



New Mexico State Legislature
Capital Outlay Training Manual
Senate Staff

2023 Legislative Session

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Capital Outlay Timeline for 2023

Deadline to submit a capital project request online: 3:00 pm, **Thursday, January 12**

Legislators receive a report listing requested projects: **Monday, January 23**

Deadline for legislators to return sponsored project list: 5:00 pm, **Thursday, February 2**

Sponsored projects posted online (by agency and by county): **Monday, February 6**

Legislators receive a final list of sponsored projects for approval: **Thursday, February 9**

Deadline to submit changes to sponsored projects list: 5:00 pm, **Monday, February 13**

Deadline to submit reauthorization requests: 5:00 pm, **Monday, February 13**

Introduction deadline for Capital Outlay Requests: 12:00 noon, **Thursday, February 16**

Capital Outlay Requests posted online: **Friday, February 17**

Funding allocation deadline: **TBD**

Case Study #1: Public vs. Private Benefit¹

55th Legislature - First Session - 2021

LCS Project ID: 1779

Title: ALB ARTIFICIAL TURF PLAYING FIELD PRCHS

Total Amount Requested: \$185,000

Study, map, plan, design, develop, construct, rehabilitate, renovate, expand, furnish, equip, enhance and otherwise improve, and to acquire property, vehicles and equipment for park and recreational facilities, including public parks and facilities within those parks, swimming pools, tennis courts, sports fields, other recreational facilities, open space, medians, bikeways, Bosque lands, and trails that will benefit Council Districts in Albuquerque in Bernalillo County.

Project Location: Albuquerque

County: Bernalillo

Fiscal Agent: Albuquerque

Funded to Date/Secured: \$185,000

Total Project Cost: \$1,480,000

ICIP ID: 36581

Case Study #1

Discussion Questions:

1. Based on the language and information provided, what is the intent of this capital appropriation? Can you visualize this project? If so, what does the funding look like it will be spent on?
2. Based on the language and information provided, do you see any red flags or have lingering questions about the purpose of the appropriation?

Participant Notes:



¹ Barker, Larry (11/22/2022). [Turf Wars - A Tale of Misused Tax Dollars](#). KRQE News 13 Investigation.

Breaking Down Capital Outlay Language

[\$ Amount] ... to acquire land, easements and rights of way and to plan, design, construct, replace, renovate, install, furnish, equip, and purchase ... [Project + Location]

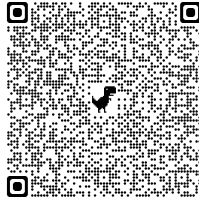
Project Status	Typical Language Used	Preferred Funding Source	Purpose of Phase <i>[Participant Notes]</i>
Phase 1	<i>To acquire:</i> <ul style="list-style-type: none"> • Land • Easements • Right of way <i>To:</i> <ul style="list-style-type: none"> • Plan • Design 	1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds 4. Other State Funds	
Phase 2	<i>To:</i> <ul style="list-style-type: none"> • Plan • Design <i>To:</i> <ul style="list-style-type: none"> • Construct • Replace • Renovate 	1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds 4. Other State Funds	
Phase 3	<i>To:</i> <ul style="list-style-type: none"> • Construct • Replace • Renovate 	1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds Other State Funds	
Phase 4+	<i>To:</i> <ul style="list-style-type: none"> • Construct • Replace • Renovate <i>To:</i> <ul style="list-style-type: none"> • Furnish • Equip • Purchase 	1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds 4. Other State Funds	

Making Contact with Capital Outlay Constituents



Funding criteria for grantees to receive State capital outlay appropriations and grant management and oversight requirements.

This is the resource capital outlay grantees should be following in order to qualify for appropriations. To download this resource follow [this link](#) or scan the QR below:



Infrastructure Capital Improvement Plans and Capital Outlay appropriations are public record. Navigating these resources will help you get a solid grasp on the project scope of the identified priorities of communities and political subdivisions across the state. Look at these resources to answer any questions your legislator may have before making contact with a potential grantee.

