

Water Rights in New Mexico

December 10, 2013

Prepared For: NM Real Estate Commission
Continuing Education Course

Presented By: Kyle Harwood, J.D.

Format: This outline is primarily lecture format, with reference to the packet handout materials or to those documents projected on a screen.

Learning Objectives: 1, 2 and 3 introduce basic water concepts and issues to realtors representing Buyers and Sellers, RANM form information, disclosure requirements and cautions.

1, 2 and 3 identify when other experts are needed for water right and water law issues.

1, 2 and 3 respond to basic inquiries from Buyers and Sellers regarding water right and water law issues.

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Course Overview

This course is designed to introduce New Mexico water law and water rights to real estate agents in the Continuing Education program of the NM Real Estate Commission. This course is not legal advice, and is not a substitute for a review of the facts and relevant requirements of a particular fact pattern.

*Review of Course Outline
Logistics
Parking Lot for Questions*

Introduction

15 min

How are water rights and water law relevant to real estate transactions ...

Professional and ethical considerations ...

Real estate disclosures and information sheets ...

How to be an informed consumer of legal services ...

How to advise real estate clients ...

Discussion of water law and real estate in practice ...

"3 Legged Stool" - water supply, water infrastructure, water right

Water system types

domestic well, shared wells, mutual domestic, private or public utility

Water use and features

domestic, irrigation, stock ponds, acequias, springs, streams, reservoirs, cisterns

Usufructuary Right ... (no joke)

What is a Water Right?

15 min

Point of Diversion

Place of Use

Purpose of Use

Volume (or other measure of amount)

Priority Date

Ownership

What a Water Right is Not ...

Office of the State Engineer and researching water rights

District Offices

WATERS database

Jurisdiction of related state agencies

15 min

Water Right Market and Transfer Process

Water Quality issues

15 min and Q&A break

Review of RANM Forms

15 min

➤ Form 2104 Residential Resale

15 min

➤ Form 2307 Important General Information and Disclaimer Water Rights and Domestic Wells

15 min

w/Q&A

Ten Common Client Questions Regarding Water Rights

15 min

"Understanding New Mexico water law is not unlike learning statistics. It seems inscrutable at first, causing confusion and consternation. After a while, basic rules and principles are learned and the rest eventually falls in place, at least for some. For others, we conclude it will never make sense and hope we'll never really have to deal with it. Unlike statistics, water law questions regularly do appear in the practice of law in New Mexico and the frequency is likely to increase as competition for limited supplies escalates." - credited to Tim De Young, J.D., RIP

1. Who owns the water located on or under my property?
2. Do I have a water right?
3. Are water rights conveyed with real estate?
4. How much are my water rights worth?
5. When is public notice required?
6. Is my well share agreement enforceable?
7. Have my water rights been lost through non-use?
8. Should I file a 'Proof of Beneficial Use' or an 'Extension of Time'?
9. Can I move my water rights?
10. How many homes can share a domestic well?
11. Should I hire a water law attorney?

Water Right Terms and Definitions

15 min

Surface water and Ground water

Acre Foot, Acre Foot per Year, Acre Foot per Year per Acre

Consumptive Use, Diversion Use, Farm Delivery Requirement

Declaration, Permit, License, pre-1907

Prior Appropriation, Priority, Hydrographic Survey

Adjudication, Orders, Decrees

Domestic Well, Acequia Bylaws

ABCWUA, MRGCD, ISC, BOR, BDDDB, NMED, COE, GPM, and AFY

Return Flow, Groundwater Mining, State Water Plan and other terms

Instream Environmental Flows & the Rio Grande Silvery Minnow ...

Water Law and Property Law

Prior Appropriation

15 min

- First in Time, First in Right
- Beneficial Use
- Diversion, Intent, Due Diligence

Property Right

- Compare to land title, easement, and zoning
- Adjudication

15 min

Title review and title insurance

Common Water Issues in Real Estate Transactions

15 min

Title Insurance Commitments

- Water Right exception

Change of Ownership

- Wells and acequia water rights
- Requirements for a COO
- Review of OSE application
- County Clerk recordation

Shared Well Agreements

- Common terms and issues
- Review of typical shared well agreement
- County Clerk recordation

Water Right Transfers

15 min

- Requirements
- Review of OSE application
- Application, Legal Notice, Opportunity for Protest, and Hearing
- Water Right banks and utility requirements
- Review of sample utility applications, requirements

Well and Water Right title transfers

15 min

- Contract and title considerations
- Water Right Purchase Agreement
- Filings and OSE applications

Other issues

Replacement well
Supplemental well

General Water Law topics

15 min

San Juan Chama Project
Federal Reserved Water Rights Doctrine
Endangered Species Act
Native American Water Rights and the Winters Doctrine
Interstate Compacts

Conclusion

15 min
w/Q&A

Review of Parking Lot
Additional Resources



**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2013**



OFFER DATE: _____

1. PARTIES.

("Buyer") agrees to buy from Seller and _____

("Seller") agrees to sell and convey to Buyer the Property described in Paragraph 4 with a
Settlement/Signing Date of _____ (described in Paragraph 7 below).

2. PURCHASE PRICE.

A. APPROXIMATE CASH DOWN PAYMENT

\$ _____

B. AMOUNT OF THE LOAN(S) (described in Paragraph 5 below)

\$ _____

\$ _____

Buyer will deliver \$ _____

3. EARNEST MONEY.

Earnest Money in the form of Check Cash Note dated _____, to be escrowed upon mutual acceptance of this Agreement by Buyer and Seller with _____, in accordance with New Mexico law. Earnest Money will be applied to Purchase Price, down payment, and/or closing costs upon Funding Date.

4. PROPERTY.

A. DESCRIPTION.

Address _____ City _____ State/Zip _____

Legal Description

or see metes and bounds or other legal description attached as Exhibit _____, _____ County(ies), New Mexico. If the legal description of the Property is not complete or is inaccurate, this Agreement will not be invalid and the legal description will be completed or corrected to meet the requirements of the title company which will issue the Title policy.

