

1 AN ACT
2 RELATING TO NATURAL RESOURCES; ENACTING THE PRODUCED WATER
3 ACT; ESTABLISHING CONTROL AND RESPONSIBILITY FOR PRODUCED
4 WATER; ALLOWING THE USE OF TREATED OR RECYCLED PRODUCED
5 WATER; DECLARING CERTAIN CONTRACT PROVISIONS RELATING TO
6 PRODUCED WATER VOID AGAINST PUBLIC POLICY; AMENDING AND
7 ADDING DEFINITIONS; AMENDING THE DUTIES OF THE OIL
8 CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL
9 RESOURCES DEPARTMENT AND THE WATER QUALITY CONTROL
10 COMMISSION; MAKING CONFORMING TECHNICAL CHANGES; AMENDING THE
11 OIL AND GAS ACT REGARDING VIOLATIONS; PROVIDING FOR
12 PENALTIES; REQUIRING ANNUAL REPORTS; AMENDING AND ENACTING
13 SECTIONS OF THE NMSA 1978.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of Chapter 70 NMSA 1978 is
17 enacted to read:

18 "SHORT TITLE.--Sections 1 through 5 of this act may be
19 cited as the "Produced Water Act"."

20 SECTION 2. A new section of Chapter 70 NMSA 1978 is
21 enacted to read:

22 "DEFINITIONS.--As used in the Produced Water Act:

23 A. "operator" means a person authorized by the oil
24 conservation division of the energy, minerals and natural
25 resources department to operate a unit for an oil or gas well

1 or other oil or gas facility;

2 B. "produced water" means a fluid that is an
3 incidental byproduct from drilling for or the production of
4 oil and gas;

5 C. "recycled water" or "recycled produced water"
6 means produced water that is reconditioned by a recycling
7 facility permitted by the oil conservation division of the
8 energy, minerals and natural resources department; and

9 D. "treated water" or "treated produced water"
10 means produced water that is reconditioned by mechanical or
11 chemical processes into a reusable form."

12 SECTION 3. A new section of Chapter 70 NMSA 1978 is
13 enacted to read:

14 "JURISDICTION.--It is the jurisdiction of:

15 A. the oil conservation division of the energy,
16 minerals and natural resources department to regulate
17 produced water as provided in the Oil and Gas Act; and

18 B. the water quality control commission to
19 regulate produced water as provided in the Water Quality
20 Act."

21 SECTION 4. A new section of Chapter 70 NMSA 1978 is
22 enacted to read:

23 "PRODUCED WATER--TRANSFERRED FOR TREATMENT--SUBSEQUENT
24 USE.--

25 A. Unless otherwise provided by law, a contract,

1 bill of sale or other legally binding document:

2 (1) all produced water that is produced from
3 an oil or gas well is the responsibility of and under the
4 control of the working interest owners and operator of that
5 oil or gas well. The working interest owners and operator
6 shall have a possessory interest in the produced water,
7 including the right to take possession of the produced water
8 and to use, handle, dispose of, transfer, sell, convey,
9 transport, recycle, reuse or treat the produced water and to
10 obtain proceeds for any such uses. The operator of the oil
11 and gas well that the produced water is produced from shall
12 handle the use, disposition, transfer, sale, conveyance,
13 transport, recycling, reuse or treatment of the produced
14 water as a reasonably prudent operator;

15 (2) when produced water is transferred, sold
16 or conveyed to another operator, transporter, pipeline,
17 midstream company, plant, processing facility, refinery or
18 entity that provides recycling or treatment services for
19 produced water, the transferee shall have control of and
20 responsibility for the produced water until the water is
21 transferred to another operator, transporter, pipeline,
22 midstream company, plant, processing facility, refinery or
23 recycling or treatment facility. A transferee shall have a
24 possessory interest in the produced water, including the
25 right to use, possess, handle the disposition of, transfer,

1 sell, convey, transport, recycle, reuse or treat the produced
2 water and to obtain proceeds for any such uses. Upon
3 transfer of the produced water, transferees shall be liable
4 for the use, disposition, transfer, sale, conveyance,
5 transport, recycling, reuse or treatment of the produced
6 water; and