Use the [Department of Finance and Administration - ICIP Publications](#) if you want all of the data provided about ICIP projects submitted to DFA.



Use the [Department of Finance and Administration - ICIP Dashboard](#) to access project details through an easily navigable portal.



Use the [Department of Finance and Administration - Capital Outlay Dashboard](#) to access existing projects:



Video instructions on how to navigate these resources. To access the video click [on this link](#) or scan the QR code:





[Community Development Bureau | New Mexico Department of Finance and Administration](#)

The Community Development Bureau has assisted New Mexico's municipalities and counties in investing over \$250 million in federal CDBG funds to address local community development needs. Bureau staff members provide assistance and oversight to local officials with the implementation of needed infrastructure, public buildings, housing rehabilitation, economic development, planning and other critical projects.

The second major responsibility of the Community Development Bureau is the administration of hundreds of Capital Outlay Projects passed by the New Mexico Legislature and signed into law by the Governor each year. The Bureau executes formal agreements with units of local government, processes payments and ensures that these state funds – nearly \$400 million over ten years – are spent in accordance with authorizing legislation.

To download a copy of DFA's [Community Development Bureau map](#) scan here:



Staff	Job Title	Phone No.
Carmen Morin	Bureau Chief	505-470-8979
Annette Apodaca	ICIP Program Manager	505-369-0341
Ariana Vigil	Project Manager	505-470-7041
Daniel Catanach	Project Manager	505-231-6090
Dawn Webster	Project Manager	505-490-1528
Donna Stewart	Project Manager	505-231-2993
Jennifer McGrath	Project Manager	505-469-2910
Lynda Martinez	Project Manager	505-699-3971
Maureen Ayers	Project Manager	505-470-0977
Monica Tapia	Project Manager	505-470-1775
Rick Chavez	Project Manager	505-670-7320
Steve Lacy	Project Manager	505-695-5602

Criteria for the Legislature to Evaluate Local Projects

The following criteria may be used as a guide in ranking a project's importance. Legislators can use the criteria as a tool in making funding decisions. The first set of criteria is related to the need of the project, and the second set is related to how well-planned the project is and its current status. This criteria is supplied by the Legislative Council Service:

Need-Based Criteria

1. Project is on the governmental entity's Infrastructure Capital Improvements Plan (ICIP).
2. Project is necessary to eliminate potential or actual health or safety hazards or other liability issues.
3. Project is required by federal, state or judicial mandate.
4. Project will prevent deterioration of assets or will correct infrastructure problems of assets.
5. Project is necessary to address population or client growth, and will provide direct services to that population or clientele.

Planning Criteria

1. Project has been thoroughly planned and is ready to begin.
2. Project has received prior funding and can be completed with this appropriation.
3. Matching funds or a local share has been secured for the project.
4. **Operational costs of the project upon completion have been identified and planned for.**
5. Project has had public input and buy-in.
6. Project has been designed to be energy efficient in its operation.
7. Construction of the project can be successfully phased, so that each phase will be operational.

The following criteria may be used as a guide in ranking a project's importance based on project summary sheets available through the Legislative Council Service. This criteria is supplied by the Legislative Finance Committee.

LFC's Recommended Capital Outlay Project Vetting Checklist

- ☐ Project reduces health and safety hazards or provides key infrastructure for economic development
- ☐ Project is a top-three priority on a local entity's Infrastructure Capital Improvement Plan (ICIP)
- ☐ Project cost and request amount is based on estimates provided by a qualified professional
- ☐ Land, property, easements or rights of way necessary to begin construction have been acquired
- ☐ Capital outlay appropriation can fully fund the project or a functional, operational phase
- ☐ Funding requested could not be secured through other sources
- ☐ Requesting entity has committed some local revenues to the project

Additional Considerations

- ☐ Funding regional projects in rural areas is encouraged.
- ☐ Limited local administrative and project management capacity may delay projects.
- ☐ Fully funding unfinished projects in one local government area before funding new projects in the same area is encouraged.
- ☐ Non-profit organizations may request capital outlay only if the request is sponsored by a local government entity. The government entity must be the owner of the project and serve as its fiscal agent.