B. TYPE: Site built Manufactured housing Modular Off site built Other: _____
(See RANM Form 2305 – Information Sheet-Manufactured Housing, for further information.)

C. Description or explanation of any known mineral or water rights appurtenant to the Property and whether they will be included in the sale: _____ . If water or mineral rights are identified as being included in the sale of the Property, Buyer is advised to seek expert and legal advice and assistance to ensure that those rights are properly transferred at closing.

D. The Property will include the following, if existing on the Property, unless excluded as stated in Paragraph 4E, free of liens: smoke, fire, security and water conditioning systems (if owned by Seller); heating, ventilating and air conditioning systems, landscaping; sprinklers/irrigation equipment; storm windows and doors, screens, window coverings and rods; TV antennas, satellite dishes and receiver with access card (if owned by Seller and if transferable); light fixtures; ceiling fans; range; oven; dishwasher; garbage disposal; attached mirrors; attached floor coverings; awnings; mailboxes; fireplace grate and screen; garage door openers and controls; pool and spa equipment; and outdoor plants and trees (other than in movable containers). The following additional existing personal property, if checked, shall remain with the Property:

- | | | | | |
|---|---|---------------------------------|--------------------------------|---|
| <input type="checkbox"/> Refrigerator | <input type="checkbox"/> Microwave | <input type="checkbox"/> Washer | <input type="checkbox"/> Dryer | <input type="checkbox"/> Decorative mirrors above bath vanities |
| <input type="checkbox"/> Built-in/attached speakers and sub woofers | <input type="checkbox"/> Audio Components | <input type="checkbox"/> TV | <input type="checkbox"/> Other | _____ |

The above additional existing personal property included shall not be considered part of the premises and shall be transferred with no monetary value, and free and clear of all liens and encumbrances.

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PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2013**

15. INSURANCE CONTINGENCY/APPLICATION.

A. Buyer agrees to make application for insurance within _____ days after Date of Acceptance of this Agreement. If Buyer fails to make application within the agreed time, this insurance contingency shall be deemed waived. This Agreement is conditioned upon Buyer's ability to obtain a homeowner's or property insurance quote on the Property at normal and customary premium rates. **Buyer understands that an insurance company may cancel or change the terms of a homeowner's insurance policy/quote for any reason prior to close of escrow or within sixty days after issuance of the homeowner's policy/quote (which generally occurs at close of escrow).**

B. This insurance contingency shall be deemed satisfied, unless within _____ days after Date of Acceptance of this Agreement, Buyer gives notice of inability to obtain a quote for insurance or if Buyer gives notice that Buyer is unable to obtain a homeowner's or property insurance quote on the Property at normal and customary premium rates. If Buyer is unable to obtain such a quote for insurance after making a good faith effort and gives timely notice of such inability, then the Purchase Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

16. SELLER DISCLOSURE AND OTHER DOCUMENTS AND INSPECTIONS. Any "Deadline" can be expressed either as a calendar date or as a number of days after Date of Acceptance. Delivery Deadlines, Objection Deadlines and Resolution Deadlines may be extended only by a written agreement of both parties.

A. **DOCUMENTS.** Seller shall deliver the following documents by the Delivery Deadline specified below. "Delivery Deadline" is the date by which Buyer shall receive any documents, reports or surveys as set forth below.

DOCUMENTS	DELIVERY DEADLINE	OBJECTION DEADLINE	RESOLUTION DEADLINE
Property Disclosure Statement			
Road Documents			
Water Rights Documents			
Well Documents. See RANM Form 2307 Information Sheet - Water Rights & Wells. (Including but not limited to: well permit, well log, shared well agreement and Change of Ownership Information notification.)			
Lease Agreements			
Permits			
Home Owner Associations (HOA)			
CCR's - Restrictive covenants			
Other:			
Other:			

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PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2013**

- Is any part of this Property a residence built before 1978?* Yes No *If the answer is yes, federal law says:*
- Seller cannot legally accept this offer unless Buyer has received, before making this offer, ALL of the following:
 - Lead-Based Paint Addendum to Purchase Agreement (RANM Form 5112) that was first fully completed and signed by Seller and then is signed by Buyer; and
 - A list of and copies of all reports or information relating to lead-based paint inspections, risk assessments, and hazards; and
 - A copy of the pamphlet, "Protect Your Family From Lead-Based Paint in Your Home."
 - If Buyer received the above items prior to writing this offer, Buyer's right to a 10 day opportunity to conduct inspections or risk assessments for the presence of lead-based paint and/or lead-based paint hazards will begin on the Date of Acceptance (as defined in the Purchase Agreement).
 - If Buyer has not received ALL the above items and had an opportunity to review them before writing this offer, AND has not signed the Lead-Based Paint Addendum to the Purchase Agreement, Seller cannot legally accept this offer. Seller should consult an attorney for specific legal advice.
 - This Property is subject to the Lead-Based Paint Renovation, Repair and Painting Program (see RANM Form 2315-Information Sheet: Lead Based Paint Renovation Repair and Painting Program).

SEPTIC SYSTEM. Does the Property include an on-site liquid waste system? Yes No If the answer is "Yes", the transfer of the Property is subject to Regulations of the New Mexico Environment Department governing on-site liquid waste systems, which require inspection and possible repair, and RANM Form 5120A, Septic System Contingency Addendum, is attached hereto and incorporated by reference.

PROPERTY TAX DISCLOSURE.

- Buyer(s) hereby acknowledge receipt of the Estimated Property Tax Levy on the Property, attached as Exhibit _____ and understands that said Estimated Property Tax Levy is based on the LISTING price of the Property.
- Buyer(s) hereby acknowledge that the Estimated Property Tax Levy on the Property is not readily available and does hereby waive the right to receive the Estimated Property Tax Levy prior to submitting this Purchase Agreement. See Estimated Property Tax Levy Disclosure Information Sheet (RANM Form 3275).