7 (3) when an operator of an oil or gas well
8 or a transferee listed in Paragraph (2) of this subsection
9 takes possession of produced water for the purpose of
10 recycling or treating the water, the operator or transferee
11 may transfer recycled or treated water, treated product or
12 any byproduct to another operator, transporter, pipeline,
13 midstream company, plant, processing facility, refinery or
14 entity that provides recycling or treatment services for
15 produced water. Upon transfer, the transferee shall have
16 control and responsibility for the produced water, recycled
17 or treated water or treated product or byproduct. A
18 transferee shall have a possessory interest in the produced
19 water, recycled or treated water or treated product or
20 byproduct, including the right to use, possess, handle
21 disposition of, transfer, sell, convey, transport, recycle,
22 reuse or treat the produced water, and to obtain proceeds for
23 any such uses. Upon transfer, a transferee shall be liable
24 for the use, disposition, transfer, sale, conveyance,
25 transport, recycling, reuse or treatment of the produced

1 water, recycled or treated water or treated product or
2 byproduct.

3 B. Subsection A of this section only applies to
4 transfers of produced water between an operator, transporter,
5 pipeline, midstream company, plant, processing facility,
6 refinery or recycling or treatment entity and shall not
7 affect liability in an action brought by other persons for
8 damages, including damages for personal injury, death or
9 property damage, arising from exposure to produced water,
10 recycled or treated water or treated product or byproduct.

11 C. A permit or other approval from the state
12 engineer is not required for the disposition of produced
13 water, recycled water or treated water. The disposition of
14 produced water, recycled water or treated water, including
15 disposition by use, is neither an appropriation of water for
16 beneficial use under Chapter 72 NMSA 1978 nor a waste of
17 water, and no water right shall be established by the
18 disposition of produced water, recycled water or treated
19 water.

20 D. For uses regulated by the water quality control
21 commission pursuant to the Water Quality Act, a person shall
22 obtain a permit from the department of environment before
23 using the produced water, the recycled or treated water or
24 treated product or any byproduct of the produced water."

25 SECTION 5. A new section of Chapter 70 NMSA 1978 is

1 enacted to read:

2 "VOID AS AGAINST PUBLIC POLICY--THROUGHOUT
3 FEES--LIMITATIONS ON USE OF RECYCLED OR TREATED PRODUCED
4 WATER.--A provision of an agreement, covenant or promise,
5 foreign or domestic, between private parties, entered into on
6 or after July 1, 2019 is against public policy and void to
7 the extent of it:

8 A. allows a private party to charge a tariff or
9 fee for the movement or transport of produced water, treated
10 water or recycled water on surface lands owned by the state,
11 if the agreement does not provide for transportation
12 services;

13 B. requires fresh water resources to be purchased
14 for oil and gas operations when produced water, treated water
15 or recycled water is available and able to be used and the
16 operator elects to use that produced water, treated water or
17 recycled water for the oil and gas operations; or

18 C. relates to the purchase of water and precludes
19 an operator from purchasing or using produced water, treated
20 water or recycled water in the operator's oil and gas
21 operations when such water is available for the operations."

22 SECTION 6. Section 70-2-12 NMSA 1978 (being Laws 1978,
23 Chapter 71, Section 1, as amended) is amended to read:

24 "70-2-12. ENUMERATION OF POWERS.--

25 A. The oil conservation division of the energy,

1 minerals and natural resources department may:

2 (1) collect data;

3 (2) make investigations and inspections;

4 (3) examine properties, leases, papers,
5 books and records;

6 (4) examine, check, test and gauge oil and
7 gas wells, tanks, plants, refineries and all means and modes
8 of transportation and equipment;

9 (5) hold hearings;

10 (6) provide for the keeping of records and
11 the making of reports and for the checking of the accuracy of
12 the records and reports;

13 (7) limit and prorate production of crude
14 petroleum oil or natural gas or both as provided in the Oil
15 and Gas Act; and

16 (8) require either generally or in
17 particular areas certificates of clearance or tenders in
18 connection with the transportation of crude petroleum oil or
19 natural gas or any products of either or both oil and
20 products or both natural gas and products.

