WATER RIGHTS IN NEW MEXICO

Water Rights 101
October 26, 2026

1. What Is a Water Right?

In New Mexico, water itself belongs to the public. What you can own is a water right: the legal right to divert and use a specific quantity of water, from a specific source, at a specific place, for a specific purpose. This is called a "usufructuary" right, a right to use something, not to own the thing itself. You do not own the water in the river or the aquifer. You own the right to use a defined amount of it.

A water right in New Mexico has six defining elements. Change any one of them without approval from the OSE, and the change generally is not legal:

- **Priority –** the date the right was established. Older rights are served first when supply is short.
- **Quantity –** how much water can be diverted, and how much can be consumed.
- **Point of diversion –** the specific well, spring, headgate, or ditch where the water is diverted.
- **Place of use –** the specific land or location where the water is used.
- **Purpose of use –** what the water is used for (irrigation, domestic, commercial, municipal, and so on).
- **Source –** the specific stream system or aquifer the water comes from.

2. The Basic Rule: First in Time, First in Right

New Mexico follows the Doctrine of Prior Appropriation, not the riparian doctrine used in most eastern states, which would give every landowner next to a stream an automatic right to use that water. New Mexico rejected that approach in favor of a different system, built around two ideas written into the state constitution:

- Beneficial use is the basis, the measure, and the limit of a water right. Water that is put to a real and productive use earns a right; water that is wasted does not.
- Priority in time gives the better right. Whoever first put water to beneficial use, and kept doing so, has the senior claim. In shortage, senior rights are satisfied before junior ones.

In practice, this means agricultural users, acequias, and Native American and Pueblo water rights (which can predate New Mexico statehood, or even date to "time immemorial" for Pueblo rights) are frequently the most senior rights on a given stream system. Municipal, commercial, residential, and recreational uses are more often junior.

3. Surface Water and Groundwater

New Mexico manages surface water (rivers, streams, and lakes) and groundwater (aquifers) under similar rules, but on different timelines. The OSE has had jurisdiction over new surface water appropriations since 1907. No one may use new surface water without a permit issued after that date.

Groundwater is regulated by groundwater basin. When the State Engineer formally "declares" a groundwater basin, new groundwater diversions, changes to one of the six defining elements of an existing water right, and the drilling of wells within that basin require a permit. New Mexico now has more than 40 declared groundwater basins, together covering essentially the entire state (with narrow exceptions for some deep, non-potable aquifers). In practice, this means any new groundwater diversions, changes to existing diversions or the drilling of wells anywhere in New Mexico requires an OSE permit. Domestic wells, livestock wells, and some other small or temporary wells aren't exempt from that permit requirement, but they do skip the lengthy publication-and-review process described in Section 6.

Surface water and groundwater are frequently connected: pumping a well near a river can reduce the river's flow over time. Because of this, the OSE evaluates groundwater and surface water together (called conjunctive management) in many areas, and a right tied to one source generally cannot simply be moved to an unconnected source.

4. Do You Already Have a Water Right?

If you are buying or already own land in New Mexico, one of the first things to determine is whether a water right exists, and if so, whether it transfers with the property. A few starting points:

- Pre-basin or pre-1907 rights: Surface water rights established by beneficial use before 1907, and groundwater rights established before a basin was declared, are called pre-1907 or pre-basin rights, respectively. Water rights adjudication suits are designed to identify all of these rights/claims and then determine their elements in a judicial proceeding. Prior to an adjudication, holders of these rights may exercise them without a permit unless they need to change one of the elements of the right (in which case a permit is needed). Holders of pre-basin or pre-1907 rights often still choose to document these rights with the OSE through the filing of a declaration. This is to ensure that these rights are recognized in the event of priority administration or protected from impairment by future applications. It should be noted that these water rights are subject to forfeiture if they go unused for an extended period of time as described in Section 8.
- Permitted rights: Post-1907 surface water rights and post-basin groundwater rights of water that have an OSE permit. The permit specifies the elements of the water right and includes conditions of approval conditioning the use of the water right. These permits also contain deadlines by which the water rights must be put to beneficial use, at which time permit holders are required to file a "proof of beneficial use," or PBU.
- An irrigation water right is legally attached ("appurtenant") to the specific land it serves, and ownership generally transfers with that land unless the conveyance document (i.e., the deed) specifies otherwise. The OSE encourages parties to do their due diligence with respect to the conveyance of water rights.
- New Mexico law requires anyone who acquires a water right by sale, gift, or other conveyance to file a change-of-ownership of water right form with the OSE, along with a copy of the deed or other transferring document; once the OSE accepts the change-of-ownership for filing, the new water right owner then records a copy with the county clerk. If you acquire a water right, file this promptly. Changes-of-ownership are also required to be filed for domestic, and livestock well permits.
- Some areas of New Mexico have administrative orders, judicial orders, administrative guidelines, and District Specific Regulations (DSRs) that affect the ability to use and/or transfer their water rights. Do not hesitate to ask your local district office to determine whether any such requirements apply to your water rights.