WELLS. Does the Property include a well? Yes No If the answer is "Yes", Is the well a Private Domestic Well Shared Domestic Well Other _____ ?
Transfer of Property with a well is subject to the regulations of the New Mexico Office of the State Engineer which were amended effective August 15, 2006. Among other requirements, the regulations require that the State Engineers Office be notified when a well changes ownership. Brokers recommend that Buyer and Seller review RANM Form 2307 - Information Sheet - Water Rights & Wells.

B. INSPECTIONS. Seller and Broker strongly recommend that Buyer satisfy any concerns that Buyer may have about the physical condition of the Property. To accomplish this, the parties are encouraged to employ competent (and, where appropriate, licensed) professionals to perform inspections of all conditions of the Property. Buyer Seller will be responsible for paying any charges required by the Utility Company to have utilities turned on for inspection purposes, but in no event will Buyer be responsible for charges to repair the Property, to bring it up to code, to pay unpaid bills, or for anything other than the turn-on fee.

Buyer(s) may complete any and all inspections which they deem necessary to complete their purchase of the subject Property. These inspections may included, but are not limited to the following: home, structures, electrical, heating/air conditioning, plumbing, roof, structural, lead-based paint evaluation (including risk assessment, paint inspection or both), well equipment (pumps, pressure tanks, lines), well potability tests, well water yield tests, pool/spa/hot tub equipment, wood destroying insects, dry rot, radon, mold, square foot measurement, sewer line inspections, Septic Letter of Determination, ductwork, phase one environmental inspection and soil tests.

UNLESS OTHERWISE AGREED TO IN WRITING, THE BUYER SHALL SELECT ALL INSPECTORS AND ORDER ALL INSPECTIONS. THE SELLER DOES NOT HAVE THE RIGHT TO SELECT THE INSPECTOR BY AGREEING TO PAY FOR THE INSPECTION.

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PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2013**

BUYER(S) AGREES TO PAY FOR ALL INSPECTIONS EXCEPT THE FOLLOWING, WHICH SHALL BE PAID BY SELLER(S).

- Inspections to be completed and reports delivered to Buyer(s) no later than: _____, _____ or _____ days from Date of Acceptance. (Delivery Deadline)
- Objections to be delivered to Seller(s) no later than: _____, _____ or _____ days from Date of Acceptance. (Objection Deadline)
- All objections to be resolved no later than: _____, _____ or _____ days from Date of Acceptance. (Resolution Deadline)
- Buyer waives ALL Inspections unless required by Law or Buyer's Lender.
- Buyer waives ALL Inspections.
- Buyer waives the following Inspections: _____

Initials: Buyer _____

C. SURVEYS OR IMPROVEMENT LOCATION REPORT. Buyer has the right to have performed the item selected below or the right to accept an existing one. Unless otherwise agreed in writing the party paying for the item will select the surveyor and order the survey or report.

SURVEY/IMPROVEMENT LOCATION REPORT	Delivery Deadline	Objection Deadline	Resolution Deadline
Improvement Location Report			
Metes and Bounds Description			
Staked Boundary Survey			
American Land Title Association Survey (ALTA)			
Flood Plain Designation			
Other:			

D. EACH PARTY IS RESPONSIBLE FOR PAYMENT AS SHOWN ABOVE FOR ANY INSPECTIONS OR SURVEYS ORDERED AND PERFORMED WHETHER OR NOT THE TRANSACTION CLOSES.

E. BUYER'S OBJECTIONS.

1. The Buyer may make any reasonable objections to any report or unsatisfactory condition disclosed by any document (16A), inspections (16B), survey or Improvement Location Report (16C) by submitting them in writing to Seller no later than applicable Objection Deadline. Any objections to any inspection, survey or report must be accompanied by a copy of the report. If Seller is responsible for ordering a report or document, and if Buyer does not receive that report or document by the Delivery Deadline, Buyer and Seller may agree to extend the Objection Deadline and Resolution Deadline or Buyer may terminate the Agreement. If Buyer is responsible for ordering a report or document, and fails to do so in a timely manner, Buyer may not use the failure to receive the report or document as cause to terminate the Agreement.

2. Upon objection, Buyer can request that Seller cure the objections or Buyer can terminate this Agreement. If no written objection or termination is delivered to Seller in writing by Objection Deadline, the contingency shall be deemed removed.

F. RESOLUTION. If Buyer makes specific objections and requests Seller to cure, Buyer and Seller may negotiate a resolution. If the objections are not resolved by the Resolution Deadline, this Agreement shall be terminated.

G. COST OF REPAIRS. Seller agrees to complete or pay for any repairs required by a FHA, VA, conventional lender, or with respect to any objections made by Buyer as a result of the above reports, at an aggregate cost **not to exceed** \$ _____. If the cost to cure the objections exceeds this amount, such excess costs may be negotiated and if no agreement is reached, the Agreement shall terminate.



**REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET
WATER RIGHTS AND DOMESTIC WELLS – 2013**

IMPORTANT GENERAL INFORMATION AND DISCLAIMER

This is neither a disclosure nor a warranty concerning any specific property.

WATER RIGHTS:

A Property may or may not include water rights. **Title to water rights, their location and permitted use, and applicable restrictions should be independently verified by an expert employed by the Buyer (such as an engineer, hydrologist, or qualified attorney).** Water rights of record are subject to court decisions, laws, ordinances, rules, and regulations and compacts of the State of New Mexico and local governing bodies, including Ditch Associations and Conservancy Districts, and may also be subject to private contracts. Existence of water rights does not assure that water actually is or will be available or that legal or physical access to the water is available. Water rights that exist at the time of a purchase may be limited, altered or extinguished in the future as a result of court decisions, laws, ordinances, or regulations. **Title insurance does not generally cover water rights.** Buyer must complete specific legal procedures to transfer or develop water rights.

