompt manner as provided by Section 72-3-3 NMSA for review of water master actions. Filing of an objection to an approval, denial or revocation of a replacement plan will not stay the state engineer's determination that all water use under all, or part of, a revoked replacement plan must cease, pending resolution of the objection.
[19.25.13.40 NMAC - N, 12/30/2004]

19.25.13.41 APPEALS FROM STATE ENGINEER DECISIONS: All appeals from state engineer review of objections to any actions or decisions made pursuant to these rules and regulations shall be in accordance with Section 72-7-1 NMSA.

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

19.25.13.42 REQUEST FOR ADMINISTRATION FROM THE INTERSTATE STREAM

COMMISSION: The state engineer shall proceed with water rights administration when requested to do so by the New Mexico interstate stream commission for the purpose of compliance with interstate stream compacts, which request shall be in the form of a resolution.

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

19.25.13.43 EMERGENCY ADMINISTRATIVE ACTIONS: The state engineer may determine that the need for water rights administration in a specific district is so urgent that water rights administration may proceed directly under order issued pursuant to the procedural requirements of Paragraph 3 of Subsection B of 72-2-8 NMSA.

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

19.25.13.44 EXPEDITED MARKETING AND LEASING: The state engineer will review and analyze permit applications in water master districts affected by priority administration on an expedited basis utilizing the appropriate hydrologic model adopted by the state engineer for the water master district. Expedited review of permit applications in water master districts affected by priority administration shall fulfill the requirements of Subsection C of 72-2-9.1 NMSA for the promotion of expedited marketing and leasing of water rights.

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

19.25.13.45 KNOWLEDGE OF AND COMPLIANCE WITH STATUTES, RULES, REGULATIONS AND CODES: It shall be the responsibility of all applicants and permittees to know of, and comply with, all applicable statutes, rules, regulations and codes.

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

19.25.13.46 RETROACTIVE EFFECT: These rules and regulations shall have retroactive effect on all water master districts already formed at the time of promulgation of these rules and regulations.

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

19.25.13.47 SEVERABILITY: If any provision or provisions of these regulations are found to be invalid, the remaining provisions shall continue to be in effect.

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

19.25.13.48 ENFORCEMENT: The state engineer may enforce these rules by all means within his legal authority.

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

19.25.13.49 STATE ENGINEER OPTION TO REVISE RULES AND REGULATIONS: The state engineer may modify these rules and regulations as needed to accomplish the objectives of these rules and regulations. Removal of a regulation or a section of these rules and regulations, whether by a court or by the state engineer, shall not affect the validity of the remaining rules and regulations.

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

19.25.13.50 LIBERAL CONSTRUCTION: These rules shall be liberally construed to carry out their purpose in accordance with Subsection H of 72-2-8 NMSA.

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

HISTORY OF 19.25.13 NMAC: [RESERVED]