

LFC Requester:**Davidson****AGENCY BILL ANALYSIS - 2026 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 02/3/2026*Check all that apply:***Bill Number:** HB 207Original Correction Amendment Substitute

Sponsor:	<u>Brown, Mason, Murphy, Henry & Cortez</u>	Agency Name and Code Number:	<u>NMED 667</u>
Short Title:	<u>Water Quality Commission Produced Water Rules</u>	Person Writing Analysis:	<u>Jonas Armstrong</u>
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SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
\$0.0	\$0.0	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$400.0	\$2,900.0		\$3,300.0	Recurring	NMED Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE**BILL SUMMARY**Synopsis:

House Bill 207 (HB207) revises the Water Quality Act to require that the Water Quality Control

Commission (WQCC) adopt rules for permitting treated produced water uses before December 31, 2026. The bill includes directions to the WQCC to adopt regulations for permitting 13 treated produced water uses.

FISCAL IMPLICATIONS

The WQCC is administratively attached to the New Mexico Environment Department (NMED). Typically, the Department incurs costs related to WQCC rulemaking petitions regardless of whether the Department or a third-party file a rulemaking petition. The fiscal impact of HB207 can vary depending on whether NMED or a third-party initiates the rulemaking.

NMED will need approximately \$400,000 for contractor support and expert witness testimony in FY26 and into FY27 to meet the December 31, 2026, deadline. Note that adoption of NMED's proposed amendment to HB207 would reduce NMED's costs by requiring the New Mexico Produced Water Research Consortium academic institutions to serve in this capacity.

Once a rule is adopted by the WQCC and depending on the scope, NMED estimates the recurring cost of implementing a produced water reuse program at \$2.9 million annually, which is comprised of 12 program staff, internal and contract legal support, and contract technical support. This revenue would likely come through permitting fees.

SIGNIFICANT ISSUES

The bill includes a completion date of December 31, 2026, for the adoption of rules, which will provide only six months for the WQCC to complete the required rulemaking after the bill's effective date. The WQCC took approximately 18 months to issue a prior rule related to produced water that resulted in a prohibition on the treatment and discharge of produced water.

The WQCC does not draft its own proposed regulations. This bill does not specify which entity would draft the required regulations and petition the Commission. If amended to require NMED to draft and propose regulations, the Water Quality Act requirements for an advisory committee and other outreach will conflict with the deadline stated. Under existing regulations, NMED is required to conduct a two-month public outreach process when presenting a proposed rule to WQCC. A hearing can only happen after this process. Preparing for and conducting a hearing typically requires at least six months. Given this eight-month timeframe, NMED would need to initiate this process prior to HB207 becoming law.

NMED notes that the specific uses identified in HB207 are typically determined through a rulemaking process where technical and scientific evidence is presented to and considered by the WQCC. Further, identifying setback requirements and broadly defining safe discharge zones in legislation for the entire state may not consider regional variations that technical and scientific evidence may otherwise allow for through the hearing process. For example, allowing for discharges in areas with a 100 feet depth to groundwater is not necessarily protective in all geologic settings, and could adversely impact groundwater to some extent. NMED suggests that a rulemaking directed by HB207 should allow for regional or geologic variations in rules or permits to account for such concerns. The bill also directs WQCC to allow for direct surface and groundwater discharges, which are potential end uses of treated produced water that must be carefully regulated to protect "health, welfare, environment, and property" as required of the WQCC for all Water Quality Act rules. See subsection F of 74-6-4 NMSA, on pages 3-4 of HB207.

Several terms that would appear in the Water Quality Act for the first time with the list of uses in HB207, such as “commercial uses,” “industrial uses” and “industrial crops,” should be carefully defined in the bill or removed to allow terminology use and definitions to be established by the WQCC in rules to avoid direct human contact with treated produced water.

PERFORMANCE IMPLICATIONS

To meet the 2026 deadline, NMED will need to spend funds in FY26 but there is not an existing appropriation to support the necessary work. This could be addressed through a Section 5 non-recurring appropriation in HB2 or a non-recurring appropriation and emergency provision in HB207.

ADMINISTRATIVE IMPLICATIONS

HB207 does not require NMED to submit the petition to initiate the mandated rulemaking. However, as noted above, NMED would likely participate in the rulemaking due to its interest as the implementing agency of the resulting rule. Without an appropriation to support this work, NMED will not have sufficient resources to engage in the rulemaking and carry out its key mission roles, including other nondiscretionary duties.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill’s December 31, 2026, completion date for rulemaking could conflict with the rulemaking regulations adopted by the WQCC in accordance with Section 74-6-6 of the Water Quality Act. The typical timeline for a complex rulemaking effort once a petition is filed with the WQCC is approximately one year. As of this date, there is no active petition for these issues in front of the WQCC. As previously stated, the prior produced water rulemaking completed in 2025 was an 18-month process.