5. Domestic Wells: What Most New Landowners Deal With

Most people buying rural or semi-rural property in New Mexico will encounter the domestic well rules rather than the full permitting process. Wells drilled for domestic use follow a simplified path. The most recent guidance available for this process is explained below:

- A domestic well permit covers household purposes and irrigation of up to one acre of non-commercial trees, lawn, garden, or landscaping. Watering livestock is treated as a separate purpose under New Mexico rules, though it can often be applied for alongside a domestic permit; ask your district office how to apply for both together, if you need each.
- A single household's permitted diversion is capped at an amount of up to 1.0 acre-foot per year (about 326,000 gallons). Depending upon which basin the well is located in, more restrictive uses and quantities of water allowed may apply, and local ordinances may also contain additional restrictions. Actual household use is typically well under the capped amount.
- A shared domestic well serving two households is generally capped at 1.0 acre-foot per household. Once a well serves three or more households, the combined diversion is capped at 3.0 acre-feet per year total, no matter how many households share it.

- In some areas, the state engineer can declare a "domestic well management area" to prevent new wells from harming existing water rights; within one of these areas, a new single-household well is capped at 0.25 acre-foot per year instead of 1.0 (or lower, at the state engineer's discretion), each household on a new shared well is capped at 0.25 acre-foot (still with the 3.0 acre-foot combined ceiling once three or more households share a well), and meters are required. Separately, the state engineer has also issued basin-specific orders capping new domestic wells at 0.50 acre-foot per year and requiring meters in parts of some basins, including Estancia and portions of the Gallup, Tularosa and Zuni Salt Lake basins, outside of any formally declared management area. Because these restrictions are basin and area specific and can change, check with your district office to find out what limits apply to your specific property.
- Domestic well applications skip the lengthy publication-and-protest process used for other permits, and New Mexico law gives the state engineer authority to issue a permit upon filing; ask your local district office for a current estimate of processing time.
- Meters are generally required for wells serving multiple households, multiple purposes of use, supplemental wells, wells in a domestic well management area, and wells used for drinking and sanitary purposes incidental to a government, commercial, or non-profit facility.
- Domestic well permit applications carry a filing fee; $125 for a new domestic well permit, $75 for a replacement well, $125 for a supplemental well, $75 to repair or deepen a well, $75 to change the type of domestic use authorized, and varying costs to transfer an existing water right into a domestic well permit. Confirm current fees with your district office before filing, since fee schedules can change.

A COMMON MISUNDERSTANDING: DOMESTIC AND IRRIGATION RIGHTS ARE LIMITED

The use of a well for domestic purposes cannot simply be changed for a business, and an existing irrigation right cannot simply be changed for a greenhouse or other non-agricultural commercial use, even if the crop grown is the same.

Example: a 10-acre farm might have a right to divert 50 acre-feet per year and consume 25 acre-feet per year, with the difference returning to the ditch or stream as flood-irrigation return flow. A greenhouse using drip irrigation returns little or none of that water. To convert the use, the owner must apply to the OSE for a change of purpose of use of a water right, and the converted right will generally be limited to the original consumptive-use amount, not the larger diversion amount.

The lesson for a new landowner: an existing water rights records tell you what it currently allows. It does not automatically extend to a different use, even a similar sounding one.

6. Changing How a Water Right Is Used

If you want to do anything other than continue exercising an existing water right exactly as it is authorized, such as change the purpose of use, move the point of diversion, or change the place of use, you generally need a permit from the OSE. The process is outlined below:

- File an application with the OSE describing the amount of water, the purpose of use, the place of use, and the point of diversion. Additional documentation, such as acequia/community ditch approval, may be required when the application is filed. Your local district office will be able to assist with determining if any additional documentation is required to be filed with the application.
- After filing, the OSE drafts a notice for publication which by statute requires that the legal notice be posted on the OSE website and a copy of the notice is issued to the applicant, with instructions, to be published in a local newspaper for three consecutive weeks. The legal notice contains a protest period which generally runs about 70 days after the initial posting; the accuracy of the content of the legal notice and having the notice published

in the designated newspaper is the responsibility of the applicant. If publication doesn't happen within 60 days of the online posting, the applicant will be required to re-post the legal notice at their expense and the process starts over. Protests must be filed in writing (in triplicate) with the OSE by the deadline and method of submittal described in the legal notice.

