

SLO RULE ORDER 2026-01

FINAL RULEMAKING ORDER APPROVING REPEAL AND REPLACE OF 19.2.7 NMAC, RELATING TO GEOTHERMAL RESOURCES LEASES

The Commissioner of Public Lands (“Commissioner”), executive officer of the New Mexico State Land Office (“SLO”), in accordance with law and a previously published Notice of Rulemaking, hereby repeals existing Part 19.2.7 NMAC, relating to geothermal resources leases, and promulgates and approves a replacement Part 19.2.7 NMAC, relating to geothermal resources leases, which is attached to this Order as Exhibit 1 and incorporated herein, and effective May 1, 2026.

Procedure. In accordance with applicable laws and administrative rules, the Commissioner published in the New Mexico Register, Vol. XXXVI, Issue 16 (August 26, 2025) a Notice of Public Hearing to consider repealing and replacing State Land Office Rule 19.2.7 NMAC relating to geothermal resources leases. The Notice informed the public where and how copies of the proposed replacement Rule could be obtained, stated that written comments regarding the rule could be submitted through September 26, 2025, and provided various options for how interested parties could submit written comments. The Notice also informed the public of the Commissioner’s public hearing on the proposed Rule, which was held on September 30, 2025. At the hearing, the State Land Office extended the public comment period for until October 3, 2025. In addition to publishing the Notice of Hearing in the New Mexico Register, the Commissioner (i) published the Notice of Hearing in the Albuquerque Journal on August 25, 2025; (ii) posted the Notice of Hearing on the State Land Office website (<https://www.nmstatelands.org/>) on August 25, 2025; (iii) posted the Notice of Hearing to the New Mexico Sunshine Portal (<https://ssp.nm.gov/>) on August 25, 2025; (iv) made it available at all State Land Office district offices on August 25, 2025; and (v) hand delivered it to the New Mexico Legislative Council on August 25, 2025 for distribution to the appropriate interim and standing legislative committees.

Legal Authority. Under the New Mexico Geothermal Resources Act, NMSA 1978 § 19-13-1 *et seq.* (the “Act”), the Commissioner is authorized to issue leases for the extraction and removal of geothermal resources from state lands, which includes all state trust lands. Under the Act, the Commissioner is directed and authorized to adopt such reasonable regulations as she may determine are necessary to carry out the provisions of the Geothermal Resources Act. *See* NMSA 1978 § 19-13-1. More generally, the New Mexico Constitution and statutes give the Commissioner jurisdiction over and broad authority with respect to management, care, custody, control and disposition of state trust lands. *See* N.M. Const., Art. XIII; NMSA 1978, § 19-1-1 *et seq.* The Commissioner is directed and authorized to make rules and regulations for the control, management, disposition, lease and sale of state trust lands. *See* NMSA 1978, § 19-1-1.

Comments. The Commissioner solicited public comment on the proposed repeal of existing Part 19.2.7 NMAC, relating to geothermal resources leases, and promulgation of a replacement Part 19.2.7 NMAC, relating to geothermal resources leases, beginning on August 25, 2025. Prior to the September 30, 2025 hearing, written comments were received, as summarized below. Additional oral comments were received at the September 30, 2025 hearing, where a few

questions were asked by the public and answers given by SLO staff, as reflected in the Hearing Officer's report.

Public Hearing. The September 30, 2025 public hearing was held in a hybrid format, i.e. an in-person hearing at the State Land Office building in Santa Fe, New Mexico, with a virtual (online) option allowing interested parties to observe and participate remotely. State Land Office Project Manager Elaine Heltman presided over the hearing and prepared the report summarizing the hearing, attached to this Order as Exhibit 2. SLO staff attended the hearing and provided information and answered questions from the public about the proposed repeal of the existing rule and the proposed replacement. Two interested parties appeared to provide in-person or virtual statements regarding the proposed Rule (one of which – Zanskar Geothermal & Minerals, Inc. – also provided written comments regarding the Rule).

Review and Synopsis of Public Comments. During the public comment period, the State Land Office received a total of seven written comments. A number of public comments covered similar topics and made similar points.

Clean Air Task Force ("CATF"). Comments submitted by CATF support requirements for carefully calibrated data sharing regarding geothermal activity on state trust lands to ensure that each geothermal project deepens collective understanding of a region's subsurface conditions, making future geothermal projects in that region less risky, while also allowing operators to maintain the confidentiality of data regarding new approaches and methodologies that would damage their business model and deter them from developing projects. CATF stated that the confidentiality of some proprietary information developed under an exploratory/due diligence lease should expire after a certain period of time:

Although proprietary information about developers' unique technologies, models, and other innovations should be kept confidential, data about the subsurface (e.g. geothermal gradient, rock type, etc.) should be kept confidential only for a sufficient period of time for developers to use that data to inform their projects. After sufficient time has passed, the State Land Office should consider whether such data retains its character as confidential information such that it may be disclosed consistent with NMSA § 19-1-2.1. Subsurface characterization data could reasonably be made public if, for example, no developer moves forward with a production lease on that land within a year from the end of the exploration lease. This compares favorably to the confidentiality provisions for oil and gas unit agreements at NMAC § 19.2.100.51 (six months or until the unit agreement is approved, whichever comes first). Disclosure of data in this way would balance developers' need to use data to inform their projects with a general need for more subsurface data to derisk geothermal exploration in New Mexico.

With regard to the proposed replacement rule requirement that an operator's operation plan include complete geological and engineering data and that the data will be kept confidential for a period of six months or until the plan is approved, CATF stated that requiring all this information to be shared is likely to reduce the incentive for innovative geothermal developers to site projects in New Mexico.

With regard to the proposed replacement rule requirement that competitive bidding be used in issuing geothermal leases (other than limited exploratory/due diligence leases), CATF stated that such a requirement:

would mean that geothermal developers might invest resources into evaluating a site under an exploration lease but fail to secure the production lease that would allow them to generate a return on their investment. Thus, the provision as written is likely to disincentivize geothermal development in New Mexico – especially development of innovative forms of geothermal energy in new areas. CATF recommends that the New Mexico State Land Office consider alternate leasing structures that would allow non-competitive production leasing of lands for which a developer already has an exploration lease, when possible. For example, developers could have the “right of first refusal” for an exploration lease, with a price determined based on prior lease prices in similar regions.

Entrada Energy, LLC (“Entrada”). Referring to the Act’s requirement that geothermal leases charge a base rent based on fair market value and a percentage rent as a based on gross revenue derived from the production, sale or use of geothermal resources, or the energy produced therefrom, at a value within the range that could be determined by the federal bureau of land management, *see* NMSA 1978, § 19-13-7(A)(2); 30 U.S.C. §1004 and 30 C.F.R. pts. 202, 206, 210, 217, and 218 (2025), comments submitted by Entrada stated that the replacement rule should include limits to the rate at which the base rent and percentage rent may be increased. According to Entrada, in the absence of a limit on increases will “likely to make lessees and their financial backers uncomfortable because a commissioner could raise rents and royalties by any amount at any time” and make SLO geothermal leases less competitive than federal leases. Entrada stated that federal rules prohibit the BLM from increasing rentals or royalties by more than 50% over the rental or royalties paid before readjustment. *See* 43 C.F.R. § 3210.14(b).

With regard to the proposed replacement rule provision allowing the Commissioner to condition approval of assignment of a geothermal lease on agreement to “such additional terms and compensation as the commissioner may deem in the best interests of the trust,” Entrada stated that:

Developers may be reticent to develop—and financiers may be hesitant to support—geothermal resource development where the ability to assign leases is unreservedly subject to the preferences of a Commissioner. The proposed language is also nebulous and provides no clear basis to developers of the conditions on which an assignment would be approved or denied. Moreover, such language opens the door to issues of any assignment denial being arbitrary and capricious, which the SLO should seek to proactively avoid. The proposed language regarding assignments introduces a level of uncertainty into the leasing process that would harm the state’s chances of obtaining applications from the most qualified developers because of the attendant risk of such nebulous language governing assignment of leases, thereby risking maximizing the potential benefits of leasing State Lands for geothermal resource development.

Entrada stated that the replacement rule should adopt BLM's approach to approving oil and gas lease assignments or transfers (*see* 43 C.F.R. pt. 3100) and set out clear enumerated criteria for the qualifications of assignees and transferees. *See* 43 C.F.R. § 3106.20 and 43 C.F.R. § 3102.10-.53. Entrada stated that the "objective factors" to be considered in approving an assignment could include (a) that the developer be in good standing with the SLO at the time of assignment or transfer; (b) that the assignment or transfer be of a minimum acreage; (c) that the developer has not been out of compliance for some period of time (such as 2 years) before the time of assignment; (d) that the assignee can meet all financial assurance requirements of the SLO; and (e) that the assignee be licensed to conduct business in New Mexico. According to Entrada, enumerating such criteria would ensure "regulatory fairness" and "transparency" and reduce the SLO's regulatory oversight burden and expense.

