

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 546

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54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO NATURAL RESOURCES; ENACTING THE PRODUCED WATER ACT;
ESTABLISHING CONTROL AND RESPONSIBILITY FOR PRODUCED WATER;
ALLOWING THE USE OF TREATED OR RECYCLED PRODUCED WATER;
DECLARING CERTAIN CONTRACT PROVISIONS RELATING TO PRODUCED
WATER VOID AGAINST PUBLIC POLICY; AMENDING AND ADDING
DEFINITIONS; AMENDING THE DUTIES OF THE OIL CONSERVATION
DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT AND THE WATER QUALITY CONTROL COMMISSION; MAKING
CONFORMING TECHNICAL CHANGES.

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

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

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this
act may be cited as the "Produced Water Act"."

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

3 "[NEW MATERIAL] DEFINITIONS.--As used in the Produced
4 Water Act:

5 A. "operator" means a person authorized by the oil
6 conservation division of the energy, minerals and natural
7 resources department to operate a unit for an oil or gas well
8 or other oil or gas facility; and

9 B. "produced water" means a fluid that is an
10 incidental byproduct from drilling for or the production of oil
11 and gas."

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

14 "[NEW MATERIAL] JURISDICTION.--It is the jurisdiction of:

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

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

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

22 "[NEW MATERIAL] PRODUCED WATER--TRANSFERRED FOR
23 TREATMENT--SUBSEQUENT USE.--

24 A. Unless otherwise provided by law, a contract,
25 bill of sale or other legally binding document:

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

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

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

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

25 B. Subsection A of this section only applies to

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underscored material = new
~~[bracketed material] = delete~~

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

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

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

21 SECTION 5. A new section of Chapter 70 NMSA 1978 is
 22 enacted to read:

23 "[NEW MATERIAL] VOID AS AGAINST PUBLIC POLICY--THROUGHPUT
 24 FEES--LIMITATIONS ON USE OF RECYCLED OR TREATED PRODUCED
 25 WATER.--A provision of an agreement, covenant or promise,

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1 foreign or domestic, between private parties, entered into on
2 or after July 1, 2019 is against public policy and void to the
3 extent it:

4 A. allows a private party to charge a tariff or fee
5 for the movement or transport of produced water, treated water
6 or recycled water on surface lands owned by the state, if the
7 agreement does not provide for transportation services;

8 B. requires fresh water resources to be purchased
9 for oil and gas operations when produced water, treated water
10 or recycled water is available and able to be used and the
11 operator elects to use that produced water, treated water or
12 recycled water for the oil and gas operations; or

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

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

19 "70-2-12. ENUMERATION OF POWERS.--

20 A. The oil conservation division of the energy,
21 minerals and natural resources department may:

- 22 (1) collect data;
23 (2) make investigations and inspections;
24 (3) examine properties, leases, papers, books

25 and records;

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1 (4) examine, check, test and gauge oil and gas
2 wells, tanks, plants, refineries and all means and modes of
3 transportation and equipment;

4 (5) hold hearings;

5 (6) provide for the keeping of records and the
6 making of reports and for the checking of the accuracy of the
7 records and reports;

8 (7) limit and prorate production of crude
9 petroleum oil or natural gas or both as provided in the Oil and
10 Gas Act; and

11 (8) require either generally or in particular
12 areas certificates of clearance or tenders in connection with
13 the transportation of crude petroleum oil or natural gas or any
14 products of either or both oil and products or both natural gas
15 and products.

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

19 (1) to require dry or abandoned wells to be
20 plugged in a way so as to confine the crude petroleum oil,
21 natural gas or water in the strata in which it is found and to
22 prevent it from escaping into other strata; pursuant to Section
23 70-2-14 NMSA 1978, the division shall require financial
24 assurance conditioned for the performance of the rules;

25 (2) to prevent crude petroleum oil, natural

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1 gas or water from escaping from strata in which it is found
2 into other strata;

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

6 (4) to prevent the drowning by water of any
7 stratum or part thereof capable of producing oil or gas or both
8 oil and gas in paying quantities and to prevent the premature
9 and irregular encroachment of water or any other kind of water
10 encroachment that reduces or tends to reduce the total ultimate
11 recovery of crude petroleum oil or gas or both oil and gas from
12 any pool;

13 (5) to prevent fires;

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

17 (7) to require wells to be drilled, operated
18 and produced in such manner as to prevent injury to neighboring
19 leases or properties;

20 (8) to identify the ownership of oil or gas
21 producing leases, properties, wells, tanks, refineries,
22 pipelines, plants, structures and all transportation equipment
23 and facilities;

