

**OFFICE OF THE STATE ENGINEER
STATE OF NEW MEXICO**

IN THE MATTER OF METERING REQUIREMENTS
FOR GROUNDWATER DIVERSIONS IN THE NAMBÉ
POJOAQUE TESUQUE WATER MASTER DISTRICT
IN THE STATE OF NEW MEXICO

Order No. 186

NAMBÉ POJOAQUE TESUQUE WATER MASTER DISTRICT METERING ORDER

WHEREAS, the water of underground streams, channels, artesian basins, reservoirs or lakes having reasonably ascertainable boundaries belong to the public and are subject to appropriation for beneficial use, NMSA 1978, Section 72-12-1; and

WHEREAS, the geographic boundaries of the Nambé Pojoaque Tesuque (“NPT”) Water Master District are those declared by State Engineer Order No. 178; and

WHEREAS, the State Engineer has a statutory responsibility to supervise the measurement, appropriation, and distribution of the waters of the state, NMSA 1978, Section 72-2-1 in accordance with the prior appropriation doctrine, as established by Article XVI of the New Mexico Constitution and NMSA 1978, Section 72-1-2; and

WHEREAS, the State Engineer may adopt rules regarding the administration of water and promoting expedited marketing and leasing of water in areas affected by priority administration, NMSA 1978, Section 72-2-8, NMSA 1978, Section 72-2-9.1; and

WHEREAS, the State Engineer and his appointed Water Master have immediate charge of the apportionment of surface and groundwater within the NPT Water Master District pursuant to his statutory authority, NMSA 1978, Section 72-3-2, and consistent with the Settlement Agreement in *State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al*, No. 66cv6639 (D.N.M.) (dated April 19, 2012); and

WHEREAS, consistent with Section 5.3 of the Settlement Agreement, the State Engineer has promulgated District Specific Rules for administration of the *Nambé-Pojoaque-Tesuque Water Master District: Active Water Resource Management*, 19.25.20 NMAC pursuant to NMSA 1978, Section 72-2-8; and

WHEREAS, the Water Master shall apportion, regulate and control the surface and groundwater of the district as well as prevent waste, NMSA 1978, Section 72-3-2; and

WHEREAS, the State Legislature has recognized that the need for water administration is urgent, NMSA 1978, Section 72-2-9.1; and

WHEREAS, the underground waters of the NPT Water Master District are in hydrologic

connection with the surface water system of the NPT Water Master District; and

WHEREAS, measuring and reporting of groundwater diversions in the NPT Water Master District will assist the State Engineer and his appointed Water Master in managing and administering the waters of the NPT Water Master District; and

WHEREAS, measuring and reporting of groundwater diversions in the NPT Water Master District will promote expedited leasing and marketing of water by ensuring a high degree of accuracy in the determination of actual water use, and by assisting in State Engineer analysis of impairment, public welfare and conservation issues; and

WHEREAS, this Order providing the measurement and reporting of groundwater diversions in the NPT Water Master District will assist the State Engineer in performing both his statutory duties and duties under the Settlement Agreement and the NPT Water Master District rules, 19.25.20 NMAC, to protect existing water rights, promote expedited leasing and marketing of water, and promote the conservation of water within the State and the public welfare of the State by preventing the over-appropriation, illegal use and waste of water.

NOW THEREFORE, I, Tom Blaine, State Engineer of the State of New Mexico, do hereby order metering by totalizing flow meters of all groundwater diversions in the NPT Water Master District. I further order that all metering devices be in place and operational no later than one year after the effective date of this order.

DEFINITION OF THE NPT WATER MASTER DISTRICT: The NPT Water Master District includes all lands described by State Engineer Order Number 178, including all lands within which rainfall and runoff flows into arroyos, drainages, and named tributaries that drain to the Rio Pojoaque, the two unnamed arroyos immediately south of the Rio Pojoaque, the two arroyos (including the Alamo) that are immediately north of the Rio Pojoaque, and all of the San Ildefonso Eastern Reservation recognized by the Act of September 14, 1961, 75 Stat. 505, Section 8.

METERING OF ALL GROUNDWATER USES IN THE NPT BASIN WATER MASTER DISTRICT: A totalizing flow meter, in accordance with the standards set out in this Order, is required for every groundwater well within the NPT Water Master District. Multiple household wells diverting from a single shared point of diversion must install and maintain individual measuring devices for each household's separate diversions from the shared well, so that each household's diversion and use may be tracked and recorded individually. Each Pueblo shall install a totalizing meter to measure the amount of water diverted from each well located on Pueblo land, consistent with the requirements of this metering order, upon the promulgation of the administrative rules for the NPT Water Master District.