DOMESTIC WELLS:

If a Property is not connected to a public water system, it may use a private, shared, or community well. Domestic wells fall under the jurisdiction of the Office of the State Engineer (OSE). The following information is based on OSE requirements. **PLEASE NOTE: Additional county and/or municipal ordinances and restrictions may apply to domestic well permitting and usage. This form is NOT all inclusive of the regulations governing domestic wells. Buyer and Seller should familiarize themselves with all current state and local regulatory requirements prior to entering into a contract.**

DOMESTIC HOUSEHOLD USAGE:

The drilling of a domestic well and the amount and use of water permitted are subject to such additional or more restrictive limitations imposed by a court, by lawful municipal or county ordinance, or by the OSE, such as but not limited to by the OSE's orders or administrative guidelines. The maximum permitted diversion of water from a domestic well that is not subject to additional or more restrictive limitations shall be as follows. **For wells drilled on or after August 15, 2006, the maximum household usage per domestic well is one-acre-foot per year.** For wells serving a single household permitted and drilled prior to August 15, 2006, the maximum household usage per well is three-acre-feet per year. The maximum usage for wells serving multi-households is one-acre-foot per household per year with a cumulative maximum of three-acre-feet per shared well per year (regardless of the date the well was permitted and/or drilled). While not required by State regulations, some counties have ordinances that require that single-household wells be metered.

FINES FOR EXCEEDING MAXIMUM DIVERSION:

The owner of a well who exceeds maximum diversion shall repay (in water) twice the amount of the over-diversion during the following calendar year in a manner acceptable to the OSE.

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**REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET
WATER RIGHTS AND DOMESTIC WELLS – 2013**

WELL MUST BE PERMITTED IN CURRENT OWNER'S NAME:

In order to comply with New Mexico law, domestic wells must be permitted in the current Property owner's name. If a well is not permitted in the current owner's name, the current owner of the Property on which the well is located must retrieve warranty deeds or other instruments of conveyance from the County Clerk's Office for each transfer of the Property from the time beginning with the last owner of the domestic well as recorded with the OSE to the present. These deeds or other instruments of conveyance must be submitted to the OSE, along with change of ownership notification, in order for the well to be permitted in the current Property owner's name.

REQUIREMENTS UPON TRANSFER:

The transfer of Property with a domestic well is subject to the regulations of the OSE which were amended effective August 15, 2006. Among other requirements, the regulations require that the OSE be notified when a domestic well changes ownership. Under New Mexico law, new owners of a Property with a domestic well must file a change of ownership notification with the OSE. The form must contain all information conforming with water rights or record filed with the OSE and must be accompanied by a copy of the warranty deed or other instrument of conveyance. The new owner must also record a copy of the "Change of Ownership" form filed with the OSE and with the County Clerk's Office of the County in which the water right is located.

WELL-SHARE AGREEMENTS:

A shared or community well may be subject to written "of record" or unwritten agreements governing water usage, maintenance and repair, testing, easements, periodic charges and reserves, etc. A Buyer should carefully review any such agreements with an attorney.

WELL SERVING MULTIPLE HOUSEHOLDS:

A well serving multiple households must be permitted in the name of the person who owns the property on which the well is located. The permit holder must place a meter on the well and must file quarterly meter readings with the OSE. The permit holder of a well serving multiple households is also required to provide notice to the OSE of the following: the number of households being served by the well; the owners' contact information for each household being served by the well; and, a Legal description of the property of record for each household being served by the well. A copy of the Well-Share Agreement may be filed to support a claim that a well is serving more than one household. A copy of the Well-Share Agreement should be filed with the County Clerk's Office in the county where the well is located.

DEVELOPER PERMITS:

Developers may obtain a permit that allows them to use the water from a domestic well for construction resale purposes until the home is sold. Once sold, the developer-owner must provide the Buyer with notice in writing of the requirement to file a "Change of Ownership" form for the domestic well permit with the OSE. A copy of the notice provided by the developer-owner to the Buyer must be filed with the OSE along with a copy of the deed or other instrument of conveyance for the land upon which the domestic well is located. A developer will not be issued more than five "Construction-Resale" permits at any given time.

FEE:

Contact the OSE for applicable fees for a permit to drill any well.

CANCELLATION OF PERMITS:

The OSE may cancel a domestic well permit upon failure of a permit holder to comply with any permit condition of approval or any applicable provision of the regulations; **this includes, but is not limited to, the failure to file a Change of Ownership at the time of transfer that meets the requirements set forth under New Mexico law.** The OSE may cancel a domestic well permit and proceed with enforcement action if a permit holder diverts water in excess of the authorized maximum amount and fails to repay the over-diversion in a time and manner acceptable to the OSE.

**REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET
WATER RIGHTS AND DOMESTIC WELLS – 2013**

INSPECTIONS AND TESTING:

Well inspections can include a visual inspection; examination of the pump, other equipment, and well-house; and tests for flow and potability. **The OSE does NOT require a potability test; however local ordinances may. There is no "standard" test for potability. A Buyer must normally specify all the substances that are of concern to the Buyer.** Generally a separate fee is charged for each test requested. Underground contamination from on or off-site conditions may affect the water quality in the future even if the water appears unaffected at the time of sale.

The water condition and amount of the water available may vary seasonally or with the weather. Indoor and outdoor water use may be subject to restrictions that could affect a Buyer's ability to use the property as the Buyer intends. Past performance of a well is no guarantee of future performance. **Any well can go dry, and there is no guarantee that merely deepening the well or digging another well (if permitted) will result in an adequate supply of water.**

CONNECTION TO PUBLIC WATER SYSTEM:

If a public system becomes available, the property owner may be required to connect to that system. However, there can be no guarantee that such a system ever will become available. A Buyer should investigate these alternatives.

DISCLAIMER:

Neither the Seller nor the Broker makes any warranties concerning water rights or wells on the Property. Buyer should thoroughly investigate all issues involving water rights and/or wells, whether existing or contemplated, associated with the Property.

FOR MORE INFORMATION:

For questions or additional information, contact the New Mexico Office of the State Engineer (OSE) at (505)827-6166 or www.ose.state.nm.us.

