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SENATE BILL 313

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Carlos R. Cisneros

FOR THE WATER AND NATURAL RESOURCES COMMITTEE  
AND THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO PRODUCED WATER; ALLOWING FOR THE DISPOSITION OF  
PRODUCED WATER WITHOUT STATE ENGINEER APPROVAL; PROVIDING A  
CORPORATE INCOME TAX CREDIT FOR THE DISPOSAL OF PRODUCED WATER.

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

Section 1. A new section of the Corporate Income and  
Franchise Tax Act is enacted to read:

"[NEW MATERIAL] CREDIT--DISPOSAL OF TREATED PRODUCED  
WATER.--

A. A taxpayer that generates electricity and  
disposes of produced water by its use in the generation of  
electricity may claim a tax credit for the taxable year in  
which the disposal of water occurs if the disposal of water is  
in accordance with rules promulgated by the oil conservation  
division of the energy, minerals and natural resources

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1 department. The tax credit shall be an amount equal to one  
2 thousand dollars (\$1,000) per acre-foot of the produced water  
3 disposed of in the taxable year, but shall not exceed three  
4 million dollars (\$3,000,000) in a taxable year.

5 B. A taxpayer may apply for certification of  
6 eligibility for the tax credit provided in this section from  
7 the energy, minerals and natural resources department, which  
8 shall determine if the applicant has disposed of produced water  
9 in accordance with rules promulgated pursuant to Subsection B  
10 of Section 70-2-12 NMSA 1978 and shall determine the amount of  
11 that produced water that has been used in the taxable year by  
12 the applicant in the generation of electricity. The energy,  
13 minerals and natural resources department shall issue a  
14 certification of eligibility to the applicant containing this  
15 information.

16 C. To claim the tax credit provided in this  
17 section, a taxpayer shall submit to the taxation and revenue  
18 department a certification of eligibility issued by the energy,  
19 minerals and natural resources department pursuant to  
20 Subsection B of this section, along with any other information  
21 the taxation and revenue department may require to determine  
22 the amount of the tax credit due the taxpayer.

23 D. The tax credit provided in this section may be  
24 deducted from the taxpayer's corporate income tax liability for  
25 the taxable year. If the amount of the tax credit claimed

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1 exceeds the taxpayer's corporate income tax liability, the  
2 credit may be carried forward for up to three consecutive  
3 years.

4 E. As used in this section, "produced water" means  
5 water that is an incidental byproduct from drilling for or  
6 production of oil or gas."

7 Section 2. [NEW MATERIAL] DISPOSITION OF PRODUCED WATER--  
8 NO PERMIT REQUIRED.--The state engineer shall not require a  
9 permit for the disposition of produced water disposed of in  
10 accordance with rules promulgated pursuant to Section 70-2-12  
11 NMSA 1978 by the oil conservation division of the energy,  
12 minerals and natural resources department.

13 Section 3. Section 70-2-12 NMSA 1978 (being Laws 1978,  
14 Chapter 71, Section 1, as amended) is amended to read:

15 "70-2-12. ENUMERATION OF POWERS.--

16 A. Included in the power given to the oil  
17 conservation division of the energy, minerals and natural  
18 resources department is the authority to collect data; to make  
19 investigations and inspections; to examine properties, leases,  
20 papers, books and records; to examine, check, test and gauge  
21 oil and gas wells, tanks, plants, refineries and all means and  
22 modes of transportation and equipment; to hold hearings; to  
23 provide for the keeping of records and the making of reports  
24 and for the checking of the accuracy of the records and  
25 reports; to limit and prorate production of crude petroleum oil

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1 or natural gas or both as provided in the Oil and Gas Act; and  
2 to require either generally or in particular areas certificates  
3 of clearance or tenders in connection with the transportation  
4 of crude petroleum oil or natural gas or any products of either  
5 or both oil and products or both natural gas and products.