21 B. The oil conservation division may make rules
22 and orders for the purposes and with respect to the subject
23 matter stated in this subsection:

24 (1) to require dry or abandoned wells to be
25 plugged in a way so as to confine the crude petroleum oil,

1 natural gas or water in the strata in which it is found and
2 to prevent it from escaping into other strata; pursuant to
3 Section 70-2-14 NMSA 1978, the division shall require
4 financial assurance conditioned for the performance of the
5 rules;

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

9 (3) to require reports showing locations of
10 all oil or gas wells and for the filing of logs and drilling
11 records or reports;

12 (4) to prevent the drowning by water of any
13 stratum or part thereof capable of producing oil or gas or
14 both oil and gas in paying quantities and to prevent the
15 premature and irregular encroachment of water or any other
16 kind of water encroachment that reduces or tends to reduce
17 the total ultimate recovery of crude petroleum oil or gas or
18 both oil and gas from any pool;

19 (5) to prevent fires;

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

23 (7) to require wells to be drilled, operated
24 and produced in such manner as to prevent injury to
25 neighboring leases or properties;

1 (8) to identify the ownership of oil or gas
2 producing leases, properties, wells, tanks, refineries,
3 pipelines, plants, structures and all transportation
4 equipment and facilities;

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

7 (10) to fix the spacing of wells;

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

12 (12) to determine the limits of any pool
13 producing crude petroleum oil or natural gas or both and from
14 time to time redetermine the limits;

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

18 (14) to permit the injection of natural gas
19 or of any other substance into any pool in this state for the
20 purpose of repressuring, cycling, pressure maintenance,
21 secondary or any other enhanced recovery operations;

22 (15) to regulate the disposition, handling,
23 transport, storage, recycling, treatment and disposal of
24 produced water during, or for reuse in, the exploration,
25 drilling, production, treatment or refinement of oil or gas,

1 including disposal by injection pursuant to authority
2 delegated under the federal Safe Drinking Water Act, in a
3 manner that protects public health, the environment and fresh
4 water resources;

5 (16) to determine the limits of any area
6 containing commercial potash deposits and from time to time
7 redetermine the limits;

8 (17) to regulate and, where necessary,
9 prohibit drilling or producing operations for oil or gas
10 within any area containing commercial deposits of potash
11 where the operations would have the effect unduly to reduce
12 the total quantity of the commercial deposits of potash that
13 may reasonably be recovered in commercial quantities or where
14 the operations would interfere unduly with the orderly
15 commercial development of the potash deposits;

16 (18) to spend the oil and gas reclamation
17 fund and do all acts necessary and proper to plug dry and
18 abandoned oil and gas wells and to restore and remediate
19 abandoned well sites and associated production facilities in
20 accordance with the provisions of the Oil and Gas Act, the
21 rules adopted under that act and the Procurement Code,
22 including disposing of salvageable equipment and material
23 removed from oil and gas wells being plugged by the state;

24 (19) to make well price category
25 determinations pursuant to the provisions of the federal

1 Natural Gas Policy Act of 1978 or any successor act and, by
2 regulation, to adopt fees for such determinations, which fees
3 shall not exceed twenty-five dollars (\$25.00) per filing.

4 Such fees shall be credited to the account of the oil
5 conservation division by the state treasurer and may be
6 expended as authorized by the legislature;

7 (20) to regulate the construction and
8 operation of oil treating plants and to require the posting
9 of bonds for the reclamation of treating plant sites after
10 cessation of operations;

11 (21) to regulate the disposition of
12 nondomestic wastes resulting from the exploration,
13 development, production or storage of crude oil or natural
14 gas to protect public health and the environment; and

15 (22) to regulate the disposition of
16 nondomestic wastes resulting from the oil field service
17 industry, the transportation of crude oil or natural gas, the
18 treatment of natural gas or the refinement of crude oil to
19 protect public health and the environment, including
20 administering the Water Quality Act as provided in Subsection
21 E of Section 74-6-4 NMSA 1978."

22 SECTION 7. Section 70-2-31 NMSA 1978 (being Laws 1981,
23 Chapter 362, Section 1) is amended to read:

24 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--
25 PENALTIES.--

1 A. Whenever the division determines that a person
2 violated or is violating the Oil and Gas Act or any provision
3 of any rule, order, permit or authorization issued pursuant
4 to that act, the division may seek compliance and civil
5 penalties by:

6 (1) issuing a notice of violation;

7 (2) commencing a civil action in district
8 court for appropriate relief, including injunctive relief; or

9 (3) issuing a temporary cessation order if
10 the division determines that the violation is causing or will
11 cause an imminent danger to public health or safety or a
12 significant imminent environmental harm. The cessation order
13 will remain in effect until the earlier of when the violation
14 is abated or thirty days unless a hearing is held before the
15 division and a new order is issued.