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EXAMPLE 1

Capital Outlay Web Project Summary



LCS WEB ID: 256

CHIPPEWAY MDWCA WATER SYSTEM IMPROVEMENTS PROJECT RPLC

Chippeway MDWCA requests \$420,000

design and construction of failing waterline replacement and water storage tank and well improvements.

Project location: Chippeway MDWCA

County: Otero

Fiscal agent: Chippeway MDWCA

Total amount requested this legislative session: \$420,000

Funded to date/secured: \$775,000

Total project cost: \$1,195,000

Total project cost estimated by qualified professional(s): Yes

The amount requested this session will: fully fund a phase of the project

Have capital appropriations been made for this project in previous years: No

Other funding for this project: DWRLF - \$775,000

Local Government Planning Fund grant awarded: No

Have easements, rights of way, land or property required to begin construction been acquired?: Yes

The amount requested this session will be used to match federal funds: No

Project start date: 7/1/23 - 6/30/24 (FY 24)

Project Contact: Mickie Warwick

Title: Board President



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EXAMPLE 2

Capital Outlay Web Project Summary



LCS WEB ID: 226

OTIS MDWC & SWA OTIS MUTUAL DOMESTIC WATER & SWA CONSTRUCT

Otis MDWC & SWA requests \$700,000

to design and plan an emergency connection between Malaga Mutual Domestic Water and Otis Mutual Domestic Water..

Project location: Otis MDWC & SWA

County: Eddy

Fiscal agent: Otis MDWC & SWA

Total amount requested this legislative session: \$700,000

Funded to date/secured: \$0

Total project cost: \$700,000

Total project cost estimated by qualified professional(s): No

The amount requested this session will: fund the total project cost

Have capital appropriations been made for this project in previous years: No

Other funding for this project: CAP: 0

Local Government Planning Fund grant awarded: No

Have easements, rights of way, land or property required to begin construction been acquired?: No

The amount requested this session will be used to match federal funds: No

Project start date: 7/1/23 - 6/30/24 (FY 24)

Project Contact: Cutter

Case Study #2: Determining Project Viability²

LCS WEB ID: 149

DONA ANA CO SOUTH VALLEY FIRE STATION #13 REN

Dona Ana County requests \$875,000

to plan, design, construct, furnish and remodel the South Valley Fire Station #9 in Dona Ana County.

Project location: Dona Ana County

County: Dona Ana

Fiscal agent: Dona Ana County

Total amount requested this legislative session: \$875,000

Funded to date/secured: \$0

Total project cost: \$875,000

Total project cost estimated by qualified professional(s): Yes

The amount requested this session will: fully fund a phase of the project

Have capital appropriations been made for this project in previous years: No

Other funding for this project:

Local Government Planning Fund grant awarded: No

Have easements, rights of way, land or property required to begin construction been acquired?: Yes

The amount requested this session will be used to match federal funds: No

Project start date: 7/1/23 - 6/30/24 (FY 24)

Project Contact: Eric Crespín

Title: Deputy Fire Chief

Phone: 575-647-7925

Email: ericc@donaanacounty.org

ICIP ID: 40188

56TH LEGISLATURE-FIRST SESSION-2023

² Capital Outlay Project Summary Search Engine (2023 Session). <https://www.nmlegis.gov/CapitalOutlayWeb/Default>



Case Study #2

Discussion Questions

1. Based on the language and information provided, what is the intent of this capital appropriation? Can you visualize this project? If so, what does the funding look like it will be spent on?
2. Based on the language and information provided, what information gives you an indication of the capital project's viability?
3. If you were to reach out to the Project Contact for further information, what would be some of the questions you may want to have answered based on the information you have been given?
4. What project summary details or look-fors best indicate a project is primed to be successfully executed?
5. How would you approach and discuss the viability of this project with your Senator?

