

The New Mexico Cannabis Regulation Act, defined in Sections 1 through 42 [26-2C-1 to 26-2C-42 NMSA 1978] was enacted on April 12, 2021, requiring that an applicant requesting to produce cannabis for sale to demonstrate the legal right to a commercial water supply, a valid water rights or another supply of water sufficient to meet the water needs as determined by the Regulation and Licensing Department. Proof must be evidenced by documentation from the office of the state engineer of a valid water right or a letter from a water provider stating that the use of water for cannabis production is compliant with that water providers rules.

Q: Can I grow cannabis using water from my domestic well?

A: While you may use a domestic well for personal (non-commercial) cannabis growth allowable by law, similar to water use for a garden, domestic well permits do not allow water to be used in growing any commercial crops, including cannabis. Cannabis producers must acquire valid irrigation rights for outdoor cultivation or commercial water rights for indoor cultivation. If you do not have them, you will have to acquire valid commercial or irrigation rights from someone who does, then transfer those rights into your existing well with a permit from the Office of the State Engineer (OSE). All permit approvals will require meter installation and reporting of the usage.

Q: I have a well that was permitted for Drinking and Sanitary Uses in conjunction with a Commercial Operation, can that be used to grow cannabis?

A: No, that well is drilled under statute 72-12-1 NMSA which does not allow the use to grow commercial crops. This well is only allowed for uses such as sinks and bathrooms for a business. A drinking and sanitary well may, however, be used to supply water to your facility for hand washing as required by CCD regulation which states: 16.8.2.27(F)(4) NMAC, "hand-washing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices".

Q: I own property that has an acequia (ditch), stream, river, spring or waterway running through it, does that mean I have water rights?

A: Do not assume that you have water rights because you have bought property with an acequia, ditch, river, stream, spring or waterway running through it. Check with the OSE, local District Office to research water rights on your property.

Q: I found someone willing to sell me water rights that I will need to move to my property, is there anything I should be concerned with before purchasing these water rights?



Note: This FAQ sheet is intended to assist those interested in commercial cannabis cultivation. This may be updated and subject to revision. Page 1 of 2

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- A: If someone offers to sell you water rights from an acequia system, check to see if that acequia commission has bylaws that prohibit or limit such transfers. Most acequia commissions do have bylaws, and they often have the right to refuse the transfer. Also, you must research to make sure the water rights that you are being offered are valid rights. There are also some specific rules governing groundwater basins that limit how water can be transferred to different places of use. Check with the OSE, local District Office to find out more about what restrictions might be in place for transferring water rights.
- Q: I found a water right for sale, is there a process to expedite the transfer?
- A: No, unfortunately, this does not qualify as an emergency request pursuant to statutes 72-12-22, 72-12-24, 72-12-25, or 72-5-25 NMSA.
- Q: What is the timeline for changing the place, purpose, and/or point of diversion of water rights?
- A: Once you have found water rights to purchase, get ready to get in line again. The Office of the State Engineer has over 500 non-cannabis related water applications backlogged statewide to act upon, with an average wait time of eight to 10 months. If someone protests the application or contests those water rights, it could take another possible one to two years of waiting while the protest is resolved through legal processes.
- Q: Can I collect rainwater to grow commercial cannabis?
- A: Rainwater captured via rooftop catchment, which is allowed, is NOT a valid water right so this will not suffice as a water source for the purposes of commercial cannabis growing. You may use rainwater caught from your rooftop only to supplement a valid water right, but that is all.
- Q: What if I am connected to a commercial or municipal water system?
- A: If, on the other hand, you are buying or renting a facility connected to a commercial or municipal water systems, your road will be easier to travel because you can connect to those systems as a paying customer and prove you have the water or "right" to use it. If you are planning to operate out of a building in, say, Albuquerque, the Albuquerque-Bernalillo County Water Utility Authority (ABCWUA) has water rights for commercial, agriculture, and domestic use so you are just buying it from ABCWUA and you can show you are a customer of the authority.
- Q: I want to grow in a hoop house with my irrigation right?
- A: Growing in a hoop house is considered a greenhouse and would require a commercial water right.



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Q: Can I have water hauled to me through a water hauler to allow me to grow or process cannabis?

A: No, having water hauled to you does not establish a valid water right.



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