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

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1 (10) to fix the spacing of wells;

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

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

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

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

16 (15) to regulate the disposition, [~~of water~~
17 ~~produced or used in connection with the drilling for or~~
18 ~~producing of oil or gas or both and to direct surface or~~
19 ~~subsurface disposal of the water, including disposition by use~~
20 ~~in drilling for or production of oil or gas, in road~~
21 ~~construction or maintenance or other construction, in the~~
22 ~~generation of electricity or in other industrial processes, in~~
23 ~~a manner that will afford reasonable protection against~~
24 ~~contamination of fresh water supplies designated by the state~~
25 engineer] handling, transport, storage, recycling, treatment

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1 and disposal of produced water during, or for reuse in, the
2 exploration, drilling, production, treatment or refinement of
3 oil or gas, including disposal by injection pursuant to
4 authority delegated under the federal Safe Drinking Water Act,
5 in a manner that protects public health, the environment and
6 fresh water resources;

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

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

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

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

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

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

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

24 **SECTION 7.** Section 70-2-33 NMSA 1978 (being Laws 1935,
25 Chapter 72, Section 24, as amended) is amended to read:

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1 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

2 A. "person" means:

3 (1) any individual, estate, trust, receiver,
4 cooperative association, club, corporation, company, firm,
5 partnership, joint venture, syndicate or other entity; or

6 (2) the United States or any agency or
7 instrumentality thereof or the state or any political
8 subdivision thereof;

9 B. "pool" means an underground reservoir containing
10 a common accumulation of crude petroleum oil or natural gas or
11 both. Each zone of a general structure, which zone is
12 completely separate from any other zone in the structure, is
13 covered by the word "pool" as used in the Oil and Gas Act.

14 "Pool" is synonymous with "common source of supply" and with
15 "common reservoir";

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

23 D. "product" means any commodity or thing made or
24 manufactured from crude petroleum oil or natural gas and all
25 derivatives of crude petroleum oil or natural gas, including

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1 refined crude oil, crude tops, topped crude, processed crude
2 petroleum, residue from crude petroleum, cracking stock,
3 uncracked fuel oil, treated crude oil, fuel oil, residuum, gas
4 oil, naphtha, distillate, gasoline, kerosene, benzine, wash
5 oil, waste oil, lubricating oil and blends or mixtures of crude
6 petroleum oil or natural gas or any derivative thereof;

7 E. "owner" means the person who has the right to
8 drill into and to produce from any pool and to appropriate the
9 production either for [~~himself~~] the person or for [~~himself~~] the
10 person and another;

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

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

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

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1 total recoverable oil or gas or both in the pool and, for such
2 purpose, to use [~~his~~] the owner's just and equitable share of
3 the reservoir energy;

4 I. "potash" means the naturally occurring bedded
5 deposits of the salts of the element potassium;

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

11 K. "produced water" means [~~water~~] a fluid that is
12 an incidental byproduct from drilling for or the production of
13 oil and gas."

14 SECTION 8. Section 74-6-2 NMSA 1978 (being Laws 1967,
15 Chapter 190, Section 2, as amended) is amended to read:

16 "74-6-2. DEFINITIONS.--As used in the Water Quality Act:

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

24 B. "water contaminant" means any substance that
25 could alter, if discharged or spilled, the physical, chemical,

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1 biological or radiological qualities of water. "Water
2 contaminant" does not mean source, special nuclear or [~~by-~~
3 ~~product~~] byproduct material as defined by the federal Atomic
4 Energy Act of 1954;

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

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

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

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

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

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

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

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

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

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

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

3 L. "new source" means:

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

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

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

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

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

23 P. "substantial adverse environmental impact" means
24 that an act or omission of the violator causes harm or damage:

25 (1) to human beings; or

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

7 Q. "federal act" means the Federal Water Pollution
8 Control Act, its subsequent amendment and successor provisions;
9 [~~and~~]

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

13 S. "produced water" means a fluid that is an
14 incidental byproduct from drilling for or the production of oil
15 and gas."