I acknowledge that I have received a copy of this Information Sheet:

BUYER ACKNOWLEDGEMENT

Buyer Signature Date Time

Buyer Signature Date Time

SELLER ACKNOWLEDGEMENT

Seller Signature Date Time

Seller Signature Date Time

**REALTORS® ASSOCIATION OF NEW MEXICO
PROPERTY DISCLOSURE STATEMENT – RESIDENTIAL – 2013**

YES	NO
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IS THE SELLER AWARE OF:

- H. Any water pressure problems?
 I. Any plumbing system problems (For example, line blockages, leaks, freezing, etc.)
 J. Do you have knowledge of any environmental consequences resulting from the Water Softener?
 Explain: _____
 K. Any bathroom ventilation problems?
 L. Any hot water problems?

For additional information or further explanation (indicate item #): _____

6. WATER SUPPLY

YES	NO	DON'T KNOW
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- A. Is the water supply City/Municipal? Community/Subdivision Domestic Well Private Well Shared Well Other: _____
 B. If the water supply is City/Municipal/Community/Subdivision, list name and address of supplier: _____

 i. Any water supply problems? If yes, explain: _____

 ii. Fees per month: \$ _____
 iii. Is there a Transfer Fee? If yes, how much? _____

 iv. Any restrictions or regulations? If yes, explain: _____
NOTE: Additional expenses may be required
 C. If water supply to the house is domestic/private/shared well, any problems with well equipment? If yes, explain: _____
 i. Any restrictions or regulations?
 ii. If this is a shared well, is a written agreement available?
 iii. Is well registered with the State Engineer's Office?
 Permit Number: _____
 iv. Does Seller have well record?
 v. Is well metered?
 vi. Is there sufficient water yield at all times?
 If no, explain: _____
 vii. Is there a separate electrical meter for the shared well?
 If yes, what is the location of the meter? _____
 and other well components & equipment? _____
 viii. Is there a requirement to connect to the City/Municipal/Community/Subdivision water? If yes, what are the requirements? _____

NOTE: Additional expenses may be required

**REALTORS® ASSOCIATION OF NEW MEXICO
PROPERTY DISCLOSURE STATEMENT – RESIDENTIAL – 2013**

YES	NO	DON'T KNOW
-----	----	---------------

- D. Is there any other water source for the Property for any other use?
If so, explain: _____

For more information , see RANM Form 2307 – Information Sheet – Water Rights and Domestic Wells)

For additional information or further explanation (indicate item #): _____

7. SEWER/WASTEWATER TREATMENT

YES	NO	DON'T KNOW
-----	----	---------------

- A. Is the sewer/wastewater treatment system?
 City/Municipal? Community/Subdivision Onsite Liquid Waste System
Any problems? _____
- B. If the sewer/wastewater treatment system is City/Municipal/Community/
Subdivision? List name and address of provider: _____
- i. Fees per month: \$ _____
- ii. Any restrictions or regulations?
If yes, explain: _____
- iii. Is a written agreement available
- iv. Is there a transfer fee? If yes, how much? _____
- v. Is there a requirement to connect to the City/Municipal/Community/
Subdivision Wastewater? If yes, what are the requirements? _____
- C. If there is an Onsite Liquid waste system, type:
 Conventional Advanced Treatment System Cesspool
- i. Any problems? _____
- ii. List name and address of service company: _____
- iii. Date last serviced: _____
- iv. Is there an available installation permit?
- v. New Mexico Environmental Department (NMED) Environmental
Improvement District (EID) Certification? NMED (EID) Certification
number and date: _____
- vi. Is there a requirement to connect to the City/Municipal/Community/
Subdivision wastewater? If yes, what are the requirements? _____
- NOTE: Additional expenses may be required**
- vii. Location of the system: _____
- D. Are there any ALTERNATIVE LIQUID WASTE SYSTEMS?
- i. Is there an ADVANCED ON-SITE LIQUID WASTE SYSTEM (Multi-Flow
Septic System): GRAY WATER and/or BLACK WATER?
- 1) Does the Property have a harvesting system utilizing Gray and/or
black water? If yes, please explain: _____

72-12-2. [Right to use waters.]

Beneficial use is the basis, the measure and the limit to the right to the use of the waters described in this act [[72-12-1](#) to [72-12-10](#) NMSA 1978].

History: Laws 1931, ch. 131, § 2; 1941 Comp., § 77-1102; 1953 Comp., § 75-11-2.

72-12-1.1. Underground waters; domestic use; permit.

A person, firm or corporation desiring to use public underground waters described in this section for irrigation of not to exceed one acre of noncommercial trees, lawn or garden or for household or other domestic use shall make application to the state engineer for a well on a form to be prescribed by the state engineer. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to use the underground waters applied for; provided that permits for domestic water use within municipalities shall be conditioned to require the permittee to comply with all applicable municipal ordinances enacted pursuant to [Chapter 3, Article 53](#) NMSA 1978.

History: 1978 Comp., § 72-12-1.1, enacted by Laws 2003, ch. 298, § 2.

NEW MEXICO OFFICE OF THE STATE ENGINEER



APPLICATION FOR PERMIT TO USE UNDERGROUND WATERS IN ACCORDANCE WITH SECTIONS 72-12-1.1, 72-12-1.2, OR 72-12-1.3 NEW MEXICO STATUTES



For fees, see State Engineer website: <http://www.ose.state.nm.us/>

1. APPLICANT(S)

Name:	Name:
Contact or Agent: check here if Agent <input type="checkbox"/>	Contact or Agent: check here if Agent <input type="checkbox"/>
Mailing Address:	Mailing Address:
City:	City:
State: Zip Code:	State: Zip Code:
Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell	Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell
Phone (Work):	Phone (Work):
E-mail (optional):	E-mail (optional):

2. WELL LOCATION Required: Coordinate location must be New Mexico State Plane (NAD 83), UTM (NAD 83), or Lat/Long (WGS84). District II (Roswell) and District VII (Cimarron) customers, provide a PLSS location in addition to above.

