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AN ACT

RELATING TO NATURAL RESOURCES; PROVIDING FOR THE DEVELOPMENT,
REGULATION AND CONSERVATION OF GEOTHERMAL RESOURCES;
REPEALING THE GEOTHERMAL RESOURCES CONSERVATION ACT AND
ENACTING THE GEOTHERMAL RESOURCES DEVELOPMENT ACT; REQUIRING
GEOTHERMAL PERMITS; PROVIDING POWERS AND DUTIES; PRESCRIBING
CIVIL PENALTIES AND REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--Sections 1 through 11 of this
act may be cited as the "Geothermal Resources Development
Act".

SECTION 2. FINDINGS AND PURPOSE.--The legislature finds
that the people of New Mexico have a direct interest in the
development of geothermal resources and that the state should
exercise its power and jurisdiction through the division to
require that geothermal resources be explored, developed and
produced in such a manner as to safeguard life, health,
property, natural resources and the public welfare and to
encourage maximum economic recovery.

SECTION 3. DEFINITIONS.--As used in the Geothermal
Resources Development Act:

A. "correlative rights" means the opportunity
afforded, insofar as is practicable, to each owner or
leaseholder in a geothermal reservoir to produce the owner's

1 or leaseholder's just and equitable share of the geothermal
2 resources within such reservoir, being an amount, so far as
3 can be practicably determined and so far as can be
4 practicably obtained without waste, substantially in the
5 proportion that the recoverable geothermal resources of such
6 ownership or lease interest bear to the total recoverable
7 geothermal resources in the reservoir and, for such purpose,
8 to use the owner's or leaseholder's just and equitable share
9 of the natural heat or energy in the reservoir;

10 B. "division" means the energy conservation and
11 management division of the energy, minerals and natural
12 resources department;

13 C. "geothermal reservoir" means an underground
14 reservoir containing geothermal resources, whether the fluids
15 in the reservoir are native to the reservoir or flow into or
16 are injected into the reservoir;

17 D. "geothermal resources" means the natural heat
18 of the earth in excess of two hundred fifty degrees
19 Fahrenheit, or the energy, in whatever form, below the
20 surface of the earth present in, resulting from, created by
21 or that may be extracted from this natural heat in excess of
22 two hundred fifty degrees Fahrenheit, and all minerals in
23 solution or other products obtained from naturally heated
24 fluids, brines, associated gases and steam, in whatever form,
25 found below the surface of the earth, but excluding oil,

1 hydrocarbon gas and other hydrocarbon substances and
2 excluding the heating and cooling capacity of the earth not
3 resulting from the natural heat of the earth in excess of two
4 hundred fifty degrees Fahrenheit, as may be used for the
5 heating and cooling of buildings through an on-site geo-
6 exchange heat pump or similar on-site system; and

7 E. "person" means an individual or other legal
8 entity, including federal, state or local governments or
9 their agents or instrumentalities.

10 SECTION 4. EXCLUSION--INCIDENTAL LOSS OR EXTRACTION OF
11 HEAT--LIMITED EXCEPTION.--

12 A. A permit from the state engineer is not
13 required for the use of ground water over two hundred fifty
14 degrees Fahrenheit as incident to the development of
15 geothermal resources permitted pursuant to the Geothermal
16 Resources Development Act when:

17 (1) the use does not require any diversion
18 of ground water; or

19 (2) all diverted ground water is reinjected
20 as soon as practicable into the same ground water source from
21 which it was diverted, resulting in no new depletions to the
22 source; provided that:

23 (a) the division shall provide to the
24 state engineer all information available to the division
25 regarding the proposed diversion and reinjection and shall

1 request the opinion of the state engineer as to whether
2 existing ground water rights sharing the same ground water
3 source may be impaired; and

4 (b) if the state engineer determines
5 that the information provided is sufficient to render an
6 opinion and it is the opinion of the state engineer that any
7 existing ground water rights may be impaired, the division,
8 upon receipt of the opinion of the state engineer, shall
9 require the owner or operator to submit to the division a
10 plan of replacement with regard to any existing ground water
11 rights that are likely to be impaired.

12 B. In response to a request for opinion pursuant
13 to Subsection A of this section, the determination by the
14 state engineer as to whether the information provided is
15 sufficient to render an opinion or the issuance by the state
16 engineer of an opinion shall not constitute a decision, act
17 or refusal to act under Section 72-2-16 NMSA 1978.

18 C. No ground water right is established through
19 the use of ground water as allowed in Subsection A of this
20 section.

21 D. As used in this section, "plan of replacement"
22 means a detailed plan for the replacement of water, which may
23 include:

24 (1) the furnishing of a substitute water
25 supply;

- 1 (2) the modification of existing water
2 supply facilities;
- 3 (3) the drilling of replacement wells;
- 4 (4) the assumption of additional operating
5 costs;
- 6 (5) the procurement of documentation
7 establishing a waiver of protection by owners of affected
8 water rights;
- 9 (6) artificial recharge; or
- 10 (7) any other means to avoid impairment of
11 water rights.