16 SECTION 9. Section 74-6-4 NMSA 1978 (being Laws 1967,
17 Chapter 190, Section 4, as amended) is amended to read:

18 "74-6-4. DUTIES AND POWERS OF COMMISSION.---The
19 commission:

20 A. may accept and supervise the administration of
21 loans and grants from the federal government and from other
22 sources, public or private, which loans and grants shall not be
23 expended for other than the purposes for which provided;

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

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

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

18 E. shall adopt, promulgate and publish regulations
19 to prevent or abate water pollution in the state or in any
20 specific geographic area, aquifer or watershed of the state or
21 in any part thereof, or for any class of waters, and to govern
22 the disposal of septage and sludge and the use of sludge for
23 various beneficial purposes. The regulations governing the
24 disposal of septage and sludge may include the use of tracking
25 and permitting systems or other reasonable means necessary to

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

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

17 (2) the public interest, including the social
18 and economic value of the sources of water contaminants;

19 (3) the technical practicability and economic
20 reasonableness of reducing or eliminating water contaminants
21 from the sources involved and previous experience with
22 equipment and methods available to control the water
23 contaminants involved;

24 (4) the successive uses, including [~~but not~~
25 ~~limited to~~] domestic, commercial, industrial, pastoral,

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1 agricultural, wildlife and recreational uses;

2 (5) feasibility of a user or a subsequent user
3 treating the water before a subsequent use;

4 (6) property rights and accustomed uses; and

5 (7) federal water quality requirements;

6 F. shall assign responsibility for administering
7 its regulations to constituent agencies so as to assure
8 adequate coverage and prevent duplication of effort. To this
9 end, the commission may make such classification of waters and
10 sources of water contaminants as will facilitate the assignment
11 of administrative responsibilities to constituent agencies.

12 The commission shall also hear and decide disputes between
13 constituent agencies as to jurisdiction concerning any matters
14 within the purpose of the Water Quality Act. In assigning
15 responsibilities to constituent agencies, the commission shall
16 give priority to the primary interests of the constituent
17 agencies. The department of environment shall provide
18 technical services, including certification of permits pursuant
19 to the federal act, and shall maintain a repository of the
20 scientific data required by [~~this~~] the Water Quality Act;

21 G. may enter into or authorize constituent agencies
22 to enter into agreements with the federal government or other
23 state governments for purposes consistent with the Water
24 Quality Act and receive and allocate to constituent agencies
25 funds made available to the commission;

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

13 I. may adopt regulations to require the filing with
14 it or a constituent agency of proposed plans and specifications
15 for the construction and operation of new sewer systems,
16 treatment works or sewerage systems or extensions,
17 modifications of or additions to new or existing sewer systems,
18 treatment works or sewerage systems. Filing with and approval
19 by the federal housing administration of plans for an extension
20 to an existing or construction of a new sewerage system
21 intended to serve a subdivision solely residential in nature
22 shall be deemed compliance with all provisions of this
23 subsection;

24 J. may adopt regulations requiring notice to it or
25 a constituent agency of intent to introduce or allow the

1 introduction of water contaminants into waters of the state;

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

20 L. may adopt regulations establishing pretreatment
21 standards that prohibit or control the introduction into
22 publicly owned sewerage systems of water contaminants that are
23 not susceptible to treatment by the treatment works or that
24 would interfere with the operation of the treatment works;

25 M. shall not require a permit respecting the use of

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1 water in irrigated agriculture, except in the case of the
2 employment of a specific practice in connection with such
3 irrigation that documentation or actual case history has shown
4 to be hazardous to public health or the environment or for the
5 use of produced water;

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

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

13 (2) a gray water storage tank is covered to
14 restrict access and to eliminate habitat for mosquitos or other
15 vectors;

16 (3) a gray water system is sited outside of a
17 floodway;

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

20 (5) gray water pressure piping is clearly
21 identified as a nonpotable water conduit;

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

24 (7) gray water is applied in a manner that
25 minimizes the potential for contact with people or domestic

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1 pets;

2 (8) ponding is prohibited, application of gray
3 water is managed to minimize standing water on the surface and
4 to ensure that the hydraulic capacity of the soil is not
5 exceeded;

6 (9) gray water is not sprayed;

7 (10) gray water is not discharged to a
8 watercourse; and

9 (11) gray water use within municipalities or
10 counties complies with all applicable municipal or county
11 ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;
12 [~~and~~]

13 O. shall coordinate application procedures and
14 funding cycles for loans and grants from the federal
15 government and from other sources, public or private, with
16 the local government division of the department of finance
17 and administration pursuant to the New Mexico Community
18 Assistance Act;

19 P. may adopt regulations to be administered by the
20 department of environment for the discharge, handling,
21 transport, storage, recycling or treatment for the disposition
22 of treated produced water, including disposition in road
23 construction maintenance, roadway ice or dust control or other
24 construction, or in the application of treated produced water
25 to land, for activities unrelated to the exploration, drilling,

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1 production, treatment or refinement of oil or gas; and

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

4 SECTION 10. APPLICABILITY.--The provisions of this act
5 apply to contracts entered into on and after July 1, 2019.

6 SECTION 11. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2019.