INSTALLATION, MAINTENANCE AND REPAIR: The water right owner shall be responsible for installing, maintaining and repairing the meter. The meter shall be installed in accordance with the manufacturer's specifications. The owner shall keep the meter in good working order so as to provide a continuous and accurate record of the amount of water

diverted. If the meter is broken, or not functioning in accordance with the specifications of this Order, diversion of water from that well shall be discontinued unless estimates of diversion can be made by hour meters or electrical meters associated with the well pump. Estimates using data from hour meters shall be made based upon the listed pump capacity. Broken or non-functioning meters must be repaired or replaced within 30 days of the date the meter ceased to function.

REPORTING REQUIREMENTS: Within ten days after meter installation, the water right owner shall submit to the State Engineer a written record of the meter's make, model, serial number, date of installation, initial reading, units of measurement and multiplier (if any), information as to the presence of an hour meter or electrical meter associated with the well pump, and the Office of the State Engineer (OSE) file number for the well. The meter readings, and readings from any hour meter or electrical meter associated with the well pump, shall be reported on or before the tenth day of January, April, July and October of each year, for the three preceding calendar months, unless otherwise ordered by the State Engineer. If, however, a permit or license of the State Engineer requires more frequent meter readings, the terms of the permit or license shall control.

All reporting shall be either by electronic submission through a meter data input system developed by the OSE, or in writing on a form acceptable to the State Engineer. Reports shall include the OSE file number for the well, serial number of the meter, dates of reading, units of measurement and multiplier, if any. If a meter is serviced, repaired or replaced, the owner shall record the meter readings before and after such actions, and shall include those readings in a written report submitted for the quarter in which servicing, repair or replacement occurred.

STANDARDS, SPECIFICATIONS AND GUIDELINES: Each meter shall be of a type acceptable to the State Engineer and shall be installed, maintained and repaired to be operational in a manner that is acceptable to the State Engineer. A list of acceptable meters is available on the OSE website. Each meter shall meet the following minimum standards:

- A. The meter shall be a totalizing flow meter with a rated accuracy of plus or minus two (2) percent of actual flow. The installed accuracy of the meter and any secondary equipment such as data recorders shall be within plus or minus ten (10) percent of actual flow. The meter shall be factory calibrated or calibrated according to industry standards upon installation, and shall be tested for accuracy or re-calibrated at least once every three years thereafter.
- B. The meter shall be installed, inspected, maintained and repaired according to the manufacturer's specifications.
- C. The meter shall contain sufficient recording digits to assure that "roll over" to zero does not occur within a one-year period.
- D. The meter register or display shall record total volume and instantaneous flow rate or be capable of flow rate calculation, be non-resettable, and have a waterproof and tamperproof seal.

- E. There shall be no diversions between the wellhead and the meter.
- F. The meter shall be installed and maintained in such a manner as to prevent meter error, for example, due to the pipe being incompletely filled with water at the location of the meter.
- G. The meter shall be installed and maintained in such a manner as to prevent meter error due to the meter being too close to obstructions in the discharge pipe, such as valves, pumps, bends in the pipe or changes in pipe inner diameter. The meter shall be installed at a distance of at least 10 pipe diameters downstream, and at least five pipe diameters upstream from obstructions to flow, unless manufacturer's installation instructions specify a shorter minimum run of straight pipe.
- H. The meter shall be accessible for reading, inspection and testing by a representative of the State Engineer, including his appointed Water Master.
- I. The units of measurement and the multiplier, if any, for determining the total amount of water diverted shall be indicated on the meter.

The Measurement Specifications adopted by the State Engineer and the list of meters that conform to these specifications may be obtained from the District Office and may be found on the State Engineer's website at www.ose.state.nm.us. To install a meter that is not on the State Engineer's list of conforming meters requires that, prior to installation, the State Engineer or the Water Master determine that the meter meets the adopted measurement specifications and approve its installation. Any currently installed measuring devices not meeting these specifications must be replaced within one year of the effective date of this order. The State Engineer may modify these standards, specifications and guidelines, or adopt additional standards, specifications and guidelines for meters and for their installation, repair and maintenance, or for other alternative measurement methods or devices, which shall be on file in his office.