- OSE evaluates every application, protested or not, against the same basic criteria, however basin specific guidelines may require the OSE to consider different criteria. The basic criteria include whether water is available to satisfy the application, if there is a valid water right, whether the change would impair existing rights, and whether it is contrary to water conservation or detrimental to the public welfare. An unprotested application is typically evaluated and acted on as being approved, partially approved, or denied; a protested application is decided after an administrative hearing on those same criteria.
- An application can take up to 6 months or longer as the minimum time from filing to a decision on a straightforward, unprotested application. A protested application, or one that goes to an administrative hearing, can take several years.

Acequias, community ditches and irrigation districts are recognized under New Mexico law as political subdivisions of the state. Many acequia associations date back to the Spanish colonial period. Acequias have an additional layer of protection: a water right generally cannot be transferred into or out of an acequia without the consent of the acequia's commissioners, who can deny a request only if it would be detrimental to the acequia or its members and who must explain their decision in writing. A denial can be appealed to district court, and if the acequia doesn't respond within 120 days of a certified request, the change is treated as approved.

7. What Happens When There Isn't Enough Water

New Mexico does not prioritize uses by type (irrigation is not legally more important than municipal use, for example). What matters is priority date. In a shortage, senior rights are served first, and junior rights may go unserved. Some parts of the state operate under active water resource management, in which a water master measures and distributes water on a stream system and can enforce priorities in real time. The Lower Pecos, Middle Rio Grande, Lower Rio Grande, San Juan, Upper Mimbres, Rio Gallinas, Nambe-Pojoaque-Tesuque, and Rio Chama basins are all identified by OSE as priority basins in various stages of active water resource management; check with OSE's Water Rights Division or your district office for the current status of a specific stream system.

New Mexico's surface water is also shared with neighboring states under several interstate compacts. These compacts can require New Mexico to deliver a set amount of water downstream regardless of in-state demand, which is an added constraint on top of ordinary priority administration.

8. Forfeiture and Abandonment

A water right that goes unused for four consecutive years can be forfeited. Forfeiture occurs after the OSE gives notice of the nonuse and the right holder still fails to resume beneficial use within one additional year. Certain circumstances stop this clock, including enrollment in the federal Conservation Reserve Program, participation in an OSE-approved conservation program, coverage under a municipal or county water plan, active military duty, participation in an approved water bank, or an OSE-approved extension (grantable in increments of up to three years).

Water rights can also be abandoned. Abandonment may result from nonuse coupled with an intent to abandon a water right. The intent to abandon a water right may be inferred from an unreasonably long period of nonuse, coupled with a lack of valid excuses for non-use. Prospective purchasers of water rights are encouraged to do their due diligence regarding the historical beneficial use of water rights that they are seeking to acquire.

9. Where to Get Help

The Office of the State Engineer administers water rights through district offices around the state, generally open 8:00 a.m. to 5:00 p.m., Monday through Friday.

- **District I – Albuquerque: 5550 San Antonio Dr NE, Albuquerque, NM 87109, (505) 383-4000**
- **District II – Roswell: 1900 West Second Street, Roswell, NM 88201, (575) 622-6521**
- **District III – Deming: 321 West Spruce Street, Deming, NM 88030, (575) 546-2851**
- **District IV – Las Cruces: 1680 Hickory Loop, Suite J, Las Cruces, NM 88005-6598, (575) 524-6161**
- **District V – Aztec: 100 Gossett Drive, Suite A, Aztec, NM 87410, (505) 383-4571**
- **District VI – Santa Fe: 407 Galisteo Street, Suite #102, Bataan Memorial Building, Santa Fe, NM 87501 (for visits); mail to PO Box 25102, Santa Fe, NM 87504-5102; (505) 827-6120**
- **District VII – Cimarron: 301 East 9th Street, PO Box 481, Cimarron, NM 87714, (575) 376-2918 or (575) 376-2410**

Quick Glossary

Acequia – a community-operated irrigation ditch, common in northern New Mexico, governed by a ditch commission; a mayordomo manages day-to-day operations and carries out the commission's rules.

Appropriation – the act of taking water and applying it to a beneficial use, which establishes a water right with a priority date.

Beneficial use – the legal standard for a valid water right; a productive use of water, as opposed to waste.

Declared groundwater basin – an area where the State Engineer has asserted jurisdiction, requiring a permit to change an element of a water right or to drill a new well.

Diversion vs. consumptive use – diversion is the total amount of water taken; consumptive use is the portion actually used up rather than returned to the source.

Priority date – the date a water right was established; determines seniority relative to other rights.

Vested right – a right established before 1907 (surface water) or before a basin's declaration date (groundwater), valid without a permit.

