

SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO NATURAL RESOURCES; PROHIBITING CERTAIN USES OF
FRESH WATER IN OIL AND GAS OPERATIONS; PROVIDING PENALTIES FOR
THE SPILL OR RELEASE OF OIL, GAS OR PRODUCED WATER; CREATING
THE OIL CONSERVATION DIVISION DATA COMPILATION FUND; DIRECTING
THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT TO ADOPT RULES RELATING TO
PRODUCED WATER AND NONDOMESTIC WASTES THAT ARE PROTECTIVE OF
PUBLIC HEALTH, WORKER SAFETY AND NATURAL RESOURCES; REQUIRING
THE TRACKING OF PRODUCED WATER; ALPHABETIZING DEFINITIONS AND
ADDING DEFINITIONS FOR "FRESH WATER", "WATER POLLUTION",
"RECYCLED WATER" AND "TREATED WATER" TO THE OIL AND GAS ACT;
AMENDING THE PRODUCED WATER ACT TO CONFORM TO CHANGES IN THE
OIL AND GAS ACT; CLARIFYING REQUIREMENTS FOR WATER QUALITY
CONTROL COMMISSION RULEMAKING RELATED TO THE USE OF PRODUCED
WATER OUTSIDE OF THE OIL FIELD.

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

SECTION 1. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] FRESH WATER USE--PROHIBITION.--For oil and gas well drilling and development at depths lower than protected fresh water resource zones, an operator shall use produced water, recycled water or treated water in lieu of fresh water. Use of fresh water in contravention of this section is a violation of the Oil and Gas Act."

SECTION 2. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] SPILLS, LEAKS AND OTHER RELEASES--PENALTY.--

A. It is prohibited for a person to cause or contribute to a spill, leak or other release into the environment of oil, gas, produced water or other nondomestic wastes resulting from the exploration, drilling, production, treatment or refinement of oil or gas.

B. Notwithstanding the civil penalty limitations of Subsection D of Section 70-2-31 NMSA 1978, a person found in violation of this section in accordance with the procedures of Section 70-2-31 NMSA 1978 shall be liable for a civil penalty in the following amounts:

(1) two thousand dollars (\$2,000) for a

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1 release of less than five barrels;

2 (2) ten thousand dollars (\$10,000) for a
3 release of five to twenty-five barrels; and

4 (3) twenty-five thousand dollars (\$25,000) for
5 a release of more than twenty-five barrels plus two thousand
6 dollars (\$2,000) per barrel for each additional barrel released
7 over twenty-five barrels.

8 C. Penalties collected pursuant to this section
9 shall be deposited in the state treasury to be credited to the
10 oil conservation division data compilation fund."

11 SECTION 3. A new section of the Oil and Gas Act is
12 enacted to read:

13 "[NEW MATERIAL] OIL CONSERVATION DIVISION DATA COMPILATION
14 FUND--CREATED.--The "oil conservation division data compilation
15 fund" is created in the state treasury as a nonreverting fund.
16 All funds received by the division from penalties imposed
17 pursuant to Section 2 of this 2021 act shall be delivered to
18 the state treasurer and deposited in the fund. Disbursements
19 from the fund shall be made upon warrants drawn by the
20 secretary of finance and administration pursuant to vouchers
21 signed by the secretary of energy, minerals and natural
22 resources or the secretary's authorized representative. Money
23 in the fund is subject to appropriation by the legislature to
24 the division to compile, organize and analyze data collected
25 pursuant to the Oil and Gas Act, to develop and modernize the

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1 division's online databases, to increase public accessibility
2 to the division's data on the division's web page and for
3 technological upgrades to the division's databases and web
4 page. Any unexpended or unencumbered balance remaining in the
5 fund at the end of a fiscal year shall not revert to the
6 general fund. Money in the fund in fiscal year 2021 may be
7 expended by the division for the purposes of the fund."

8 SECTION 4. Section 70-2-12 NMSA 1978 (being Laws 1978,
9 Chapter 71, Section 1, as amended) is amended to read:

10 "70-2-12. ENUMERATION OF POWERS.--

11 A. The [~~oil conservation~~] division [~~of the energy,~~
12 ~~minerals and natural resources department~~] may:

- 13 (1) collect data;
- 14 (2) make investigations and inspections;
- 15 (3) examine properties, leases, papers, books
16 and records;
- 17 (4) examine, check, test and gauge oil and gas
18 wells, tanks, plants, refineries and all means and modes of
19 transportation and equipment;
- 20 (5) hold hearings;
- 21 (6) provide for the keeping of records and the
22 making of reports and for the checking of the accuracy of the
23 records and reports;
- 24 (7) limit and prorate production of crude
25 petroleum oil or natural gas or both as provided in the Oil and

1 Gas Act; and

2 (8) require either generally or in particular
3 areas certificates of clearance or tenders in connection with
4 the transportation of crude petroleum oil or natural gas or any
5 products of either or both oil and products or both natural gas
6 and products.

