

AN ACT

RELATING TO GEOTHERMAL RESOURCES; PROVIDING FOR GROUND WATER TO QUALIFY AS A GEOTHERMAL RESOURCE.

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

SECTION 1. Section 71-5-2.1 NMSA 1978 (being Laws 2003, Chapter 16, Section 2) is amended to read:

"71-5-2.1. EXCLUSION--INCIDENTAL LOSS OR EXTRACTION OF HEAT--LIMITED EXCEPTION.--

A. When the application of potable water to a beneficial use involves the incidental loss or extraction of heat, and the water is two hundred fifty degrees Fahrenheit or less, then that heat is not a geothermal resource for which a royalty is due. In such a case, the use is not governed by laws related to geothermal resources but is simply governed by Chapter 72 NMSA 1978.

B. A permit from the state engineer is not required for the use of ground water over two hundred fifty degrees Fahrenheit as incident to the development of geothermal resources permitted pursuant to the Geothermal Resources Conservation Act when:

(1) the use does not require any diversion of ground water; or

(2) all diverted ground water is reinjected as soon as practicable into the same ground water source from

which it was diverted, resulting in no new net depletions to the source; provided that the division shall provide to the state engineer all information available to the division regarding the proposed diversion and reinjection and shall request the opinion of the state engineer as to whether existing ground water rights sharing the same ground water source may be impaired. If the state engineer determines that the information provided is sufficient to render an opinion, and it is the opinion of the state engineer that any existing ground water rights may be impaired, then the division, upon receipt of the opinion of the state engineer, shall require the owner or operator to submit to the division a plan of replacement with regard to any existing ground water rights that are likely to be impaired. In response to a request for an opinion under this subsection, the determination by the state engineer as to whether the information provided is sufficient to render an opinion or the issuance by the state engineer of an opinion shall not constitute a decision, act or refusal to act under Section 72-2-16 NMSA 1978.

C. No ground water right is established through the use of ground water as allowed in Subsection B of this section.

D. As used in this section, "plan of replacement" means a detailed plan for the replacement of water, which may include:

- (1) the furnishing of a substitute water supply;
- (2) the modification of existing water supply facilities;
- (3) the drilling of replacement wells;
- (4) the assumption of additional operating costs;
- (5) the procurement of documentation establishing a waiver of protection by owners of affected water rights;
- (6) artificial recharge; or
- (7) any other means to avoid impairment of water rights."

SECTION 2. A new section of the Geothermal Resources Conservation Act is enacted to read:

"WATER RIGHTS OWNER--ACTION FOR IMPAIRMENT.--Any water rights owner may bring a de novo action in the district court of the county in which the water rights are located for damages or injunctive relief with respect to any claimed impairment of existing water rights due to the development of geothermal resources pursuant to Subsection B of Section 71-5-2.1 NMSA 1978."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012. _____