16 B. A notice of violation issued pursuant to
17 Paragraph (1) of Subsection A of this section shall state
18 with reasonable specificity the nature of the violation,
19 shall require compliance immediately or within a specified
20 time period, shall provide notice of the availability of an
21 informal review and the date of a hearing before the division
22 and shall provide notice of potential sanctions, including
23 assessing a penalty, suspending, canceling or terminating a
24 permit or authorization, shutting in a well and plugging and
25 abandonment of a well and forfeiting financial assurance

1 pursuant to Section 70-2-14 NMSA 1978.

2 C. If the notice of violation is not resolved
3 informally within thirty days after service of the notice,
4 the division shall hold a hearing and determine whether the
5 violation should be upheld and whether any sanctions,
6 including civil penalties, shall be assessed. In assessing a
7 penalty authorized by this section, the division shall take
8 into account the seriousness of the violation, any good faith
9 efforts to comply with the applicable requirements, any
10 history of noncompliance under the Oil and Gas Act and other
11 relevant factors. When a decision is rendered by the
12 division after a hearing, any party of record adversely
13 affected shall have the right to have the matter heard de
14 novo before the commission pursuant to Section 70-2-13 NMSA
15 1978.

16 D. Any civil penalty assessed by a court or by the
17 division or commission pursuant to this section may not
18 exceed two thousand five hundred dollars (\$2,500) per day of
19 noncompliance for each violation unless the violation
20 presents a risk either to the health or safety of the public
21 or of causing significant environmental harm, or unless the
22 noncompliance continues beyond a time specified in the notice
23 of violation or order issued by the division, commission or
24 court, whereupon the civil penalty may not exceed ten
25 thousand dollars (\$10,000) per day of noncompliance for each

1 violation. No penalty assessed by the division or commission
2 after a hearing may exceed two hundred thousand dollars
3 (\$200,000); provided that such limitation does not apply to
4 penalties assessed by a court.

5 E. The commission shall make rules, pursuant to
6 Section 70-2-12.2 NMSA 1978, providing procedures for the
7 issuance of notices of violations, the assessment of
8 penalties and the conduct of informal proceedings and
9 hearings pursuant to this section.

10 F. It is unlawful, subject to a criminal penalty
11 of a fine of not more than five thousand dollars (\$5,000) or
12 imprisonment for a term not exceeding three years or both
13 such fine and imprisonment, for any person to knowingly and
14 willfully:

15 (1) violate any provision of the Oil and Gas
16 Act or any rule, regulation or order of the commission or the
17 division issued pursuant to that act; or

18 (2) do any of the following for the purpose
19 of evading or violating the Oil and Gas Act or any rule,
20 regulation or order of the commission or the division issued
21 pursuant to that act:

22 (a) make any false entry or statement
23 in a report required by the Oil and Gas Act or by any rule,
24 regulation or order of the commission or division issued
25 pursuant to that act;

1 (b) make or cause to be made any false
2 entry in any record, account or memorandum required by the
3 Oil and Gas Act or by any rule, regulation or order of the
4 commission or division issued pursuant to that act;

5 (c) omit or cause to be omitted from
6 any such record, account or memorandum full, true and correct
7 entries; or

8 (d) remove from this state or destroy,
9 mutilate, alter or falsify any such record, account or
10 memorandum.

11 G. For the purposes of Subsection F of this
12 section, each day of violation shall constitute a separate
13 offense.

14 H. Any person who knowingly and willfully
15 procures, counsels, aids or abets the commission of any act
16 described in Subsection A or F of this section shall be
17 subject to the same penalties as are prescribed in Subsection
18 D or F of this section."