Reauthorization and Consolidation Language

Completed, signed forms must be submitted to the LCS by February 13, 2023.

The request form is found here (follow link or scan the QR code):

https://www.nmlegis.gov/Publications/Capital_Outlay/capital_outlay_reauth_form.pdf



The form is largely self-explanatory. If you need help identifying the legal citation for our appropriation, please contact the LCS.

If your request is to move the balance of an existing appropriation to another existing appropriation, simply mirror the language of the appropriation to which you are seeking to move the balance, per the example below:

Original language for project to be reauthorized:

to purchase and equip senior transportation vehicles in Rio Arriba county;

This language should be included in item 5 on the form (see below).

Original language for project to which funding is being steered:

to plan, design, construct and furnish a senior center at the Pueblo of San Felipe in Sandoval county;

This language should be included in item 6 on the form (see below).

Form Example

5. What was the original purpose of this appropriation?

to purchase and equip senior transportation vehicles
in Rio Arriba county;

6. What is the change to the purpose or the language of the appropriation that you are requesting? *

to plan, design, construct and furnish a senior center
at the Pueblo of San Felipe in Sandoval county;

Please note that appropriations can only be reauthorized for a two year period and that a change in the project description may also require a change in the administering agency.

Office of the State Engineer Overview of Water Law and Permitting Process for Capital Projects



New Mexico Water Law Overview

The NM Office of the State Engineer is a regulatory agency, charged with administering the state's water resources. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including streams and rivers that cross state boundaries.

Anyone seeking to use water for any purpose in the state of New Mexico must secure proof of valid water rights from the OSE. There are three elements to any water right: place of use, point of diversion, purpose of use. Changes to any of those elements requires permit from NMOSE. Actions requiring a water right permit include:

- New appropriation
- Change in point of diversion
- Change in purpose of use
- Change in place of use
- Declarations of surface water and groundwater rights
- Return flow
- Change of ownership

All water rights permitting takes place in the OSE Water Rights Division. There are seven Water Rights District Offices throughout the state that serve the public. The Water Rights Division has the primary purpose of providing for the efficient administration of the available surface and underground waters of the state. The Water Rights Division administers surface and ground water rights throughout the state in accordance with state laws, court adjudications and State Engineer rules. District Offices are located in Albuquerque, Roswell, Deming, Las Cruces, Aztec, Santa Fe, and Cimarron.

A water right is the legal right to appropriate water for a specific beneficial use. The elements of a water right generally include owner, point of diversion, place of use, purpose of use, priority date, amount of water, and any other element necessary to describe the right.

Valid water rights are based on the availability of water and whether the water will be put to beneficial use. Beneficial use is the basis of water rights administration in New Mexico. Article XVI, Section 3 of the New Mexico Constitution dictates that "Beneficial use shall be the basis, the measure and the limit of the right to the use of water." Beneficial use is the direct use or storage and use of water for a beneficial purpose including, but not limited to agricultural, municipal, commercial, industrial, domestic, livestock, fish and wildlife, and recreational uses.

Under New Mexico water law, all surface water and groundwater belong to the public and are subject to appropriation under the Doctrine of Prior Appropriation, a constitutional provision that says earlier appropriators have priority over later appropriators. The Doctrine of Prior Appropriation mandates that:

- All un-appropriated water within the state of New Mexico belongs to the public
- Water may be appropriated for beneficial use in accordance with state laws
- Senior water rights be served by the available water supply first

In times of water supply shortage, the more senior water rights are served by the available water supply first. Senior water right holders typically include Tribes, Pueblos, and Nations, acequias, and agricultural water users. Junior water right holders typically include Industrial or commercial water users, municipalities, residential water users, and recreational water users.