Geothermal Rising. Comments submitted by Geothermal Rising supported updating the SLO's rule for geothermal leases to align with statutory changes and operational needs, including the introduction of an exploratory/due diligence lease option, and explicit provisions to coordinate with EMNRD/ECAM for geothermal development on state trust lands. Geothermal Rising stated that an operator who holds an exploration lease should have exclusive rights to a longer term lease. Geothermal Rising stated that the Commissioner should update the designation of known geothermal resources fields using current mapping, heat flow data, and other recent resource assessment tools. With regard to lease sale auctions, Geothermal Rising encouraged the use of Energynet.com and stated that the replacement rule should address the refunding of deposits made by unsuccessful bidders and the bases that would justify rejecting all bids made in a lease sale auction. With regard to the replacement rule provisions regarding rent and royalties, Geothermal Rising stated that the SLO should establish a fair pricing model that provides a predictable framework, such as the BLM's structures, rather than tying rates to fluctuating market prices. With regard to the replacement rule provisions regarding submission and approval of operation plans, Geothermal Rising stated that there should be more confidentiality protection for sensitive data and proprietary models and exemption for low impact surface studies (providing several examples of the kind of work that should be exempted).¹

Oxy Low Carbon Ventures, 1PointFive, and Oxy USA Inc. (collectively, "Oxy"). Comments submitted by Oxy state that the replacement rule provision regarding percentage rent should specify rates matching the rates specified in BLM's regulations and form geothermal lease (*see* 43 CFR §§ 3211.17 – 3211.21); *viz.*, (i) for electricity generated but not sold in an arm's length transaction, 1.75% for the first ten years of production and 3.5% after the first ten years; and (ii) for arm's length transactions, 10% of the gross proceeds.

¹ Examples included (i) field-based, surficial mapping using hand tools; (ii) collection of rock, soil, spring, gas, or mineral specimens using hand tools, including sampling existing wells without modification or drilling; (iii) shallow ground-temperature or water sampling collection using handheld or small off-highway vehicle-mounted direct-push probes (rods less than 2 inch diameter) using existing roads, disturbed areas, open clearings or off-road where such vehicle use is consistent with land-use plans; (iv) temporary, near-surface geophysical surveys (installed to depths less than 10 feet), including seismic, electromagnetic, and potential-field methods, excluding the use of off-road sources and explosive sources; (v) drone or airplane based remote sensing surveys.

TLS Geothermics (“*TLS*”). Comments submitted by *TLS* stated that the replacement rule should allow the holder of an exploratory/due diligence lease that demonstrates the existence of a geothermal resource to require the sale of a long-term lease in which it has a right of first refusal and a credit for documented expenditures.

XGS Energy, Inc. (“*XGS*”). Along with other commenters, comments submitted by *XGS* stated that the holder of an exploratory/due diligence lease should be permitted to obtain a long-term lease without going through a competitive bid process. Addressing definitions in the proposed replacement rule, *XGS* stated that (i) the definition of “geothermal resources” should clarify whether it includes only heat or also minerals in solution; (ii) references to “known geothermal resources fields” should use the word “area” instead of “fields” to match the terminology used by the BLM² and other states; (iii) the definition of “contiguous” should specify whether parcels connected only at a corner qualify. Addressing lease applications, *XGS* stated that the replacement rule should eliminate the notarization requirement and address refunding of deposits made by unsuccessful bidders. With regard to lease sales, *XGS* stated that the replacement rule should (i) address whether a fee will be required to nominate lands for lease; and (ii) require at least 30 days notice for a lease sale. With regard to rent and royalties, *XGS* stated that the Commissioner should not be permitted to raise base rent after discovery of a geothermal resource and that the replacement rule should set rent and royalty rates that match BLM rates; the rationale being that certainty and predictability encourage development and parity with BLM makes state trust lands competitive with federal lands. *XGS* stated that the proposed replacement rule provision allowing the Commissioner to require a lessee to produce and market other geothermal resources if discovered should be limited to resources that can be produced and marketed with the lessee’s existing technology and business model. *XGS* stated that the replacement rule should provide for maintaining the confidentiality of proprietary information in operation plans beyond six months after approval of the plan and coordination between SLO and EMNRD/ECAM with regard to information and reports submitted to each agency. *XGS* stated that the replacement rule provision deeming a well abandoned after 180 days of non-use should allow for consideration of operational practices that anticipate future use of the well and allow an operator to request an exemption.

Zanskar Geothermal & Minerals, Inc. (“*Zanskar*”). Along with other commenters, comments submitted by *Zanskar* stated that the holder of an exploratory/due diligence lease should be permitted to obtain a long-term lease without going through a competitive bid process outside of known geothermal resource fields where the lessee has demonstrated “with drilling and in-situ/exploration data, the presence or reasonable potential” of a geothermal resource. *Zanskar* provided detailed information regarding the investments required to explore for geothermal resources and the ways in which such investment is encouraged and not discouraged if the operator can obtain a long-term lease without going through a competitive bid process. According to *Zanskar*:

Since the 2005 Energy Policy Act required that all geothermal exploration discoveries go to public auction,^[3] there have been no large, privately funded

² See 43 CFR § 3200.1 (“Known geothermal resource area (KGRA) means an area where BLM determines that persons knowledgeable in geothermal development would spend money to develop geothermal resources.”).

³ See Pub. L. 109-58 (Aug. 8, 2005), § 222, 20 U.S.C. § 1003.

exploration campaigns on BLM lands besides Zanskar. The net effect is that the number of geothermal discoveries since 2005 has declined by an order of magnitude relative to discoveries made prior to 2005.

Zanskar supported the use of ECAM/EMNRD permitting as a means of compliance with the non-diminishment standard in known geothermal resources fields, but urged the SLO to support a repeal of the statutory non-diminishment standard as incompatible with the essential nature of geothermal power plants. Zanskar also urged an update to the Commissioner's designation of known geothermal resource fields. In this regard, Zanskar recommended (i) using recent mapping, heat flow data, and more recent resource assessments conducted by the New Mexico Bureau of Geology and other state or federal agencies; and (ii) defining the boundaries of a known geothermal resources field using specific criteria such as a where subsurface heat flux (a) exceeds twice the regional or background heat flux, (b) exceeds the regional mean by at least two standard deviations, or (c) is contoured by the 90th percentile of heat flux measurements within the relevant geologic province.

Zanskar stated that the replacement rule should allow certain types of low-impact exploration activities without a permit or lease and, where there is a lease, without an approved operation plan, noting BLM rules allowing certain "casual uses."⁴ Zanskar stated that these uses should include (i) field-based, surficial mapping using hand tools; (ii) collection of rock, soil, spring, gas, or mineral specimens using hand tools, including sampling existing wells without modification or drilling; (iii) shallow ground-temperature or water sampling collection using handheld or small off-highway vehicle-mounted direct-push probes (rods less than 2-inch diameter) using existing roads, disturbed areas, open clearings or off-road where such vehicle use is consistent with land-use plans; (iv) temporary, near-surface geophysical surveys (installed to depths less than 5 feet), including seismic, electromagnetic, and potential-field methods, excluding the use of off-road sources and explosive sources; (v) drone- or airplane-based remote sensing surveys.

Concurrent with the publication of the final replacement rule, the State Land Office will post to its website the text of the final rule; this Rulemaking Order; a copy of all comments received during the public comment period; and the Hearing Officer's Report from the September 30, 2025 public hearing. These materials will be available on the agency's website at least through June 30, 2026, and will thereafter be available on request.

Responses to Comments.

⁴ See 43 CFR § 2881.5 ("Casual use [not requiring a BLM right-of-way permit] means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. Examples of casual use include: Surveying, marking routes, and collecting data to prepare applications for grants or [temporary use permits]."); 43 CFR § 3150.0-5 ("Casual use [under regulations pertaining to oil and gas exploration] means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicular movement except over established roads and trails are casual use.").

1. *Repeal of the existing rule.* None of the comments received supported maintaining the existing rule as is. To the extent that the proposed replacement rule modifies provisions in the existing rule or contains provisions in addition to the existing rule, none of the comments supported maintaining the existing rule without modification. The Commissioner notes that the 2013 revisions to the Act essentially require a substantial change in the existing rule that supports repealing and replacing the rule.

2. *Lease sales.* With regard to comments regarding the auctioning of geothermal leases, the Commissioner notes that, in areas designated as known geothermal resources fields, the Act requires that a lease, if any, must go to “the highest responsible qualified bidder under rules prescribed by the [C]ommissioner,” which rules “shall include notice to the public of the terms and conditions of the sale and procedures of conducting the sale, including the receipt of written bids on a competitive basis and the issuing of the lease.” NMSA 1978 § 19-13-6(B). Thus, to that extent, competitive bidding is required by statute.

With regard to the issuance of geothermal leases outside of areas designated as known geothermal resources fields, the Enabling Act auction requirement⁵ provides the baseline for most State Land Office leasing. Thus, while the Act does not require lease auctions outside of known geothermal resources fields, there are transparency and other benefits from auctioning leases, which have been realized in the context of oil and gas leasing⁶ and lease for wind and solar renewable energy projects. Thus, the replacement rule includes an auction requirement for all geothermal leases, but allows for a due diligence lease (which may be issued without an auction) to incorporate the ability of the lessee under a due diligence lease to match the highest bid made for a subsequent geothermal lease on the same land, subject to terms and conditions that may be included in the due diligence lease.

