

**STATE OF NEW MEXICO  
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO THE COMMISSION'S  
RULES ON PRODUCED WATER,  
19.15.2, 19.15.16, AND 19.15.34 NMAC**

**CASE NO. 21281**

**OIL CONSERVATION DIVISION'S  
PRE-HEARING STATEMENT**

The Oil Conservation Division (OCD) through its counsel, Cheryl L. Bada, submits the following Pre-hearing Statement in accordance with 19.15.3.11(B) NMAC.

**I. Statement of the Case**

The OCD has filed an application proposing amendments to the Oil Conservation Commission rules to (1) amend 19.15.2.7 NMAC to conform the definition of “produced water” with the definition found in the Oil and Gas Act, NMSA 1978, §70-2-33(K) (2019); (2) amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable, or recycled produced water; and (3) amend 19.15.34 NMAC to conform the language in 19.15.34 NMAC to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water. The purpose of the proposed rule amendments is to implement the changes in produced water management and authority enacted by House Bill 546.

**II. Testimony and Exhibits**

The OCD will present one witness, William Brancard, General Counsel of the Energy, Minerals and Natural Resources Department. Ms. Brancard has been General Counsel for the Energy, Minerals and Natural Resources Department since 2010, and has extensive experience in rulemaking for boards and commissions and advising boards and commissions, including the Oil Conservation Commission, the Mining Commission, and the Water Quality Control Commission. From 2003 to 2010, he served as the Director of the Mining and Minerals Division in the Department. He has also worked as an Assistant Land Commissioner and an Assistant Attorney General for the State of New Mexico as well as practicing law with the firm of Sutin, Thayer & Browne in Albuquerque and Santa Fe. Mr. Brancard is a graduate of Hamilton College (1979) and Harvard Law School (1987) and attended the London School of Economics. Mr. Brancard drafted the proposed amendments to 19.15.3 NMAC.

Mr. Brancard will testify about the proposed amendment to 19.15.2.7 NMAC to amend the definition of produced water, amendment of 19.15.16 to require the filing of a water use report, and amendment of 19.15.34 to conform the language to the legislative changes in HB 546. OCD

estimates Mr. Brancard's testimony will take about 15 minutes. OCD will offer the following exhibits:

1. Proposed Amendments to 19.15.2.7, 19.15.16, and 19.15.34 NMAC
2. House Bill 546
3. Written Testimony of Bill Brancard
4. PowerPoint Presentation of Bill Brancard
5. A. Form C-105  
B. proposed addition for water use report
6. Certificate of Compliance with Notice Requirements from Florene Davidson

The OCD reserves the right to call rebuttal witnesses as necessary.

### **III. Procedural Matters**

The OCD's counsel knows of no procedural matters that the Commission needs to address.

Respectfully submitted,



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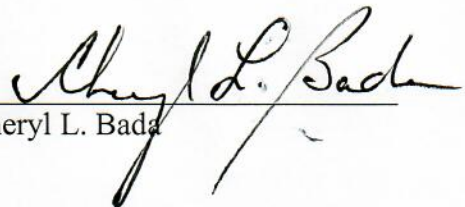
Certificate of Service

I hereby certify that the Oil Conservation Division's Pre-Hearing Statement was served by e-mail on July 17, 2020, to the following:

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Cheryl L. Bada

## Proposed Rule Changes for the Oil Conservation Commission

### TITLE 19 NATURAL RESOURCES AND WILDLIFE

#### CHAPTER 15 OIL AND GAS

##### PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS

**19.15.2.7 DEFINITIONS:** These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

**P. Definitions beginning with the letter “P”.**

**(10) “Produced water”** means ~~[water]~~ a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

### TITLE 19 NATURAL RESOURCES AND WILDLIFE

#### CHAPTER 15 OIL AND GAS

##### PART 16 DRILLING AND PRODUCTION

**19.15.16.21 WATER USE REPORT:** For a hydraulically fractured well, an operator shall report, on form C-103 or C-105, the amount of water reported on the disclosure required by Subsection B of 19.15.16.19 NMAC and the breakdown of that amount by types of water including produced water, nonpotable water and potable water. As used in 19.15.16.21 NMAC

**A.** “nonpotable water” means water, other than produced water, which contains 1,000 mg/l or more of TDS; and

**B.** “potable water” means water, other than produced water, which contains less than 1,000 mg/l of TDS.

### TITLE 19 NATURAL RESOURCES AND WILDLIFE

#### CHAPTER 15 OIL AND GAS

##### PART 34 PRODUCED WATER, DRILLING FLUIDS AND LIQUID OIL FIELD WASTE

**19.15.34.2 SCOPE:** 19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition ~~[by use]~~ of produced water [produced or used] in connection with the development or production of oil or gas or both ~~[; in road construction or maintenance, or other construction; in the generation of electricity or in other industrial processes]~~. 19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste.

**19.15.34.3 STATUTORY AUTHORITY:** 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas [of water produced or used in connection with the drilling for or producing of oil and gas or both] and Paragraph (21) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

**19.15.34.6 OBJECTIVE:** To encourage the recycling ~~[;]~~ or re-use [or disposition] of produced water ~~[by use]~~ in a manner that ~~[will afford reasonable protection against contamination of fresh water]~~ protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose ~~[of]~~ produced water, drilling fluids and other liquid oil

field waste in activities related to the exploration, drilling, production, treatment or refinement of oil or gas.

**19.15.34.7 DEFINITIONS:** These definitions apply to 19.15.34.2 NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

**A.** “Recycling facility” is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water [~~intended for disposition by use~~]. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

**19.15.34.8 REQUIREMENTS FOR ~~[DISPOSITION BY USE]~~ REUSE, RECYCLING [FACILITIES] OR DISPOSAL OF PRODUCED WATER:**

**A.** Recycling or [~~disposition by use~~] reuse of produced water.

(1) No permit or registration is required from the division for the [~~disposition by use~~] reuse of produced water for drilling, completion, producing [~~secondary~~] or enhanced recovery [~~pressure maintenance~~] of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other [~~disposition by use~~] reuse of produced water in the exploration, drilling, production, treatment or refinement of oil or gas requires prior approval by the appropriate division district office on form C-147. Approval requirements will be determined by the district office based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the appropriate division district office.

(4) All produced water for recycling or [~~disposition by use~~] reuse shall be handled and stored in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water shall be handled in accordance with 19.15.29 NMAC.

(7) Any discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

**B.** Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

(1) [~~disposition in a manner that does not constitute a hazard to fresh water, public health, or the environment;~~] delivery to a [~~permitted salt~~] produced water disposal well [~~or facility~~] permitted pursuant to 19.15.26 NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC; [~~or to a drill site for use in drilling fluid; or~~]

(2) [~~use~~] recycling or reuse in accordance with 19.15.34 NMAC; [~~or other authorization from the division.~~]

(3) for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the department of environment before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.

**19.15.34.9 RECYCLING FACILITIES:**

**B.** In addition to the other applicable rule requirements, registration of a recycling facility is required in the following circumstances:

(3) when the recycling facility is an addition to a [~~salt~~] produced water disposal well permitted under 19.15.26 NMAC;

**19.15.34.13 OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

C. A recycling containment shall be deemed to have ceased operations if less than [~~20%~~] twenty percent of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the appropriate division district office. The appropriate division district office may grant an extension to this determination of cessation of operations not to exceed six months.

**19.15.34.14 CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

F. Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent [~~(50%)~~] of pre-disturbance levels and a total percent plant cover of at least seventy percent [~~(70%)~~] of pre-disturbance levels, excluding noxious weeds.

**19.15.34.18 DENIAL OF FORM C-133:** The division may deny approval of a form C-133 if:

D. the applicant or officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [~~(25%)~~], is or was within the past five years an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [~~(25%)~~] in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division or other state or federal environmental laws; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

1 AN ACT  
2 RELATING TO NATURAL RESOURCES; ENACTING THE PRODUCED WATER  
3 ACT; ESTABLISHING CONTROL AND RESPONSIBILITY FOR PRODUCED  
4 WATER; ALLOWING THE USE OF TREATED OR RECYCLED PRODUCED  
5 WATER; DECLARING CERTAIN CONTRACT PROVISIONS RELATING TO  
6 PRODUCED WATER VOID AGAINST PUBLIC POLICY; AMENDING AND  
7 ADDING DEFINITIONS; AMENDING THE DUTIES OF THE OIL  
8 CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL  
9 RESOURCES DEPARTMENT AND THE WATER QUALITY CONTROL  
10 COMMISSION; MAKING CONFORMING TECHNICAL CHANGES; AMENDING THE  
11 OIL AND GAS ACT REGARDING VIOLATIONS; PROVIDING FOR  
12 PENALTIES; REQUIRING ANNUAL REPORTS; AMENDING AND ENACTING  
13 SECTIONS OF THE NMSA 1978.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "SHORT TITLE.--Sections 1 through 5 of this act may be  
19 cited as the "Produced Water Act".

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

22 "DEFINITIONS.--As used in the Produced Water Act:

23 A. "operator" means a person authorized by the oil  
24 conservation division of the energy, minerals and natural  
25 resources department to operate a unit for an oil or gas well

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1 or other oil or gas facility;

2 B. "produced water" means a fluid that is an  
3 incidental byproduct from drilling for or the production of  
4 oil and gas;

5 C. "recycled water" or "recycled produced water"  
6 means produced water that is reconditioned by a recycling  
7 facility permitted by the oil conservation division of the  
8 energy, minerals and natural resources department; and

9 D. "treated water" or "treated produced water"  
10 means produced water that is reconditioned by mechanical or  
11 chemical processes into a reusable form."

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

14 "JURISDICTION.--It is the jurisdiction of:

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

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

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

23 "PRODUCED WATER--TRANSFERRED FOR TREATMENT--SUBSEQUENT  
24 USE.--

25 A. Unless otherwise provided by law, a contract,



1 bill of sale or other legally binding document:

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

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

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

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

1 water, recycled or treated water or treated product or  
2 byproduct.