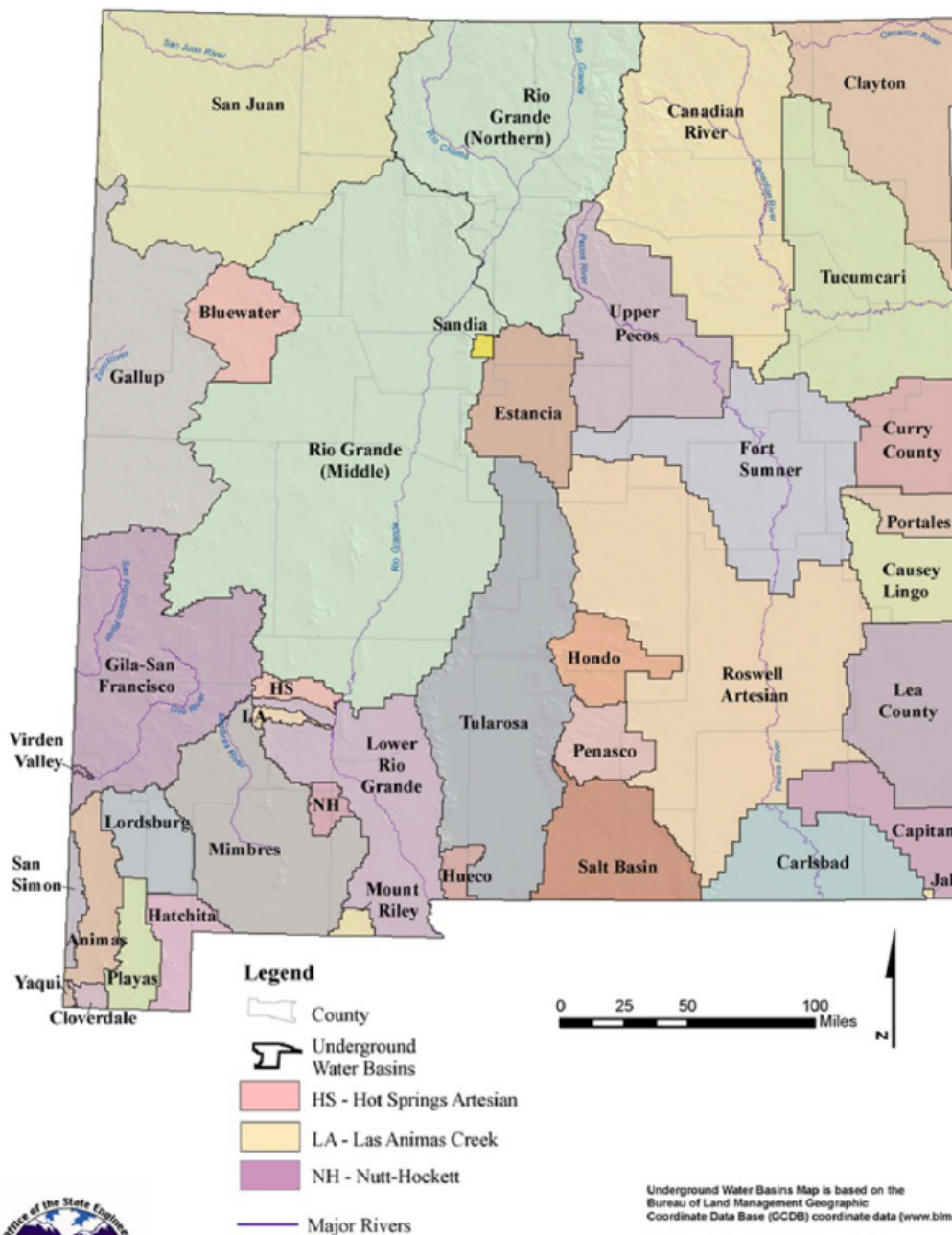
Office of the State Engineer

Overview of Water Law and Permitting Process for Capital Projects



All surface water in the state has been administered by the State Engineer since 1907. Groundwater is administered based on the declaration date of the basin. The entire state is covered by declared groundwater basins – there are 39 groundwater basins in New Mexico.