3. *Nominations and notice of lease sales.* The process for receiving nominations and giving notice of lease sales is expected to track the practice followed for oil and gas leases. That practice does not involve charging a fee for nominations and does not involve a minimum of 30 days notice of a lease sale, and the Commissioner does not see the necessity or advisability of setting restrictions by rule given the experience with regard to oil and gas leases.

4. *Return of deposits made by unsuccessful bidders.* In response to comments requesting a provision requiring the return of deposits made by applicants to whom a lease is not issue, the replacement rule will include such a provision.

5. *Geothermal lease rentals.* Under the Act, a geothermal lease must include provision for (i) base rent “based upon fair market value at the time of leasing”; and (ii) percentage rent based on “gross revenue derived from the production, sale or use of geothermal resources, or the energy produced therefrom, under the lease as determined by the commissioner, who shall not determine a value below or above a range that could be determined by the federal bureau of land management, based on fair market value of the geothermal resource or use of the geothermal

⁵ See Act of June 20, 1910, 36 Stat. 557, § 10 (requiring public auction for sale or lease of state trust lands for a term in excess of five years).

⁶ Statute and rule require competitive bidding on essentially all State Land Office oil and gas leases. See NMSA 1978 § 19-10-16; 19.2.100.10 NMAC.

resource at the time of leasing.” NMSA 1978 § 19-13-7(A). In addition, “The commissioner may require an escalation of the royalty or percentage rent over time.” *Id.* The proposed replacement rule largely re-stated what is in the Act. Following a practice that has been developed under State Land Office leases for wind energy projects and solar energy projects, the proposed replacement rule allows for a provision in the geothermal lease setting an initial base rent that would apply until the lease becomes operational, at which point an operations phase base rent would apply. The Act largely addresses the concerns of commenters seeking to have rent set in accordance with BLM regulations and practices. Comments seeking further limitations on rent or the escalation of rent are better addressed on a lease-by-lease basis than through a one-size-fits-all rule. It should be noted that the rule provides for the rent and rent escalation to be set forth in the lease as issued and does not contemplate re-setting the rent if and when there is a commercially viable operation.

6. *Lease assignments.* The Act provides that a geothermal lease “may be assigned, transferred or sublet with the approval of the commissioner. NMSA 1978, § 19-13-21. Under the existing rule, a geothermal lease may be assigned, in whole or in part, “[s]ubject to such conditions as the commissioner may require”; provided that “no assignment of an undivided interest in a lease or any part thereof, or any assignment of less than a legal subdivision or tract” shall be approved. The proposed replacement rule incorporated additional restrictions on assignments from the rule governing oil and gas leases. *See* 19.2.100.41 NMAC. None of the comments addressed the specific restrictions on assignments. However, comments submitted by Entrada suggest that the replacement rule should eliminate the open-ended discretion of the Commissioner to reject or place conditions on approval of an assignment of a geothermal lease and instead adopt BLM’s approach to approving oil and gas lease assignments or transfers (see 43 C.F.R. pt. 3100), which set out clear enumerated criteria for the qualifications of assignees and transferees. No statute or rule governing any type of State Land Office lease sets forth criteria that, if met, require approval of an assignment. The State Land Office’s experience with oil and gas leases and other types of leases indicates that the Commissioner’s discretionary authority with regard to assignments appropriately protects the SLO’s interests and does not inhibit leasing or lead to excessive administrative burden or expense. Where project financing requires more certainty with regard to the assignability of a lease, those concerns have been and can be addressed on a lease-by-lease basis.

7. *Designation of known geothermal resources fields.* In accordance with the Act, the proposed replacement rule contained a section regarding the Commissioner’s designation of known geothermal resources fields in accordance with Section 19-13-6 NMSA 1978. Prior to the 2013 amendments to the Act, the effect of a designation of known geothermal resources field was to require a lease auction when issuing a lease including land within the known geothermal resources field. In accordance with the 2013 amendments to the Act, the proposed replacement rule section implements the Act’s requirement that a geothermal resources lease of land within a known geothermal resources field for use of the geothermal resource as a renewable energy resource must require that the geothermal resource not be diminished beneath applicable natural seasonal fluctuations in the measurable quantity, quality or temperature of the area. The establishment of specific criteria or standards for the Commissioner to consider in designating known geothermal resources fields is largely outside the scope of the current rulemaking. However, the Commissioner does intend to confer with the State Geologist in accordance with Section 19-13-6 regarding a possible revision of Order No. 79-1 designating known geothermal resources fields. In doing so, the Commissioner will confer with the State Geologist regarding

appropriate criteria and standards for making designations, taking into consideration the comments submitted in response to the proposed replacement rule.

8. *Confidentiality.* The proposed replacement rule included a provision for maintaining the confidentiality of certain information or data obtained by the lessee under a due diligence lease and geological and engineering data submitted in support of a geothermal lease operation plan (for a period of six months or until the operation plan is approved). In response to the comments, the replacement rule modifies the confidentiality provision pertaining to due diligence leases to allow disclosure of confidential information or data concerning the nature or extent of the geothermal resource one year after the due diligence lease terminates if an application for a geothermal lease for the same lands has not been received. The replacement rule also allows the Commissioner to maintain the confidentiality of geological and engineering data submitted in support of a geothermal lease operation plan for a longer period of time upon request.

9. *Contiguity.* The replacement rule's definition of "contiguous," which carries over from the rule to be repealed, adequately conveys that parcels touching at the corners are contiguous.

10. *Low impact uses.* Unlike BLM, the SLO has an obligation to ensure that it receives true value compensation for essentially any occupation and use of state trust lands to ensure that it benefits the land beneficiary. A person seeking to engage in most, if not all, of the "casual" uses identified by Zanskar can, with little cost and administrative burden, obtain a right of entry or geophysical permit, and more extensive use is available under a due diligence lease. Therefore, the replacement rule does not include any provision allowing "casual" use of state trust lands without a lease or permit.

11. *Requirement to market other available geothermal resources.* Under the Act, "Where it is determined by the commissioner that the production or use of geothermal energy is also susceptible of economically producing other of the geothermal resources in commercially valuable quantities, and a market therefor exists, production of the other geothermal resources may be required by the commissioner." NMSA 1978 § 19-13-4. The existing rule and the proposed replacement rule re-stated that authority without elaboration. In response to the comment submitted by XGS, the replacement rule states that this authority will be exercised where it is consistent with the existing operations plan.

12. *Decommissioning of inactive wells.* The proposed replacement rule included closeout and reclamation requirements for discontinued operations and the plugging of inactive wells deemed to be abandoned, with notice and an opportunity to respond. The final replacement rule requires that a showing a non-abandonment include an engineering or operations plan and operations conducted in accordance with the engineering or operations plan. While the proposed replacement rule allowed for the plugging requirement to be waived where appropriate, a comment submitted by XGS sought further allowance for consideration of operational practices that anticipate future use of the well. The general waiver authority in the replacement rule allows consideration of a variety of factors and circumstances and should be sufficient to address the concern. It should be noted that the replacement rule is intended to be consistent with and complement regulations adopted and enforced by the Energy Conservation and Management division of the Energy, Minerals and Natural Resources Department (EMNRD/ECAM).

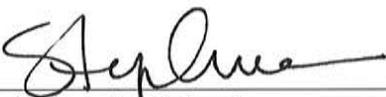
Reasons for Repeal of the Existing Rule and Adoption of the Replacement Rule. The 2013 amendments to the Act (i) substantially changed the definition of “geothermal resources” to exclude heat that is not in excess of 250° F; (ii) imposed a requirement that renewable energy leasing of geothermal resources not diminish the resource within known geothermal resources fields; (iii) and substantially changed the lease requirements as to rent and royalties. *See* NM Laws 2013, ch. 120. In addition, State Land Office staff have advised that various geothermal lease procedures and standards contained in the existing rule are outdated and in need of reforming, and those recommendations were supported by comments submitted by potential lessees and other industry groups. Having reviewed the staff recommendations and comments received in response to the proposed rulemaking, the Commissioner finds that repeal of the existing rule and adoption of a replacement rule is essentially required by the 2013 amendments to the Act and is otherwise warranted in order to ensure that leases allowing occupation and use of state trust lands for the purpose of extracting or using geothermal resources are issued in a manner and on terms and conditions serving the best interests of the Enabling Act trust and its beneficiary institutions.

Final Rule. The final Rule incorporates all stylistic and formal requirements of the State Records Administrator set forth in 1.24.10 NMAC. The new Rule as proposed was modified as a result of comments received and further deliberation on the part of SLO, as described in this Order and as attached.

FOR THE ABOVE REASONS, AND IN ACCORDANCE WITH LAW, IT IS HEREBY ORDERED:

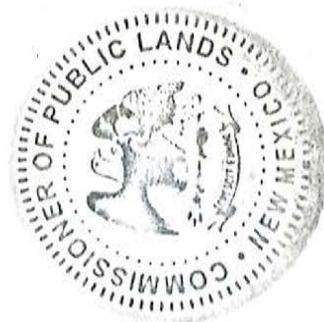
Existing Part 19.2.7, relating to geothermal resources leases, is hereby repealed.

A replacement Part 19.2.7, relating to geothermal resources leases, is hereby adopted as shown in Exhibit 1 attached to this Order, incorporated herein, and effective May 1, 2026.