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

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

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

25 SECTION 5. A new section of Chapter 70 NMSA 1978 is

1 enacted to read:

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

8 A. allows a private party to charge a tariff or  
9 fee for the movement or transport of produced water, treated  
10 water or recycled water on surface lands owned by the state,  
11 if the agreement does not provide for transportation  
12 services;

13 B. requires fresh water resources to be purchased  
14 for oil and gas operations when produced water, treated water  
15 or recycled water is available and able to be used and the  
16 operator elects to use that produced water, treated water or  
17 recycled water for the oil and gas operations; or

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

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

24 "70-2-12. ENUMERATION OF POWERS.--

25 A. The oil conservation division of the energy,

1 minerals and natural resources department may:

- 2 (1) collect data;
- 3 (2) make investigations and inspections;
- 4 (3) examine properties, leases, papers,  
5 books and records;
- 6 (4) examine, check, test and gauge oil and  
7 gas wells, tanks, plants, refineries and all means and modes  
8 of transportation and equipment;
- 9 (5) hold hearings;
- 10 (6) provide for the keeping of records and  
11 the making of reports and for the checking of the accuracy of  
12 the records and reports;
- 13 (7) limit and prorate production of crude  
14 petroleum oil or natural gas or both as provided in the Oil  
15 and Gas Act; and
- 16 (8) require either generally or in  
17 particular areas certificates of clearance or tenders in  
18 connection with the transportation of crude petroleum oil or  
19 natural gas or any products of either or both oil and  
20 products or both natural gas and products.

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

- 24 (1) to require dry or abandoned wells to be  
25 plugged in a way so as to confine the crude petroleum oil,

1 natural gas or water in the strata in which it is found and  
2 to prevent it from escaping into other strata; pursuant to  
3 Section 70-2-14 NMSA 1978, the division shall require  
4 financial assurance conditioned for the performance of the  
5 rules;

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

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

12 (4) to prevent the drowning by water of any  
13 stratum or part thereof capable of producing oil or gas or  
14 both oil and gas in paying quantities and to prevent the  
15 premature and irregular encroachment of water or any other  
16 kind of water encroachment that reduces or tends to reduce  
17 the total ultimate recovery of crude petroleum oil or gas or  
18 both oil and gas from any pool;

19 (5) to prevent fires;

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

23 (7) to require wells to be drilled, operated  
24 and produced in such manner as to prevent injury to  
25 neighboring leases or properties;

1                   (8) to identify the ownership of oil or gas  
2 producing leases, properties, wells, tanks, refineries,  
3 pipelines, plants, structures and all transportation  
4 equipment and facilities;

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

7                   (10) to fix the spacing of wells;

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

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

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

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

22                   (15) to regulate the disposition, handling,  
23 transport, storage, recycling, treatment and disposal of  
24 produced water during, or for reuse in, the exploration,  
25 drilling, production, treatment or refinement of oil or gas,

1 including disposal by injection pursuant to authority  
2 delegated under the federal Safe Drinking Water Act, in a  
3 manner that protects public health, the environment and fresh  
4 water resources;

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

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

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

24 (19) to make well price category  
25 determinations pursuant to the provisions of the federal



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

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

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

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

22 **SECTION 7.** Section 70-2-31 NMSA 1978 (being Laws 1981,  
23 Chapter 362, Section 1) is amended to read:

24 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--  
25 PENALTIES.--

1           A. Whenever the division determines that a person  
2 violated or is violating the Oil and Gas Act or any provision  
3 of any rule, order, permit or authorization issued pursuant  
4 to that act, the division may seek compliance and civil  
5 penalties by:

- 6                   (1) issuing a notice of violation;
- 7                   (2) commencing a civil action in district  
8 court for appropriate relief, including injunctive relief; or
- 9                   (3) issuing a temporary cessation order if  
10 the division determines that the violation is causing or will  
11 cause an imminent danger to public health or safety or a  
12 significant imminent environmental harm. The cessation order  
13 will remain in effect until the earlier of when the violation  
14 is abated or thirty days unless a hearing is held before the  
15 division and a new order is issued.

16           B. A notice of violation issued pursuant to  
17 Paragraph (1) of Subsection A of this section shall state  
18 with reasonable specificity the nature of the violation,  
19 shall require compliance immediately or within a specified  
20 time period, shall provide notice of the availability of an  
21 informal review and the date of a hearing before the division  
22 and shall provide notice of potential sanctions, including  
23 assessing a penalty, suspending, canceling or terminating a  
24 permit or authorization, shutting in a well and plugging and  
25 abandonment of a well and forfeiting financial assurance

1 pursuant to Section 70-2-14 NMSA 1978.

2 C. If the notice of violation is not resolved  
3 informally within thirty days after service of the notice,  
4 the division shall hold a hearing and determine whether the  
5 violation should be upheld and whether any sanctions,  
6 including civil penalties, shall be assessed. In assessing a  
7 penalty authorized by this section, the division shall take  
8 into account the seriousness of the violation, any good faith  
9 efforts to comply with the applicable requirements, any  
10 history of noncompliance under the Oil and Gas Act and other  
11 relevant factors. When a decision is rendered by the  
12 division after a hearing, any party of record adversely  
13 affected shall have the right to have the matter heard de  
14 novo before the commission pursuant to Section 70-2-13 NMSA  
15 1978.

16 D. Any civil penalty assessed by a court or by the  
17 division or commission pursuant to this section may not  
18 exceed two thousand five hundred dollars (\$2,500) per day of  
19 noncompliance for each violation unless the violation  
20 presents a risk either to the health or safety of the public  
21 or of causing significant environmental harm, or unless the  
22 noncompliance continues beyond a time specified in the notice  
23 of violation or order issued by the division, commission or  
24 court, whereupon the civil penalty may not exceed ten  
25 thousand dollars (\$10,000) per day of noncompliance for each

1 violation. No penalty assessed by the division or commission  
2 after a hearing may exceed two hundred thousand dollars  
3 (\$200,000); provided that such limitation does not apply to  
4 penalties assessed by a court.

5 E. The commission shall make rules, pursuant to  
6 Section 70-2-12.2 NMSA 1978, providing procedures for the  
7 issuance of notices of violations, the assessment of  
8 penalties and the conduct of informal proceedings and  
9 hearings pursuant to this section.

10 F. It is unlawful, subject to a criminal penalty  
11 of a fine of not more than five thousand dollars (\$5,000) or  
12 imprisonment for a term not exceeding three years or both  
13 such fine and imprisonment, for any person to knowingly and  
14 willfully:

15 (1) violate any provision of the Oil and Gas  
16 Act or any rule, regulation or order of the commission or the  
17 division issued pursuant to that act; or

18 (2) do any of the following for the purpose  
19 of evading or violating the Oil and Gas Act or any rule,  
20 regulation or order of the commission or the division issued  
21 pursuant to that act:

22 (a) make any false entry or statement  
23 in a report required by the Oil and Gas Act or by any rule,  
24 regulation or order of the commission or division issued  
25 pursuant to that act;

1 (b) make or cause to be made any false  
2 entry in any record, account or memorandum required by the  
3 Oil and Gas Act or by any rule, regulation or order of the  
4 commission or division issued pursuant to that act;

5 (c) omit or cause to be omitted from  
6 any such record, account or memorandum full, true and correct  
7 entries; or

8 (d) remove from this state or destroy,  
9 mutilate, alter or falsify any such record, account or  
10 memorandum.

11 G. For the purposes of Subsection F of this  
12 section, each day of violation shall constitute a separate  
13 offense.

14 H. Any person who knowingly and willfully  
15 procures, counsels, aids or abets the commission of any act  
16 described in Subsection A or F of this section shall be  
17 subject to the same penalties as are prescribed in Subsection  
18 D or F of this section."

19 **SECTION 8.** Section 70-2-33 NMSA 1978 (being Laws 1935,  
20 Chapter 72, Section 24, as amended) is amended to read:

21 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

22 A. "person" means:

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

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

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

18                  D. "product" means any 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,  
24 gas oil, naphtha, distillate, gasoline, kerosene, benzine,  
25 wash oil, waste oil, lubricating oil and blends or mixtures

1 of crude petroleum oil or natural gas or any derivative  
2 thereof;

3 E. "owner" means the person who has the right to  
4 drill into and to produce from any pool and to appropriate  
5 the production either for the person or for the person and  
6 another;

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

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

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

1 I. "potash" means the naturally occurring bedded  
2 deposits of the salts of the element potassium;

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

7 K. "produced water" means a fluid that is an  
8 incidental byproduct from drilling for or the production of  
9 oil and gas;

10 L. "commission" means the oil conservation  
11 commission; and

12 M. "division" means the oil conservation division  
13 of the energy, minerals and natural resources department."

14 **SECTION 9.** A new section of the Oil and Gas Act is  
15 enacted to read:

16 "REPORTING REQUIREMENT.--No later than October 1 of each  
17 year, the division shall report to the appropriate interim  
18 committee of the legislature and to the governor and shall  
19 post on the agency website:

20 A. the number of notices of violation that the  
21 division issued pursuant to the Oil and Gas Act during the  
22 previous fiscal year;

23 B. the total amount of penalties collected by the  
24 division for violations pursuant to the Oil and Gas Act  
25 during the previous fiscal year;



1           C. for each penalty collected, the following  
2 information:

3                   (1) the name of the person penalized and the  
4 location of the violation; and

5                   (2) the nature of the violation and the  
6 calculation of the penalty collected; and

7           D. the number and nature of lawsuits filed for a  
8 violation of the Oil and Gas Act, including the names of  
9 defendants, the nature of the violation and the outcome of  
10 the litigation."

11       **SECTION 10.** Section 74-6-2 NMSA 1978 (being Laws 1967,  
12 Chapter 190, Section 2, as amended) is amended to read:

13       "74-6-2. DEFINITIONS.--As used in the Water Quality  
14 Act:

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

22           B. "water contaminant" means any substance that  
23 could alter, if discharged or spilled, the physical,  
24 chemical, biological or radiological qualities of water.