NM State Plane (NAD83) - In feet	NM West Zone <input type="checkbox"/> NM Central Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/>	X (in feet): Y (in feet):
UTM (NAD83) - In meters	UTM Zone 13N <input type="checkbox"/> UTM Zone 12N <input type="checkbox"/>	Easting (in meters): Northing (in meters):
Lat/Long (WGS84) - To 1/10 th of second	Latitude: deg	min sec
	Longitude: deg	min sec
Other Location Information (complete the below, if applicable):		
PLSS Quarters or Halves:	Section:	Township: Range:
County:		
Land Grant Name (if applicable):		
Lot No:	Block No:	Unit/Tract: Subdivision:
Hydrographic Survey:	Map:	Tract:
Other description relating point of diversion to common landmarks, streets, or other:		
Point of Diversion is on Land Owned by (Required):		

FOR OSE INTERNAL USE

Application for Permit, Form wr-01, Rev 3/8/12

File Number:	Trn Number:
Sub-basin:	POD No. Log Due Date:

3. PURPOSE OF USE

<input type="checkbox"/> Domestic use for one household <input type="checkbox"/> Livestock watering <input type="checkbox"/> Domestic use for more than one household. Number of households _____ <input type="checkbox"/> Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility <input type="checkbox"/> Prospecting, mining or drilling operations to discover or develop natural resources <input type="checkbox"/> Construction of public works, highways and roads <input type="checkbox"/> Domestic use for one household and livestock watering <input type="checkbox"/> Domestic use for multiple households and livestock watering <input type="checkbox"/> Domestic well to accompany a house or other dwelling unit constructed for sale
--

4. WELL INFORMATION

File Information: (If existing well, provide OSE no. & indicate below if well is to be replacement, repaired or deepened, or supplemental. If new well, leave blank, as OSE must assign no.)		
OSE Well No.(If Existing)	New Well No. (provided by OSE)	
Driller Name:	Driller License Number:	
Approximate Depth of Well (feet):	Outside Diameter of Well Casing (inches):	
<input type="checkbox"/> Replacement well (List all existing wells if more than one):	<input type="checkbox"/> Repair or Deepen: <input type="checkbox"/> Clean out well to original depth <input type="checkbox"/> Deepen well from _____ to _____ ft. <input type="checkbox"/> Other (Explain):	<input type="checkbox"/> Supplemental well (List OSE No. for all wells this will supplement):

5. ADDITIONAL STATEMENTS OR EXPLANATIONS

--

ACKNOWLEDGEMENT

I, We (name of applicant(s)), _____
 Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

 Applicant Signature

 Applicant Signature

ACTION OF THE STATE ENGINEER (FOR OSE USE ONLY)

This application is approved subject to the attached general and specific conditions of approval.

Witness my hand and seal this _____ day of _____ 20 _____, for the State Engineer,

By: _____
 Signature

 Print

FOR OSE INTERNAL USE

Application for Permit, Form wr-01, Rev 3/8/12

File Number:	Trn Number:		
Sub-basin:	POD No.	Log Due Date:	

**NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR PERMIT TO USE UNDERGROUND WATERS
IN ACCORDANCE WITH SECTIONS 72-12-1.1, 72-12-1.2, AND 72-12-1.3 NEW MEXICO STATUTES**

INSTRUCTIONS

1. The application shall be made in the name of the actual user of the well for the purpose specified in the application (if the agent is submitting the application, check the agent box).
2. The application shall be filed with the appropriate filing fee.
3. A separate application must be filed for each well to be drilled or used.
4. If well to be used is an existing well, an explanation (and the file number, if possible) should be given under Remarks (Item 5).
5. If well is to be used for livestock watering on state or federal land, proof of the following must be included as part of the application; (a) applicant is legally entitled to place his or her livestock on the land where the water is to be used, (b) applicant has been granted access to the drilling site and has permission to occupy the portion of the land as is necessary to drill and operate the well.
6. An application to drill a well on land owned by another person, the state of New Mexico, the federal government, or another entity shall be accompanied by written consent of the landowner.
7. For an application for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility, the applicant shall demonstrate that no alternative water supply is reasonably accessible or available.
8. An application for a 72-12-1.1 domestic well to serve multiple households shall be filed with documentation listing the number of households to be served by the well, the owner's contact information for each household to be served, and a description of the legal lot of record for each household to be served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well will serve more than one household.
9. The Office of the State Engineer may require an application to be filed with a deed or purchase contract and plat of survey on file with the appropriate county.
10. See General Conditions of Approval for more information.

FEE SCHEDULE FOR APPLICATIONS

72-12-1.1 (domestic) = \$125.00

72-12-1.2 (livestock) = \$5.00

72-12-1.3 (temporary) = \$5.00

Replacement well = \$ 75.00

Supplemental well= \$125.00

Repair or Deepen = \$ 75.00

Amend Domestic Use = \$ 75.00

Application for permit, well records and requests for information in the following basins should be addressed to the Office of the State Engineer at:

Bluewater, Estancia, Gallup, Middle Rio Grande, Northern Tularosa, and Sandia Basins

District No. 1. 5550 San Antonio Dr. NE , Albuquerque, NM 87109 Phone # 505-383-4000

Capitan, Carlsbad, Casey Lingo, Curry County, Fort Sumner, Hagerman Canal, Hondo, Jal, Lea County, Peñasco, Roswell-Artesian, and Portales Basins

District No. 2. 1900 West Second St., Roswell, NM 88201 Phone # 575-622-6521

Animas, Cloverdale, Gila-San Francisco, Hachita, Lordsburg Valley, Mimbres, Mount Riley, Nutt-Hockett, Playas, San Simon, Virden Valley, and Yaqui Basins

District No. 3. P.O. Box 844, Deming, NM 88031 Phone # 575-546-2851

Lower Rio Grande, Southern Tularosa, Hueco, Las Animas Creek, Salt, and Hot Springs Basins

District No. 4. 1680 Hickory Loop, Suite J, Las Cruces, NM 88005. Phone # 575-524-6161

San Juan Basin

District No. 5. 100 Gossett Drive, Suite A, Aztec, NM 87410 Phone # 505-334-4571

Northern Rio Grande and Upper Pecos Basins

District No. 6. P.O. Box 25102, Santa Fe, NM 87504-5102 Phone # 505-827-6120

Canadian River, Clayton, and Tucumcari Basins

District No. 7. P.O. Box 481, 301 East 9th Street, Cimarron, NM 87714 Phone # 575-376-2918