7 B. The [~~oil conservation~~] division may make rules
8 and orders for the purposes and with respect to the subject
9 matter stated in this subsection:

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

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

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

22 (4) to prevent the drowning by water of any
23 stratum or part thereof capable of producing oil or gas or both
24 oil and gas in paying quantities and to prevent the premature
25 and irregular encroachment of water or any other kind of water

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1 encroachment that reduces or tends to reduce the total ultimate
2 recovery of crude petroleum oil or gas or both oil and gas from
3 any pool;

4 (5) to prevent fires;

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

8 (7) to require wells to be drilled, operated
9 and produced in such manner as to prevent injury to neighboring
10 leases or properties;

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

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

17 (10) to fix the spacing of wells;

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

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

25 (13) to regulate the methods and devices

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1 employed for storage in this state of oil or natural gas or any
2 product of either, including subsurface storage;

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

7 [~~(15)~~] ~~to regulate the disposition, handling,~~
8 ~~transport, storage, recycling, treatment and disposal of~~
9 ~~produced water during, or for reuse in, the exploration,~~
10 ~~drilling, production, treatment or refinement of oil or gas,~~
11 ~~including disposal by injection pursuant to authority delegated~~
12 ~~under the federal Safe Drinking Water Act, in a manner that~~
13 ~~protects public health, the environment and fresh water~~
14 ~~resources;~~

15 ~~(16)]~~ (15) to determine the limits of any area
16 containing commercial potash deposits and from time to time
17 redetermine the limits;

18 [~~(17)]~~ (16) to regulate and, where necessary,
19 prohibit drilling or producing operations for oil or gas within
20 any area containing commercial deposits of potash where the
21 operations would have the effect unduly to reduce the total
22 quantity of the commercial deposits of potash that may
23 reasonably be recovered in commercial quantities or where the
24 operations would interfere unduly with the orderly commercial
25 development of the potash deposits;

1 [~~(18)~~] (17) to spend the oil and gas
2 reclamation fund and do all acts necessary and proper to plug
3 dry and abandoned oil and gas wells and to restore and
4 remediate abandoned well sites and associated production
5 facilities in accordance with the provisions of the Oil and Gas
6 Act, the rules adopted under that act and the Procurement Code,
7 including disposing of salvageable equipment and material
8 removed from oil and gas wells being plugged by the state; and

9 [~~(19)~~] (18) to make well price category
10 determinations pursuant to the provisions of the federal
11 Natural Gas Policy Act of 1978 or any successor act and, by
12 [~~regulation~~] rule, to adopt fees for such determinations, which
13 fees shall not exceed twenty-five dollars (\$25.00) per filing.
14 Such fees shall be credited to the account of the [~~oil~~
15 ~~conservation~~] division by the state treasurer and may be
16 expended as authorized by the legislature

17 [~~(20)~~] ~~to regulate the construction and~~
18 ~~operation of oil treating plants and to require the posting of~~
19 ~~bonds for the reclamation of treating plant sites after~~
20 ~~cessation of operations;~~

21 ~~(21) to regulate the disposition of~~
22 ~~nondomestic wastes resulting from the exploration, development,~~
23 ~~production or storage of crude oil or natural gas to protect~~
24 ~~public health and the environment; and~~

25 ~~(22) to regulate the disposition of~~

1 ~~nondomestic wastes resulting from the oil field service~~
2 ~~industry, the transportation of crude oil or natural gas, the~~
3 ~~treatment of natural gas or the refinement of crude oil to~~
4 ~~protect public health and the environment, including~~
5 ~~administering the Water Quality Act as provided in Subsection E~~
6 ~~of Section 74-6-4 NMSA 1978].~~

7 C. The division shall make rules and orders that
8 protect public health, worker safety and the environment,
9 including fresh water resources, wildlife and domestic animals,
10 using the best available science and technology, for the
11 purposes and with respect to the subject matter stated in this
12 subsection to:

13 (1) require the identification of the chemical
14 and radionuclide composition of produced water or treated
15 produced water that is spilled, leaked or released into the
16 environment and to make such information available to the
17 public;