Stephanie Garcia Richard
Commissioner of Public Lands

Dated: March 5, 2026



TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 7 RELATING TO GEOTHERMAL RESOURCES LEASES

19.2.7.1 ISSUING AGENCY: Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P. O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.
[19.2.7.1 NMAC - Rp, 19.2.7.1 NMAC, 5/1/2026]

19.2.7.2 SCOPE: This rule pertains to state lands (as defined in the Geothermal Resources Act, Chapter 19, Article 13 NMSA 1978, as amended) which are subject to the jurisdiction, custody and control of the commissioner of public lands, and governs the leasing of geothermal resources on state lands and leases entered into subsequent to the date of this rule.
[19.2.7.2 NMAC - Rp, 19.2.7.2 NMAC, 5/1/2026]

19.2.7.3 STATUTORY AUTHORITY: The commissioner's jurisdiction over and authority with respect to management, care, custody, control and disposition of state trust lands is found in N.M. Const., Art. XIII, and in Section 19-1-1 NMSA 1978. In accordance with N.M. Const., Art. XXIV, §1 (pertaining to the issuance of leases and other contracts for the development and operation of geothermal steam and waters on state trust lands), the legislature enacted the Geothermal Resources Act (Chapter 19, Article 13 NMSA 1978, as amended) authorizing the commissioner of public lands to issue leases containing terms and conditions not inconsistent with the provisions of the Geothermal Resources Act and which the commissioner determines to be in the best interest of the state. The authority to promulgate this rule is found in Sections 19-1-2 and 19-13-25 NMSA 1978.
[19.2.7.3 NMAC - Rp, 19.2.7.3 NMAC, 5/1/2026]

19.2.7.4 DURATION: Permanent.
[19.2.7.4 NMAC - Rp, 19.2.7.4 NMAC, 5/1/2026]

19.2.7.5 EFFECTIVE DATE: May 1, 2026, unless a later date is cited at the end of a section.
[19.2.7.5 NMAC - Rp, 19.2.7.5 NMAC, 5/1/2026]

19.2.7.6 OBJECTIVE: The objective of 19.2.7 NMAC is to provide for the orderly and lawful administration and the appropriate development of geothermal resources on state trust lands in accordance with the Geothermal Resources Act.
[19.2.7.6 NMAC - Rp, 19.2.7.6 NMAC, 5/1/2026]

19.2.7.7 DEFINITIONS: The following terms as used in this rule shall have the meaning here indicated, unless otherwise clearly stated in the text:

A. "Confidential information" – Confidential contract, reserve data, or other confidential information clearly and appropriately marked as confidential and submitted to the state land office subject to Section 19-1-2.1 NMSA 1978.

B. "Contiguous" - Adjoining or touching at a point or along at least one common side or boundary.

C. "Due diligence lease" – A lease issued pursuant to Subsection A of 19.2.7.11 NMAC.

D. "EMNRD/ECAM" - The energy conservation and management division of the energy, minerals and natural resources department or successor agency exercising authority under the Geothermal Resources Development Act (Chapter 71, Article 9 NMSA 1978, as amended).

E. "Geothermal lease" - A lease for the extraction and removal of geothermal resources from state trust lands or other use of geothermal resources from state trust lands.

F. "Geothermal resources" - The natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or which may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gasses, and steam, in whatever form, found below the surface of the earth, but excluding oil, natural gas (as defined in, Section 19-10-2 NMSA 1978, including carbon dioxide gas, helium gas, and hydrocarbon gas), hydrogen, and other hydrocarbon substances, and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, as may be used for the heating and cooling of buildings through an on-site geothermal heat pump or similar on-site system.

G. “Lessee” - The original geothermal lessee and the assignee of an assignment (other than a collateral assignment) duly approved and recognized by the commissioner in accordance with 19.2.7.29 NMAC.

H. “Land” - Includes all land owned by the state and subject to the jurisdiction, custody and control of the commissioner of public lands, including lands where the state owns and the commissioner of public lands exercises jurisdiction, custody and control over the mineral estate and such mineral estate includes the right to extract, remove or otherwise use the geothermal resources, regardless of whether state owns the surface estate.

I. “Legal subdivision” – Legal subdivision as designated by the U.S. public land survey system plats and New Mexico state land office tract books.

J. “Low temperature resources lease” – A lease issued pursuant to Subsection D of 19.2.7.11 NMAC.

K. “Open acreage” - Land not included in an existing geothermal lease and not withdrawn from leasing by the commissioner as shown on the tract books.

L. “Person” - Individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.

M. “Schedule of fees” - A list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

N. “Tract books” - Tract books kept and maintained at the New Mexico state land office for the purpose of recording geothermal leases, including automated or electronic versions.

O. “Well” - Any well for the discovery of geothermal resources or any well on lands producing or using geothermal resources or reasonably presumed to contain geothermal resources or otherwise extracting or using natural heat of the earth, including but not limited to an exploratory well, development well, monitoring well, injection well, disposal well, thermal gradient well, geothermal observation well, or low-temperature thermal well, whether drilled or operated pursuant to a permit issued by the energy, minerals and natural resources department or otherwise.

[19.2.7.7 NMAC - Rp, 19.2.7.7 NMAC, 5/1/2026]

19.2.7.8 APPLICATION FOR LEASE: An application for a geothermal lease may be filed for open acreage in a manner prescribed in these rules and under the Geothermal Resources Act.

[19.2.7.8 NMAC - Rp, 19.2.7.8 NMAC, 5/1/2026]

19.2.7.9 LANDS SUBJECT TO LEASE: An application for a geothermal lease may be considered when the lands are shown to be open acreage on the tract books. The commissioner may withhold a tract or tracts from leasing at any time before or after an application for a geothermal lease has been submitted. Alternatively, in lieu of a geothermal lease, the commissioner may provide for a compensatory agreement as to any tract or tracts. The commissioner may, in the commissioner’s sole discretion, include or exclude tracts from the final lands offered at any particular lease sale.

[19.2.7.9 NMAC - Rp, 19.2.7.9 NMAC, 5/1/2026]

19.2.7.10 REQUIREMENTS FOR APPLICATIONS:

A. Each application for geothermal lease shall be made upon forms to be prescribed by the commissioner, with an applicant signature acknowledged before an officer authorized to administer oaths. An application for geothermal lease accompanying a sealed bid shall be executed under oath by the applicant, or by the applicant’s agent or attorney, duly authorized in writing, or by an officer or attorney-in-fact of a corporation, if application is by a corporation, and must be accompanied by a non-refundable application fee as set forth in the schedule of fees and a deposit of the amount of the first year’s rental and bonus offered. Unless the commissioner has approved the applicant’s use of a non-certified exchange, payments shall be made in cash, electronic transfer, money order or certified check on a solvent bank. If a geothermal lease is not issued to the applicant, funds deposited by the applicant (but not the application fee) shall be refunded to the applicant.

B. A person seeking a due diligence lease to be issued in accordance with 19.2.7.11 NMAC shall submit an application specifically indicating that they are seeking a due diligence lease.

C. The applicant shall pay the application fee as set forth in the schedule of fees, which fee shall not be refunded.

[19.2.7.10 NMAC - Rp, 19.2.7.10 NMAC, 5/1/2026]

19.2.7.11 DUE DILIGENCE LEASE; LOW-TEMPERATURE RESOURCES LEASE:

A. Upon an application filed in accordance with Subsection B of 19.2.7.10 NMAC, the commissioner may issue a due diligence lease for up to five years allowing occupation and use of specified state trust lands for the sole and exclusive purpose of (i) exploring for the existence and location of geothermal resources; (ii) determining the extent and nature of geothermal resources; (iii) conducting other due diligence activities that do not involve extraction, removal or commercial use of geothermal resources. The lessee under a due diligence lease issued pursuant to this 19.2.7.11 NMAC may maintain as confidential any confidential information obtained as a result of its operations under the lease. If the lessee submits confidential information in accordance with Section 19-1-2.1 NMSA 1978, the commissioner and the commissioner's employees and agents shall hold such information confidential in accordance with the statute. If confidential information concerns the nature or extent of geothermal resources that may be extracted or used from the leased lands and at least one year has elapsed since the lease expired or terminated without the submission of an application under Subsection A or B. of 19.2.7.10 NMAC for a new lease as to some or all of the same lands, the state land office may disclose the confidential information.

B. The commissioner shall not issue more than one concurrent due diligence lease for the same land, and the commissioner shall retain discretion as to whether and when to issue a geothermal lease for any or all of the land included in a due diligence lease during and after the term of the due diligence lease. If a due diligence lease includes lands not designated by the commissioner as within a known geothermal resources field in accordance with Subsection A of Section 19-13-6 NMSA 1978, the due diligence lease may provide that the lessee shall, subject to terms and conditions that the commissioner may prescribe, have, in any sale of a subsequently issued geothermal lease that includes only some or all of the same lands and no other lands, the ability to meet the highest qualifying offer to obtain the geothermal lease. If a sale of a geothermal lease includes lands as to which there was no prior due diligence lease with a provision providing the ability to meet the highest qualifying offer to obtain the geothermal lease offered for sale, there shall be no such right, notwithstanding that the geothermal lease offered for sale includes some lands as to which there was a prior due diligence lease with a provision providing the ability to meet the highest qualifying offer in a subsequent sale of a geothermal lease.