25 "Water contaminant" does not mean source, special nuclear or

1 byproduct material as defined by the federal Atomic Energy  
2 Act of 1954;

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

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

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

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

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

25 H. "water" means all water, including water

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

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

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

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

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

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

4 L. "new source" means:

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

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

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

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

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

25 P. "substantial adverse environmental impact"

1 means that an act or omission of the violator causes harm or  
2 damage:

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

10 Q. "federal act" means the Federal Water Pollution  
11 Control Act, its subsequent amendment and successor  
12 provisions;

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

16 S. "produced water" means a fluid that is an  
17 incidental byproduct from drilling for or the production of  
18 oil and gas."

19 **SECTION 11.** Section 74-6-4 NMSA 1978 (being Laws 1967,  
20 Chapter 190, Section 4, as amended) is amended to read:

21 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The  
22 commission:

23 A. may accept and supervise the administration of  
24 loans and grants from the federal government and from other  
25 sources, public or private, which loans and grants shall not

1 be expended for other than the purposes for which provided;

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

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

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

22 E. shall adopt, promulgate and publish regulations  
23 to prevent or abate water pollution in the state or in any  
24 specific geographic area, aquifer or watershed of the state  
25 or in any part thereof, or for any class of waters, and to

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

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

22 (2) the public interest, including the  
23 social and economic value of the sources of water  
24 contaminants;

25 (3) the technical practicability and

1 economic reasonableness of reducing or eliminating water  
2 contaminants from the sources involved and previous  
3 experience with equipment and methods available to control  
4 the water contaminants involved;

5 (4) the successive uses, including domestic,  
6 commercial, industrial, pastoral, agricultural, wildlife and  
7 recreational uses;

8 (5) feasibility of a user or a subsequent  
9 user treating the water before a subsequent use;

10 (6) property rights and accustomed uses; and

11 (7) federal water quality requirements;

12 F. shall assign responsibility for administering  
13 its regulations to constituent agencies so as to assure  
14 adequate coverage and prevent duplication of effort. To this  
15 end, the commission may make such classification of waters  
16 and sources of water contaminants as will facilitate the  
17 assignment of administrative responsibilities to constituent  
18 agencies. The commission shall also hear and decide disputes  
19 between constituent agencies as to jurisdiction concerning  
20 any matters within the purpose of the Water Quality Act. In  
21 assigning responsibilities to constituent agencies, the  
22 commission shall give priority to the primary interests of  
23 the constituent agencies. The department of environment  
24 shall provide technical services, including certification of  
25 permits pursuant to the federal act, and shall maintain a



1 repository of the scientific data required by the Water  
2 Quality Act;

3 G. may enter into or authorize constituent  
4 agencies to enter into agreements with the federal government  
5 or other state governments for purposes consistent with the  
6 Water Quality Act and receive and allocate to constituent  
7 agencies funds made available to the commission;

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

20 I. may adopt regulations to require the filing  
21 with it or a constituent agency of proposed plans and  
22 specifications for the construction and operation of new  
23 sewer systems, treatment works or sewerage systems or  
24 extensions, modifications of or additions to new or existing  
25 sewer systems, treatment works or sewerage systems. Filing

1 with and approval by the federal housing administration of  
2 plans for an extension to an existing or construction of a  
3 new sewerage system intended to serve a subdivision solely  
4 residential in nature shall be deemed compliance with all  
5 provisions of this subsection;

6 J. may adopt regulations requiring notice to it or  
7 a constituent agency of intent to introduce or allow the  
8 introduction of water contaminants into waters of the state;

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

1 an opportunity for public input and stakeholder negotiations;

2 L. may adopt regulations establishing pretreatment  
3 standards that prohibit or control the introduction into  
4 publicly owned sewerage systems of water contaminants that  
5 are not susceptible to treatment by the treatment works or  
6 that would interfere with the operation of the treatment  
7 works;

8 M. shall not require a permit respecting the use  
9 of water in irrigated agriculture, except in the case of the  
10 employment of a specific practice in connection with such  
11 irrigation that documentation or actual case history has  
12 shown to be hazardous to public health or the environment or  
13 for the use of produced water;

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

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

21 (2) a gray water storage tank is covered to  
22 restrict access and to eliminate habitat for mosquitos or  
23 other vectors;

24 (3) a gray water system is sited outside of  
25 a floodway;

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

3 (5) gray water pressure piping is clearly  
4 identified as a nonpotable water conduit;

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

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

10 (8) ponding is prohibited, application of  
11 gray water is managed to minimize standing water on the  
12 surface and to ensure that the hydraulic capacity of the soil  
13 is not exceeded;

14 (9) gray water is not sprayed;

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

17 (11) gray water use within municipalities or  
18 counties complies with all applicable municipal or county  
19 ordinances enacted pursuant to Chapter 3, Article 53 NMSA  
20 1978;

21 0. shall coordinate application procedures and  
22 funding cycles for loans and grants from the federal  
23 government and from other sources, public or private, with  
24 the local government division of the department of finance  
25 and administration pursuant to the New Mexico Community

1 Assistance Act;

2 P. shall adopt regulations to be administered by  
3 the department of environment for the discharge, handling,  
4 transport, storage, recycling or treatment for the  
5 disposition of treated produced water, including disposition  
6 in road construction maintenance, roadway ice or dust control  
7 or other construction, or in the application of treated  
8 produced water to land, for activities unrelated to the  
9 exploration, drilling, production, treatment or refinement of  
10 oil or gas; and

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

13 SECTION 12. APPLICABILITY.--The provisions of this act  
14 apply to contracts entered into on and after July 1, 2019.

15 SECTION 13. EFFECTIVE DATE.--

16 A. The effective date of the provisions of  
17 Sections 1 through 6, 8, 10 and 11 of this act is July 1,  
18 2019.

19 B. The effective date of the provisions of  
20 Sections 7 and 9 of this act is January 1, 2020.

## TESTIMONY OF BILL BRANCARD

### **Could you provide your name and your relevant experience and education?**

My name is Bill Brancard and I am the General Counsel of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD). I have held that position for over ten years. Prior to that I served as the Director of the EMNRD Mining and Minerals Division for seven years. I have also been an Assistant Land Commissioner and an Assistant Attorney General for the State of New Mexico. I began my legal career as a private attorney in Albuquerque. My law degree is from Harvard Law School and my undergraduate degree is from Hamilton College.

### **What are the goals of this rulemaking?**

The primary goal of this rulemaking is to incorporate the changes from House Bill 546, enacted in 2019, into the Oil Conservation Commission's (Commission) rules. Certain language within the current rules was based on language in the Oil and Gas Act that was modified by HB 546. Another goal is to obtain additional data on the reuse of produced water within the oil and gas industry to aid in future regulatory decisions. In addition, the rule changes include some stylistic corrections.

Most of HB 546 focuses on issues surrounding the reuse of produced water. Produced water is a byproduct of oil and gas production. In 2019, over one billion barrels of produced water was extracted in New Mexico. Currently, the vast majority of produced water is either disposed in deep injection wells or reused in enhanced oil recovery projects. Some produced water is reused in the drilling and completion of new wells.

The Commission has already addressed one aspect of HB 546 with its rulemaking on compliance procedures earlier this year. The remainder of HB 546, which includes the new Produced Water Act, encourages the reuse and recycling of produced water particularly within the oil and gas industry. HB 546 clarifies the regulatory jurisdiction of state agencies over the reuse of produced water, establishes which parties have responsibility and power over produced water once it is extracted, and removes contractual barriers against reuse of produced water.

### **How were the rule changes developed?**

After the passage of HB 546, the state agencies affected by the legislation (EMNRD, New Mexico Environment Department (NMED), Office of State Engineer) began a process to implement the legislation. One of the first steps to conduct a series of public meetings to provide information on produced water and on future rulemaking proceedings. The meetings also allowed the public to provide input about their concerns and questions about produced and the implementation of HB 546. Meetings were held in 2019 in Albuquerque, Farmington, Carlsbad, Santa Fe, and Las Cruces and were well attended.

Another step being pursued by the agencies is research to acquire additional data and information on produced water and its potential uses and treatments. NMED entered into an agreement with New Mexico State University to establish a produced water research consortium to fill the scientific and technical knowledge gaps needed to develop rules and policies on the treatment of produced water.

For EMNRD, data gaps also exist. While the Oil Conservation Division (OCD) collects data on the amount of produced water generated per month and per year (over 1.2 billion barrels in 2019), where all that produced water goes is not as clear. For years, the Commission and OCD have encouraged the use of produced water in oil and gas drilling. The Commission has adopted rules to streamline permitting for facilities in recycling of recycling produced water (e.g., 19.15.34.9 NMAC (recycling facilities), 19.15.34.10 NMAC (recycling containments)), but the amount of produced water used in drilling is not measured.

While NMED continues to work on developing its produced water treatment rules, EMNRD has determined to go forward with a rulemaking to implement its responsibilities under HB 546. Earlier this year, EMNRD developed a draft proposal to align its rules with HB 546 and to gather more information on the reuse of produced water within the oil and gas industry. EMNRD shared the draft rules with representatives of the oil and gas industry, public interest organizations, and other agencies. These groups and individuals provided feedback on the proposal. EMNRD finalized the proposal and applied to the Commission for a rulemaking.

EMNRD has met with representatives of several organizations to answer questions and discuss possible changes. The New Mexico Oil and Gas Association (NMOGA) provided proposed changes to the proposal (Attachment A). EMNRD does not oppose any of these changes and will discuss them further.

### **What provisions in HB 546 are relevant to this rulemaking?**

For the purposes of this rulemaking the most important parts of HB 546 are the amendment to the definition of “produced water”, the clarification of the jurisdiction over the reuse of produced water, and the changes to OCD’s authority over produced water in the Oil and Gas Act.