19 **SECTION 8.** Section 70-2-33 NMSA 1978 (being Laws 1935,
20 Chapter 72, Section 24, as amended) is amended to read:

21 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

22 A. "person" means:

23 (1) any individual, estate, trust, receiver,
24 cooperative association, club, corporation, company, firm,
25 partnership, joint venture, syndicate or other entity; or

1 (2) the United States or any agency or
2 instrumentality thereof or the state or any political
3 subdivision thereof;

4 B. "pool" means an underground reservoir
5 containing a common accumulation of crude petroleum oil or
6 natural gas or both. Each zone of a general structure, which
7 zone is completely separate from any other zone in the
8 structure, is covered by the word "pool" as used in the Oil
9 and Gas Act. "Pool" is synonymous with "common source of
10 supply" and with "common reservoir";

11 C. "field" means the general area that is
12 underlaid or appears to be underlaid by at least one pool and
13 also includes the underground reservoir or reservoirs
14 containing the crude petroleum oil or natural gas or both.
15 The words "field" and "pool" mean the same thing when only
16 one underground reservoir is involved; however, "field",
17 unlike "pool", may relate to two or more pools;

18 D. "product" means any commodity or thing made or
19 manufactured from crude petroleum oil or natural gas and all
20 derivatives of crude petroleum oil or natural gas, including
21 refined crude oil, crude tops, topped crude, processed crude
22 petroleum, residue from crude petroleum, cracking stock,
23 uncracked fuel oil, treated crude oil, fuel oil, residuum,
24 gas oil, naphtha, distillate, gasoline, kerosene, benzine,
25 wash oil, waste oil, lubricating oil and blends or mixtures

1 of crude petroleum oil or natural gas or any derivative
2 thereof;

3 E. "owner" means the person who has the right to
4 drill into and to produce from any pool and to appropriate
5 the production either for the person or for the person and
6 another;

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

9 G. "gas transportation facility" means a pipeline
10 in operation serving gas wells for the transportation of
11 natural gas or some other device or equipment in like
12 operation whereby natural gas produced from gas wells
13 connected therewith can be transported or used for
14 consumption;

15 H. "correlative rights" means the opportunity
16 afforded, so far as it is practicable to do so, to the owner
17 of each property in a pool to produce without waste the
18 owner's just and equitable share of the oil or gas or both in
19 the pool, being an amount, so far as can be practicably
20 determined and so far as can be practicably obtained without
21 waste, substantially in the proportion that the quantity of
22 recoverable oil or gas or both under the property bears to
23 the total recoverable oil or gas or both in the pool and, for
24 such purpose, to use the owner's just and equitable share of
25 the reservoir energy;

1 I. "potash" means the naturally occurring bedded
2 deposits of the salts of the element potassium;

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

7 K. "produced water" means a fluid that is an
8 incidental byproduct from drilling for or the production of
9 oil and gas;

10 L. "commission" means the oil conservation
11 commission; and

12 M. "division" means the oil conservation division
13 of the energy, minerals and natural resources department."

14 **SECTION 9.** A new section of the Oil and Gas Act is
15 enacted to read:

16 "REPORTING REQUIREMENT.--No later than October 1 of each
17 year, the division shall report to the appropriate interim
18 committee of the legislature and to the governor and shall
19 post on the agency website:

20 A. the number of notices of violation that the
21 division issued pursuant to the Oil and Gas Act during the
22 previous fiscal year;

23 B. the total amount of penalties collected by the
24 division for violations pursuant to the Oil and Gas Act
25 during the previous fiscal year;

1 C. for each penalty collected, the following
2 information:

3 (1) the name of the person penalized and the
4 location of the violation; and

5 (2) the nature of the violation and the
6 calculation of the penalty collected; and

7 D. the number and nature of lawsuits filed for a
8 violation of the Oil and Gas Act, including the names of
9 defendants, the nature of the violation and the outcome of
10 the litigation."

11 SECTION 10. Section 74-6-2 NMSA 1978 (being Laws 1967,
12 Chapter 190, Section 2, as amended) is amended to read:

13 "74-6-2. DEFINITIONS.--As used in the Water Quality
14 Act:

15 A. "gray water" means untreated household
16 wastewater that has not come in contact with toilet waste and
17 includes wastewater from bathtubs, showers, washbasins,
18 clothes washing machines and laundry tubs, but does not
19 include wastewater from kitchen sinks or dishwashers or
20 laundry water from the washing of material soiled with human
21 excreta, such as diapers;

22 B. "water contaminant" means any substance that
23 could alter, if discharged or spilled, the physical,
24 chemical, biological or radiological qualities of water.