**NEW MEXICO OFFICE OF THE STATE ENGINEER
APPLICATION FOR PERMIT TO USE UNDERGROUND WATERS
IN ACCORDANCE WITH SECTIONS 72-12-1.1, 72-12-1.2, or 72-12-1.3 NEW MEXICO STATUTES**

GENERAL CONDITIONS OF APPROVAL

- 06A The maximum amount of water that may be appropriated under this permit is _____ acre-feet in any year.
- 06B The well shall be drilled by a driller licensed in the State of New Mexico in accordance with Section 72-12-12 New Mexico Statutes Annotated. A licensed driller shall not be required for the construction of a driven well; provided, that the casing shall not exceed two and three-eighths (2 3/8) inches outside diameter (Section 72-12-12).
- 06C Driller's well record must be filed with the State Engineer within 20 days after the well is drilled or driven. Well record forms will be provided by the State Engineer upon request, or may be printed from the OSE website at www.ose.state.nm.us, under applications & forms.
- 06D The casing shall not exceed 7 inches outside diameter except under specific conditions in which reasons satisfactory to the State Engineer are shown.
- 06E To request a change to the use of water authorized under this permit, the permittee shall file an application with the State Engineer.
- 06F An application for a new 72-12-1.1 domestic well permit where the proposed point of diversion is to be located on the same legal lot of record as an operational 72-12-1.1 domestic well shall be treated as an application for a supplemental well.
- 06G If artesian water is encountered, all rules and regulations pertaining to the drilling and casing of artesian wells shall be complied with.
- 06H The drilling of the well and amount and uses of water permitted are subject to such limitations as may be imposed by a court or by lawful municipal or county ordinance which are more restrictive than the conditions of this permit and applicable State Engineer regulations.
- 06I The permittee shall utilize the highest and best technology available to ensure conservation of water to the maximum extent practical.
- 06J The well shall be set back a minimum of 50 feet from an existing well of other ownership unless a variance has been granted by the State Engineer. The State Engineer may grant a variance for a replacement well or to allow for maximum spacing of the well from a source of groundwater contamination. The well shall be set back from potential sources of contamination in accordance with rules and regulations of the New Mexico Environment Department.
- 06K Pursuant to Section 72-8-1 NMSA, the permittee shall allow the State Engineer and his representatives entry upon private property for the performance of their respective duties, including access to the well for meter reading and water level measurement.
- 06L The permit is subject to cancellation for non-compliance with the conditions of approval or if otherwise not exercised in accordance with the terms of the permit.
- 06M The right to divert water under this permit is subject to curtailment by priority administration as implemented by the State Engineer or a court.
- 06N In the event of any change of ownership to this permit the new owner shall file a change of ownership form with the State Engineer in accordance with Section 72-1-2.1 NMSA.
- 06O This well permit shall automatically expire unless the well is completed and the well record is filed with the State Engineer within one year of the date of issuance of the permit. It is the responsibility of the permit holder to ensure that the well record has been properly filed with the State Engineer.

72-1-2.1. Water rights; change in ownership; filing and recording; constructive notice.

In the event of any changes of ownership of a water right, whether by sale, gift or any other type of conveyance, affecting the title to a water right that has been permitted or licensed by the state engineer, has been declared with the state engineer or has been adjudicated and is evidenced by a subfile order, partial final decree, final decree or any other court order, the new owner of the water right shall file a change of ownership form with the state engineer. The form shall include all information conforming with water rights of record filed with the state engineer and shall be accompanied by a copy of a warranty deed or other instrument of conveyance. The new owner shall record a copy of the change of ownership form filed with the state engineer with the clerk of the county in which the water right will be located. The filing shall be public notice of the existence and contents of the instruments so recorded from the time of recording with the county clerk.

History: Laws 1991, ch. 34, § 1; 1996, ch. 32, § 1.

File No.



NEW MEXICO OFFICE OF THE STATE ENGINEER



CHANGE OF OWNERSHIP OF WATER RIGHT (NON-72-12-1) FOR (check one):

Important: Acceptance of the form for filing by the State Engineer does not constitute verification of the right conveyed.

<input type="checkbox"/> Individual	<input type="checkbox"/> Corporation
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1. OWNER OF RECORD (Seller)

Name:		Name:	
Phone:	<input type="checkbox"/> Home <input type="checkbox"/> Cell	Phone:	<input type="checkbox"/> Home <input type="checkbox"/> Cell
Phone (Work):		Phone (Work):	
a. Owner of Record File No:	b. Sub-file No.:	c. Cause No.:	

2. NEW OWNER (Buyer) **Note: If more owners need to be listed, attach a separate sheet. Attached?** Yes

Name:		Name:	
Contact or Agent:	check here if Agent <input type="checkbox"/>	Contact or Agent:	check here if Agent <input type="checkbox"/>
Mailing Address:		Mailing Address:	
City:		City:	
State:	Zip Code:	State:	Zip Code:
Phone:	<input type="checkbox"/> Home <input type="checkbox"/> Cell	Phone:	<input type="checkbox"/> Home <input type="checkbox"/> Cell
Phone (Work):		Phone (Work):	
E-mail (optional):		E-mail (optional):	

Required: Submit warranty deed(s) or other instrument(s) of conveyance properly recorded with the county clerk's office.