C. Except where a provision states otherwise, the provisions of 19.2.7 NMAC pertaining to a geothermal lease shall apply to a due diligence lease.

D. The commissioner may issue a lease permitting the lessee to occupy and use land for the purpose of extracting or using naturally existing heat of the earth not in excess of two hundred fifty degrees Fahrenheit. Such leases shall be issued in accordance with such procedures and containing such terms and conditions as the commissioner may prescribe, which need not comply with the Geothermal Resources Act or 19.2.7 NMAC. [19.2.7.11 NMAC - Rp, 19.2.7.11 NMAC, 5/1/2026]

19.2.7.12 SEPARATE APPLICATIONS: Separate applications shall be made for each geothermal lease, and an application shall be deemed to seek a geothermal lease for all acreage listed thereon or for that part thereof as may be available for leasing. An application shall be rejected if it seeks to lease: (i) lands that are not contiguous; (ii) more than 2,560 acres; or (iii) less than 640 acres or all of the land in a legal subdivision, unless the parcel is isolated from and not contiguous with other parcels available for lease. The commissioner may issue a geothermal lease for less than all of the acreage listed on an application. [19.2.7.12 NMAC - Rp, 19.2.7.12 NMAC, 5/1/2026]

19.2.7.13 COMPETITIVE BIDDING: Each geothermal lease (which excludes due diligence leases and low temperature leases issued in accordance with 19.2.7.11 NMAC) shall be issued to the person making the highest qualified bid after notice of a lease sale to be conducted by sealed bids or oral bidding or on-line bidding. [19.2.7.13 NMAC - Rp, 19.2.7.13 NMAC, 5/1/2026]

19.2.7.14 NOMINATION OF TRACTS: A party seeking a geothermal lease may nominate one or more tracts or request a lease auction by letter or by email message. Prior to the completion of the bidding initiated pursuant to a nomination or request made in accordance with this 19.2.7.14 NMAC, the state land office shall not disclose to anyone outside of the state land office the identity of a party making the nomination or request. [19.2.7.14 NMAC - Rp, 19.2.7.14 NMAC, 5/1/2026]

19.2.7.15 DESIGNATION OF KNOWN GEOTHERMAL RESOURCES FIELDS:

A. After consulting with the director of the New Mexico bureau of geology and mineral resources, the commissioner may designate or remove the designation of specified lands as constituting a known geothermal resources field in accordance with Subsection A of Section 19-13-6 NMSA 1978.

B. If any lands within a designated known geothermal resources field are offered for a geothermal lease, the lands shall be leased, if at all, to the highest responsible qualified bidder in accordance with 19.2.7.13 NMAC. The commissioner may issue a due diligence lease of such lands or a low temperature lease of such lands in accordance with 19.2.7.11 NMAC without an auction.

C. If any lands within a designated known geothermal resources field are leased for use of a geothermal resource as a renewable energy resource (i.e., to generate power and not exclusively to extract mineral products or chemical compounds), the lease shall require that the geothermal resource beyond the lands leased shall not be diminished beneath applicable natural seasonal fluctuations in the measurable quantity, quality or temperature. The commissioner shall presume that a lessee's use of geothermal resources complies with this subsection where it is conducted in accordance with a permit issued by EMNRD/ECAM upon a finding that the permitted activity will not impair correlative rights or cause waste. In addition, the lessee shall provide to the commissioner a copy of each temperature and pressure test report when submitted to EMNRD/ECAM for each well located on or producing or using geothermal resources on or under state trust lands or lands being operated jointly with state trust lands.

[19.2.7.15 NMAC - Rp, 19.2.7.15 NMAC, 5/1/2026]

19.2.7.16 [RESERVED]

[19.2.7.16 NMAC – Rn, 9/30/2002; Repealed, 5/1/2026]

19.2.7.17 [RESERVED]

[19.2.7.17 NMAC – Rn, 9/30/2002; Repealed, 5/1/2026]

19.2.7.18 COMMISSIONER MAY WITHHOLD LAND FROM LEASING: The commissioner, at the commissioner's discretion, may at any time either before or after application is made, withhold any tract or tracts of land from geothermal resources leasing, if in the commissioner's opinion the best interest of the trust would be served by so doing. A withdrawal from geothermal resources leasing may be posted in the tract books. Regardless of whether a withdrawal from geothermal resources leasing has been posted in the tract books, the commissioner may at any time prior to issuing a geothermal lease determine that issuance of a geothermal lease for a tract or tracts of land would not be in the best interests of the trust. Notwithstanding a withdrawal from geothermal resources leasing or a determination that a geothermal lease would not be in the best interests of the trust, the commissioner may exercise the full range of discretion to enter into or refuse to enter into a compensatory agreement as to such tract or tracts.

[19.2.7.18 NMAC - Rp, 19.2.7.18 NMAC, 5/1/2026]

19.2.7.19 [RESERVED]

[19.2.7.19 NMAC – Rn, 9/30/2002; A, 6/11/2019; Repealed, 5/1/2026]

19.2.7.20 [RESERVED]

[19.2.7.20 NMAC – Rn, 9/30/2002; Repealed, 5/1/2026]

19.2.7.21 [RESERVED]

[19.2.7.21 NMAC – Rn, 9/30/2002; Repealed, 5/1/2026]

19.2.7.22 NOTICE OF LEASE SALE POSTED: Before any sale of a geothermal lease sale shall be held, the commissioner shall post in a conspicuous place in the state land office building in Santa Fe and on the state land office website, not less than 10 days before the date of the sale, a notice of same, specifying the physical or online address, date and hour of the sale, and containing a description of the lands to be offered for lease and indicating whether the sale is to be by sealed bids or by oral bidding or on-line bidding.

[19.2.7.22 NMAC - Rp, 19.2.7.22 NMAC, 5/1/2026]

19.2.7.23 SEALED BIDS PROCEDURE: In the event the sale is to be by sealed bids, bids will be received up to the deadline set forth in the notice of sale, and all bids submitted prior to the deadline set forth in the notice of sale will be opened at the appointed time, and the geothermal lease, if any, will be awarded to the highest bidder, subject to the right of the commissioner to reject all bids if the commissioner shall deem the bids too low or shall deem it in the best interest of the trust to do so. To qualify for consideration, sealed bids must be accompanied by remittance covering application fee, first year's rental and bonus offered. If provided for at the discretion of the

commissioner and as stated in the notice of lease sale posted in accordance with section 19.2.7.22 NMAC, sealed bids may be submitted, received and opened on-line via a computer network or other electronic telecommunications system generally available to the public allowing any and all qualified bidders to submit bids. When two or more sealed bids are equal and higher than all other bids, the commissioner shall notify the tied highest bidders that they may within 10 calendar days submit new sealed bids, which shall be higher than the previously submitted bids. The commissioner shall issue a geothermal lease, if any, to the bidder submitting the highest new sealed bid. If two or more of the new sealed bids are equal, the commissioner shall repeat the process. If none of the tied highest bidders submits a new sealed bid, the commissioner shall flip a coin to select and offer a geothermal lease, if any, to one of the tied highest bidders.

[19.2.7.23 NMAC - Rp, 19.2.7.23 NMAC, 5/1/2026]

19.2.7.24 ORAL OR ONLINE BIDS - PROCEDURE: In the event sale is by oral bidding or on-line bidding, the successful bidder will be required to pay the lease application fee, the first year's base rental and bonus offered in accordance with 19.2.7.10 NMAC on or before close of business on the date of sale. If the lease sale is conducted by on-line bidding, bidding shall be conducted via a computer network or other electronic telecommunications system generally available to the public allowing any and all qualified bidders to submit bids.

[19.2.7.24 NMAC - Rp, 19.2.7.24 NMAC, 5/1/2026]

19.2.7.25 [RESERVED]

[19.2.7.25 NMAC – Rn, 9/30/2002; Repealed, 5/1/2026]

19.2.7.26 [RESERVED]

[19.2.7.26 NMAC – Rn, 9/30/2002; Repealed, 5/1/2026]

19.2.7.27 GEOTHERMAL LEASE BASE RENT; ROYALTIES; PERCENTAGE RENT; LEASE TERM:

A. Each geothermal lease (which excludes due diligence leases and low temperature leases issued in accordance with 19.2.7.11 NMAC) shall provide for payment of the following base rent, royalties and percentage rent with respect to geothermal resources produced or sold from the lands included within the geothermal lease:

(1) a base lease rent based upon fair market value at the time of leasing as determined by the commissioner, which may provide for escalation from an amount payable prior to the lessee's discovery and extraction or use of geothermal resources to an amount payable after the lessee discovers and begins extraction or use of geothermal resources;

(2) a royalty or percentage rent to be charged as a percentage of gross revenue derived from the production, sale or use of geothermal resources, or the energy produced therefrom, under the geothermal lease as determined by the commissioner, who shall not determine a value below or above a range that could be determined by the federal bureau of land management, based on fair market value of the geothermal resource or use of the geothermal resource at the time of leasing, provided that the commissioner may require an escalation of the royalty or percentage rent over time;

(3) a royalty of the gross revenue received from the sale of mineral products or chemical compounds recovered from geothermal fluids, if any, based on fair market value of the mineral product as determined by the commissioner, except that as to any by-product or minerals covered by other mineral leasing statutes administered by the commissioner or rules or regulations of the commissioner, the rate of royalty for such mineral or by-product shall be the same as the then-existing rate of royalty under geothermal leases currently being issued by the commissioner.