-Definition of “produced water”. [slide 4 of OCD Exhibit 4] HB 546 makes a minor change to the definition of produced water in the Oil and Gas Act, NMSA 1978, § 70-2-33:

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

HB 546 also inserts that definition of “produced water” into the Produced Water Act, NMSA 1978, § 70-13-2(B), and the Water Quality Act, NMSA 1978, § 74-6-2(S).

-Regulatory jurisdiction over the reuse of produced water. [slide 5 of OCD Exhibit 4] HB 546 provides that the jurisdiction over the reuse of produced water is divided between the OCD and NMED. A new section of the Produced Water Act, NMSA 1978, § 70-13-3 provides

70-13-3. JURISDICTION.--It is the jurisdiction of:

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

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

HB 546 amended the Water Quality Act to provide for specific authority over the reuse of produced water outside of the oil and gas industry. The Water Quality Act now requires the Water Quality Control Commission (WQCC) to adopt rules to be administered by NMED:

for the discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas;

NMSA 1978, § 74-6-4(P).

For the uses regulated by the WQCC, HB 546 requires that a permit must be issued by NMED. NMSA 1978, § 70-13-4(D).

-Changes to Oil and Gas Act. [slide 8 of OCD Exhibit 4] HB 546 modified Section 70-2-12(B)(15) which provides for the agency's powers regarding produced water. It is these statutory changes that are primarily reflected in this rulemaking. The Commission's rules in 19.15.34 NMAC follow, and at times repeat, the language in this statutory paragraph. Because the statutory language has changed the rule must be updated.

The changes in Section 70-2-12(B)(15) that are reflected in this rulemaking:

a) eliminate OCC and OCD's authority to regulate the use of produced water in "road construction or maintenance or other construction, in the generation of electricity or in other industrial processes";

b) clarify that the scope of authority in regulating produced water within the oil and gas industry includes the "disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas";

c) modify the goal of regulating produced water from "in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer" to "in a manner that protects public health, the environment and fresh water resources"; and

d) change terminology: from "water produced" to "produced water", and from "disposition by use" to "reuse".

### **Could you please describe the specific rule changes?**

The proposed rule changes are found in three "Parts" of the Commission's rules:

- 19.15.2 NMAC: General Provisions
  - Definition of "produced water" (HB 546)
- 19.15.16 NMAC: Drilling and Production
  - Water Use Report (new)
- 19.15.34 NMAC: Produced Water
  - Update to incorporate changes in HB 546

#### 19.15.2.7(P)(10) NMAC:

The regulatory definition of "produced water" is changed to match the revised definition in the Oil and Gas Act, NMSA 1978, § 70-2-33(K).

#### 19.15.16.21 NMAC:



This new section requires operators who hydraulically fracture a well to provide information on the water used in the completion of the well. The operator must provide the amount of water, which is already reported in the required FracFocus disclosure form (19.15.16.19 NMAC), and then break down that amount by recycled produced water, potable water, and nonpotable water. The data can be provided as part of existing forms that are submitted after completion of the well.

The section defines “potable water” and “nonpotable water” as water which is not recycled produced water, and which contains either less or more than 1,000 mg/L of total dissolved solids (TDS). The definition of “nonpotable water” is taken from the underground water statute. NMSA 1978, § 72-12-25(C). The dividing line of 1000 mg/L TDS allows the agency to determine how much water used in drilling could be drinkable or usable water and how much is brackish water. Amigos Bravos has objected to the use of terms such as potable and nonpotable water. The agency is not wed to the terminology.

Obtaining this basic information on the amount of recycled produced water and other types of water is used in drilling is essential to implement the goals of HB 546 and will inform future policy decisions.

The process for obtaining the information is relatively simple and coincides with other filings by the operator. An operator who drills and completes a well must file a completion report (form C-105) within 45 days after completion. 19.15.16.19(A) NMAC. If the well is hydraulically fractured, then the operator must also file a FracFocus disclosure by the same deadline. 19.15.16.19(B) NMAC. The proposed rule change would add to the C-105 form a water use report which includes the amount of water used in completion (as listed in the FracFocus disclosure) and then breaks down that water into three categories. OCD Exhibit 5A is the current C-105 form and OCD Exhibit 5B is the added section.

NMOGA has proposed the deletion of certain words in 19.15.16.21 and EMNRD does not oppose.

#### 19.15.34.2 NMAC      SCOPE

Changes to this section reflect the elimination of the Commission’s authority over non-oilfield uses of produced water and changes in terminology.

#### 19.15.34.3 NMAC      STATUTORY AUTHORITY

Changes to this section copy the language in Section 70-2-12(B)(15) that describe the scope of authority over produced water within the oil and gas industry.

#### 19.15.34.6 NMAC      OBJECTIVE

Changes to this section reflect the changes in Section 70-2-12(B)(15) that modify the goals of produced water regulation and clarified the scope of authority. Terminology is also updated.

#### 19.15.34.7 NMAC      DEFINITIONS

Changes to this section eliminate terminology that is no longer used and is unnecessary.

#### 19.15.34.8 NMAC      REQUIREMENTS

This section provides overall direction on the handling and disposition of produced water. In addition to changes in terminology, changes to this section reflect the clarification of scope (paragraph A(2)), the change to the goal of produced water regulation (paragraph A(4)), and the narrowing of the OCD’s authority over produced water (paragraphs B(1) and B(2)).

NMOGA has proposed changes to paragraph A(1) to more closely follow the terms used in the Commission's rule on injection. 19.15.26 NMAC. They also propose simplifying the language in paragraph A(2). EMNRD does not oppose either change.

A new paragraph A(7) [slide 15 of OCD Exhibit 4] is added to alert the handlers of produced water that any reuse of produced water outside of the oil and gas industry is subject to regulation by the WQCC. The language in A(7) is taken directly from the HB 546 amendment to the Water Quality Act. NMSA 1978, § 74-6-4(P).

A new paragraph B(3) [slide 16 of OCD Exhibit 4] is added to inform the regulated community that a permit is required from the NMED for any uses regulated by the WQCC. The language in B(3) is taken directly from the Produced Water Act. NMSA 1978, § 70-13-4(D).

19.15.34.9 NMAC      **RECYCLING FACILITIES**

Changes to this section follow the Commission's injection well rulemaking in 2018, which changed the term "salt water disposal well" to "produced water disposal well". 19.15.26.8(E) NMAC.

19.15.34.13 NMAC      **OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS**

19.15.34.14 NMAC      **CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS**

19.15.34.18 NMAC      **DENIAL OF FORM C-133**

Changes to these sections include style corrections to comply with the NMAC style rules require spelling out percentages. 1.24.10.12(A)(2)(c) NMAC.

**Do any of the proposed rule changes allow for the reuse of produced water outside the oil and gas industry?**

No.

**Does the OCC or OCD have the authority to permit the reuse of produced water outside the oil and gas industry?**

No. That authority was removed by HB 546, and this rulemaking removes any reference to such prior authority.



Bill Brancard



Date

**NMOGA'S PROPOSED MODIFICATIONS**  
**NMOGA Exhibit 1**

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15 OIL AND GAS**  
**PART 2        GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS**

**19.15.2.7      DEFINITIONS:** These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.  
    **P.        Definitions beginning with the letter "P".**  
        **(10)      "Produced water"** means ~~[water]~~ a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15 OIL AND GAS**  
**PART 16      DRILLING AND PRODUCTION**

**19.15.16.21    WATER USE REPORT:** For a hydraulically fractured well, an operator shall report, on form C-103 or C-105, the amount of water reported on the disclosure required by Subsection B of 19.15.16.19 NMAC and the breakdown of that amount by types of water including produced water, nonpotable water and potable water. As used in 19.15.16.21 NMAC

A.        "nonpotable water" means water, other than produced water, which contains 1,000 mg/l or more of TDS; and

B.        "potable water" means water, other than produced water, which contains less than 1,000 mg/l of TDS.

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15 OIL AND GAS**  
**PART 34      PRODUCED WATER, DRILLING FLUIDS AND LIQUID OIL FIELD WASTE**

**19.15.34.2      SCOPE:** 19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition ~~[by use]~~ of produced water ~~[produced or used]~~ in connection with the development or production of oil or gas or both ~~[; in road construction or maintenance, or other construction; in the generation of electricity or in other industrial processes]~~. 19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste.

**19.15.34.3      STATUTORY AUTHORITY:** 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas ~~[of water produced or used in connection with the drilling for or producing of oil and gas or both]~~ and Paragraph (21) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

**19.15.34.6      OBJECTIVE:** To encourage the recycling ~~[;]~~ or re-use ~~[or disposition]~~ of produced water ~~[by use]~~ in a manner that ~~[will afford reasonable protection against contamination of fresh water]~~ protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose ~~[of]~~ produced water, drilling fluids and other liquid oil

field waste in activities related to the exploration, drilling, production, treatment or refinement of oil or gas.

**19.15.34.7 DEFINITIONS:** These definitions apply to 19.15.34.2 NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

A. “Recycling facility” is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water [~~intended for disposition by use~~]. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

**19.15.34.8 REQUIREMENTS FOR ~~[DISPOSITION BY USE]~~ REUSE, RECYCLING [FACILITIES] OR DISPOSAL OF PRODUCED WATER:**

A. Recycling or [~~disposition by use~~] reuse of produced water.

(1) No permit or registration is required from the division for the [~~disposition by use~~] reuse of produced water for drilling, completion, productioning, pressure maintenance, secondary recovery [~~secondary~~] or enhanced recovery [~~pressure maintenance~~] of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other [~~disposition by use~~] reuse of produced water within the jurisdiction of the division in the exploration, drilling, production, treatment or refinement of oil or gas requires prior approval by the appropriate division district office on form C-147. Approval requirements will be determined by the district office based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the appropriate division district office.

(4) All produced water for recycling or [~~disposition by use~~] reuse shall be handled and stored in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water shall be handled in accordance with 19.15.29 NMAC.

