



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
The State of New Mexico AND  
The U.S. Environmental Protection Agency**

**Section 1: Purpose and Scope**

This document is a Memorandum of Understanding (MOU) between the State of New Mexico, through the New Mexico Energy, Minerals and Natural Resources Department (NM EMNRD), the New Mexico Environment Department (NMED), the New Mexico Office of the State Engineer (NM OSE), and the United States Environmental Protection Agency (EPA) through Region 6 and the Office of Water.

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

The scope of the MOU pertains to proactively clarifying and understanding the existing regulatory and permitting frameworks, and associated policy decisions among the parties related to the re-use, recycling, and beneficial use of waters originating from oil and natural gas activities (produced water).

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

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

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

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

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

**Whereas**, the EPA's strategic plan recognizes that protecting the nation's waters relies on cooperation among states and local communities to protect and improve water quality and strong partnerships that facilitate achieving water quality goals while supporting robust economic growth; and

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

**Section 2: Definitions as used within the MOU:**

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

*Produced water* is the fluid brought up from the hydrocarbon bearing strata during the extraction of oil and natural gas, and includes, where present, formation water, injection water, and any chemicals added downhole or constituents released from the formation.

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

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

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

### **Section 3: Authorities and Limitations**

1. Nothing in this MOU alters the statutory authorities or responsibilities of any party.
2. This MOU does not supersede, clarify or otherwise change existing agreements or restrict any future agreements between any of the parties with each other or any other entity.
3. This MOU does not, in and of itself, obligate any party to expend funds. Any commitments made pursuant to this MOU are subject to the availability of appropriated funds. Any endeavor involving reimbursement, contribution, or financial assistance between the parties to this MOU will be handled according to applicable laws, regulations, and procedures, including policies relating to competition for contracts and assistance agreements, and subject to separate agreements. No party will submit a claim for compensation to another party for activities carried out pursuant to this MOU.

This MOU is a voluntary agreement that expresses the good faith intention of the parties. This MOU is not legally binding on any of the parties, and does not create any contractual obligations, rights or benefits, substantive or procedural, enforceable at law or equity by any person against the parties, any of the parties' officers or employees, or any other person. This MOU does not apply to any person outside of the parties.

4. The EPA enters into this MOU pursuant to section 1442(a) of the Safe Drinking Water Act, section 104 of the Clean Water Act, section 103 of the Clean Air Act, section 8001 of the Solid Waste Disposal Act, and section 102(2)(G) of the National Environmental Policy Act.
5. Under Federal ethics rules, the EPA may not endorse products or services provided by private entities. Nothing in this MOU constitutes an endorsement by any party of the products, services, and/or fundraising activities of another party. NM EMNRD, NMED, and NM OSE agree not to make statements to the public at workshops and meetings, promotional literature, on its web sites or through other media that imply that EPA endorses its products or services. In addition, NM EMNRD, NMED, and NM OSE agree not to make statements that imply that EPA supports state efforts to raise public or private funds. Any statements or promotional materials prepared by the parties that describe this MOU must be approved in advance by EPA.

## **Section 4: Responsibilities**

1. The parties agree to form a collaborative workgroup to explore the further clarification and understanding of the existing regulatory and permitting frameworks and associated policy decisions among the parties associated with produced water.
2. The workgroup will undertake the development of a white paper related to produced water opportunities under state and federal law in New Mexico. The white paper will: (a) synthesize the regulatory and permitting frameworks related to produced water; (b) identify data gaps/policy gaps with respect to use of such water; (c) identify possible uses of renewable water, re-use water, and recycled water; and (d) identify any process or other improvement opportunities with respect to such uses.
3. The workgroup is expected to develop the white paper related to produced water opportunities under state and federal law in New Mexico within six months of the effective date of this MOU.
4. In addition to the white paper, the workgroup will meet on a regular and ad hoc basis, as necessary, focusing on issue-oriented policy matters. Matters dictated by federal and/or state statutes and regulations involving a public process (such as permitting processes) are not a subject of the MOU.
5. On a quarterly basis, the signatories of the MOA will convene a meeting of the workgroup. The workgroup will provide updates to the signatories on the white paper and related topics.
6. Each of the parties to this MOU is expected to appoint at least one member to the workgroup. Appointees are expected to be knowledgeable about the oil and natural gas sector, the water law or policy, frameworks at the federal/state levels, and /or associated policy topics.

**Section 5: Duration and Signatures**

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

*For the U.S. Environmental Protection Agency:*

  
\_\_\_\_\_  
Signature

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

June 29, 2018  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature

Anne Idsal  
Regional Administrator  
U.S. EPA Region 6

July 5, 2018  
\_\_\_\_\_  
Date

*For the State of New Mexico:*

  
\_\_\_\_\_  
Signature

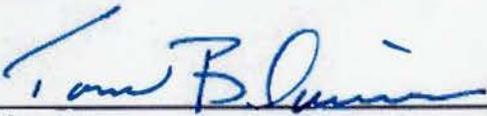
Ken McQueen  
Secretary  
New Mexico Energy, Minerals and Natural Resources Department

July 13, 2018  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature

Butch Tongate  
Secretary  
New Mexico Environment Department

July 13, 2018  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature

Tom Blaine  
State Engineer  
New Mexico Office of the State Engineer

July 16, 2018  
\_\_\_\_\_  
Date