25 "Water contaminant" does not mean source, special nuclear or

1 byproduct material as defined by the federal Atomic Energy
2 Act of 1954;

3 C. "water pollution" means introducing or
4 permitting the introduction into water, either directly or
5 indirectly, of one or more water contaminants in such
6 quantity and of such duration as may with reasonable
7 probability injure human health, animal or plant life or
8 property, or to unreasonably interfere with the public
9 welfare or the use of property;

10 D. "wastes" means sewage, industrial wastes or any
11 other liquid, gaseous or solid substance that may pollute any
12 waters of the state;

13 E. "sewer system" means pipelines, conduits,
14 pumping stations, force mains or any other structures,
15 devices, appurtenances or facilities used for collecting or
16 conducting wastes to an ultimate point for treatment or
17 disposal;

18 F. "treatment works" means any plant or other
19 works used for the purpose of treating, stabilizing or
20 holding wastes;

21 G. "sewerage system" means a system for disposing
22 of wastes, either by surface or underground methods, and
23 includes sewer systems, treatment works, disposal wells and
24 other systems;

25 H. "water" means all water, including water

1 situated wholly or partly within or bordering upon the state,
2 whether surface or subsurface, public or private, except
3 private waters that do not combine with other surface or
4 subsurface water;

5 I. "person" means an individual or any other
6 entity, including partnerships, corporations, associations,
7 responsible business or association agents or officers, the
8 state or a political subdivision of the state or any agency,
9 department or instrumentality of the United States and any of
10 its officers, agents or employees;

11 J. "commission" means the water quality control
12 commission;

13 K. "constituent agency" means, as the context may
14 require, any or all of the following agencies of the state:

- 15 (1) the department of environment;
- 16 (2) the state engineer and the interstate
17 stream commission;
- 18 (3) the department of game and fish;
- 19 (4) the oil conservation commission;
- 20 (5) the state parks division of the energy,
21 minerals and natural resources department;
- 22 (6) the New Mexico department of
23 agriculture;
- 24 (7) the soil and water conservation
25 commission; and

1 (8) the bureau of geology and mineral
2 resources at the New Mexico institute of mining and
3 technology;

4 L. "new source" means:

5 (1) any source, the construction of which is
6 commenced after the publication of proposed regulations
7 prescribing a standard of performance applicable to the
8 source; or

9 (2) any existing source when modified to
10 treat substantial additional volumes or when there is a
11 substantial change in the character of water contaminants
12 treated;

13 M. "source" means a building, structure, facility
14 or installation from which there is or may be a discharge of
15 water contaminants directly or indirectly into water;

16 N. "septage" means the residual wastes and water
17 periodically pumped from a liquid waste treatment unit or
18 from a holding tank for maintenance or disposal purposes;

19 O. "sludge" means solid, semi-solid or liquid
20 waste generated from a municipal, commercial or industrial
21 wastewater treatment plant, water supply treatment plant or
22 air pollution control facility that is associated with the
23 treatment of these wastes. "Sludge" does not mean treated
24 effluent from a wastewater treatment plant;

25 P. "substantial adverse environmental impact"

1 means that an act or omission of the violator causes harm or
2 damage:

3 (1) to human beings; or

4 (2) that amounts to more than ten thousand
5 dollars (\$10,000) damage or mitigation costs to flora,
6 including agriculture crops; fish or other aquatic life;
7 waterfowl or other birds; livestock or wildlife or damage to
8 their habitats; ground water or surface water; or the lands
9 of the state;

10 Q. "federal act" means the Federal Water Pollution
11 Control Act, its subsequent amendment and successor
12 provisions;

13 R. "standards of performance" means any standard,
14 effluent limitation or effluent standard adopted pursuant to
15 the federal act or the Water Quality Act; and

16 S. "produced water" means a fluid that is an
17 incidental byproduct from drilling for or the production of
18 oil and gas."