(7) Any discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

B. Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

(1) [~~disposition in a manner that does not constitute a hazard to fresh water, public health, or the environment;~~] delivery to a [~~permitted salt~~] produced water disposal well [~~or facility~~] permitted pursuant to 19.15.26 NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC; [~~or to a drill site for use in drilling fluid; or~~]

(2) [~~use~~] recycling or reuse in accordance with 19.15.34 NMAC; [~~or other authorization from the division.~~]

(3) for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the department of environment before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.

**19.15.34.9 RECYCLING FACILITIES:**

**B.** In addition to the other applicable rule requirements, registration of a recycling facility is required in the following circumstances:

**(3)** when the recycling facility is an addition to a ~~[salt]~~ produced water disposal well permitted under 19.15.26 NMAC;

**19.15.34.13 OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

**C.** A recycling containment shall be deemed to have ceased operations if less than ~~[20%]~~ twenty percent of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the appropriate division district office. The appropriate division district office may grant an extension to this determination of cessation of operations not to exceed six months.

**19.15.34.14 CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

**F.** Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent ~~[(50%)]~~ of pre-disturbance levels and a total percent plant cover of at least seventy percent ~~[(70%)]~~ of pre-disturbance levels, excluding noxious weeds.

**19.15.34.18 DENIAL OF FORM C-133:** The division may deny approval of a form C-133 if:

**D.** the applicant or officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent ~~[(25%)]~~, is or was within the past five years an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent ~~[(25%)]~~ in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division or other state or federal environmental laws; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

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# Oil Conservation Commission

## Testimony of Bill Brancard

Case No. 21281: Proposed changes to rules  
Public Hearing  
July 30, 2020

# Goals of rulemaking

Implement HB 546 passed by the Legislature in 2019

- Need to amend language in existing OCC rules that now conflicts with the statutory changes in HB 546
- Provide a mechanism to obtain data to further the goals of HB 546

Other stylistic changes

# HB 546: Key Changes

HB 546 (which includes the Produced Water Act):

-Clarifies administrative authority over the reuse of produced water:

- OCC/OCD limited to regulating reuse within oil and gas industry
- WQCC/NMED will regulate all uses of produced water outside of oil and gas industry

-Encourages the reuse and recycling of produced water particularly within the oil and gas industry



# HB 546: Definition of “produced water”

Oil and Gas Act, Section 70-2-33:

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

Same definition now found in Water Quality Act and Produced Water Act

# HB 546: Jurisdiction over produced water

Produced Water Act divides up the world of produced water:

70-13-3. JURISDICTION.--It is the jurisdiction of:

- A. the oil conservation division of the energy, minerals and natural resources department to regulate produced water as provided in the Oil and Gas Act; and
- B. the water quality control commission to regulate produced water as provided in the Water Quality Act.

# HB 546: Jurisdiction over produced water

Water Quality Act, Section 74-6-4, the WQCC:

P. shall adopt regulations to be administered by the department of environment for the discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas;

# HB 546: Jurisdiction over produced water

Produced Water Act, Section 70-13-4:

D. For uses regulated by the water quality control commission pursuant to the Water Quality Act [Chapter [74](#), Article [6](#) NMSA 1978], a person shall obtain a permit from the department of environment before using the produced water, the recycled or treated water or treated product or any byproduct of the produced water.

# HB 546: Oil & Gas Act: §70-2-12(B)(15)

- Before: (15) to regulate the disposition of **water produced** or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water, including **disposition by use** in drilling for or production of oil or gas, in **road construction or maintenance or other construction, in the generation of electricity or in other industrial processes**, in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;
- After: (15) to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of **produced water** during, or for **reuse** in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources;

# Outline of Proposed Rule Changes

3 Parts of the Oil and Gas rules are part of this proposal:

- 19.15.2 NMAC: General Provisions
  - Definition of “produced water” (HB 546)
- 19.15.16 NMAC: Drilling and Production
  - Water Use Report (new)
- 19.15.34 NMAC: Produced Water
  - Update to incorporate changes in HB 546

# Rule changes: 19.15.2.7

**19.15.2.7 DEFINITIONS:** These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

**P. Definitions beginning with the letter “P”.**

**(10) “Produced water”** means ~~[water]~~ a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

# Rule changes: 19.15.16.21

**19.15.16.21 WATER USE REPORT:** For a hydraulically fractured well, an operator shall report, on form C-103 or C-105, the amount of water reported on the disclosure required by Subsection B of 19.15.16.19 NMAC and the breakdown of that amount by types of water including produced water, nonpotable water and potable water. As used in 19.15.16.21 NMAC:

A. “nonpotable water” means water, other than produced water, which contains 1,000 mg/l or more of TDS; and

B. “potable water” means water, other than produced water, which contains less than 1,000 mg/l of TDS.



# Rule changes: 19.15.34

**19.15.34.2 SCOPE:** 19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition [~~by use~~] of produced water [~~produced or used~~] in connection with the development or production of oil or gas or both [~~;; in road construction or maintenance, or other construction; in the generation of electricity or in other industrial processes~~]. 19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste.

**19.15.34.3 STATUTORY AUTHORITY:** 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas [~~of water produced or used in connection with the drilling for or producing of oil and gas or both~~] and Paragraph (21) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

# Rule changes: 19.15.34

**19.15.34.6**            **OBJECTIVE:** To encourage the recycling [~~7~~] or re-use [~~or disposition~~] of produced water [~~by use~~] in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose [~~of~~] produced water, drilling fluids and other liquid oil field waste in activities related to the exploration, drilling, production, treatment or refinement of oil or gas.

**19.15.34.7**            **DEFINITIONS:** These definitions apply to 19.15.34.2 NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

**A.**            “Recycling facility” is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water [~~intended for disposition by use~~]. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

# Rule changes: 19.15.34

## 19.15.34.8 REQUIREMENTS FOR ~~[DISPOSITION BY USE]~~ REUSE, RECYCLING ~~[FACILITIES]~~ OR DISPOSAL OF PRODUCED WATER:

A. Recycling or ~~[disposition by use]~~ reuse of produced water.

(1) No permit or registration is required from the division for the ~~[disposition by use]~~ reuse of produced water for drilling, completion, producing ~~[secondary]~~ or enhanced recovery ~~[pressure maintenance]~~ of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other ~~[disposition by use]~~ reuse of produced water in the exploration, drilling, production, treatment or refinement of oil or gas requires prior approval by the appropriate division district office on form C-147. Approval requirements will be determined by the district office based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the appropriate division district office.

(4) All produced water for recycling or ~~[disposition by use]~~ reuse shall be handled and stored in a manner that ~~[will afford reasonable protection against contamination of fresh water]~~ protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water shall be handled in accordance with 19.15.29 NMAC.

# Rule changes: 19.15.34

## 19.15.34.8

### A.

(7) Any discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

# Rule changes: 19.15.34

## 19.15.34.8

**B.** Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

- **(1)** ~~[disposition in a manner that does not constitute a hazard to fresh water, public health, or the environment;]~~ delivery to a ~~[permitted salt]~~ produced water disposal well ~~[or facility]~~ permitted pursuant to 19.15.26 NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC; ~~[or to a drill site for use in drilling fluid; or]~~
- **(2)** ~~[use]~~ recycling or reuse in accordance with 19.15.34 NMAC; or ~~[other authorization from the division.]~~
- **(3)** for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the department of environment before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.

# Rule changes: 19.15.34

## **19.15.34.9, .13, 14, .18**

- NMAC style rules require spelling out percentages.  
1.24.10.12(A)(2)(c) NMAC
- 19.15.26 rulemaking in 2018 changed “salt water disposal well” to “produced water disposal well”

Submit To Appropriate District Office Two Copies <u>District I</u> 1625 N. French Dr., Hobbs, NM 88240 <u>District II</u> 811 S. First St., Artesia, NM 88210 <u>District III</u> 1000 Rio Brazos Rd., Aztec, NM 87410 <u>District IV</u> 1220 S. St. Francis Dr., Santa Fe, NM 87505	<b>State of New Mexico</b> <b>Energy, Minerals and Natural Resources</b>  <b>Oil Conservation Division</b> <b>1220 South St. Francis Dr.</b> <b>Santa Fe, NM 87505</b>	<b>Form C-105</b> Revised April 3, 2017								
<b>WELL COMPLETION OR RECOMPLETION REPORT AND LOG</b>		1. WELL API NO.  2. Type of Lease <input type="checkbox"/> STATE <input type="checkbox"/> FEE <input type="checkbox"/> FED/INDIAN 3. State Oil & Gas Lease No.								
4. Reason for filing:  <input type="checkbox"/> <b>COMPLETION REPORT</b> (Fill in boxes #1 through #31 for State and Fee wells only)  <input type="checkbox"/> <b>C-144 CLOSURE ATTACHMENT</b> (Fill in boxes #1 through #9, #15 Date Rig Released and #32 and/or #33; attach this and the plat to the C-144 closure report in accordance with 19.15.17.13.K NMAC)		5. Lease Name or Unit Agreement Name  6. Well Number:								
7. Type of Completion: <input type="checkbox"/> NEW WELL <input type="checkbox"/> WORKOVER <input type="checkbox"/> DEEPENING <input type="checkbox"/> PLUGBACK <input type="checkbox"/> DIFFERENT RESERVOIR <input type="checkbox"/> OTHER _____										
8. Name of Operator		9. OGRID								
10. Address of Operator		11. Pool name or Wildcat								
12. Location	Unit Ltr	Section	Township	Range	Lot	Feet from the	N/S Line	Feet from the	E/W Line	County
<b>Surface:</b>										
<b>BH:</b>										
13. Date Spudded	14. Date T.D. Reached	15. Date Rig Released				16. Date Completed (Ready to Produce)			17. Elevations (DF and RKB, RT, GR, etc.)	
18. Total Measured Depth of Well		19. Plug Back Measured Depth				20. Was Directional Survey Made?			21. Type Electric and Other Logs Run	
22. Producing Interval(s), of this completion - Top, Bottom, Name										
<b>23. CASING RECORD (Report all strings set in well)</b>										
CASING SIZE		WEIGHT LB./FT.		DEPTH SET		HOLE SIZE		CEMENTING RECORD		AMOUNT PULLED
24. LINER RECORD						25. TUBING RECORD				
SIZE	TOP	BOTTOM	SACKS CEMENT	SCREEN		SIZE	DEPTH SET	PACKER SET		
26. Perforation record (interval, size, and number)						27. ACID, SHOT, FRACTURE, CEMENT, SQUEEZE, ETC.				
						DEPTH INTERVAL		AMOUNT AND KIND MATERIAL USED		
<b>28. PRODUCTION</b>										
Date First Production		Production Method ( <i>Flowing, gas lift, pumping - Size and type pump</i> )					Well Status ( <i>Prod. or Shut-in</i> )			
Date of Test	Hours Tested	Choke Size	Prod'n For Test Period	Oil - Bbl	Gas - MCF	Water - Bbl.	Gas - Oil Ratio			
Flow Tubing Press.	Casing Pressure	Calculated 24-Hour Rate	Oil - Bbl.	Gas - MCF	Water - Bbl.	Oil Gravity - API - ( <i>Corr.</i> )				
29. Disposition of Gas ( <i>Sold, used for fuel, vented, etc.</i> )							30. Test Witnessed By			
31. List Attachments										
32. If a temporary pit was used at the well, attach a plat with the location of the temporary pit.							33. Rig Release Date:			
34. If an on-site burial was used at the well, report the exact location of the on-site burial:										
Latitude _____ Longitude _____ NAD83										
<i>I hereby certify that the information shown on both sides of this form is true and complete to the best of my knowledge and belief</i>										
Signature			Printed Name			Title			Date	
E-mail Address										