B. A geothermal lease shall not preclude other uses of the land, including but not limited to leases on the same lands for deposits of other minerals. Provided, however, that operations under leases for other uses of the land shall not unreasonably interfere with or endanger operations under any geothermal lease, nor shall operations under a geothermal lease unreasonably interfere with or endanger operations under any lease for other use of the land.

C. If the commissioner determines that the lessee's production or use of geothermal energy creates an opportunity, with its existing operation plan, to economically produce other geothermal resources in commercially valuable quantities for which there is a market, the commissioner may require the lessee to produce and market the other geothermal resources.

D. A geothermal lease shall be for a primary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from

such lands or from lands unitized therewith. If the lessee fails to produce or utilize geothermal resources or to discover geothermal resources capable of being produced or utilized in commercial quantities from the lands or from lands unitized therewith during the initial five-year term, the lessee may continue the lease in full force and effect as to the portion held by the lessee for a secondary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from such lands or from lands unitized therewith by continued payment each year, in advance, of rentals at the rate set by the lease. Provided that if for any reason beyond the control of the lessee production or utilization of geothermal resources in commercial quantities ceases or if the capability to so produce is temporarily lost after the secondary term has expired, the producing lessee may, with the written permission of the commissioner, continue such lease as to the acreage held by the lessee in effect from year to year for an additional period not to exceed three years by continued payment of rentals as provided in the lease at the rate provided in the secondary term of the lease. In determining whether geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities in accordance with Subsection D of 19.2.7.27 NMAC, the commissioner may consult reports submitted to EMNRD/ECAM and may confer with EMNRD/ECAM.
[19.2.7.27 NMAC - Rp, 19.2.7.27 NMAC, 5/1/2026]

19.2.7.28 LIMITATIONS OF ACREAGE: Except as otherwise provided in the Geothermal Resources Act, no person shall take, hold, own or control at the same time, directly or indirectly and whether acquired from the commissioner or otherwise, interest in one or more geothermal leases exceeding 51,200 acres.
[19.2.7.28 NMAC - Rp, 19.2.7.28 NMAC, 5/1/2026]

19.2.7.29 ASSIGNMENTS: Subject to approval of the commissioner upon such conditions as the commissioner may require, a geothermal lease in good standing may be assigned in whole or in part; however, no assignment of an undivided interest in a geothermal lease or any part thereof, or any assignment of less than a legal subdivision or tract shall be recognized or approved by the commissioner. All assignments shall be filed in duplicate upon forms prescribed and furnished by the commissioner which shall recite, among other things, the consideration paid for the assignment. The fee for filing shall be as set forth in the schedule of fees. The commissioner may refuse to approve any assignment and may condition the commissioner's approval on such additional terms and compensation as the commissioner may deem in the best interests of the trust. An assignment shall not be approved if the assignment: (i) seeks to assign less than the assignor's interest in a legal subdivision (except where the transfer is by operation of law); (ii) seeks to assign acreage less than a legal subdivision; (iii) seeks to assign to more than two persons or legal entities; (iv) seeks to assign to a trust without setting forth the trust or the trust has more than two trustees; (v) seeks to assign an interest in a lease as to which a lis pendens has been filed; or (iv) seeks to assign interests in more than one lease. If the assignee changes its name or its mailing address, the assignee shall promptly notify the commissioner, in writing, of the change in name or mailing address. If and when the commissioner approves the lessee's assignment of a portion of a geothermal lease, the assigned and the retained portions of the geothermal lease shall be treated and considered as separate geothermal leases.
[19.2.7.29 NMAC - Rp, 19.2.7.29 NMAC, 5/1/2026]

19.2.7.30 [RESERVED]
[19.2.7.30 NMAC – Rn, 9/30/2002; A, 6/30/2016; Repealed, 5/1/2026]

19.2.7.31 [RESERVED]
[19.2.7.31 NMAC – Rn, 9/30/2002; A, 6/11/2019; Repealed, 5/1/2026]

19.2.7.32 MISCELLANEOUS INSTRUMENTS: The record owner of a geothermal lease may enter into a contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into an agreements with respect to the development or operation of the leasehold premises. To the extent that the contract, agreement or instrument does not change ownership of the geothermal lease, it need not be approved by or filed with the office of the commissioner (but may be filed in the office of the county clerk wherein the lands are situated); it shall not shall relieve the record title owner of such geothermal lease from complying with any of the terms or provisions thereof; and the commissioner shall look solely and only to such record owner for compliance therewith. Documents pertaining to or affecting record title of a lease, including but not limited to mergers, death certificates, probate documents, and court orders, shall be filed as miscellaneous instruments, and the filing and recording thereof shall constitute notice to all the world of the

existence and contents of the documents so filed. The fee for filing miscellaneous instruments with the commissioner shall be as set forth in the schedule of fees.

[19.2.7.32 NMAC - Rp, 19.2.7.32 NMAC, 5/1/2026]

19.2.7.33 [RESERVED]

[19.2.7.33 NMAC – Rn, 9/30/2002; Repealed, 5/1/2026]

19.2.7.34 [RESERVED]

[19.2.7.34 NMAC – Rn, 9/30/2002; A, 6/30/2016; Repealed, 5/1/2026]

19.2.7.35 TRANSFER OF LEASE AFTER DEATH OF RESIDENT LESSEE: After receipt of a death certificate or other official notice that a lessee has died, the geothermal lease may be carried on the records of the state land office in the name of the lessee's estate until assigned by the duly appointed personal representative of the lessee's estate in accordance with 19.2.7.29 NMAC. If a duly appointed personal representative of the lessee's estate does not assign the geothermal lease within one year after the lessee's death, the geothermal lease may be cancelled if not so assigned within 30 days after the state land office mails notice of the intent to cancel by certified mail to the address of record for the lessee.

[19.2.7.35 NMAC - Rp, 19.2.7.35 NMAC, 5/1/2026]

19.2.7.36 TRANSFER OF LEASE AFTER DEATH OF FOREIGN LESSEE: In the event a decedent lessee was a resident of a state other than New Mexico, the estate must be probated in the state of such residence and ancillary proceedings conducted in the proper New Mexico court, and certified copies of such proceedings showing proper legal authority to transfer must be filed with the commissioner within one year after the lessee's death. The geothermal lease may be cancelled if not so assigned within 30 days after the state land office mails notice of the intent to cancel by certified mail to the address of record for the lessee.

[19.2.7.36 NMAC - Rp, 19.2.7.36 NMAC, 5/1/2026]

19.2.7.37 SURETY TO PROTECT SURFACE LESSEE WAIVERS:

A. Before the lessee or operator begins exploration, development or operations under a geothermal lease, such lessee shall execute and file with the commissioner a sufficient bond or other surety or other financial assurance, in an amount to be fixed by the commissioner, but not less than \$25,000.00, in favor of the state of New Mexico, for the benefit of the state, its contract purchaser, patentee, or surface lessee, to secure the lessee's payment for any damages to the land or tangible improvements upon the leased land as may be suffered by reason of exploration, development or operations upon the land by the lessee.

B. The bond may be either a corporate or individual surety bond and such sureties may be required to furnish proof that their net worth free and clear of all indebtedness or claims equals or exceeds the amount of the obligation.

C. In lieu of said bond, with the commissioner's consent, the lessee may file with the commissioner:

(1) a financial assurance in the form of:

(a) an escrow account at an institution duly licensed in accordance with the Escrow Company Act, NMSA 1978, § 58-22-1 et. seq., acceptable to the commissioner, and subject to instructions to the trustee or institution acceptable to the commissioner;

(b) an irrevocable letter of credit at a state or federally chartered financial institution; or

(c) a cash deposit with the commissioner that will not pay interest to Lessee; or

(2) a waiver of bond or other surety duly executed and acknowledged by the applicable surface owner or holders owning improvements.

[19.2.7.37 NMAC - Rp, 19.2.7.37 NMAC, 5/1/2026]

19.2.7.38 PERFORMANCE SURETY: Before a geothermal lease shall issue, the lessee shall file with the commissioner a bond or other surety or other financial assurance in an amount to be set by the commissioner which the commissioner deems necessary to guarantee the lessee's payment of rent and royalties as they become due and to guarantee the lessee's performance of all lessee obligations under or pertaining to the geothermal lease. If and when the lessee learns of a material change affecting the financial assurance, the lessee shall notify the state land office of such change within 30 days. The lessee's obligation under this 19.2.7.38 NMAC shall be in addition to any bond or other surety provided to EMNRD/ECAM.