New Mexico Office of the State Engineer Underground Water Basins in New Mexico



Underground Water Basins Map is based on the Bureau of Land Management Geographic Coordinate Data Base (GCDB) coordinate data (www.blm.gov/gcdb/)

Map is created in UTM, NAD27, Zone 13, Meters.

Created on October 24, 2005 by Christina Noftsker
OSE Water Resource Allocation Program

Office of the State Engineer
Overview of Water Law and Permitting Process for Capital Projects



Water Rights Permitting Process

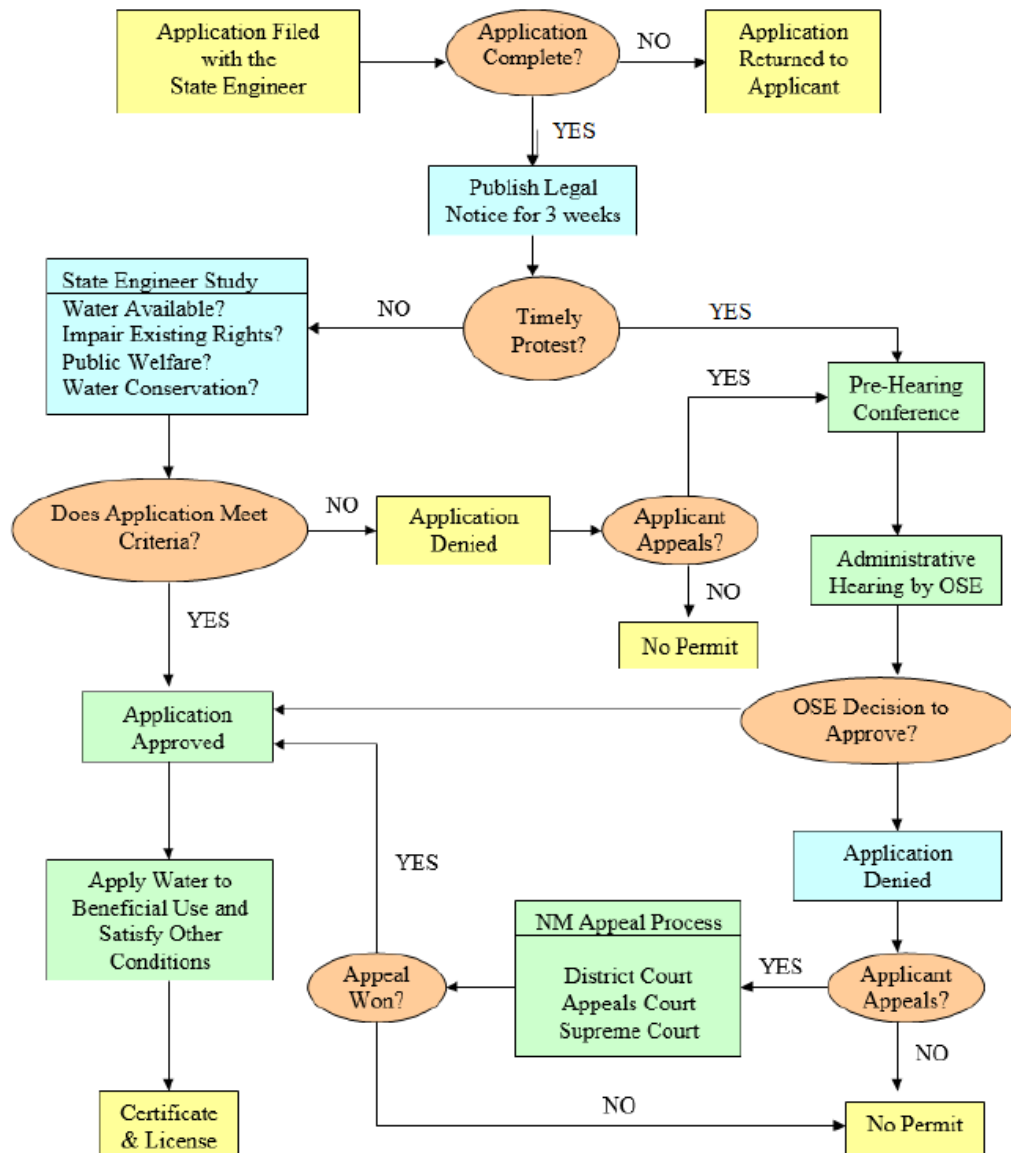
1. **File Application:** The applicant files a permit application with the Office of the State Engineer.
 - a. The owner of record of a water right permit must be the applicant or co-applicant on an application.
 - b. If the applicant is not the owner of the land on which a new point of diversion is proposed, an access agreement must be included in the application.
2. **Legal Notice:** The OSE prepares a legal notice and issues it to the applicant.
 - a. The legal notice provides all essential facts pertaining to the application.
 - b. The applicant must publish the legal notice in the local newspaper and file an affidavit of publication with the OSE.
3. **Protest/Objection:** During the noticing period, any person or other entity may protest/object the permit application.
 - a. The protester/objector must demonstrate that granting the permit would be contrary to the conservation of water within the state or detrimental to the public welfare of the state, and/or that the protester/objector would be substantially and specifically affected by the granting of the application.
 - b. A valid protest/objection must set forth the grounds for asserting standing, and be legible, signed, and include a complete mailing address.
 - c. A protest/objection must be filed with the OSE no later than 10 calendar days after the date of the last publication of the legal notice.
