

Memorandum of Understanding Between the State of New Mexico and the U.S. Environmental Protection Agency

Section 1: Purpose and Scope

This document is a Memorandum of Understanding (MOU) between the New Mexico Energy, Minerals and Natural Resources Department (NM EMNRD), the New Mexico Environment Department (NM ED), the New Mexico Office of the State Engineer (OSE), and the United States Environmental Protection Agency (EPA).

Recognizing the shared responsibilities of the parties to conserve and protect New Mexico's and the United States' natural resources, the parties enter into this MOU to facilitate greater collaboration and achieve greater success in the effort to balance economic opportunity, protection of human health, and resource conservation. In the spirit of cooperative federalism, the parties recognize that this balance cannot be fully realized by any single entity operating alone. Rather, the balance is achieved when states, in conjunction with affected communities, work together with the EPA to build partnerships rooted in trust and respect.

The scope of the MOU pertains to the regulation, permitting, and associated policy decisions related to the re-use, recycling, and beneficial use of waters originating from oil and natural gas activities (produced water).

Whereas, the NM EMNRD is a state agency with the responsibility of leading New Mexico's efforts to develop reliable supplies of energy and energy efficient technologies and practices; and

Whereas, the NM ED is a state agency with the responsibility of protecting and restoring the environment, and fostering a healthy and prosperous New Mexico for present and future generations; and

Whereas, the NM OSE is a state agency charged with administering the state's water resources, including the measurement, appropriation, and distribution of ground and surface water; and

Whereas, Governor Martinez identified in her 2015 Energy Policy & Implementation Plan the state's policy to encourage water conservation and reuse; and

Whereas, the EPA is a federal agency with the responsibility of protecting human health and the environment; and

Whereas, the EPA's strategic plan recognizes that investments in water infrastructure that spurs environmental benefits and economic growth is a top priority for the Agency; and

Whereas, the EPA's strategic plan recognizes the importance of fostering strong partnerships with states, which facilitates achieving water quality goals while supporting robust economic growth; and

Whereas, the parties to this MOU recognize that regulatory and permitting certainty, achieved through federal and state collaboration, can help achieve positive economic and environmental outcomes for all stakeholders.

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Section 2: Definitions:

Effective date means the date the document is fully executed by all parties.

Recycled water is any water that is generated from an oil or natural gas well, undergoes significant treatment, and is used again in an oil or natural gas well prior to disposal in an underground injection well.

Renewable water is water that is generated from an oil or natural gas well that undergoes treatment and is added to the hydrologic cycle as opposed to disposed of in an underground injection well.

Re-use water is any water that is generated from an oil and natural gas well, undergoes minimal treatment, and is used again in an oil or natural gas well prior to disposal in an underground injection well.

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Section 3: Authorities and Limitations

1. Nothing in this MOU alters the statutory authorities or responsibilities of any party.
2. This MOU does not supersede existing agreements or restrict any future agreements between any of the parties with each other or any other entity.
3. This MOU does not, in and of itself, obligate any party to expend funds. Any commitments made pursuant to this MOU are subject to the availability of appropriated funds. Any endeavor involving reimbursement, contribution, or financial assistance between the parties to this MOU will be handled according to applicable laws, regulations, and procedures, including policies relating to competition for contracts and assistance agreements, and subject to separate agreements. No party will submit a claim for compensation to another party for activities carried out pursuant to this MOU.
4. This MOU is not legally binding on any of its parties and does not create any rights or benefits, substantive or procedural, enforceable at law or in equity by any person against any party to the MOU.
5. The EPA enters into this MOU pursuant to section 104 of the Clean Water Act, section 103 of the Clean Air Act, section 8001 of the Solid Waste Disposal Act, and section 102(2)(G) of the National Environmental Policy Act.
6. Under Federal ethics rules, the EPA may not endorse products or services provided by private entities. Nothing in this MOU constitutes an endorsement by any party of the products, services, and/or fundraising activities of another party. The NM EMNRD and NM ED agree not to make statements to the public at workshops and meetings, promotional literature, on its web sites or through other media that imply that EPA endorses its products or services. In addition, NM EMNRD and NM ED agree not to make statements that imply that EPA supports state efforts to raise public or private funds. Any statements or promotional materials prepared by the parties that describe this MOU must be approved in advance by EPA.

Section 4: Responsibilities

1. The parties agree to form a collaborative workgroup to explore the regulatory, permitting, and policy issues associated with the re-use, recycling, and beneficial use of waters originating from oil and natural gas activities.
2. The workgroup will undertake the development of a white paper related to renewable water opportunities under state and federal law in New Mexico. The white paper will: (a) synthesize the regulatory and permitting landscape related to renewable water; (b) identify data gaps/policy gaps; (c) recommend possible uses of renewable water; and (d) to the extent process or other improvement opportunities are identified, make recommendations for those improvements t.
3. The workgroup will finalize the white paper related to renewable opportunities under state and federal law in New Mexico within six months of the effective date of this MOU.
4. In addition to the white paper, the workgroup will meet on a regular and ad hoc basis, as necessary, focusing on issue-oriented regulatory, permitting, and policy issues that may result from opportunities arising within New Mexico to manage produced water.
5. On a quarterly basis, the signatories of the MOA will convene a meeting of the workgroup. The workgroup will provide updates to the signatories on the whitepaper and the status of any regulatory, permitting or policy interpretation or action(s).
6. Workgroup members shall consist of representatives from each of the parties to this MOU and shall be knowledgeable about the oil and natural gas sector, water law and policy, or associated regulatory, permitting, and policy topics.

Section 5: Duration and Signatures

This MOU is to take effect on the date the signatures of the parties are affixed to this MOU and remains in effect through the end of 2018. At that time this MOU will terminate unless the parties agree to extend it for an additional period. Any party may terminate its participation in this MOU by providing written notice to the other parties at least ninety (90) days prior to the desired termination date.

For the U.S. Environmental Protection Agency:

For the State of New Mexico:

Signature

David Ross
Assistant Administrator
Office of Water
U.S. EPA

Signature

Ken McQueen
Secretary
New Mexico Energy, Minerals and Natural
Resources Department

Date

Date

Signature

Anne Idsal
Regional Administrator
U.S. EPA Region 6

Signature

Butch Tongate
Secretary
New Mexico Environment Department

Date

Date

Signature

Tom Blaine
State Engineer
New Mexico Office of the State Engineer

Date