METERING ENFORCEMENT: Pursuant to NMSA 1978, Section 72-8-1, the State Engineer and his duly appointed representatives shall be allowed entry upon private property for the performance of their respective duties, including access to well(s) for meter readings and water level measurements.

The following procedures shall be followed for enforcement of compliance with this Metering Order:

Step 1: Field Inspection

The Water Master or members of his or her staff shall conduct a field inspection of each groundwater point of diversion at issue, following the procedures set forth below:

- (a) Non-compliance tags shall be attached to groundwater points of diversion found to be out of compliance at the time of a field check; and

- (b) The inspecting staff member shall complete a field check form and attach photographs of the out of compliance point of diversion.
- (c) The Water Master will provide and install a well identification tag for each well/meter. The permit holder is responsible for maintaining the well identification tag and replacing missing, damaged, or illegible well identification tags with a duplicate well identification tag.

Step 2: Notice to Owner

The Water Master shall send written notice, by first class mail, to the owner of an out-of-compliance point of diversion within five business days of the field inspection. The notice shall inform the owner that the owner is out of compliance with this Metering Order and include an explanation of how to comply or request a variance as provided for by the Order.

Step 3: Owner Response to Notice

If the owner contacts the Water Master to seek a variance, or indicates, by clear proof of specific steps taken, a good faith effort to comply with this Metering Order, then the Water Master shall stay any further enforcement for a reasonable and appropriate time. The Water Master shall provide to the owner a new deadline by which to comply.

If the owner fails to respond to the notice within 30 days from the date of mailing, or does so in a manner that does not show a good faith effort to comply with this Metering Order, then the Water Master shall refer the matter to the OSE Administrative Litigation Unit (“ALU”).

Step 4: Issuance of Compliance Order

Upon referral of the matter to the ALU, no sooner than 40 days after the mailing of the notice to the owner, the OSE Water Resources Allocation Program (WRAP) shall issue a compliance order prepared by the ALU. The compliance order shall be served in accordance with NMSA 1978, Section 72-2-18, and include a cover letter.

Step 5: Response to Compliance Order

If the owner timely requests an administrative hearing in response to the compliance order, then the ALU shall request a hearing pursuant to NMSA 1978, Section 72-2-18 (D) and NMAC 19.25.2.

If after conclusion of an administrative hearing the owner timely appeals the compliance order to district court pursuant to NMSA 1978, Section 72-2-18 (F), then the matter shall proceed in accordance with applicable statutes and court rules. If the owner fails to request an administrative hearing or appeal the compliance order to the district court, then the ALU shall file an enforcement action in the District Court to enforce the compliance order and for other appropriate remedies as provided for by NMSA 1978, Section 72-2-18, up to and including repayment of water for over-diversions or illegal diversions, injunctive relief, and fines of up to \$100 per day for violation of a final compliance order.

TAMPERING WITH MEASURING DEVICE OR METER PROHIBITED; MISDEMEANOR; LIABILITY FOR DAMAGES: A water right owner shall not permit any tampering with a measuring device or meter to disable it or otherwise cause it to measure inaccurately the rate of flow or the volume of water directed. Any person who interferes with any device for the measurement of water shall be guilty of a misdemeanor and shall also be liable for any injury or damage resulting from such unlawful act pursuant to NMSA 1978, Section 72-8-1.

PENALTIES: In addition to penalties that may be assessed as a result of violation of a compliance order pursuant to NMSA 1978, Section 72-2-18, any person in violation of any section of Article 8, Chapter 72 shall be subject to the penalties described therein, pursuant to NMSA Section 72-8-6.

VARIANCES: When the strict application of any provision of this Order would be impracticable or would cause unreasonable hardship, the State Engineer may, at his discretion, grant a variance for a specific instance, provided a written request for the variance is filed with the OSE and the State Engineer finds the request justifiable. Alternative methods or devices for measuring water uses, and methods of installation, maintenance and repair that do not conform to the minimum Standards, Specifications and Guidelines of this Order, are allowable only upon written authorization from the State Engineer.

MODIFICATION OF THIS ORDER: The State Engineer may, at his sole discretion, supplement or amend this Order as warranted, by issuance of further written orders modifying or superseding this Order.

EFFECTIVE DATE: This Order shall become effective on the date of signature by the State Engineer. No water shall be diverted from any well in the NPT Water Master District one year after the effective date unless the well is equipped with a functional totalizing flow meter as required in this Order.

WITNESS my hand and seal of my office this 3rd day of October, 2017.




TOM BLAINE, P.E.
State Engineer