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SENATE BILL 730

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

H. Diane Snyder

AN ACT

**RELATING TO GOVERNMENT ORGANIZATION; CREATING THE WATER
RESOURCES DEPARTMENT AND THE NATURAL RESOURCES AND ENVIRONMENT
DEPARTMENT; TRANSFERRING FUNCTIONS, PERSONNEL, PROPERTY AND
LEGAL OBLIGATIONS OF THE DEPARTMENT OF ENVIRONMENT, OFFICE OF
THE STATE ENGINEER, ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT, DEPARTMENT OF GAME AND FISH, NATURAL RESOURCES
TRUSTEE, INTERSTATE STREAM COMMISSION, ENVIRONMENTAL
IMPROVEMENT BOARD, WATER QUALITY CONTROL COMMISSION, OIL
CONSERVATION COMMISSION, MINING COMMISSION, COAL SURFACE
MINING COMMISSION, NEW MEXICO YOUTH CONSERVATION CORPS
COMMISSION AND STATE GAME COMMISSION TO THE NEW DEPARTMENTS;
CREATING A COMMITTEE TO DEVELOP AN IMPLEMENTATION PLAN FOR
TRANSFER OF THE VARIOUS DUTIES, LEGAL OBLIGATIONS AND
FUNCTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978; MAKING AN APPROPRIATION.**

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 14 of this act may be cited as the "Water Resources Department Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the Water Resources Department Act is to establish a single, unified department to administer certain laws and exercise specific functions formerly administered by the department of environment; the environmental improvement board; the office of the state engineer; the interstate stream commission; the water quality control commission; the coal surface mining commission; the mining commission; and the energy, minerals and natural resources department pertaining to water and water resources.

Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the Water Resources Department Act:

A. "department" means the water resources department; and

B. "secretary" means the secretary of water resources.

Section 4. [NEW MATERIAL] WATER RESOURCES DEPARTMENT ESTABLISHED. -- The "water resources department" is created in the executive branch. The department shall be a cabinet department and shall include the following organizational

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1 units:

- 2 A. the office of the secretary;
- 3 B. the office of inspector general;
- 4 C. the administrative services division;
- 5 D. the river and watershed management division;
- 6 E. the water conservation division;
- 7 F. the water quality protection division;
- 8 G. the water litigation division; and
- 9 H. the water rights and adjudication division.

10 Section 5. [NEW MATERIAL] SECRETARY-- APPOINTMENT. -- The
11 chief executive and administrative officer of the department
12 is the "secretary of water resources". The secretary shall be
13 appointed by the governor with the consent of the senate. The
14 secretary shall hold the office at the pleasure of the
15 governor and shall serve in the executive cabinet; provided,
16 however, that the secretary appointed to serve as the
17 secretary of environment and whose appointment has been
18 confirmed by the senate may serve as the secretary of water
19 resources at the pleasure of the governor and without further
20 confirmation.

21 Section 6. [NEW MATERIAL] SECRETARY-- DUTIES AND GENERAL
22 POWERS. --

23 A. The secretary is responsible to the governor
24 for the operation of the department. It is the secretary's
25 duty to manage all operations of the department and to

1 administer and enforce the laws with which he or the
2 department is charged.

3 B. To perform his duties, the secretary has every
4 power expressly enumerated in the laws, whether granted to the
5 secretary, the department or any division of the department,
6 except where authority conferred upon any division is
7 explicitly exempt from the secretary's authority by statute.

8 In accordance with these provisions, the secretary shall:

9 (1) except as otherwise provided in the Water
10 Resources Department Act, exercise general supervisory and
11 appointing authority over all department employees, subject to
12 any applicable personnel laws and regulations;

13 (2) delegate authority to subordinates as he
14 deems necessary and appropriate, clearly delineating that
15 delegated authority and the limitations thereto;

16 (3) organize the department into those
17 organizational units he deems will enable it to function most
18 efficiently, subject to any provisions of law requiring or
19 establishing specific organizational units;

20 (4) within the limitations of available
21 appropriations and applicable laws, employ and fix the
22 compensation of those persons necessary to discharge his
23 duties;

24 (5) take administrative action by issuing
25 orders and instructions, not inconsistent with the law, to

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1 assure implementation of and compliance with the provisions of
2 law for which administration or execution he is responsible
3 and to enforce those orders and instructions by either
4 appropriate administrative action or actions in the courts;

5 (6) conduct research and studies that will
6 improve the operations of the department and the provision of
7 services to the citizens of the state;

8 (7) provide courses of instruction and
9 practical training for employees of the department and other
10 persons involved in the administration of programs with the
11 objective of improving the operations and efficiency of
12 administration;

13 (8) prepare an annual budget of the
14 department; and

15 (9) appoint, with the governor's consent, a
16 "director" for each division. These appointed positions are
17 exempt from the provisions of the Personnel Act. Persons
18 appointed to these positions shall serve at the pleasure of
19 the secretary.

20 C. The secretary may apply for and receive, with
21 the governor's approval and in the name of the department, any
22 public or private funds, including United States government
23 funds, available to the department to carry out its programs,
24 duties or services.