12 SECTION 5. GENERAL DUTIES, JURISDICTION AND AUTHORITY
13 OF THE DIVISION.--

14 A. The division shall regulate the exploration,
15 development and production of geothermal resources on public
16 and private land for the purposes of conservation; protection
17 of correlative rights; protection of life, health, property,
18 natural resources, the environment and the public welfare;
19 and encouraging maximum economic recovery of the geothermal
20 resources. The division may require persons seeking to
21 explore, develop or produce geothermal resources to obtain
22 permits from the division.

23 B. The division has jurisdiction over all matters
24 relating to the exploration, development and production of
25 geothermal resources. It has jurisdiction, authority and

1 control of all persons, matters and things necessary or
2 proper to enforce effectively the provisions of the
3 Geothermal Resources Development Act, including making
4 investigations and inspections of geothermal projects,
5 facilities and wells.

6 C. The division may limit and allocate production
7 of geothermal resources as needed to prevent waste whenever
8 the total amount of geothermal resources that may be produced
9 from a geothermal reservoir is limited. The division shall
10 allocate and distribute the allowable production, insofar as
11 is practicable, to afford each ownership or lease interest in
12 a geothermal reservoir the opportunity to produce its just
13 and equitable share of the geothermal resources in the
14 reservoir.

15 D. The division shall have exclusive authority to
16 regulate injection into geothermal wells pursuant to the
17 Geothermal Resources Development Act and shall have exclusive
18 authority over matters related to the protection of natural
19 resources, property, health and public welfare as they relate
20 to geothermal injection wells.

21 **SECTION 6. RULES.--**

22 A. The division shall promulgate and enforce rules
23 providing for the exploration, development and production of
24 geothermal resources and to accomplish the purposes of the
25 Geothermal Resources Development Act and that are reasonably

1 necessary to carry out the purposes of that act whether or
2 not indicated or specified in any section of that act.

3 B. The rules shall include, at minimum, provisions
4 to:

5 (1) protect the environment against damage
6 resulting from the exploration, development or production of
7 geothermal resources;

8 (2) prevent waste of natural resources,
9 including geothermal resources, in connection with the
10 exploration, development or production of geothermal
11 resources;

12 (3) ensure proper casing to prevent
13 geothermal resources, water or other fluids from escaping
14 from the strata in which they are found into other strata;

15 (4) prevent the premature cooling of any
16 geothermal reservoir from the exploration, development or
17 production of geothermal resources;

18 (5) protect the general public against
19 injury or damage resulting from the exploration, development
20 or production of geothermal resources;

21 (6) protect correlative rights against
22 infringement resulting from the exploration, development or
23 production of geothermal resources;

24 (7) regulate disposal of geothermal
25 resources or the residue of geothermal resources or the

1 disposal of nondomestic waste from the exploration,
2 development or production of geothermal resources and direct
3 the surface or subsurface disposal of such in a manner that
4 will afford reasonable protection against contamination of
5 all fresh water and water of present or probable future value
6 for domestic, commercial, agricultural or stock purposes and
7 will afford reasonable protection to human life and health
8 and to the environment;

9 (8) regulate the permitting of geothermal
10 projects, facilities and wells, and provide for public notice
11 and comment, and opportunity for hearing;

12 (9) where sufficient information is
13 available, define and, from time to time as is necessary,
14 redefine the horizontal and vertical limits of geothermal
15 reservoirs;

16 (10) permit and regulate the injection of
17 fluids into geothermal reservoirs;

18 (11) require geothermal projects, facilities
19 and wells to be drilled, installed, developed, operated or
20 produced in a manner so as to prevent environmental injury to
21 neighboring leases or properties and to afford reasonable
22 protection to human life and health and to the environment;

23 (12) require persons applying for permits to
24 explore, develop or produce geothermal resources to
25 demonstrate that they have the right to produce the

1 geothermal resources through ownership, leases, permits or
2 other documentation;

3 (13) require geothermal projects, facilities
4 and wells to be operated efficiently;

5 (14) require financial assurance in the form
6 of a surety bond, cash bond or letter of credit for
7 geothermal projects, facilities and wells, as may be
8 applicable, in amounts to be established by the division;

9 (15) require owners or operators of
10 geothermal projects, facilities or wells to keep or cause
11 records to be maintained and submitted to the division;

12 (16) require abandoned geothermal projects,
13 facilities and wells to be reclaimed, including requiring
14 wells to be plugged in a manner to confine all fluids in the
15 strata in which they are found and to prevent them from
16 escaping into other strata; and

17 (17) govern the manner and procedures by
18 which all hearings conducted pursuant to the Geothermal
19 Resources Development Act shall be held.

20 **SECTION 7. ACCESS TO PROPERTY.**--Employees or agents of
21 the division, on proper identification, may enter public or
22 private property to inspect and investigate conditions in
23 relation to the exploration, development or production of
24 geothermal resources, to monitor compliance with the
25 Geothermal Resources Development Act or a rule, permit or

1 order of the division, or to examine and copy, during
2 reasonable business hours, those records or memoranda of the
3 business being investigated; provided, however, that any
4 inspection or investigation on private property shall be at
5 reasonable times and upon notice to the private landowner.
6 Employees or agents acting under the authority of this
7 section shall observe the business's safety, internal
8 security and fire protection rules.