18 (2) regulate the management, disposition,
19 handling, transport, storage, recycling, treatment and disposal
20 of produced water during, or for reuse in, the exploration,
21 drilling, production, treatment or refinement of oil or gas,
22 including disposal by injection pursuant to authority delegated
23 under the federal Safe Drinking Water Act; provided that it is
24 prohibited to dispose, recycle or reuse produced water or
25 treated produced water in a manner that may result in water

1 pollution;

2 (3) require tracking and reporting of the
3 movement, transportation and location of produced water and
4 treated produced water throughout its production, treatment,
5 reuse and disposition in oil and gas operations and to compile
6 the reported tracking information and make it publicly
7 available;

8 (4) regulate the construction and operation of
9 oil treating plants and produced water recycling and treatment
10 plants, and to require the posting of bonds for the reclamation
11 of treating and recycling plant sites after cessation of
12 operations; provided that it is prohibited to construct or
13 operate oil treating plants or produced water recycling and
14 treatment plants in a manner that may result in water
15 pollution;

16 (5) regulate the management and disposition of
17 nondomestic wastes resulting from the exploration, development,
18 production or storage of crude oil or natural gas; provided
19 that it is prohibited to dispose of nondomestic wastes in a
20 manner that may result in water pollution;

21 (6) regulate the management and disposition of
22 nondomestic wastes resulting from the oil field service
23 industry, the transportation of crude oil or natural gas, the
24 treatment of natural gas or the refinement of crude oil,
25 including administering the Water Quality Act as provided in

1 Subsection F of Section 74-6-4 NMSA 1978; and

2 (7) regulate pits used to store, treat or
3 dispose of nondomestic wastes, including produced water,
4 resulting from the exploration, development or production of
5 crude oil or natural gas; provided that it is prohibited to use
6 pits in a manner that may result in water pollution. The rules
7 shall at minimum include requirements for liners, leak
8 detection, leachate collection, ground water monitoring,
9 closure, financial assurance for closure and post-closure
10 monitoring and maintenance of pits."

11 SECTION 5. Section 70-2-33 NMSA 1978 (being Laws 1935,
12 Chapter 72, Section 24, as amended) is amended to read:

13 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

14 [A. ~~"person" means:~~

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

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

21 B. ~~"pool" means an underground reservoir containing~~
22 ~~a common accumulation of crude petroleum oil or natural gas or~~
23 ~~both. Each zone of a general structure, which zone is~~
24 ~~completely separate from any other zone in the structure, is~~
25 ~~covered by the word "pool" as used in the Oil and Gas Act.~~

1 ~~"Pool" is synonymous with "common source of supply" and with~~
2 ~~"common reservoir";~~

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

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

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

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

24 ~~G. "gas transportation facility" means a pipeline~~
25 ~~in operation serving gas wells for the transportation of~~

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

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

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

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

20 ~~K. "produced water" means a fluid that is an~~
21 ~~incidental byproduct from drilling for or the production of oil~~
22 ~~and gas;~~

23 ~~L. "commission" means the oil conservation~~
24 ~~commission; and~~

25 ~~M. "division" means the oil conservation division~~

1 ~~of the energy, minerals and natural resources department]~~

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

6 B. "commission" means the oil conservation
7 commission;

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

18 D. "division" means the oil conservation division
19 of the energy, minerals and natural resources department;

20 E. "field" means the general area that is underlaid
21 or appears to be underlaid by at least one pool and also
22 includes the underground reservoir or reservoirs containing the
23 crude petroleum oil or natural gas or both. The words "field"
24 and "pool" mean the same thing when only one underground
25 reservoir is involved; however, "field", unlike "pool", may

1 relate to two or more pools;

2 F. "fresh water" means:

3 (1) water with less than ten thousand
4 milligrams per liter of total dissolved solids;

5 (2) water in lakes and playas, regardless of
6 quality, unless the water exceeds ten thousand milligrams per
7 liter of total dissolved solids and it can be shown that
8 degradation of the particular water body will not adversely
9 affect hydrologically connected fresh ground water;

10 (3) the surface waters of streams regardless
11 of the water quality within a given reach; and

12 (4) underground waters containing ten thousand
13 milligrams or less per liter of total dissolved solids;

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

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

22 I. "person" means:

23 (1) an 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 an agency or
2 instrumentality thereof or the state or a political subdivision
3 thereof;

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

11 K. "potash" means the naturally occurring bedded
12 deposits of the salts of the element potassium;

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

16 M. "producer" means the owner of a well capable of
17 producing oil or natural gas or both in paying quantities;

18 N. "product" means a 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, gas
24 oil, naphtha, distillate, gasoline, kerosene, benzine, wash
25 oil, waste oil, lubricating oil and blends or mixtures of crude

petroleum oil or natural gas or any derivative thereof;

O. "recycled water" or "recycled produced water"
means produced water that is reconditioned by a recycling
facility permitted by the division;

P. "treated water" or "treated produced water"
means produced water that is reconditioned by mechanical or
chemical processes into a reusable form; and

Q. "water pollution" means the introduction into
water, either directly or indirectly, of any substance that
could alter the physical, chemical, biological or radiological
qualities of the water in such quantity and of such duration as
may with reasonable probability injure human health, animal or
plant life or property, or unreasonably interfere with the
public welfare or the use of property."

