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ENCOURAGING REUSE/RECYCLING OF WATER FOR OIL AND GAS DEVELOPMENT

Policy Title	ENCOURAGING REUSE/RECYCLING OF WATER FOR OIL AND GAS DEVELOPMENT
Policy Number	ADM-01-11
Revision Date	12/15/2020
Policy Replacement Number	N/A
Purpose	To encourage reuse and recycling of water within the oil and gas industry by ending the State Land Office's practice of issuing fresh water easements or other instruments for commercial sale of fresh water for use in oil and gas development.
Statute Reference	NM Const. Art. XIII; §§19-1-1 et seq. NMSA 1978.
Appendices Form(s) Link	N/A

Table of Contents

PURPOSE.....	3
AUTHORITY.....	3
DEFINITIONS	3
APPLICABILITY	3
POLICY CONTENT AND GUIDELINES	3
FORMS AND PROCEDURES.....	4

PURPOSE

The purpose of this policy is to encourage reuse and recycling of water within the oil and gas industry by ending the State Land Office's practice of issuing fresh water easements or other instruments for commercial sale of fresh water for use in oil and gas development. The policy reflects the Commissioner's commitment to conservation of scarce fresh water resources to protect the long term value of state trust land for the Trust and for State Land Office beneficiaries. This policy supersedes ADM-01-10, "Protection of Domestic Quality Aquifers Under State Trust Lands" (1/25/2017).

AUTHORITY

NM Const. Art. XIII; NMSA 1978, §§19-1-1 et seq.

DEFINITIONS

Deep Non-Fresh Water means water containing not less than one thousand parts per million of dissolved solids that is produced from an aquifer, the top of which aquifer is at a depth of two thousand five hundred feet or more below the ground surface at any location at which a well is drilled, and that is regulated by the New Mexico Office of the State Engineer (OSE) pursuant to NMSA 1978, Sections 72-12-25 through 72-12-28.

Withdrawal (or withdrawn) means water removed from the ground or diverted from a surface water source for use.

APPLICABILITY

All applications for fresh water easements, agricultural leases, business leases, or other instruments, including renewals/reissues of existing instruments, acted on by the Commissioner after the date of this policy.

POLICY CONTENT AND GUIDELINES

1. The Commissioner will not renew/reissue or issue new easements or other instruments that authorize access to state trust lands to withdraw fresh water for third-party commercial sales for oil and gas development.
2. Use or occupation of state trust land to withdraw fresh water for commercial sales will be deemed a trespass unless such activities are conducted pursuant to an unexpired easement or other instrument permitting commercial sales (see #5 below).
3. This policy does not prohibit the issuance of new or renewal/reissue easements or other instruments to access state trust land to withdraw fresh water for other purposes, such as agriculture or domestic use.
4. This policy does not prohibit the issuance of new or renewal/reissue easements or other instruments to access state trust land to withdraw deep non-fresh water for third-party commercial sales for oil and gas development.

5. This policy does not affect the status of unexpired easements or other instruments that grant access to state trust land to withdraw fresh water from wells or surface water for commercial sales for oil and gas development. Such easements or instruments will remain in effect, provided grantees otherwise remain in compliance with easement/instrument terms, until their stated expiration date.

6. All applications for new or renewal/reissued water easements, business leases, or other instruments involving the withdrawal of water from state trust land for purposes other than third-party commercial sales for oil and gas development shall provide a description of the intended use for any water that will be withdrawn and shall indicate:

- a. any intended commercial, industrial, mining, secondary oil recovery, agricultural, domestic, or other uses;
- b. the expected location of use, distinguishing state trust land from federal, tribal, and fee lands;
- c. whether any water withdrawn will be sold and if so, the intended purchasers, uses, and projected revenue stream;
- d. whether the water produced will be used for a commercial product or resource to be extracted, produced, or sold; and
- e. the Office of the State Engineer file number and point of diversion numbers for any existing water rights that will be withdrawn.

FORMS AND PROCEDURES

All State Land Office leasing divisions shall revise their applications as needed to reflect this policy. Any applications for access to state trust land to withdraw fresh water for third-party commercial sales for oil and gas development shall be denied.

APPROVED:



Stephanie Garcia Richard
Commissioner of Public Lands

12/15/20
Date