



Santa Fe County Growth Management Division Transfer of Development Rights (TDR) Program Water Rights Requirements

Water Rights Documentation and Information Requirements for TDR Applications

If, as part of your Transfer of Development Rights (TDR) application, you wish to earn additional TDRs by restricting the transfer of water rights appurtenant to your property, you must demonstrate to the County of Santa Fe's satisfaction the validity, amount, ownership and other elements of water rights associated with your property. Under Section 12.14.5.1.3 of the Sustainable Land Development Code (Ordinance No. 2016-9; hereafter SLDC), the party sending development rights bears this burden of proof.

Please understand that the County calculates the award of TDRs based on the consumptive use (or consumptive irrigation requirement, CIR) component of an irrigation water right, and not on the diversion amount. Consumptive use is the quantity of water actually consumed during the application of water to beneficial use. The diversion amount is the quantity of water delivered to a property (or diverted from a source of water on the property, such as a well) to satisfy the allowed consumptive use for that property. The water diverted to a property but not beneficially consumed is the "return flow," i.e., the water that is returned to the available water supply. Only the consumptive use is transferable to a new place of diversion. Accordingly, the value of a water right is typically calculated based on the consumptive use, and that is the value the County uses for "irrigation water rights" as that term is used in the SLDC.

To the extent such information is available, the County will use determinations made by the OSE or courts regarding consumptive use, such as an OSE *Permit to Change an Existing Water Right* or a Final Decree in a water rights adjudication proceeding. But consumptive use is not always quantified in documentation available from the Office of the State Engineer (OSE). There are often – but not always – well-defined correlations between a diversion amount and a consumptive use amount, such that a precise formulaic approach can be used to derive consumptive use from a diversion amount. When that approach is appropriate, it will be used. In other instances, however, the correlation is more ambiguous and does not lend itself to a formulaic approach. In those situations, the County may utilize a default calculation under which consumptive use will be assigned a value of one-half (50%) of an accepted diversion amount. This approach has been approved as a reasonably accurate approximation by OSE personnel and an independent lawyer certified as a specialist in water law.

To satisfy the requirements identified above, you must provide to the County, at your own expense:

1. **Title Search and Report:** A comprehensive water rights title search and report from a qualified title company, from 1960 (or earlier) to the present. This documentation is necessary to establish your legal ownership of the water rights, as water rights can be severed from land ownership under New Mexico law.
2. **Professional Validity Study:** A comprehensive assessment of the validity of the claimed water rights which contains:
 - An analysis demonstrating continuous beneficial use of the water rights
 - A technical report showing evidence of continuous use based on:
 - Aerial photography;
 - Field studies and reports;
 - Ditch records;
 - State Engineer files; and
 - Any other competent evidence that establishes historic and ongoing beneficial use.

This documentation is essential because water rights in New Mexico may be lost through forfeiture (after four or more consecutive years of non-use) or abandonment (non-use plus intent to abandon). The County must verify that your water rights remain valid before approving them for transfer restrictions within the TDR program. There are individuals and companies (typically hydrologists, geohydrologists and past employees of the Office of the State Engineer) who are qualified to conduct such assessments. The County does not maintain a list of individuals and companies whom we recognize as being qualified to perform this research and prepare a suitable report. Feel free to notify the County of the party you intend to use for the preparation of a technical report, and we will make every effort to advise you whether the County believes that person or company is qualified to prepare such a report.

3. **Ditch Association Approval:** A statement, signed by an authorized representative of your acequia or community ditch association, verifying i) that you are current with any financial obligations relating to your acequia/ditch association, ii) that you are in good standing with the acequia/ditch association, and iii) that water was beneficially used on your property for irrigation purposes during the preceding 12 months.