FISCAL IMPACT REPORT

BILL NUMBER: House Bill 207

SHORT TITLE: Water Quality Commission Produced Water Rules

SPONSOR: Brown, Mason, Murphy, Henry, and Sena Cortez

LAST UPDATE: **ORIGINAL DATE:** 1/29/26 **ANALYST:** Davidson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED	Up to $400	Up to $2,900	Up to $2,900	Up to $6,200	Recurring	General Fund And/or Other State Funds

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis
New Mexico Environment Department
Energy, Minerals and Natural Resources Department

Agency or Agencies That Were Asked for Analysis but did not Respond
Office of the State Engineer
New Mexico Attorney General
New Mexico State University

SUMMARY

Synopsis of House Bill 207

House Bill 207 amends and adds language requiring the Water Quality Control Commission (WQCC), a quasi-independent board within the New Mexico Environment Department (NMED), to adopt rules that establish the framework on uses of treated produced water.

The bill requires WQCC to pass the new produced water rules no later than December 31st, 2026.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

The bill proposes additional duties for the WQCC without providing an appropriation or addressing the commission's current workload and hearing commitments.

NMED analysis estimates implementation of the bill in FY26 could cost up to $400 thousand for contracts and work related to the quick timeline for a hearing. Once potential new produced water rules are adopted, NMED estimates that, depending on scope, a produced water reuse program could require up to $2.9 million in recurring funding. The ruling may authorize certain fees that could offset a portion of these costs; however, because the bill does not specify the scope of the hearing or resulting program in sufficient detail, NMED did not estimate potential fee revenue.

SIGNIFICANT ISSUES

Administrative

The bill's requirement of WQCC to adopt new rules on the use of treated produced water is outside of the traditional practice of WQCC. Traditionally, an outside entity will petition the commission to adopt new rules, and then hearings will be set and an eventual ruling will be made. Requiring WQCC, through legislation, to adopt new rules without a petition and within a specified timeframe may present implementation challenges.

NMED analysis raises concerns with the bill's current structure, noting that the bill does not specify which entity would be responsible for drafting the required regulations or which entity would petition the Water Quality Control Commission (WQCC). NMED also notes that previous rulemaking related to produced water took approximately 18 months to complete, whereas the bill allows roughly seven months. In addition, NMED indicates that the bill's specified completion date may conflict with existing rulemaking regulations governing WQCC. Rulemaking of comparable scope and complexity typically requires at least one year. NMED provided several technical corrections intended to address implementation issues identified in the bill.

NMED further notes the topics outlined in the bill are typically determined through a technical and scientific process, including the identification of setback requirements for safe discharge zones and appropriate depths to ensure that sensitive geologic formations and aquifers are not damaged or contaminated. Because of the varied and unique nature of the state's subsurface conditions, NMED indicates that any resulting rules would require flexibility to account for regional and geologic variation. NMED also notes that the bill directs WQCC to consider direct surface and groundwater discharges of treated produced water for potential uses such as commercial, industrial, and agricultural purposes. NMED cautions that such uses would need to be carefully defined to ensure that the terminology and definitions avoid direct human contact with treated produced water.

Produced Water

Produced water is a byproduct of hydraulic fracking and is unique to the area it is drilled from, resulting in each barrel of produced water having a unique dissolved solids structure. Produced water, depending on the area it is created from, has been found to have varying levels of toxic

and radioactive substances in it.[1] New Mexico produces roughly 2 billion barrels of produced water a year. Portions of this produced water are recycled and reused in oil production, with produced water making up 60 percent of water used in drilling operations.

Cleaning produced water for industrial use, which requires treatment standards that vary by intended use, has not been achieved at a large scale and would require infrastructure beyond what is currently available in the state. Cleaning produced water, removing the total dissolved solids (TDS) so that it can be used beyond the oil field requires the removal of radioactive and toxic dissolved solids, a level of water purification requiring substantial infrastructure. Currently, there are no plans to clean produced water to drinking water level, which would require produced water to be clean to the drinking water requirement of TDS level of less than 500 parts per million.

A study done by the U. S Environmental Protection Agency notes[2]:

> Based on information provided in this study, this is primarily due to the availability of other wastewater management options that are lower cost, such as reuse within the oil and gas field or disposal in Class II UIC wells, as well as the cost associated with treating produced waters to a level suitable for discharge. Industry indicated that unless the produced water has total dissolved solids concentrations generally of less than a few thousand milligrams per liter, treatment using membranes (e.g., reverse osmosis) or distillation would be necessary to generate water that is suitable for agricultural uses or for discharge to surface waters. The cost of such treatment is not currently competitive where other wastewater management options are available.

Research from the New Mexico Produced Water Consortium out of New Mexico State University found a range of TDS in produced water from the Permian Basin between 100,800 to 201,500 TDS mg/L.3.[3]

A recent study also done by the New Mexico Produced Water Consortium noted that treated produced water and subsequent integration with the treated water and human cells resulted in little to no effect on the cells. However, the study did conclude that, "Produced water (PW) could be an alternative water resource after treatment for fit-for-purpose applications. However, comprehensive studies assessing the impact of treated PW exposure on human health are still lacking."

AD/SEC/dw

[1] https://www.epa.gov/radiation/tenorm-oil-and-gas-production-wastes
[2] https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2024/05/108-110.pdf
[3] https://nmpwrc.nmsu.edu/resources/documents/2022-JHM-Characterization-of-PW-and-Pecos-River-quality.pdf