Authentisign ID: D0F54EBD-1283-F111-B337-000D3A1E5FED

NEW MEXICO ASSOCIATION OF REALTORS® — 2026
INFORMATION SHEET – WATER RIGHTS

This form is NOT a disclosure and does NOT provide property-specific information. The general information contained herein is not an exhaustive analysis of the subject matter. Brokers are not experts in the subject matter. If you have additional questions or concerns, you are encouraged to conduct further research and to consult with the appropriate professional.

This Information Sheet applies only to non-domestic water rights, such as those used for:
- Irrigation (agricultural or landscaping purposes)
- Livestock (stock) watering
- Commercial or industrial operations
- Municipal or utility systems

This does not apply to water use from exempt domestic wells, which are governed separately. NMAR Form 2307 – Information sheet – Domestic Wells.

KEY TERMS:

- **OSE:** Office of the State Engineer – the state agency managing water rights.
- **APPURTENANT:** A water right legally tied to a parcel of land.
- **ADJUDICATION:** A legal process that validates and confirms a water right.
- **PRIORITY DATE:** The date when water was first used, which determines seniority.
- **BENEFICIAL USE:** The lawful and efficient use of water for an approved purpose.
- **FORFEITURE:** Legal loss of a water right due to nonuse.

In New Mexico, all waters, whether above ground or underground, are declared to be the property of the public. The right to use water for a specific purpose is a separate legal right known as a water right. These rights are regulated and administered by the New Mexico Office of the State Engineer (OSE).

Water rights are not automatically granted to property owners. A person may own land, including land with a river, stream, or irrigation ditch running through it, and still have no legal right to divert or use that water without an authorized water right.

New Mexico follows the doctrine of prior appropriation, meaning that the first person to put water to beneficial use has priority over those who come later. This doctrine is summarized as "first in time, first in right." Seniority of rights is extremely important during times of drought or water shortages.

Water rights are legally distinct from land and they do not automatically transfer when land is sold. Buyers and sellers must identify whether water rights exist, determine how they are held, and ensure any transfer is done legally and properly.

A valid water right may be evidenced by one or more of the following:

- A permit, license, or declaration issued by the OSE;
- Documentation of adjudication through a court process;
- A recorded priority date, which establishes its place in line relative to other rights;
- Acequia or ditch association memberships, if delivery occurs through a community irrigation system; and/or
- Physical evidence of infrastructure such as headgates, diversion dams, pipelines, or metering equipment.

The presence of irrigation infrastructure or ditch access does not guarantee a water right exists. A right must be legally established and used according to its approved purpose and location. Buyers should never assume a water right exists—or will be conveyed—without specific documentation and disclosure from the Seller.

DUE DILIGENCE FOR BUYERS

Water rights are complex and highly regulated. Buyers are strongly encouraged to complete the following due diligence steps prior to the end of the Inspection/Due Diligence Period:

- Confirm the existence and status of any water rights through the OSE;

This form and all New Mexico Association of REALTORS® (NMAR) forms are for the sole use of NMAR members and those New Mexico Real Estate Licensees to whom NMAR has granted prior written authorization. Distribution of NMAR forms to non-NMAR members or unauthorized Real Estate Licensees is strictly prohibited. NMAR makes no warranty of the legal effectiveness or validity of this form and disclaims any liability for damages resulting from its use. By use of this form, the parties agree to the limitations set forth in this paragraph. The parties hereby release NMAR, the Real Estate Brokers, their Agents and employees from any liability arising out of the use of this form. You should consult your attorney with regards to the effectiveness, validity or consequences of any use of this form. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by Real Estate Licensees who are members of the National Association of REALTORS® and who subscribe to the Association's strict Code of Ethics.

Authentisign ID: D0F54EBD-1283-F111-B337-000D3A1E5FED

- Review OSE records to verify the point of diversion, place of use, purpose of use, and priority date;
- Determine whether the right is adjudicated or involved in a pending adjudication;
- Inspect the condition of any physical systems (e.g., headgates, pumps, canals);
- Identify any acequia or ditch associations, including fees, bylaws, delivery schedules, and transfer requirements; and
- Consult with a qualified water rights attorney or professional consultant.

Under New Mexico law, a water right may be forfeited or canceled if it is not placed to beneficial use for a specified period.

TRANSFER OF WATER RIGHTS

Water rights are a separate legal property interest and they must be specifically addressed in a real estate transaction. Unless clearly conveyed, the water right may remain with the Seller—even if the land is sold.

To lawfully transfer a water right, the following steps are typically required:

- The right must be specifically identified in the purchase agreement;
- A separate Quitclaim Deed or Assignment of Water Rights must be executed;
- The Buyer and Seller must file a Change of Ownership form with the OSE and with the County Clerk's Office of the County in which the water right is located;
- The deed or assignment should be recorded with the county clerk; and
- If the water is delivered through an acequia or ditch, the applicable organization may have its own approval process.

Water rights transfers are not effective until they are reviewed and accepted by the OSE, and may not take effect immediately upon closing.

TITLE INSURANCE LIMITATIONS

Standard title insurance policies in New Mexico do not cover water rights. Title companies typically exclude them because of the difficulty in verifying ownership, priority, or validity.

This means:

- Title insurance does not confirm the existence of water rights;
- Buyers must perform their own investigation; and
- Legal assistance is highly recommended to assess the water rights component of any transaction.

RESOURCES FOR RESEARCHING AND TRANSFERRING WATER RIGHTS IN NEW MEXICO

New Mexico Office of the State Engineer (OSE) – Main Website
https://www.ose.state.nm.us/

Water Rights Database - Research
https://www.ose.nm.gov/WRAB/index.php

Water Rights Forms – Including Change of Ownership
https://www.ose.state.nm.us/WR/forms.php

 ©2026 NEW MEXICO ASSOCIATION OF REALTORS® BUYER(S) OR SELLER(S) HKM DLM

INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS INFORMATION SHEET.