19 **SECTION 11.** Section 74-6-4 NMSA 1978 (being Laws 1967,
20 Chapter 190, Section 4, as amended) is amended to read:

21 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The
22 commission:

23 A. may accept and supervise the administration of
24 loans and grants from the federal government and from other
25 sources, public or private, which loans and grants shall not

1 be expended for other than the purposes for which provided;

2 B. shall adopt a comprehensive water quality
3 management program and develop a continuing planning process;

4 C. shall not adopt or promulgate a standard or
5 regulation that exceeds a grant of rulemaking authority
6 listed in the statutory section of the Water Quality Act
7 authorizing the standard or regulation;

8 D. shall adopt water quality standards for surface
9 and ground waters of the state based on credible scientific
10 data and other evidence appropriate under the Water Quality
11 Act. The standards shall include narrative standards and, as
12 appropriate, the designated uses of the waters and the water
13 quality criteria necessary to protect such uses. The
14 standards shall at a minimum protect the public health or
15 welfare, enhance the quality of water and serve the purposes
16 of the Water Quality Act. In making standards, the
17 commission shall give weight it deems appropriate to all
18 facts and circumstances, including the use and value of the
19 water for water supplies, propagation of fish and wildlife,
20 recreational purposes and agricultural, industrial and other
21 purposes;

22 E. shall adopt, promulgate and publish regulations
23 to prevent or abate water pollution in the state or in any
24 specific geographic area, aquifer or watershed of the state
25 or in any part thereof, or for any class of waters, and to

1 govern the disposal of septage and sludge and the use of
2 sludge for various beneficial purposes. The regulations
3 governing the disposal of septage and sludge may include the
4 use of tracking and permitting systems or other reasonable
5 means necessary to assure that septage and sludge are
6 designated for disposal in, and arrive at, disposal
7 facilities, other than facilities on the premises where the
8 septage and sludge is generated, for which a permit or other
9 authorization has been issued pursuant to the federal act or
10 the Water Quality Act. Regulations may specify a standard of
11 performance for new sources that reflects the greatest
12 reduction in the concentration of water contaminants that the
13 commission determines to be achievable through application of
14 the best available demonstrated control technology,
15 processes, operating methods or other alternatives, including
16 where practicable a standard permitting no discharge of
17 pollutants. In making regulations, the commission shall give
18 weight it deems appropriate to all relevant facts and
19 circumstances, including:

20 (1) the character and degree of injury to or
21 interference with health, welfare, environment and property;

22 (2) the public interest, including the
23 social and economic value of the sources of water
24 contaminants;

25 (3) the technical practicability and

1 economic reasonableness of reducing or eliminating water
2 contaminants from the sources involved and previous
3 experience with equipment and methods available to control
4 the water contaminants involved;

5 (4) the successive uses, including domestic,
6 commercial, industrial, pastoral, agricultural, wildlife and
7 recreational uses;

8 (5) feasibility of a user or a subsequent
9 user treating the water before a subsequent use;

10 (6) property rights and accustomed uses; and

11 (7) federal water quality requirements;

12 F. shall assign responsibility for administering
13 its regulations to constituent agencies so as to assure
14 adequate coverage and prevent duplication of effort. To this
15 end, the commission may make such classification of waters
16 and sources of water contaminants as will facilitate the
17 assignment of administrative responsibilities to constituent
18 agencies. The commission shall also hear and decide disputes
19 between constituent agencies as to jurisdiction concerning
20 any matters within the purpose of the Water Quality Act. In
21 assigning responsibilities to constituent agencies, the
22 commission shall give priority to the primary interests of
23 the constituent agencies. The department of environment
24 shall provide technical services, including certification of
25 permits pursuant to the federal act, and shall maintain a

1 repository of the scientific data required by the Water
2 Quality Act;

3 G. may enter into or authorize constituent
4 agencies to enter into agreements with the federal government
5 or other state governments for purposes consistent with the
6 Water Quality Act and receive and allocate to constituent
7 agencies funds made available to the commission;

8 H. may grant an individual variance from any
9 regulation of the commission whenever it is found that
10 compliance with the regulation will impose an unreasonable
11 burden upon any lawful business, occupation or activity. The
12 commission may only grant a variance conditioned upon a
13 person effecting a particular abatement of water pollution
14 within a reasonable period of time. Any variance shall be
15 granted for the period of time specified by the commission.
16 The commission shall adopt regulations specifying the
17 procedure under which variances may be sought, which
18 regulations shall provide for the holding of a public hearing
19 before any variance may be granted;

20 I. may adopt regulations to require the filing
21 with it or a constituent agency of proposed plans and
22 specifications for the construction and operation of new
23 sewer systems, treatment works or sewerage systems or
24 extensions, modifications of or additions to new or existing
25 sewer systems, treatment works or sewerage systems. Filing