9 **SECTION 8. ADMINISTRATIVE PENALTY.--**

10 A. If a person violates the provisions of the
11 Geothermal Resources Development Act or the rules promulgated
12 pursuant to that act or an order or permit issued pursuant to
13 that act, the division may assess the person a civil penalty
14 of two thousand five hundred dollars (\$2,500) for each
15 violation. In the case of a continuing violation, each day
16 of violation shall constitute a separate violation.

17 B. In determining the amount of the penalty, the
18 division shall consider the person's history of previous
19 violations of the Geothermal Resources Development Act or the
20 Geothermal Resources Act or the rules or permits issued
21 pursuant to those acts, the seriousness of the violation, any
22 hazard to the health or safety of the public or the
23 environment and the demonstrated good faith of the person.

24 C. The division may assess a civil penalty only
25 after the person charged with a violation has been given an

1 opportunity for a public hearing.

2 D. After the public hearing is held, or the person
3 has failed to participate in the public hearing, the division
4 shall issue an order requiring that any penalty imposed be
5 paid.

6 E. If the person fails to pay the civil penalty as
7 ordered by the division, the division may file a civil suit
8 to collect the penalty in the district court of the county in
9 which the defendant resides or in which any defendant resides
10 if there is more than one defendant or in the district court
11 of any county in which the violation occurred.

12 SECTION 9. APPEALS.--A person subject to a final
13 decision of the division may appeal to the district court
14 pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

15 SECTION 10. WATER RIGHTS OWNER--ACTION FOR
16 IMPAIRMENT.--In addition to the appeal rights pursuant to
17 Section 9 of the Geothermal Resources Development Act, a
18 water rights owner may bring a de novo action in the district
19 court in which the water rights are located for damages or
20 injunctive relief with respect to any claimed impairment of
21 existing water rights due to the exploration, development or
22 production of geothermal resources pursuant to Section 4 of
23 that act.

24 SECTION 11. TRANSFER OF ADMINISTRATION OF RULES, ORDERS
25 AND PERMITS.--All rules, orders, permits and administrative

1 determinations of the oil conservation division of the
2 energy, minerals and natural resources department or oil
3 conservation commission issued pursuant to the Geothermal
4 Resources Conservation Act that existed prior to the
5 effective date of the Geothermal Resources Development Act
6 shall be administered by the energy conservation and
7 management division of the department and shall remain in
8 full force and effect after that date until repealed or
9 amended, unless in conflict with, prohibited by or
10 inconsistent with the provisions of the Geothermal Resources
11 Development Act.

12 SECTION 12. Section 9-5A-4 NMSA 1978 (being Laws 1987,
13 Chapter 234, Section 4, as amended) is amended to read:

14 "9-5A-4. DIVISIONS--DUTIES.--In addition to the duties
15 assigned to each division of the energy, minerals and natural
16 resources department by the secretary of energy, minerals and
17 natural resources:

18 A. the administrative services division shall
19 provide clerical, recordkeeping and administrative support to
20 the department in the areas of personnel, budget, procurement
21 and contracting;

22 B. the energy conservation and management division
23 shall plan, administer, review, provide technical assistance,
24 maintain records, monitor state and federal energy
25 conservation and alternative energy technology programs and

1 administer laws and regulations relating to geothermal
2 resources;

3 C. the forestry division shall enforce and
4 administer laws and regulations relating to forestry on lands
5 within the state;

6 D. the mining and minerals division shall enforce
7 and administer laws and regulations relating to mine safety,
8 coal surface mine reclamation and abandoned mine lands
9 reclamation;

10 E. the oil conservation division shall administer
11 laws and regulations relating to oil and gas resources,
12 except those laws specifically administered by another
13 authority; and

14 F. the state parks division shall develop,
15 maintain, manage and supervise all state parks and state-
16 owned or state-leased recreation areas."

17 SECTION 13. TEMPORARY PROVISION--TRANSFER OF
18 APPROPRIATIONS, MONEY AND RECORDS.--On the effective date of
19 this act, any appropriations, money and records of the oil
20 conservation commission or the oil conservation division of
21 the energy, minerals and natural resources department
22 dedicated to its powers and duties under the Geothermal
23 Resources Conservation Act are transferred to the energy
24 conservation and management division of that department.

25 SECTION 14. REPEAL.--Sections 71-5-1 through 71-5-24

1 NMSA 1978 (being Laws 1975, Chapter 272, Sections 1 and 2,
2 Laws 2003, Chapter 16, Section 2, Laws 1975, Chapter 272,
3 Sections 3 through 17, Laws 1979, Chapter 326, Sections 1
4 through 5, Laws 1975, Chapter 272, Sections 18 through 21,
5 Laws 2012, Chapter 50, Section 2, Laws 1975, Chapter 272,
6 Section 22, Laws 1981, Chapter 362, Section 2 and Laws 1975,
7 Chapter 272, Section 24, as amended) are repealed.

8 SECTION 15. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2016. _____

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