3. PURPOSE OF USE & AMOUNT CONVEYED

<input type="checkbox"/> Domestic <input type="checkbox"/> Livestock <input type="checkbox"/> Irrigation <input type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Other Uses (specify): _____	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section. Diversion: _____ Consumptive Use: _____ Other (include units): _____
Owner of record has conveyed all or part of said right (please check one) <input type="checkbox"/> All <input type="checkbox"/> Part	

FOR OSE INTERNAL USE

Change of Ownership, Form wr-02, Rev 8/30/12

File No.:	Trn. No.:	Receipt No.:
Trans Desc. (optional):		Sub-Basin:

4. LIST ALL KNOWN POINT(S) OF DIVERSION (POD) FOR THE WATER RIGHT CONVEYED

OSE POD No.	Subdivision / River Course / Ditch Name / Etc.	Section	Township	Range

5. PLACE(S) OF USE (list each individually)

a. _____ Acres of Irrigated Land Described as Follows (applicable to irrigation use only):

b. Legally Described By: <input type="checkbox"/> Public Land Survey System (PLSS) <input type="checkbox"/> Hydrographic Survey Report or Map <input type="checkbox"/> Irrigation or Conservation District Map <input type="checkbox"/> Subdivision	c. PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	d. PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	e. PLSS Range	f. Acres	g. Priority
PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey or District, <u>and/or</u> Name and County of Subdivision					
h. Other description relating place of use to common landmarks, streets, or other:					
i. Place of use is on land owned by:					
j. Are there other sources of water for these lands? No <input type="checkbox"/> Yes <input type="checkbox"/> If yes, describe by OSE file number:					

Note: If on Federal or State Land, please provide copy of lease

6. ADDITIONAL STATEMENTS OR EXPLANATIONS

FOR OSE INTERNAL USE		Change of Ownership, Form wr-02, Rev 8/30/12	
File No.:	Trn. No.:	Receipt No.:	
Trans Desc. (optional):		Sub-Basin:	

7. CONSENT TO LAWFUL CHANGE IN PLACE AND/OR PURPOSE OF USE

(to be completed only if it is an irrigation water right and has been conveyed separate from the land to which it was appurtenant.)

(I, We) the above owner(s) of record, hereby consent to a lawful change in the place and/or purpose of use of the above-described water right:

Signature

Signature

ACKNOWLEDGEMENT FOR INDIVIDUAL

I, We (name of owner(s)), _____
Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

Signature

Signature

State of _____)

ss.

County of _____)

This instrument was acknowledged before me this _____ day of _____ A.D., 20 _____, by (name of owner(s)):

Notary Public: _____

My commission expires: _____

ACKNOWLEDGEMENT FOR CORPORATION

I, We (name of owner(s)), _____
Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

Officer Signature

Officer Signature

State of _____)

ss.

County of _____)

This instrument was acknowledged before me this _____ day of _____ A.D., 20 _____, by the following on behalf of said corporation.

Name of Officer: _____

Title of Officer: _____

Name of Corporation Acknowledging: _____

State of Corporation: _____

Notary Public: _____

My commission expires: _____

FOR OSE INTERNAL USE

Change of Ownership, Form wr-02, Rev 8/30/12

File No.:	Trn. No.:	Receipt No.:
Trans Desc. (optional):		Sub-Basin:

CHANGE OF OWNERSHIP INSTRUCTIONS

- a. The "Owner of Record" of a water right is the current owner recorded in the State Engineer Office.
- b. This form shall be completed by the new owner and shall be accompanied by a warranty deed or other instrument of conveyance that has been properly recorded with the county clerk's office.
- c. A separate Change of Ownership of Water Right form shall be filed for each water right recorded in the State Engineer Office by Permit, License, Declaration or Court Adjudication.
- d. This form shall be filed in triplicate (3) and must be accompanied by the proper filing fee. Each form must have an original signature and each must be properly notarized. A notary public is available in each water right district office at no cost.
- e. An original will be forwarded to the new owner with instructions to file it with the county clerk in the county in which the water right is located. Acceptance of the form for filing by the State Engineer does not constitute verification of the right conveyed.

LINE BY LINE INSTRUCTIONS

1. Enter the name of the current owner on record with the OSE (required).
 - a. Enter the file number currently on record with the OSE.
 - b. Enter the sub file number if one has been assigned as part of completed or on-going water rights adjudication.
 - c. Enter the Cause Number of the water rights adjudication, if applicable.
2. Enter name and address of the new owner (required). If the person to be contacted concerning this right is other than the new owner enter contact person's name. The phone number of new owner or contact person is optional.
3. Enter the current OSE file information
 - a. Check the box for the purpose of use of the water. If other, specify the use.
 - b. Enter the allowable diversion amount (for irrigation the "Diversion Amount" is the diversion at the farm (turnout) head gate.
4. Specify all points of diversion that, to your knowledge, serve this right. If an entry is not applicable, enter NA. Enter the OSE POD Number and legal description of each well.
5. The place of use must be specified by a legal description taken from a hydrographic survey report or map, irrigation or conservation district map, a sub-division on record with a County in The State of New Mexico or by the Public Land Survey System. If possible, a copy of the survey plat shall accompany this document.
 - a. Enter the total number of irrigated acres, if applicable.
 - b – f. Provide the legal description of the property as stated above.
 - g. Enter the priority date for each place of use
 - h. Provide a common description of the property such as landmarks or street crossing that help locate the property
 - i. State the owner of the land if other than the new owner of the water right (such as, Fish and Wildlife Service)
 - j. If there are other sources of water for these lands, list the OSE file number(s).
6. Provide any additional statements that might help to clarify this water right transfer
7. If the water rights being transferred are irrigation rights and they are being severed from the lands to which they have been appurtenant, consent of the landowner (the owner of record of the water rights) must be obtained.

Assistance in completing this form is available, and the form may be filed at the State Engineer Office in Santa Fe and the District Offices located as follows:

District 1

5550 San Antonio Drive NE
Albuquerque, NM 87109-4127
Phone # 505-383-4000

District 2

1900 West Second Street,
Roswell, NM 88201-1712
Phone # 575-622-6521

District 3

301 South Tin, P.O. Box 844
Deming, NM 88031-0844
Phone # 575-546-2851

District 4

1680 Hickory Loop, Suite J
Las Cruces, NM 88005-6598
Phone # 575-524-6161

District 5

100 Gossett Drive, Suite A
Aztec, NM 87410
Phone # 505-334-4571

District 6

407 Galisteo Street
Room 102, Bataan Memorial Building
P.O. Box 25102
Santa Fe, NM 87504-5102
Phone # 505-827-6120

District 7

301 East 9th Street
P.O. Box 481
Cimarron, NM 87714
Phone # 575-376-2918