[19.2.7.38 NMAC - Rp, 19.2.7.38 NMAC, 5/1/2026]

19.2.7.39 FORMS: Forms for all bonds are prescribed and furnished by the commissioner.
[19.2.7.39 NMAC - Rp, 19.2.7.39 NMAC, 5/1/2026]

19.2.7.40 PRODUCTION REPORTS; RIGHT TO INSPECT RECORDS: The lessee under a geothermal lease shall file production, percentage rent, and royalty reports at such times and upon forms as may be prescribed by the commissioner. The commissioner or the commissioner's representative shall have the right to inspect all lessee and operator records, books or accounts pertaining to geothermal resources existing on or under the lands leased under a geothermal lease and the use or extraction thereof. Without limiting the foregoing, the lessee and operator shall, at the commissioner's request, promptly furnish such reports, samples, logs, geophysical data and models, reservoir models, assays or cores within reasonable bounds as the commissioner may deem to be necessary for the proper administration of the state lands under a geothermal lease.
[19.2.7.40 NMAC - Rp, 19.2.7.40 NMAC, 5/1/2026]

19.2.7.41 SURFACE OPERATIONS:

A. No person shall begin on-site exploration, development or production of geothermal resources without an operation plan approved in writing by the state land office addressing (i) well pad layout and design; (ii) a description of existing and planned access roads; (iii) a description of all ancillary facilities; (iv) the source of drill pad and road building material; (v) the source of water or fluid used; (vi) a description of procedures to be used to protect the environment and other resources; (vii) plans for reclamation; and (viii) all other information that the state land office may require. The operation plan must include complete geological and engineering data presented in clear and understandable form. The commissioner shall keep such data confidential for a period of six months or until such plan is approved, whichever occurs first, after which such data will be made a permanent part of the records and open for public inspection. Upon request, the commissioner may in writing approve maintaining the confidentiality of data for a longer period of time. If for any reason such proposed plan is not approved, the commissioner shall, upon request, return it to the person submitting it along with the accompanying data. The state land office may request updated information from the operator as the commissioner deems necessary, the operation plan may be updated from time to time, and the commissioner may allow a variance from the operation plan, which approval must be express and in writing signed by the commissioner or the commissioner's designee.

B. In addition to requiring compliance with the operation plan approved in accordance with Subparagraph A of 19.2.7.41 NMAC, state land office personnel may, from time to time, recommend compliance with reasonable use of the surface and prudent operator standards other than those specified in the approved operation plan.

C. The lessee shall ensure that all persons engaged in operations under the geothermal lease remove from the leased premises all surface trash and debris caused by their operations and shall keep such premises free and clear of such trash and debris. As used in 19.2.7.41 NMAC, "surface trash and debris" means all nonoperational and nonessential equipment resulting from drilling and other operations under the geothermal lease and includes, but is not limited to, garbage, rubbish, junk or scrap.

D. All access roads shall be built, maintained and reclaimed in accordance with 19.2.20 NMAC.
[19.2.7.41 NMAC - Rp, 19.2.7.41 NMAC, 5/1/2026]

19.2.7.42 COLLATERAL ASSIGNMENTS OF LEASES:

A. With the consent of the Commissioner, a geothermal lease in good standing, together with improvements placed on the land thereunder, may be assigned as collateral security to insure the payment of an indebtedness specified in said assignment.

B. A collateral assignment shall be in such form as prescribed by the commissioner, which the lessee shall submit to the commissioner for the commissioner's approval in duplicate together with the filing fee as set forth in the schedule of fees.

C. Upon approval of a collateral assignment by the commissioner, the assignee shall have a lien upon the lessee's interest in the geothermal lease, and the commissioner shall not subsequently approve the lessee's assignment or relinquishment of the geothermal lease unless the collateral assignee has released the collateral assignment, except that the commissioner may approve the lessee's assignment of the geothermal lease if the assignee agrees in writing to assume or take the geothermal lease subject to the rights of the collateral assignee.

D. If the collateral assignee changes its name or its mailing address, the collateral assignee shall promptly notify the commissioner, in writing, of the change in name or mailing address, upon a form prescribed by the commissioner.

E. The collateral assignee may foreclose on the collateral assignment in the manner provided by law for the foreclosure of chattel mortgages. If and when the purchaser of a geothermal lease in a foreclosure sale is qualified to hold a geothermal lease and submits to the commissioner documentation showing bona fide foreclosure and purchase, along with a completed assignment form and the fee required for an assignment of the geothermal lease, the lessee's interest in the geothermal lease shall be assigned to the purchaser.

F. If the debt secured by the collateral assignment is satisfied or the collateral assignee otherwise seeks to release the collateral assignment, the collateral assignee shall execute a release using a form prescribed by the commissioner and file it with the commissioner along with the required fee as set forth in the schedule of fees. If a collateral assignee fails to execute and file with the commissioner the release of a collateral assignment upon the satisfaction of the debt and the lessee submits to the commissioner documentation showing that the debt has been satisfied, the commissioner shall provide written notice to the collateral assignee at its address of record with the state land office that the collateral assignment will be deemed released unless the collateral assignee provides a sufficient showing that the debt has not been satisfied. If the collateral assignee fails to provide a timely showing that the debt has not been satisfied, the commissioner may deem the collateral assignment released.
[19.2.7.42 NMAC - Rp, 19.2.7.42 NMAC, 5/1/2026]

19.2.7.43 CO-OPERATIVE OR UNITIZED DEVELOPMENT FOR OPERATION OF LEASES:

A. The commissioner may consent to and approve agreements made by the lessee providing for cooperative or unit development for operation of a geothermal lease in accordance with Section 19-13-14 NMSA 1978.

B. In order to obtain the commissioner's consent and approval as required under Subsection A of 19.2.7.43 NMAC, the lessee shall file with the commissioner an application containing a statement of facts showing that the proposed cooperative or unit development will serve the purpose of conserving geothermal resources.

C. When the commissioner has consented to and approved an agreement in accordance with Subsection A of 19.2.7.43 NMAC, the terms and conditions of the agreement shall supersede inconsistent terms and conditions of the geothermal lease, so far as they apply to lands within the unit area; provided that, all other terms and conditions of the geothermal lease shall remain in full force and effect. The agreement shall then be included in the lease file maintained in the state land office records division. If the agreement is not in the public records, there is a presumption no such agreement exists.
[19.2.7.43 NMAC - Rp, 19.2.7.43 NMAC, 5/1/2026]

19.2.7.44 ENERGY CONSERVATION AND MANAGEMENT DIVISION REPORTS; OTHER COMPLIANCE NOTICES OR ORDERS:

A. The lessee under a geothermal lease or due diligence lease shall at its own expense comply with applicable provisions of the Geothermal Resources Development Act (Section 71-9-1 et seq. NMSA 1978) and regulations promulgated thereunder by EMNRD/ECAM.

B. If and when the lessee or operator files with EMNRD/ECAM an application, report or notice regarding contemplated or actual operations under a geothermal or due diligence lease, including but not limited to notification of a fire, break, leak, spill or blowout, the person filing such an application or report shall contemporaneously submit to the state land office a true and correct copy of the application, report or notice. If and when the lessee or operator receives from EMNRD/ECAM a permit or citation or notice of violation, the lessee or operator shall promptly submit to the state land office a true and correct copy.

C. The lessee shall notify the commissioner in writing within ten calendar days of the lessee's receipt of any compliance order, enforcement order, notice of violation, warning letter, or other written notice of final or contemplated enforcement action taken by any federal, state, or local governmental entity arising out of or concerning any operations on the leased premises. Upon the commissioner's request, the lessee shall promptly provide the commissioner with a copy of any such order, notice, or letter.
[19.2.7.44 NMAC - Rp, 19.2.7.44 NMAC, 5/1/2026]

19.2.7.45 CLOSEOUT AND RECLAMATION:

A. If a well has not been used to use or produce geothermal resources for a period of 180 days, the commissioner may deem the well abandoned and, in such case, shall notify the lessee that a well has been deemed abandoned. Upon issuance of a notice of abandonment, the lessee shall have 30 days to submit documentation

showing that the well had not been abandoned, including but not limited to evidence of diligently pursued rework operations or an ongoing bona fide effort to allow the heat of the geothermal resources to be restored. The documentation shall include an engineering or operations plan, and operations shall be conducted in accordance with the engineering or operations plan.

B. Unless waived in writing by the commissioner, a well deemed abandoned in accordance with Subsection A of 19.2.7.45 NMAC shall be plugged within 180 days of abandonment in accordance with all applicable rules promulgated by EMNRD/ECAM.

C. If a geothermal lease is cancelled or expires, the lessee shall reclaim all lands disturbed as a result of activities conducted under the geothermal lease in accordance with 19.2.7.45 NMAC or a reclamation plan approved in writing by the commissioner.

D. Within one year after the geothermal lease is cancelled or expires, the lessee shall:

(1) reclaim pads by ripping all caliche to the underlying material, replacing topsoil, and reseeding with a seed mix approved by the state land office:

(2) reclaim roads by ripping, reseeding, berming (closing) at the entrance, and constructing water bars as directed or approved by the state land office and performing all other work required under 19.2.20 NMAC;

(3) remove all surface pipelines and properly disable all buried pipelines;

(4) remove all above-ground power lines specific to the site and any associated poles, structures or equipment; and

(5) remove all lessee or operator buildings or structures.