6 B. Apart from any authority, express or implied,  
7 elsewhere given to or existing in the oil conservation division  
8 by virtue of the Oil and Gas Act or the statutes of this state,  
9 the division is authorized to make rules, regulations and  
10 orders for the purposes and with respect to the subject matter  
11 stated in this subsection:

12 (1) to require dry or abandoned wells to be  
13 plugged in a way to confine the crude petroleum oil, natural  
14 gas or water in the strata in which it is found and to prevent  
15 it from escaping into other strata; the division shall require  
16 a cash or surety bond in a sum not to exceed fifty thousand  
17 dollars (\$50,000) conditioned for the performance of such  
18 regulations;

19 (2) to prevent crude petroleum oil, natural  
20 gas or water from escaping from strata in which it is found  
21 into other strata;

22 (3) to require reports showing locations of  
23 all oil or gas wells and for the filing of logs and drilling  
24 records or reports;

25 (4) to prevent the drowning by water of any

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1 stratum or part thereof capable of producing oil or gas or both  
2 oil and gas in paying quantities and to prevent the premature  
3 and irregular encroachment of water or any other kind of water  
4 encroachment that reduces or tends to reduce the total ultimate  
5 recovery of crude petroleum oil or gas or both oil and gas from  
6 any pool;

7 (5) to prevent fires;

8 (6) to prevent "blow-ups" and "caving" in the  
9 sense that the conditions indicated by such terms are generally  
10 understood in the oil and gas business;

11 (7) to require wells to be drilled, operated  
12 and produced in such manner as to prevent injury to neighboring  
13 leases or properties;

14 (8) to identify the ownership of oil or gas  
15 producing leases, properties, wells, tanks, refineries,  
16 pipelines, plants, structures and all transportation equipment  
17 and facilities;

18 (9) to require the operation of wells with  
19 efficient gas-oil ratios and to fix such ratios;

20 (10) to fix the spacing of wells;

21 (11) to determine whether a particular well or  
22 pool is a gas or oil well or a gas or oil pool, as the case may  
23 be, and from time to time to classify and reclassify wells and  
24 pools accordingly;

25 (12) to determine the limits of any pool

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1 producing crude petroleum oil or natural gas or both and from  
2 time to time redetermine the limits;

3 (13) to regulate the methods and devices  
4 employed for storage in this state of oil or natural gas or any  
5 product of either, including subsurface storage;

6 (14) to permit the injection of natural gas or  
7 of any other substance into any pool in this state for the  
8 purpose of repressuring, cycling, pressure maintenance,  
9 secondary or any other enhanced recovery operations;

10 (15) to regulate the disposition of water  
11 produced or used in connection with the drilling for or  
12 producing of oil or gas or both and to direct surface or  
13 subsurface disposal of the water, including disposition by use  
14 in drilling for or production of oil or gas, in road  
15 construction or maintenance or other construction, in the  
16 generation of electricity or in other industrial processes, in  
17 a manner that will afford reasonable protection against  
18 contamination of fresh water supplies designated by the state  
19 engineer;

20 (16) to determine the limits of any area  
21 containing commercial potash deposits and from time to time  
22 redetermine the limits;

23 (17) to regulate and, where necessary,  
24 prohibit drilling or producing operations for oil or gas within  
25 any area containing commercial deposits of potash where the

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1 operations would have the effect unduly to reduce the total  
2 quantity of the commercial deposits of potash ~~which~~ that may  
3 reasonably be recovered in commercial quantities or where the  
4 operations would interfere unduly with the orderly commercial  
5 development of the potash deposits;

6 (18) to spend the oil and gas reclamation fund  
7 and do all acts necessary and proper to plug dry and abandoned  
8 oil and gas wells and to restore and remediate abandoned well  
9 sites and associated production facilities in accordance with  
10 the provisions of the Oil and Gas Act, the rules and  
11 regulations adopted under that act and the Procurement Code,  
12 including disposing of salvageable equipment and material  
13 removed from oil and gas wells being plugged by the state;

14 (19) to make well price category  
15 determinations pursuant to the provisions of the federal  
16 Natural Gas Policy Act of 1978 or any successor act and, by  
17 regulation, to adopt fees for such determinations, which fees  
18 shall not exceed twenty-five dollars (\$25.00) per filing. Such  
19 fees shall be credited to the account of the oil conservation  
20 division by the state treasurer and may be expended as  
21 authorized by the legislature;

