

1 SENATE BILL 86

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO NATURAL RESOURCES; PROHIBITING CERTAIN USES OF  
12 FRESH WATER IN OIL AND GAS OPERATIONS; PROVIDING PENALTIES FOR  
13 THE SPILL OR RELEASE OF OIL, GAS OR PRODUCED WATER; CREATING  
14 THE OIL CONSERVATION DIVISION DATA COMPILATION FUND; DIRECTING  
15 THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS AND  
16 NATURAL RESOURCES DEPARTMENT TO ADOPT RULES RELATING TO  
17 PRODUCED WATER AND NONDOMESTIC WASTES THAT ARE PROTECTIVE OF  
18 PUBLIC HEALTH, WORKER SAFETY AND NATURAL RESOURCES; REQUIRING  
19 THE TRACKING OF PRODUCED WATER; ALPHABETIZING DEFINITIONS AND  
20 ADDING DEFINITIONS FOR "FRESH WATER", "WATER POLLUTION",  
21 "RECYCLED WATER" AND "TREATED WATER" TO THE OIL AND GAS ACT;  
22 AMENDING THE PRODUCED WATER ACT TO CONFORM TO CHANGES IN THE  
23 OIL AND GAS ACT; CLARIFYING REQUIREMENTS FOR WATER QUALITY  
24 CONTROL COMMISSION RULEMAKING RELATED TO THE USE OF PRODUCED  
25 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

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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;

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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~~

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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

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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

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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.~~

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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~~

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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~~

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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

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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

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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

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1 petroleum oil or natural gas or any derivative thereof;

2 Q. "recycled water" or "recycled produced water"  
3 means produced water that is reconditioned by a recycling  
4 facility permitted by the division;

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

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

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

17 "70-13-5. VOID AS AGAINST PUBLIC POLICY--THROUGHOUT  
18 FEES--LIMITATIONS ON USE OF RECYCLED OR TREATED PRODUCED  
19 WATER.--A provision of an agreement, covenant or promise,  
20 foreign or domestic, between private parties, entered into on  
21 or after July 1, ~~[2019]~~ 2021 is against public policy and void  
22 to the extent ~~[of]~~ that it:

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

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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

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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;

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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

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underscored material = new  
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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

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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

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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,~~

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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

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1 provisions of this act is July 1, 2021.

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