 - d. If a protest/objection to the permit application filed, it will go through the administrative hearing process.
 - e. If no valid protest/objection is filed, the State Engineer will proceed to evaluate the application.
4. **Administrative Hearing:** If a permit application is protested/objected, or if the applicant is aggrieved by the decision of the OSE, the application will be forwarded to the Administrative Litigation Unit to go through the administrative hearing process.
 - a. The State Engineer encourages the applicant and protester/objector to resolve the protest/objection on their own. If the parties cannot reach agreement to withdraw the protest/objection, the permit application will proceed to an administrative hearing.
 - b. If there is no protest/objection to the permit application, it will advance to the next step in the process.
5. **State Engineer Evaluation:** The State Engineer will evaluate the application for impairment to existing water rights, public welfare of the state, and conservation of water within the state prior to final disposition of the application. In the evaluation the State Engineer considers:
 - a. Does water right exist?
 - b. For a new appropriation, is water available?
 - c. Would granting the application be detrimental to or impair existing water rights?
 - d. Would granting the application be contrary to the conservation of water within the state?
 - e. Would granting the application be detrimental to the public welfare of the state?
6. **Action on Application:** After evaluation, the State Engineer will act to approve or deny the permit application.
 - a. **Approval:** If the State Engineer approves the permit application based on the evaluation, the OSE will establish conditions of approval.
 - i. The OSE may impose reasonable conditions of approval including, but not limited to, measurement at the point of diversion and that the permit holder put the water to beneficial use within a specified period of time.