HB207 relates to the 2019 New Mexico Produced Water Act (HB546), which requires the WQCC to adopt regulations governing the discharge, handling, transport, storage, recycling, and treatment of produced water for use outside the oilfield, ensuring oversight by the NMED. However, unlike HB207, the 2019-enacted bill specified only three end uses for treated produced water and did not create a specific deadline for regulatory action.

HB207 also relates to the Governor’s 50-Year Water Action Plan, which states in pertinent part: “By 2024 adopt preliminary water reuse rules to create a consistent and science-based regulatory program for treatment and reuse of produced water outside of the oil and gas sector. By 2026, adopt necessary revised and sector-specific water reuse rules pursuant to the Water Quality Act, the Produced Water Act and the Environmental Improvement Act to establish clear regulatory pathways for potable (direct and indirect) and fit-for-purpose non-potable reuse of all relevant sources of wastewater, including from domestic/municipal and industrial sectors.”

TECHNICAL ISSUES

In 2025, NMED made significant progress toward revising rule language in the draft treated produced water permitting proposal by the Water, Access, Treatment and Reuse (WATR) Alliance. NMED has continued its discussions with WATR Alliance on draft rules and is evaluating how to proceed with such a rulemaking in 2026. NMED is committed to bringing science-based water reuse rules to the WQCC for consideration but the timeframe for completing

such rulemakings as described in HB207 raises concerns as to whether the WQCC can meet it. The deadline in HB207 would be more achievable and support stronger rule outcomes if the December 2026 deadline was revised to require a hearing, as opposed to rule adoption. For a complex rule such as this one, it is common for the deliberation and adoption process to take several months after completion of public hearings.

OTHER SUBSTANTIVE ISSUES

The New Mexico Legislature has made historic and significant financial investments in water conservation, new water supplies, and water/watershed protections in recent years. Moreover, New Mexico research institutions like New Mexico State University, New Mexico Institute of Mining and Technology, and University of New Mexico are nationally recognized leaders in the science and technology related to water treatment.

In 2025, Texas announced \$20 billion in water supply projects and water programs. Eligible projects include desalination and water reuse, which include treating produced water for beneficial use. Texas has relied on the science and technology developed by New Mexico research institutions as funded, in part, by the New Mexico Legislature.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

In nearly seven years since the enactment of the Produced Water Act, WQCC has not adopted rules allowing the discharge of treated produced water as the Act requires. The WQCC will not have a deadline to address produced water as required by the 2019 Produced Water Act and the Governor's 50-Year Water Action Plan. New Mexico will continue to fund produced water research for the benefit of other states, like Texas. Produced water will remain an underutilized resource in New Mexico in the face of declining freshwater supplies until such time the WQCC adopts new rules. Produced water will be limited to reuse in the oil field or in non-discharging uses outside of it. New Mexico will continue to rely on the consumption of freshwater for economic development and energy projects as opposed to treated produced water, where available and appropriate. Further delays in WQCC produced water reuse rulemaking will contribute to greater demand on community water supplies while more produced water generated in New Mexico is transported to Texas where draft discharge permits are currently in process.

If HB207 is not enacted, NMED will continue to work with the WATR Alliance and other interested groups to collaboratively develop draft regulations that are protective of ground and surface water in a timeframe that does not create difficulty in meeting deadlines under existing regulations.

AMENDMENTS

To address the concerns raised above regarding HB207's deadline and list of specific uses of treated produced water, NMED recommends amending the bill to ensure that decisions about allowable uses of treated produced water, setback requirements, and discharge pathways are made through a WQCC rulemaking process, rather than being fixed in statute. The rulemaking directed by HB207 should allow the WQCC to evaluate technical and scientific evidence, distinguish

between surface water and groundwater discharges, and clearly define terms to ensure protections against direct human contact with treated produced water.

To ensure the process adheres to relevant requirements and allows for a robust scientific record, NMED proposes pushing the rule adoption deadline from December 31, 2026, to December 31, 2027, and adding a deadline for the WQCC to hold a hearing on the proposed rule by December 31, 2026.

Additionally, HB207 should be amended to require New Mexico State University (NMSU), which leads the New Mexico Produced Water Research Consortium (Consortium), to participate as scientific and technical experts in the WQCC rulemaking. An appropriation for this purpose should be added to HB2 or HB207 for Consortium participation in a WQCC proceeding.

The Consortium is a statewide partnership created to fill the scientific and technical gaps needed to guide protective, science-based regulations for the safe treatment and reuse of produced water. The Consortium brings together scientists, academic institutions, non-profits, government agencies, and industry partners to advance research, accelerate technology development, and build public-private partnerships that support safe water management and sustainable economic growth in New Mexico.

The Consortium should serve as independent scientific and technical experts associated with the safe treatment and discharge of produced water for the use cases described in HB207 and per the 2019 Produced Water Act. This could save NMED significant costs related to hiring private sector expert witnesses.