## INSTRUCTIONS

This form is to be filed with the appropriate District Office of the Division not later than 20 days after the completion of any newly-drilled or deepened well and not later than 60 days after completion of closure. When submitted as a completion report, this shall be accompanied by one copy of all electrical and radio-activity logs run on the well and a summary of all special tests conducted, including drill stem tests. All depths reported shall be measured depths. In the case of directionally drilled wells, true vertical depths shall also be reported. For multiple completions, items 11, 12 and 26-31 shall be reported for each zone.

INDICATE FORMATION TOPS IN CONFORMANCE WITH GEOGRAPHICAL SECTION OF STATE

Southeastern New Mexico		Northwestern New Mexico	
T. Anhy	T. Canyon	T. Ojo Alamo	T. Penn A"
T. Salt	T. Strawn	T. Kirtland	T. Penn. "B"
B. Salt	T. Atoka	T. Fruitland	T. Penn. "C"
T. Yates	T. Miss	T. Pictured Cliffs	T. Penn. "D"
T. 7 Rivers	T. Devonian	T. Cliff House	T. Leadville
T. Queen	T. Silurian	T. Menefee	T. Madison
T. Grayburg	T. Montoya	T. Point Lookout	T. Elbert
T. San Andres	T. Simpson	T. Mancos	T. McCracken
T. Glorieta	T. McKee	T. Gallup	T. Ignacio Otzte
T. Paddock	T. Ellenburger	Base Greenhorn	T. Granite
T. Blinebry	T. Gr. Wash	T. Dakota	
T. Tubb	T. Delaware Sand	T. Morrison	
T. Drinkard	T. Bone Springs	T. Todilto	
T. Abo	T.	T. Entrada	
T. Wolfcamp	T.	T. Wingate	
T. Penn	T.	T. Chinle	
T. Cisco (Bough C)	T.	T. Permian	

## OIL OR GAS SANDS OR ZONES

No. 1, from.....to.....

No. 3, from.....to.....

No. 2, from.....to.....

No. 4, from.....to.....

## IMPORTANT WATER SANDS

Include data on rate of water inflow and elevation to which water rose in hole.

No. 1, from.....to.....feet.....

No. 2, from.....to.....feet.....

No. 3, from.....to.....feet.....

## LITHOLOGY RECORD (Attach additional sheet if necessary)

From	To	Thickness In Feet	Lithology



<b>WATER USE REPORT</b> (For hydraulically fractured wells only)	
Amount of water used:	gallons
Potable water (<1000mg/L TDS):	%
Non-potable water (>1000mg/L TDS):	%
Recycled produced water:	%

**STATE OF NEW MEXICO  
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO THE COMMISSION'S  
RULES ON PRODUCED WATER,  
19.15.2, 19.15.16, AND 19.15.34 NMAC**

**CASE NO. 21281**

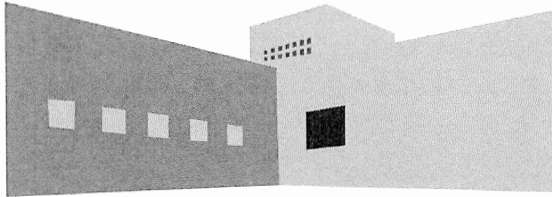
**NEW MEXICO OIL CONSERVATION COMMISSION'S  
CERTIFICATE OF COMPLIANCE WITH NOTICE REQUIREMENTS**

As Clerk to the New Mexico Oil Conservation Commission (OCC), I hereby certify that notice of this matter has been provided as follows:

1. The Notice of Proposed Rulemaking for this Case (Notice) was published in the New Mexico Register on June 9, 2020. Exhibit A.
2. The Notice was sent to the Albuquerque Journal and was published on May 29 and May 30, 2020. Exhibit B.
3. On May 26, 2020, the Notice was posted on the Oil Conservation Division (OCD) website and remained posted through the date of the public hearing. Exhibit C.
4. On May 26, 2020, the Notice was sent to the OCD field offices in Hobbs, Artesia, and Aztec to be available to the public.
5. On May 26, 2020, the Notice had been mailed or e-mailed to all persons on the OCC's mailing list for rulemakings.
6. On May 27, 2020, the Notice was mailed to the New Mexico Legislative Council for distribution to committees.
7. On May 22, 2020, the Notice was posted on the Sunshine Portal. Exhibit D.
8. On May 22, 2020, the Notice was sent to the Small Business Regulatory Advisory Commission. Exhibit E.

**NEW MEXICO OIL CONSERVATION COMMISSION**

**/s/ Florene Davidson**  
**FLORENE DAVIDSON**  
**COMMISSION CLERK**



NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, NM 87507 US  
(505) 476-7902

## Invoice

**BILL TO**

EMNRD - Oil Conservation Division  
1220 S. St. Francis Dr.  
Santa Fe, NM 87505

INVOICE #	DATE	TOTAL DUE	DUE DATE		ENCLOSED
4899	06/10/2020	\$120.00	06/10/2020		

**VOLUME**

XXXI

**ISSUE**

11

**P.O. NUMBER**

52100-0000063992

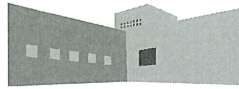
DATE	DESCRIPTION	QTY	RATE	AMOUNT
06/09/2020	<b>NM Register - 431902</b> Notice of Public Hearing and Public Meeting, hearing date: 7/30/2020	40	3.00	120.00

Thank you for your business!

BALANCE DUE

**\$120.00**

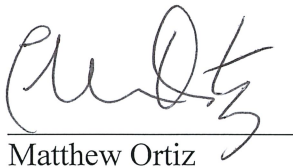
NEW MEXICO  
State Records Center and Archives  
COMMISSION OF PUBLIC RECORDS  
Your Access to Public Information



**Affidavit of Publication in New Mexico Register**

I, Matthew Ortiz, certify that the agency noted on Invoice # 4899 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXXI, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 4899, and that Invoice # 4899 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

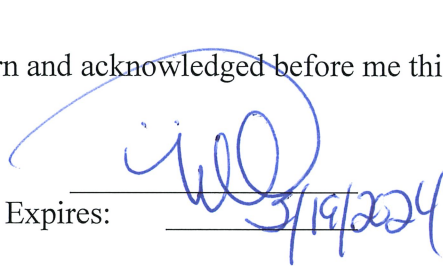
Affiant:

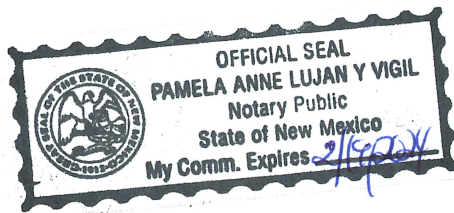
  
Matthew Ortiz

Subscribed, sworn and acknowledged before me this 1<sup>st</sup> day of June, 2020.

Notary Public:

My Commission Expires:

  
3/19/2024



1205 Camino Carlos Rey | Santa Fe, NM 87507 | [nmcpr.state.nm.us](http://nmcpr.state.nm.us)

Hon. Hector Balderas  
Attorney General

Hon. Brian S. Colón  
State Auditor

Hon. Maggie Toulouse Oliver  
Secretary of State

Debra Garcia y Griego  
Department of Cultural Affairs

Kenneth Ortiz  
General Services Department

Daniel Cordova  
Interim Director, NM State Law Library

**NOTICE OF PUBLIC MEETING AND PUBLIC HEARING**

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on July 30, 2020 online and via telephone. The hearing may be continued to the following day if not completed. Oral comments may be made either on-line or by telephone. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting.

**Case No. 21281: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULES FOR PRODUCED WATER IN 19.15.2, 19.15.16, AND 19.15.34 NMAC; STATEWIDE.**

The New Mexico Oil Conservation Division (OCD) proposes to (1) amend 19.15.2.7 NMAC to conform the definition of "produced water" with the definition found in the Oil and Gas Act, NMSA 1978, §70-2-33(K) (2019); (2) amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable, or recycled produced water; and (3) amend 19.15.34 NMAC to conform the language in 19.15.34 NMAC to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water.

**Purpose of Proposed Rule.** The proposed rule implements the changes in produced water management and authority enacted by House Bill 546 (Laws 2019, chapter 197) in the 2019 Legislature.