Office of the State Engineer
Overview of Water Law and Permitting Process for Capital Projects



- ii. The State Engineer retains jurisdiction of all permits.
- b. **Denial:** If the State Engineer denies the permit application based on the evaluation, the applicant will be notified of the decision in writing.
 - i. **Aggrieving a denied application:** If the applicant is aggrieved by the decision of the OSE, they may request that the decision be set aside for reconsideration or an administrative hearing. The applicant must notify the OSE of their grievance in writing within 30 days of receipt of the State Engineer's decision.
 - ii. The matter will be forwarded to the Administrative Litigation Unit to go through the administrative hearing process.

Water Right Permitting Process Flowchart



Office of the State Engineer Overview of Water Law and Permitting Process for Capital Projects



Declaring Groundwater Rights

Any person, firm or corporation claiming to be the owner of an underground water right in New Mexico established prior to the State Engineer's jurisdiction of the underground water basin in which the water right is located may file a declaration pursuant to Section 72-12-5 NMSA. The declarant may file a declaration based on his personal information and belief.

Declaring Surface Water Rights

All water rights established by beneficial use in New Mexico prior to March 19, 1907, were recognized and confirmed by the state constitution at the time of its adoption. Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source may file a declaration on a form prescribed by the state engineer setting forth the history and continuity of the beneficial use to which said water has been applied

Return Flow Credit

Return flow is the percentage of the total diversion of water that has been applied to beneficial use and returned to the same source from which it was appropriated. A permit from the state engineer is required to receive return flow credit. An application for return flow must include a return flow plan.

Change of Ownership

In the event of any changes of ownership affecting the title to a water right, the new owner must file a change of ownership form with the State Engineer and include a copy of a warranty deed or other instrument of conveyance that has been duly recorded with the county clerk where the water right is located. A separate change of ownership is required for each declaration, permit, license, or adjudicated water right of record filed with the State Engineer.

Adjudicated Water Rights

Adjudication is the legal process used to define the elements of a water right. Adjudication is carried out in two phases:

- Phase 1 – OSE performs a hydrographic survey to map and identify ownership of water rights
- Phase 2 – Court determination of water right elements

Water Rights Statutes, Rules, Regulations & Guidelines:

- NMSA Chapter 72 – Water Law
- 19.25.2 NMAC
- 19.25.4 NMAC
- 19.27.1 NMAC
- 19.26.2 NMAC

Appendix

State Grants and

Other Funding Resources

Public Schools

- [Public School Capital Outlay Council](#)

Water, Wastewater, Stormwater, Acequias

- [Drinking Water State Revolving Fund \(New Mexico Finance Authority\)](#)
- [Water Trust Board \(New Mexico Finance Authority\)](#)
- [Colonias Infrastructure Fund \(New Mexico Finance Authority\)](#)
- [Tribal Infrastructure Fund \(Indian Affairs Department\)](#)
- [Clean Water State Revolving Fund \(New Mexico Environment Department\)](#)
- [Rural Infrastructure Program \(New Mexico Environment Department\)](#)
- [Acequia and Community Ditch Infrastructure Fund \(Office of the State Engineer\)](#)

Roads

- [Local Government Road Fund \(Department of Transportation\)](#)

Project Planning

- [Local Government Planning Fund \(New Mexico Finance Authority\)](#)

Recreational Facilities

- [Recreation and Quality of Life Grant Program \(Department of Finance and Administration\)](#)

Outdoor Recreation Trails

- [Outdoor Recreation Trails+ Grant \(Economic Development Department, Outdoor Recreation Division\)](#)

Tribal Infrastructure

- [Tribal Infrastructure Fund \(Indian Affairs Department\)](#)

General – Southern New Mexico

- [Colonias Infrastructure Fund \(New Mexico Finance Authority\)](#)

General – All

- [Community Development Block Grant \(Department of Finance and Administration\)](#)

Downtown Revitalization

- [MainStreet Capital Outlay Program \(Economic Development Department\)](#)

Senior Centers

- [Aging and Long-Term Services Department – the agency has a program through which senior centers can apply to be included in the statewide capital outlay framework](#)

Business and Community Resource directory

<https://edd.newmexico.gov/business-development/brc-directory>

To download a copy of Economic Development Department Business and Resource directory, scan here:



Water and Crisis Response

Follow the links or scan the QR codes to access helpful resources prepared by New Mexico Senate Majority Staff. Links and QR codes will take you to Google Docs we have used to compile resources for your convenience. We will update the Google Docs periodically with new resources over time.

National Referral List to Federal Services 	State and Local Level Referral List to Services 	NM Wildfire Resource Guide: State and Federal 
Tips and Tools to Prepare for an Emergency (Fire/Flood) 	Water and Reforestation Project Resources 	Water/Wastewater Federal Fund Matching 
NM Executive Budget Recommendations (Historical) 	State Water Task Force Designated Resources and References 	Legislative Session - Water Project Prioritization Form 
Office of the State Engineer's Overview of Water Rights in New Mexico 		