

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

IN THE MATTER OF THE CREATION OF)
THE UPPER MIMBRES WATER MASTER)
DISTRICT FOR THE ADMINISTRATION OF)
RIGHTS TO THE USE OF WATER FROM)
THE MIMBRES UNDERGROUND WATER)
BASIN AND MIMBRES RIVER STREAM)
SYSTEM OF NEW MEXICO)

Order No. 171

The State Engineer for the State of New Mexico ("State Engineer") is authorized by statute to divide the State into water districts in conformity with the drainage areas for the purpose of performing the essential governmental function of distributing water among water rights owners under the laws of the State of New Mexico. The State Engineer may appoint a water master who will have immediate charge of such apportionment of waters.

STATUTORY AUTHORITIES

1. New Mexico law declares that all natural waters flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the State of New Mexico, belong to the public and are subject to appropriation for beneficial use. NMSA 1978, § 72-1-1.
2. The State Engineer has the statutory responsibility to supervise, measure, appropriate, and distribute the waters of the State, NMSA 1978, § 72-2-1, including surface waters, NMSA 1978, §§ 72-5-1 through 37, and groundwaters, NMSA 1978, §§ 72-12-1 through 28, in accordance with the prior appropriation doctrine, as established by New Mexico law, NM Const. art. XVI; NMSA 1978, § 72-1-2.
3. The State Engineer is authorized, if it is in the best interest of the State and the owners of water rights, to establish water districts upon any stream system within the State of New Mexico as necessary for the economical and satisfactory apportionment of said waters. NMSA 1978, § 72-3-1.
4. The State Engineer is authorized, if it is in the best interest of the State and the owners of water rights upon any stream system, to divide a stream system into subdistricts to effect the apportionment of waters within the State of New Mexico. NMSA 1978, § 72-3-1.
5. The State Engineer is authorized, if in his opinion the public safety or the interests of water users require it, to appoint a water master who shall appropriate, regulate and control the waters of such water districts so as to prevent waste. NMSA 1978, § 72-3-2.

FINDINGS OF FACT

1. In order to properly apportion the waters of the Upper Mimbres Stream System in Grant County, New Mexico, the establishment of the Upper Mimbres Water Master District ("District") and the appointment of a Water Master in and for the District are necessary.
2. The amount of water in the District is finite and varies from year to year based on annual spring run-off, which is dependent on annual precipitation, and on the amount of groundwater being diverted within the District.
3. A final decree in the adjudication of all water rights in the Mimbres Stream System and Mimbres Underground Water Basin was entered on January 14, 1993.
4. The recent drought in the State of New Mexico has created a water shortage crisis in the Upper Mimbres Stream System.
5. The shortage of water in the Upper Mimbres Stream System is a problem affecting the citizens of Grant County.
6. Creation of the District is necessary to ensure the economical and satisfactory apportionment of water in the District.
7. Appointment of a Water Master is necessary to ensure the public safety of water users in the District and to ensure protection of existing water rights in the District from impairment.

CONCLUSIONS OF LAW

Creation of Water Master District and Appointment of Water Master

1. The State Engineer concludes that, for the economical and satisfactory apportionment of water in the District, it is in the interest of public safety and in the interest of the water users that the UPPER MIMBRES WATER MASTER DISTRICT ("District") should be formed and a Water Master appointed on a permanent basis, so as to administer the surface water and groundwaters of the District in accordance with New Mexico law.
2. The District Water Master shall have immediate charge of the apportionment of waters in the District under the general supervision of the State Engineer, and shall appropriate, regulate and control the waters of the District so as to prevent impairment of senior water right owners and to prevent waste.
3. This Order applies to all surface water and groundwater rights for the diversion and beneficial use of water within the Upper Mimbres Water Master District, located in Grant County, State of New Mexico.

Administration of Affected Water Rights

4. The State Engineer concludes that the immediate administration of water rights in the District is necessary for the protection of the public, the protection of prior surface water and groundwater rights, and the prevention of waste.

5. The State Engineer concludes that the Water Master of the District created by this Order shall apportion the waters of the District in accordance with Active Water Resource Administration regulations to be promulgated for the Upper Mimbres Water Master District; other applicable existing or future regulations; the Water Master Manual; and any guidelines, directions and supervision provided by the State Engineer.
6. The State Engineer concludes that the Water Master of the District created by this Order shall perform the following specific duties:
 - a. Curtail illegal diversions (i.e. any diversion without a water right, or in excess of the elements or conditions of a water right);
 - b. Measure and report water usage in the District;
 - c. Curtail out-of-priority diversions determined by the State Engineer to be causing injury to senior priority water rights; and
 - d. Administer water usage according to any agreements entered into by the water right owners of the District.
7. Additional instructions to the Water Master for the administration of surface water and groundwater rights in the District will be based upon available water rights data, hydrologic models, and the State Engineer's best professional judgment.
8. The State Engineer concludes that the District created by this Order shall include the following organizational features:
 - a. The appointment of a single Water Master for the District.
 - b. The Water Master will be a direct employee of the Office of the State Engineer and shall receive compensation in an amount to be determined by the State Engineer. The Water Master shall also be compensated for all actual and necessary expenses incurred in performing the duties of Water Master.
 - c. The salary and expenses of the Water Master will be paid monthly by the water right owners through the Board of County Commissioners of Grant County, New Mexico, in accordance with the requirements of NMSA 1978, § 72-3-4. The amount to be paid monthly by each water right owner will be based on the amount of water used by each water right owner, or as otherwise provided for by future legislative acts, unless otherwise funded by annual appropriations by the New Mexico Legislature.
 - d. The boundaries of the District 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 in the District.

ORDER

IT IS ORDERED that:

1. The UPPER MIMBRES WATER MASTER DISTRICT is hereby created to include all surface water and groundwater rights within the area depicted on the map attached hereto as Attachment A and incorporated herein by reference.

2. The State Engineer hereby authorizes the appointment of a Water Master for the District for the purpose of administration and apportionment of the waters thereof.

DATED this 16th day of December, 2005.


JOHN R. D'ANTONIO, JR., P.E.
State Engineer