22 (20) to regulate the construction and  
23 operation of oil treating plants and to require the posting of  
24 bonds for the reclamation of treating plant sites after  
25 cessation of operations;

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1 (21) to regulate the disposition of  
2 nondomestic wastes resulting from the exploration, development,  
3 production or storage of crude oil or natural gas to protect  
4 public health and the environment; and

5 (22) to regulate the disposition of  
6 nondomestic wastes resulting from the oil field service  
7 industry, the transportation of crude oil or natural gas, the  
8 treatment of natural gas or the refinement of crude oil to  
9 protect public health and the environment, including  
10 administering the Water Quality Act as provided in Subsection E  
11 of Section 74-6-4 NMSA 1978."

12 Section 4. Section 70-2-33 NMSA 1978 (being Laws 1935,  
13 Chapter 72, Section 24, as amended) is amended to read:

14 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

15 A. "person" means:

16 (1) any individual, estate, trust, receiver,  
17 cooperative association, club, corporation, company, firm,  
18 partnership, joint venture, syndicate or other entity; or

19 (2) the United States or any agency or  
20 instrumentality thereof or the state or any political  
21 subdivision thereof;

22 B. "pool" means an underground reservoir containing  
23 a common accumulation of crude petroleum oil or natural gas or  
24 both. Each zone of a general structure, which zone is  
25 completely separate from any other zone in the structure, is

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1 covered by the word pool as used in the Oil and Gas Act. Pool  
2 is synonymous with "common source of supply" and with "common  
3 reservoir";

4 C. "field" means the general area [~~which~~] that is  
5 underlaid or appears to be underlaid by at least one pool and  
6 also includes the underground reservoir or reservoirs  
7 containing the crude petroleum oil or natural gas or both. The  
8 words field and pool mean the same thing when only one  
9 underground reservoir is involved; however, field, unlike pool,  
10 may relate to two or more pools;

11 D. "product" means any commodity or thing made or  
12 manufactured from crude petroleum oil or natural gas and all  
13 derivatives of crude petroleum oil or natural gas, including  
14 refined crude oil, crude tops, topped crude, processed crude  
15 petroleum, residue from crude petroleum, cracking stock,  
16 uncracked fuel oil, treated crude oil, fuel oil, residuum, gas  
17 oil, naphtha, distillate, gasoline, kerosene, benzine, wash  
18 oil, waste oil, lubricating oil and blends or mixtures of crude  
19 petroleum oil or natural gas or any derivative thereof;

20 E. "owner" means the person who has the right to  
21 drill into and to produce from any pool and to appropriate the  
22 production either for himself or for himself and another;

23 F. "producer" means the owner of a well capable of  
24 producing oil or natural gas or both in paying quantities;

25 G. "gas transportation facility" means a pipeline

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1 in operation serving gas wells for the transportation of  
2 natural gas or some other device or equipment in like operation  
3 whereby natural gas produced from gas wells connected therewith  
4 can be transported or used for consumption;

5 H. "correlative rights" means the opportunity  
6 afforded, so far as it is practicable to do so, to the owner of  
7 each property in a pool to produce without waste his just and  
8 equitable share of the oil or gas or both in the pool, being an  
9 amount, so far as can be practicably determined and so far as  
10 can be practicably obtained without waste, substantially in the  
11 proportion that the quantity of recoverable oil or gas or both  
12 under the property bears to the total recoverable oil or gas or  
13 both in the pool and, for such purpose, to use his just and  
14 equitable share of the reservoir energy;

15 I. "potash" means the naturally occurring bedded  
16 deposits of the salts of the element potassium; ~~and~~

17 J. "casinghead gas" means any gas or vapor or both  
18 indigenous to an oil stratum and produced from such stratum with  
19 oil, including any residue gas remaining after the processing  
20 of casinghead gas to remove its liquid components; and

21 K. "produced water" means water that is an  
22 incidental byproduct from drilling for or the production of oil  
23 and gas."