SECTION 6. Section 70-13-5 NMSA 1978 (being Laws 2019,
Chapter 197, Section 5) is amended to read:

"70-13-5. VOID AS AGAINST PUBLIC POLICY--THROUGHOUT
FEES--LIMITATIONS ON USE OF RECYCLED OR TREATED PRODUCED
WATER.--A provision of an agreement, covenant or promise,
foreign or domestic, between private parties, entered into on
or after July 1, ~~[2019]~~ 2021 is against public policy and void
to the extent ~~[of]~~ that it:

A. allows a private party to charge a tariff or fee
for the movement or transport of produced water, treated water
or recycled water on surface lands owned by the state, if the

1 agreement does not provide for transportation services;

2 B. requires fresh water resources to be purchased
3 for oil and gas operations when produced water, treated water
4 or recycled water:

5 (1) is required to be used pursuant to the Oil
6 and Gas Act; or

7 (2) is available and able to be used and the
8 operator elects to use that produced water, treated water or
9 recycled water for the oil and gas operations; or

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

14 SECTION 7. Section 74-6-4 NMSA 1978 (being Laws 1967,
15 Chapter 190, Section 4, as amended) is amended to read:

16 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The
17 commission:

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

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

24 C. shall not adopt or promulgate a standard or
25 [~~regulation~~] rule that exceeds a grant of rulemaking authority

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1 listed in the statutory section of the Water Quality Act
2 authorizing the standard or [~~regulation~~] rule;

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

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

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

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

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

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

23 (4) the successive uses, including domestic,
24 commercial, industrial, pastoral, agricultural, wildlife and
25 recreational uses;

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

3 (6) property rights and accustomed uses; and

4 (7) federal water quality requirements;

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

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

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

25 H. may grant an individual variance from any

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

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

23 J. may adopt ~~[regulations]~~ rules requiring notice
24 to it or a constituent agency of intent to introduce or allow
25 the introduction of water contaminants into waters of the

1 state;

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

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

1 the treatment works;

2 M. shall not require a permit respecting the use of
3 water in irrigated agriculture, except in the case of the
4 employment of a specific practice in connection with such
5 irrigation that documentation or actual case history has shown
6 to be hazardous to public health or the environment or for the
7 use of produced water;

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

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

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

18 (3) a gray water system is sited outside of a
19 floodway;

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

22 (5) gray water pressure piping is clearly
23 identified as a nonpotable water conduit;

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

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

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

8 (9) gray water is not sprayed;

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

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

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

20 P. shall adopt ~~[regulations to be administered by~~
21 ~~the department of environment]~~ rules based on the best
22 available science and technology for the discharge, handling,
23 transport, storage, recycling, ~~[or]~~ treatment ~~[for the]~~ and
24 disposition of produced water and treated produced water
25 ~~[including disposition in road construction maintenance,~~

1 ~~roadway ice or dust control or other construction, or in the~~
2 ~~application of treated produced water to land]~~ for activities
3 unrelated to the exploration, drilling, production, treatment
4 or refinement of oil or gas. ~~[and]~~ The rules shall be
5 administered by the department of environment and shall:

6 (1) prohibit the discharge or disposition of
7 untreated produced water for activities unrelated to oil or gas
8 operations;

9 (2) require a person who proposes to discharge
10 treated produced water, or to treat produced water for
11 activities unrelated to oil or gas operations, to disclose to
12 the department of environment for public disclosure the water
13 contaminants in the untreated produced water, including
14 constituents added for oil or gas drilling or production;

15 (3) require a thorough characterization of all
16 water contaminants, including their toxicity, mobility,
17 persistence in the environment and propensity to bioaccumulate;
18 and

19 (4) permit a discharge of treated produced
20 water only upon a determination by the department of
21 environment that such discharge will not result in water
22 pollution; and

23 Q. may adopt ~~[regulations]~~ rules to be administered
24 by the department of environment for surface water discharges."

25 SECTION 8. EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2021.

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