1 with and approval by the federal housing administration of
2 plans for an extension to an existing or construction of a
3 new sewerage system intended to serve a subdivision solely
4 residential in nature shall be deemed compliance with all
5 provisions of this subsection;

6 J. may adopt regulations requiring notice to it or
7 a constituent agency of intent to introduce or allow the
8 introduction of water contaminants into waters of the state;

9 K. shall specify in regulations the measures to be
10 taken to prevent water pollution and to monitor water
11 quality. The commission may adopt regulations for particular
12 industries. The commission shall adopt regulations for the
13 dairy industry and the copper industry. The commission shall
14 consider, in addition to the factors listed in Subsection E
15 of this section, the best available scientific information.
16 The regulations may include variations in requirements based
17 on site-specific factors, such as depth and distance to
18 ground water and geological and hydrological conditions. The
19 constituent agency shall establish an advisory committee
20 composed of persons with knowledge and expertise particular
21 to the industry category and other interested stakeholders to
22 advise the constituent agency on appropriate regulations to
23 be proposed for adoption by the commission. The regulations
24 shall be developed and adopted in accordance with a schedule
25 approved by the commission. The schedule shall incorporate

1 an opportunity for public input and stakeholder negotiations;

2 L. may adopt regulations establishing pretreatment
3 standards that prohibit or control the introduction into
4 publicly owned sewerage systems of water contaminants that
5 are not susceptible to treatment by the treatment works or
6 that would interfere with the operation of the treatment
7 works;

8 M. shall not require a permit respecting the use
9 of water in irrigated agriculture, except in the case of the
10 employment of a specific practice in connection with such
11 irrigation that documentation or actual case history has
12 shown to be hazardous to public health or the environment or
13 for the use of produced water;

14 N. shall not require a permit for applying less
15 than two hundred fifty gallons per day of private residential
16 gray water originating from a residence for the resident's
17 household gardening, composting or landscape irrigation if:

18 (1) a constructed gray water distribution
19 system provides for overflow into the sewer system or on-site
20 wastewater treatment and disposal system;

21 (2) a gray water storage tank is covered to
22 restrict access and to eliminate habitat for mosquitos or
23 other vectors;

24 (3) a gray water system is sited outside of
25 a floodway;

1 (4) gray water is vertically separated at
2 least five feet above the ground water table;

3 (5) gray water pressure piping is clearly
4 identified as a nonpotable water conduit;

5 (6) gray water is used on the site where it
6 is generated and does not run off the property lines;

7 (7) gray water is applied in a manner that
8 minimizes the potential for contact with people or domestic
9 pets;

10 (8) ponding is prohibited, application of
11 gray water is managed to minimize standing water on the
12 surface and to ensure that the hydraulic capacity of the soil
13 is not exceeded;

14 (9) gray water is not sprayed;

15 (10) gray water is not discharged to a
16 watercourse; and

17 (11) gray water use within municipalities or
18 counties complies with all applicable municipal or county
19 ordinances enacted pursuant to Chapter 3, Article 53 NMSA
20 1978;

21 O. shall coordinate application procedures and
22 funding cycles for loans and grants from the federal
23 government and from other sources, public or private, with
24 the local government division of the department of finance
25 and administration pursuant to the New Mexico Community

1 Assistance Act;

2 P. shall adopt regulations to be administered by
3 the department of environment for the discharge, handling,
4 transport, storage, recycling or treatment for the
5 disposition of treated produced water, including disposition
6 in road construction maintenance, roadway ice or dust control
7 or other construction, or in the application of treated
8 produced water to land, for activities unrelated to the
9 exploration, drilling, production, treatment or refinement of
10 oil or gas; and

11 Q. may adopt regulations to be administered by the
12 department of environment for surface water discharges."

13 **SECTION 12. APPLICABILITY.--**The provisions of this act
14 apply to contracts entered into on and after July 1, 2019.

15 **SECTION 13. EFFECTIVE DATE.--**

16 A. The effective date of the provisions of
17 Sections 1 through 6, 8, 10 and 11 of this act is July 1,
18 2019.

19 B. The effective date of the provisions of
20 Sections 7 and 9 of this act is January 1, 2020.