[19.2.7.45 NMAC – N, 5/1/2026]

HISTORY OF 19.2.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

CPL 69-5, Rules and Regulations Concerning the Sale, Lease, and Other Disposition of State Trust Lands, filed 9/02/1969;

CPL 71-2, filed 12/16/1971;

CPL 77-1, filed 1/7/1977;

Rule 7, Rules and Regulations Relating to Geothermal Resources Leases, filed 3/11/1981;

SLO Rule 7, filed 1/20/1984;

SLO Rule 7, Amendment No. 1, filed 6/16/1995.

History of Repealed Material:

19.2.7 NMAC - Relating To Geothermal Resources Leases, filed 1/20/1984 was repealed and replaced by 19.2.7 NMAC - Relating To Geothermal Resources Leases, effective 5/1/2026.

**STATE OF NEW MEXICO
BEFORE THE COMMISSIONER OF PUBLIC LANDS**

**In re Proposed Repeal of Rule 19.2.7 NMAC and Adoption of Replacement
Rule 19.2.7 Relating to Geothermal Resources Leases**

HEARING OFFICER REPORT

On September 30, 2025, a public rulemaking hearing was held in a hybrid format, i.e., an in-person hearing at the State Land Office building in Santa Fe, New Mexico, with a virtual (online) option allowing interested parties to observe and participate remotely. The hearing was conducted in accordance with the State Rules Act (NMSA 1978, §§ 14-4-1 et seq.), the Geothermal Resources Act governing State Land Office geothermal resources leases (NMSA 1978, §§ 19-13-1 et seq.), and the State Land Office Rulemaking Procedures in 19.2.16 NMAC.

State Land Office Project Manager Elaine Heltman presided over the hearing, and State Land Office Senior Counsel Jack Sullivan made a presentation regarding the proposed repeal of the existing Rule 19.2.7 NMAC and the proposed replacement rule relating to geothermal resources leases. State Land Office Petroleum Specialist Paige Czoski was available to answer questions. In addition to other State Land Office staff, two persons from the Energy Conservation and Management Division (ECAM) of the New Mexico Energy, Minerals and Natural Resources Department were present in person, as was one in-person interested person who made comment for the record. Two members of public attended by Zoom, one of whom provided comment. The public comment made at the hearing is summarized below.

At 10:00 MDT, Ms. Heltman opened the hearing by explaining the hearing procedures and requesting that all attendees sign in. Ms. Heltman noted that written comments had been received from various parties, whom she identified,¹ and asked if anyone else participating in the hearing had submitted written comment. No one responded to indicate that Ms. Heltman's enumeration of parties submitting public comment was incomplete.

Mr. Sullivan then made a presentation that included a discussion of the notice provided in advance of the hearing; viz. publication in the New Mexico Register, Vol. XXXVI, Issue 16 (August 26, 2025) of a Notice of Public Hearing, which informed the public where and how copies of the proposed replacement Rule could be obtained and stating that written comments regarding the rule could be submitted through September 26, 2025. In addition to publishing the Notice of Hearing in the New Mexico Register, the State Land Office (i) published the Notice of Hearing in the Albuquerque Journal on August 25, 2025; (ii) posted the Notice of Hearing on the State Land Office website (<https://www.nmstatelands.org/>) on August 25, 2025; (iii) posted the Notice of Hearing to the New Mexico Sunshine Portal (<https://ssp.nm.gov/>) on August 25, 2025; (iv) made it available at all State Land Office district offices on August 25, 2025; and (v) hand delivered it to the New Mexico Legislative Council on August 25, 2025 for distribution to the appropriate interim and standing legislative committees. Mr. Sullivan noted that the Notice of Public Hearing

¹ The parties identified as submitting written comment prior to the hearing were: (i) Clean Air Task Force; (ii) Entrada Energy, LLC; (iii) Geothermal Rising; (iv) Oxy; (v) TLS Geothermics; (vi) XGS Energy; and (vi) Zanskar Geothermal & Minerals, Inc.

contained information as to how persons with disabilities could request assistance to participate in the hearing and that no requests for assistance were received.

Mr. Sullivan then gave a presentation explaining the rationale for repealing the existing rule and describing the main features of the proposed replacement rule. Mr. Sullivan's presentation provided background information regarding the State Land Office and its management of state trust lands. Mr. Sullivan explained that the New Mexico Constitution and statutes give the Commissioner authority to issue leases allowing occupation and use of state trust lands for the purpose of exploring for and utilizing geothermal resources. He noted that the Geothermal Resources Act governing State Land Office geothermal leases was amended in 2013 in various ways that, as a practical matter, required changes to the State Land Office rule before new geothermal leases could be issued. As he explained, the 2013 changes included:

- amending the definition of "geothermal resources" to limit it to heat in excess of 250° F and to exclude certain kinds of heating and cooling;
- requiring that renewable energy projects not diminish the resource in areas designated as known geothermal resources fields;
- changing certain statutorily required terms and conditions in geothermal leases, with standards for establishing base rent, percentage rent based on revenues from sale of the resource or power generated using the resource, and royalties on the sale of minerals extracted from geothermal fluids.

Mr. Sullivan explained that the proposed replacement rule focuses on facilitating occupation and use of state trust lands for the purpose of developing and using geothermal resources consistent with the State Land Office mission of generating support for beneficiary institutions now and into the future. He explained that the proposed replacement rule would implement the non-diminishment standard for leases in known geothermal resources fields by requiring operations to be conducted in accordance with an ECAM permit issued upon a finding that the operations will not impair correlative rights or constitute waste. He explained that the proposed replacement rule contains provisions regarding (i) limited due diligence/exploratory leases to allow for exploration and study prior to the issuance of a full geothermal resources lease; and (ii) leases allowing for occupation and use of state trust lands for the purpose of developing and using heat below the 250° F threshold and thus outside the scope of the Geothermal Resources Act. He explained that the proposed replacement rule contains provisions to ensure that geothermal projects on state trust lands are conducted in a manner that is consistent with the trust interests now and in the future, which provisions are intended to exist along with ECAM regulation and not to supplant or supersede ECAM regulation.

Ms. Heltman then opened the hearing for public comment.

Brad L. Handy. Mr. Handy identified himself as someone with an extensive background in exploration and production of oil and gas and geothermal resources primarily outside of the United States. He expressed his support for facilitating and incentivizing the development of geothermal resources in New Mexico, provided that safeguards are in place to ensure that geothermal operations are properly conducted by qualified operators. Mr. Handy expressed concern that the proposed replacement rule provision regarding issuance of geothermal leases to the highest qualified bidder at a lease sale lacks specificity as to what qualification criteria will be

used. Mr. Sullivan explained that the State Land Office expects to include case-by-case bidder qualifications in each lease sale notice rather than setting out blanket bidder qualifications in the replacement rule that would apply to all lease sales. In addition, Ms. Czoski explained that the qualification of bidders is expected to focus on whether bidders are registered to do business in New Mexico and have posted a bond to secure their lease and reclamation obligations.

Joel Edwards (Zanskar Geothermal & Minerals, Inc.). In the Zoom chat, Mr. Edwards asked for an explanation of the relationship and transition between the replacement rule provisions pertaining to exploratory leases and business leases, which was addressed by Mr. Sullivan. Mr. Edwards then noted that his company Zanskar operates Lightning Dock, which is the only geothermal power plant in New Mexico, and supports regulatory reform that would incentivize investment in geothermal operations in New Mexico. Mr. Edward's comments highlighted points made in written comments Zanskar submitted prior to the hearing and provided further context and explanation for those comments. Mr. Edwards stated that other Western states incentivize private sector investment in geothermal exploration and development in a way that takes into account the capital-intensive nature of geothermal projects and the risks associated with those investments. Mr. Edwards noted that Utah employs an "OBA framework" for geothermal leases on its state lands that does not entail lease auctions. Mr. Edwards also expressed concern that the non-diminishment standard for geothermal leases in areas designated by the Commissioner as known geothermal resources fields is based on a misunderstanding of the resource and the effects of development and use of the resource and what is accepted industry standard. According to Mr. Edwards, limiting use of geothermal resource to what can be done within the natural recharge rate presents an undefined and difficult problem for which there is no industry-standard approach. Mr. Edwards stated that the Commissioner should consider updating the existing 1970s-era designation of known geothermal resources fields to take into account work by the New Mexico Bureau of Geology and others to compile data regarding geothermal resources. Mr. Edwards stated that the State should consider a streamlined process for low-impact exploration projects similar to the BLM's casual use framework.

At the conclusion of the hearing, Ms. Heltman announced that additional written comment could be submitted by 5:00 p.m. on October 3, 2025. Ms. Heltman then noted that the rulemaking record would be compiled and submitted to the Commissioner for a final decision regarding the proposed repeal of the existing rule and adoption of a replacement rule. She noted that the Commissioner's final decision would be set forth in a final order that would be sent to all persons who submitted a written comment or attended the hearing (as reflected in the sign-in sheet) and that any repeal of the existing rule and/or adoption of a replacement rule would be published in the New Mexico Register. No written transcript was made; an audio recording is available for review in addition to the documents in the rulemaking file, written public comment, Mr. Sullivan's presentation slides, and this report.

Respectfully submitted,

Elaine G. Heltman

Digitally signed by Elaine G. Heltman
Date: 2025.10.30 10:12:18 -06'00'

Elaine G. Heltman
Hearing Officer