**Legal Authority.** The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the Commission and OCD). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

**Availability of Proposed Rule.** The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/ocd>.

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**July 30**

OCC - (Day 1) Produced Water Rule Making Hearing

Meeting number: 967 682 712

Password: R4SpDXpeu49

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m6572062a0ff431b8f7a815b6edf74af0>

Join by phone

+1-408-418-9388 United States Toll

Access code: 967 682 712

**July 31 (IF NECESSARY):**

OCC - (Day 2) Produced Water Rule Making Hearing

Meeting number: 963 288 479

Password: ZjiqP9PET32

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m2854bda11fb429c3fd553e90c6707a8f>

Join by phone

+1-408-418-9388 United States Toll

Access code: 963 288 479

For information on how to participate in the hearing please contact the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458 or visit the OCD's website at <http://www.emnrd.state.nm.us/ocd>. Pursuant to NMAC 19.15.3.8(C), the Commission will issue a Procedural Order specifying additional rules for the hearing as outlined below. The Procedural Order may be obtained from the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/ocd>.

**Proposed Modifications, Technical Testimony, and Cross Examination.** Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on July 17, 2020. Additionally, all technical testimony shall be presented to the Commission in writing and shall be filed with the Commission no later than 5:00 p.m. on July 17, 2020. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or electronic mail to [OCD.Hearings@state.nm.us](mailto:OCD.Hearings@state.nm.us). Any person who presents technical testimony in writing shall attend the hearing online or via telephone and will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

**Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony. Any person that wishes to present oral non-technical testimony to the Commission shall notify the Commission Clerk, Florene Davidson by first class or electronic mail at 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) no later than 5:00 p.m. on July 29, 2020. In order to ensure that all participants are able to participate in the hearing, notifications to the Commission Clerk shall include at least a name and telephone number of the person intending to present non-technical testimony. Any exhibits that will be offered in conjunction with non-technical testimony must be sent via electronic mail to the Commission Clerk, Florene Davidson, at the above email address no later than 5:00 p.m. on July 29, 2020. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

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**Persons with Disabilities.** If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than July 17, 2020.

**Technical Information.** There is no technical information for the proposed rule.

## ALBUQUERQUE PUBLISHING COMPANY

7777 Jefferson St. NE, Albuquerque, NM 87109

## Ad Proof/Order Confirmation

**Account Number**

1009661

**Ad Order Number**

0001487981

N M DEPT OF ENERGY, MINING &  
NATURAL RES FORESTRY DIV  
1220 S ST FRANCIS DR  
SANTA FE, NM 87505 USA

**Ordered By** Marlene Salvidrez**Customer Phone**

5054763300

**Joint Ad #****Customer Email** fran.chavez@state.nm.us**PO Number**

52100-0000063999

**Ad Cost** \$847.00**Sales Rep**

sramirez

**Tax Amount** \$66.70**Order Taker**

sramirez

**Total Amount** \$913.70**Payment Method**

Credit Card

**Amount Due** \$913.70**Payment Amount**

\$0.00

**Affidavits** 0**Pick Up #****Product** Albuquerque Journal**Placement**

0Legal Notices

**Ad Number** 0001487981-01**Classification**

0Government

**Ad Type** 0 Legals Multi Col**Sort Text**

NOTICEOFPUBLICMEETINGANDPUBL  
ICHEARINGTHENEWMEXICOOILCON  
SERVATIONCOMMISSIONCOMMISSI  
ONHEREBYGIVESNOTICETHATTHEC  
OMMISSIONWILLHOLDTHEF

**Ad Size** 3 X 12.50"**Color****Run Date**

05/29/2020

05/29/2020

05/29/2020

05/30/2020

05/30/2020

**WYSIWYG Content**

Exhibit B

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OCC - (Day 1) Produced Water Rule Making Hearing  
Meeting number: 967 682 712  
Password: R4SpDXpeu49  
<https://nmemnrd.webex.com/nmemnrdj.php?MTID=m6572062a0f431b8f7a815b6edf74af0>

Join by phone  
+1-408-418-9388 United States Toll  
Access code: 967 682 712

**July 31 (IF NECESSARY):**  
OCC - (Day 2) Produced Water Rule Making Hearing  
Meeting number: 963 288 479  
Password: ZjqP9PET32  
<https://nmemnrd.webex.com/nmemnrdj.php?MTID=m2854bda11fb429c3d553e90c6707a8f>

Join by phone  
+1-408-418-9388 United States Toll  
Access code: 963 288 479

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**Technical Information.** There is no technical information for the proposed rule.

Journal: May 29, 30, 2020



## OCD Rules

### Proposed Rules

[Case No. 21281: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULES FOR PRODUCED WATER IN 19.15.2, 19.15.16, AND 19.15.34 NMAC; STATEWIDE.](#)

[Notice of Public Meeting and Public Hearing](#)

[Procedural Order](#)

[19.15.2 NMAC Proposed Amendment](#)

[19.15.16 NMAC Proposed Amendment](#)

[19.15.34 NMAC Proposed Amendment](#)

### New Rules

#### Case 20895 Compliance and Enforcement (19.15.5 NMAC)

[Final Rule](#)

[OCC Final Order](#)

[Notice of Rule Adoption](#)

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#### Case 16377 Injection (19.15.26 NMAC)

[Proposed Rule Amendments Transmittal Form](#)

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#### Case 16376 Amend Horizontal Well Rule (19.15.16, S15 NMAC)

[Final Rule](#)

---

#### Case 15959 Releases (19.15.29)

[Order/Pending Rule](#)



**Case 16078 Financial Assurance (19.15.25, 19.15.8, 19.15.2.7 NMAC)**

[19.15.25 NMAC Transmittal Form](#)

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**Case 15957 Horizontal Well Rule (19.15.2,19.15.4, 19.15.14, 19.15.15, 19.15.16 NMAC)**

[Commission Order](#)

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**Case 15802 C-115 Forms (19.15.7.24 NMAC)**

[Notice of Rule Adoption](#)

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**Case 15738 (19.15.3 NMAC)**

[Notice of Rule Adoption](#)

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**Current Rules**

**For the most up-to-date version of OCD's rules or to investigate the rules of other New Mexico state agencies, please visit the New Mexico Commission of Public Records' official website via the links below:**

[New Mexico Administrative Code \(indexed\)](#)

[New Mexico Administrative Code Table of Contents](#)

**OCD Rule Cross Walks**

[Old Rules to Current Rules](#)

[Current Rules to Old Rules](#)

[Rules](#)

**New Mexico Statutes**

[Oil and Gas Act, Chapter 70, NMSA 1978](#)

[Table of Contents of Chapter 70 Oil and Gas](#)

Directions--New Mexico Commission of Public Records' official website:

NM Public Access Law- Statutes and Court Rules--Desktop- Click OK

Top Left- Click + by Statutes, Rules and Const.

Click + by NMSA, Scroll Down

Click + by More. Scroll down to Chapter 70 Oil and Gas. Expand for Articles



<b>EMNRD Home</b> 505-476-3200	<b>State Parks</b> 1-888-667-2757	<b>State Forestry</b> 505-476-3325	<b>Mining &amp; Minerals</b> 505-476-3400	<b>Energy Conservation</b> 505-476-3315	<b>Oil &amp; Gas</b> 505-476-3441
<b>EMNRD News</b> .....	<b>Find a State Park</b> .....	<b>Forest and Watershed</b> .....	<b>Programs</b> .....	<b>Tax Incentives</b> .....	<b>About OCD</b> .....
<b>Public Information</b> .....	<b>Reserve a Campground</b> .....	<b>Health</b> .....	<b>Mining Applications</b> .....	<b>Forms</b> .....	<b>OCD Online</b> .....
<b>Office</b> .....	<b>Boating Information</b> .....	<b>Fire Forms</b> .....	<b>and Forms</b> .....	<b>RFPs</b> .....	<b>Hearings</b> .....
<b>New Mexico.gov</b> .....		<b>New Mexico Forest Re- Leaf</b> .....	<b>RFPs and ITBs</b> .....		

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1220 South St. Francis Drive | Santa Fe, NM 87505  
[Webmaster](#) | [EMNRD Legal Disclaimer](#)



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OCC - (Day 1) Produced Water Rule Making  
Hearing

Meeting number: 967 682 712

Password: R4SpDXpeu49

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m6572062a0ff431b8f7a815b6edf74af0>

Join by phone

+1-408-418-9388 United States Toll

Access code: 967 682 712

#### **July 31 (IF NECESSARY):**

OCC - (Day 2) Produced Water Rule Making  
Hearing

Meeting number: 963 288 479

Password: ZjiqP9PET32

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m2854bda11fb429c3fd553e90c6707a8f>

Join by phone

+1-408-418-9388 United States Toll

Access code: 963 288 479

For information on how to participate in the hearing please contact the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458 or visit the OCD's website at <http://www.emnrd.state.nm.us/ocd>. Pursuant to NMAC 19.15.3.8(C), the Commission will issue a Procedural Order specifying additional rules for the hearing as outlined below. The Procedural Order may be obtained from the Commission Clerk, Florene Davidson at

[florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/oed>.

**Proposed Modifications, Technical Testimony, and Cross Examination.** Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on July 17, 2020. Additionally, all technical testimony shall be presented to the Commission in writing and shall be filed with the Commission no later than 5:00 p.m. on July 17, 2020. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or electronic mail to [OCD.Hearings@state.nm.us](mailto:OCD.Hearings@state.nm.us). Any person who presents technical testimony in writing shall attend the hearing online or via telephone and will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

**Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony. Any person that wishes to present oral non-technical testimony to the Commission shall notify the Commission Clerk, Florene Davidson by first class or electronic mail at 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) no later than 5:00 p.m. on July 29, 2020. In order to ensure that all participants are able to participate in the hearing, notifications to the Commission Clerk shall include at least a name and telephone number of the person intending to present non-technical testimony. Any exhibits that will be offered in conjunction with non-technical testimony must be sent via electronic mail to the Commission Clerk, Florene Davidson, at the above email address no later than 5:00 p.m. on July 29, 2020. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

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**Persons with Disabilities.** If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than July 17, 2020.

**Technical Information.** There is no technical information for the proposed rule.

 Rule Hearing

**Amendment of Oil Conservation Commission Rules Regarding Produced Water**

+ Follow

New Note

Change Owner

Edit

▼

Related

Details

SSP Rule Hearing Name

Amendment of Oil Conservation Commission Rules Regarding Produced Water

Agency

[Energy Minerals and Natural Resources Department \(/lightning/r/0014100000Am09uAAB/view\)](/lightning/r/0014100000Am09uAAB/view)

Proposed Rule Summary

The New Mexico Oil Conservation Division (OCD) proposes to (1) amend 19.15.2.7 NMAC to conform the definition of “produced water” with the definition found in the Oil and Gas Act, NMSA 1978, §70-2-33(K) (2019); (2) amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable, or recycled produced water; and (3) amend 19.15.34 NMAC to conform the language in 19.15.34 NMAC to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water.



Purpose (Brief) ⓘ

The proposed rule amendments implement the changes in produced water management and authority enacted by House Bill 546 (Laws 2019, chapter 197) in the 2019 Legislature.

Purpose

The proposed rule amendments implement the changes in produced water management and authority enacted by House Bill 546 (Laws 2019, chapter 197) in the 2019 Legislature.

Owner

 [Cheryl Bada \(/lightning/r/00541000005ESxhAAG/view\)](/lightning/r/00541000005ESxhAAG/view) 

▼ Information to Constituents

Hearing Start Date and Time

7/30/2020 9:00 AM

Hearing End Date and Time

Public Hearing Location

The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on July 30, 2020 online and via telephone. The hearing may be continued to the following day(s) if not completed. The hearing will be held via Webex Meeting platform.

How To Participate

The public meeting can be accessed by using the following link and/or meeting information:

July 30

OCC - (Day 1) Produced Water Rule Making Hearing

Meeting number: 967 682 712

Rule Hearing

**Amendment of Oil Conservation Commission Rules Regarding**

**Produced Water**

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m6572062a0ff431b8f7a815b6edf74af0> (<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m6572062a0ff431b8f7a815b6edf74af0>)

+ Follow

New Note

Change Owner

Edit

▼

Join by phone

+1-408-418-9388 United States Toll

Access code: 967 682 712

July 31 (IF NECESSARY):

OCC - (Day 2) Produced Water Rule Making Hearing

Meeting number: 963 288 479

Password: ZjiqP9PET32

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m2854bda11fb429c3fd553e90c6707a8f> (<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m2854bda11fb429c3fd553e90c6707a8f>)

Join by phone

+1-408-418-9388 United States Toll

Access code: 963 288 479

For information on how to participate in the hearing please contact the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) (<mailto:florene.davidson@state.nm.us>) or (505) 476-3458 or visit the OCD's website at <http://www.emnrd.state.nm.us/oecd> (<http://www.emnrd.state.nm.us/oecd>). Pursuant to NMAC 19.15.3.8(C), the Commission will issue a Procedural Order specifying additional rules for the hearing as outlined below. The Procedural Order may be obtained from the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) (<mailto:florene.davidson@state.nm.us>) or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/oecd> (<http://www.emnrd.state.nm.us/oecd>).

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How To Obtain Copy of Proposed Rule

The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) (<mailto:florene.davidson@state.nm.us>) or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/oecd> (<http://www.emnrd.state.nm.us/oecd>).

Rule Hearing Contact Name ⓘ

Florene Davidson

Rule Hearing Contact Email ⓘ

[florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) (<mailto:florene.davidson@state.nm.us>)

Rule Hearing Contact Phone Number ⓘ

(505) 476-3458 (tel: (505) 476-3458)

When Are Comments Due

7/30/2020 9:00 AM

How to Submit Comments



Oral Comments. Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony. Any person that wishes to present oral non-technical testimony to the Commission shall notify the Commission Clerk, Florene Davidson by first class or electronic mail at 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) (mailto:florene.davidson@state.nm.us) no later than 5:00 p.m. on July 29, 2020. In order to ensure that all participants are able to participate in the hearing, notifications to the Commission Clerk shall include at least a name and telephone number of the person intending to present non-technical testimony. Exhibits to be offered at the hearing must be sent via electronic mail to the Commission Clerk, Florene Davidson, at the above email address no later than 5:00 p.m. on July 29, 2020. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

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Related Links

Link to Rule Explanatory Statement


Link to Rule Corrections

Related New Mexico Register Publications


Administrative Code

NMAC 19.15.2.7;NMAC 19.15.16.21;NMAC 19.15.34

Created By

 Cheryl Bada (/lightning/r/00541000005ESxhAAG/view),  
5/22/2020 4:46 PM

Last Modified By

 Cheryl Bada (/lightning/r/00541000005ESxhAAG/view),  
5/22/2020 4:47 PM

Refresh

Update Descriptions

FILE NAME	FILE TYPE	LINK
OCC Hearing Notice Produced Water Rule	PDF	<a href="https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176De/37D9MXjhTI8WJVxRL4T.cTdVh">View (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176De/37D9MXjhTI8WJVxRL4T.cTdVh)</a>
Description: <input type="text"/>		
19.15.34 Proposed Amendments	PDF	<a href="https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176Df/PwppZz2Ehhu_8GFWGKdghK">View (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176Df/PwppZz2Ehhu_8GFWGKdghK)</a>
Description: <input type="text"/>		
Application for Rulemaking Produced Water	PDF	<a href="https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176Dj/tPvznNsF2LWqThbwfrz4_Prdnt">View (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176Dj/tPvznNsF2LWqThbwfrz4_Prdnt)</a>
Description: <input type="text"/>		
19.15.2.7(P) Proposed Amendments	PDF	<a href="https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176Dk/j3BZeykSLAnMEP9y.avawoeWf">View (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176Dk/j3BZeykSLAnMEP9y.avawoeWf)</a>
Description: <input type="text"/>		
19.15.16.21 Proposed Amendments	PDF	<a href="https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176DI/3MSIpJ_tW4BhIhnQ5trbfvhlC">View (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M00000176DI/3MSIpJ_tW4BhIhnQ5trbfvhlC)</a>
Description: <input type="text"/>		

Citations and Administrative codes

CITATIONS

NMSA 1978, §

+ Add


Save

Clear

ADMINISTRATIVE CODES

NMAC

+ Add

 NMAC 19.15.2.7

- NMAC 19.15.16.21
- NMAC 19.15.34

Save

Clear

Activity

Rule Hearing

Amendment of Oil Conservation Commission Rules Regarding Produced Water

+ Follow

New Note

Change Owner

Edit

- New Event
- New Task
- Log a Call
- More

Set up an event...

Add

Filters: All time • All activities • All types



Refresh • Expand All • View All(/runtime\_sales\_activities/activityViewAll.app?parentRecordId=a042M00000eJ1TxQAK)

Upcoming & Overdue

No next steps.  
To get things moving, add a task or set up a meeting.

No past activity. Past meetings and tasks marked as done show up here.

State of New Mexico  
Energy, Minerals and Natural Resources Department

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**Michelle Lujan Grisham**  
Governor

**Sarah Cottrell Propst**  
Cabinet Secretary

**Todd Leahy, JD, PhD**  
Deputy Cabinet Secretary

**Bill Brancard, General Counsel**  
Office of General Counsel



May 22, 2020

Small Business Regulatory Advisory Commission c/o Ms. Johanna Nelson  
New Mexico Economic Development Department  
1100 St. Francis Drive  
Santa Fe, New Mexico 87505  
Johanna.Nelson@state.nm.us

*Sent via e-mail*

RE: Proposed Amendments to 19.15.2.7, 19.15.16, and 19.15.34 NMAC

Dear Chair and Members of the Small Business Regulatory Advisory Commission;

The Energy, Minerals and Natural Resources Department, Oil Conservation Division (OCD), hereby gives notice, pursuant to the Small Business Regulatory Relief Act, NMSA 1978, Section 14-4A-1, *et seq.*, that OCD has petitioned the Oil Conservation Commission for amendments to amend 19.15.2.7 NMAC to conform the definition of "produced water" with the definition found in the Oil and Gas Act, NMSA 1978, §70-2-33(K) (2019); (2) amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable, or recycled produced water; and (3) amend 19.15.34 NMAC to conform the language in 19.15.34 NMAC to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water..

The Oil Conservation Commission is scheduled to hold a hearing on the proposed amendments on July 30 and 31, 2020. A copy of the proposed amendments and hearing notice are included for your convenience.

If you have any questions or concerns about the proposed amendments, please contact me at (505) 476-3200 or [cheryl.bada@state.nm.us](mailto:cheryl.bada@state.nm.us).

Sincerely,

A handwritten signature in cursive script, reading "Cheryl L. Bada".

Cheryl L. Bada  
Deputy General Counsel

Exhibit E

**From:** [Nelson, Johanna, EDD](#)  
**To:** [Bada, Cheryl, EMNRD](#)  
**Subject:** RE: Notice of Proposed Rulemaking Before the Oil Conservation Commission Produced Water Rule Amendments  
**Date:** Friday, May 22, 2020 4:19:51 PM

---

Received, passed it on to the group, thanks!

---

**From:** Bada, Cheryl, EMNRD  
**Sent:** Friday, May 22, 2020 4:14 PM  
**To:** Nelson, Johanna, EDD <Johanna.Nelson@state.nm.us>  
**Subject:** Notice of Proposed Rulemaking Before the Oil Conservation Commission Produced Water Rule Amendments

Ms. Nelson,

Please find attached for the Small Business Regulatory Advisory Commission, notice of the Energy, Minerals and Natural Resources Department, Oil Conservation Division's proposed amendments to the Oil Conservation Commission's rules concerning produced water. I have attached the notice of rulemaking and the proposed rule amendments with a letter to the Commission.

Cheryl L. Bada  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
1220 S. St. Francis Dr.  
Santa Fe, NM 87505  
[cheryl.bada@state.nm.us](mailto:cheryl.bada@state.nm.us)