25 D. The secretary may make and adopt such

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1 reasonable and procedural rules as may be necessary to carry
2 out the duties of the department and its divisions. No rule
3 promulgated by the director of a division in carrying out the
4 functions and duties of the division shall be effective until
5 approved by the secretary unless otherwise provided by
6 statute. Unless otherwise provided by statute, no procedural
7 rule affecting a person or agency outside the department shall
8 be adopted, amended or repealed without a public hearing on
9 the proposed action before the secretary or a hearing officer
10 designated by the secretary. The public hearing shall be held
11 in Santa Fe unless otherwise permitted by statute. Notice of
12 the subject matter of the regulation, the action proposed to
13 be taken, the time and place of the hearing, the manner in
14 which interested persons may present their views and the
15 method by which copies of the proposed regulation, proposed
16 amendment or repeal of an existing regulation may be obtained
17 shall be published once at least thirty days prior to the
18 hearing date in a newspaper of general circulation and mailed
19 at least thirty days prior to the hearing date to all persons
20 who have made a written request for advance notice of hearing.
21 All rules shall be filed in accordance with the State Rules
22 Act.

23 Section 7. [NEW MATERIAL] ORGANIZATIONAL UNITS OF THE
24 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW-- ACCESS TO
25 INFORMATION.-- Those organizational units of the department and

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1 the officers of those units specified by law shall have all
2 the powers and duties enumerated in the specific laws
3 involved. However, the carrying out of those powers and
4 duties shall be subject to the direction and supervision of
5 the secretary, and he shall retain the final decision-making
6 authority and responsibility for the administration of any
7 laws as provided in Subsection B of Section 6 of the Water
8 Resources Department Act. The department shall have access to
9 all records, data and information of other state departments,
10 agencies and institutions, including its own organizational
11 units, not specifically held confidential by law.

12 Section 8. [NEW MATERIAL] DIRECTORS--QUALIFICATIONS. --

13 A. The secretary, with the approval of the
14 governor, shall appoint "directors" of divisions established
15 within the department. Division directors, with the approval
16 of the secretary, may appoint "deputy directors" of divisions.
17 The positions so appointed are exempt from the Personnel Act.

18 B. Following are minimum qualifications for
19 division directors:

20 (1) for the director of the river and
21 watershed management division, education in biology, forestry
22 or ecology with at least ten years' relevant experience;

23 (2) for the director of the water
24 conservation division, education in natural resources or water
25 resource planning or administration with at least ten years'

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1 relevant experience;

2 (3) for the director of the water quality
3 protection division, education in earth science or natural
4 resource management with at least ten years' relevant
5 experience;

6 (4) for the director of the water litigation
7 division, license to practice law in New Mexico; and

8 (5) for the director of the water rights and
9 adjudication division, a registered professional engineer
10 with a background in civil engineering and at least ten years'
11 relevant experience.

12 Section 9. [NEW MATERIAL] BUREAUS--CHIEFS. --The
13 secretary may establish within the divisions such bureaus as
14 he deems necessary to carry out the provisions of the Water
15 Resources Department Act. He shall employ a "chief" to be the
16 administrative head of each bureau. The chiefs and all
17 subsidiary employees of the department shall be covered by the
18 Personnel Act.

19 Section 10. [NEW MATERIAL] DIRECTORS' FUNCTIONAL
20 GROUP. --The secretary and division directors, except the
21 administrative services division director and the office of
22 the inspector general, shall serve as the "directors'
23 functional group" with respect to the powers and duties of the
24 former interstate stream commission, water quality control
25 commission, oil conservation commission, coal surface mining

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1 commission and mining commission.

2 Section 11. [NEW MATERIAL] LEGAL ADVICE. -- Attorneys
3 under contract with the department may act for the department
4 in lawsuits filed against or on behalf of the department. The
5 attorney general may, at the request of the department, file
6 and defend lawsuits on behalf of the department.

7 Section 12. [NEW MATERIAL] POWERS AND DUTIES OF
8 DIVISIONS. --

9 A. The administrative services division shall
10 provide clerical, recordkeeping, information technology and
11 administrative support to the department in the areas of
12 personnel, budget, procurement and contracting.

13 B. The office of inspector general shall be
14 responsible for oversight, investigations and auditing of the
15 activities of the department and shall report directly to the
16 secretary.

17 C. The river and watershed management division is
18 responsible for the functions of the following organizational
19 units transferred from the former agencies:

20 (1) compact compliance of the office of the
21 state engineer and the interstate stream commission;

22 (2) nonpoint source programs and total
23 maximum daily load programs of the department of environment;

24 (3) supervision and interaction with
25 irrigation and conservancy districts of the office of the

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1 state engineer and the interstate stream commission;

2 (4) responsibilities associated with acequias
3 of the office of the state engineer and the interstate stream
4 commission;

5 (5) ecology and biological programs of the
6 department of environment, the office of the state engineer
7 and the interstate stream commission; and

8 (6) state water planning of the office of the
9 state engineer and the interstate stream commission.

10 D. The director of the water litigation division
11 shall have the authority to defend and prosecute all claims in
12 the name of and against the state of New Mexico, the
13 department and any director within the department relating to
14 the duties and responsibilities of the department. Legal
15 actions undertaken by the division shall not be subject to
16 approval or oversight by the attorney general.

17 E. The water quality protection division is
18 responsible for the functions of the following organizational
19 units transferred from the former department of environment:

20 (1) ground water protection and remediation
21 bureau;

22 (2) surface water quality bureau;

23 (3) drinking water bureau;

24 (4) underground storage tank bureau; and

25 (5) water and wastewater construction bureau.

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1 F. The water conservation division is responsible
2 for the functions of the following organizational units
3 transferred from the former agencies:

4 (1) drought management of the office of the
5 state engineer and the energy, minerals and natural resources
6 department;

7 (2) regional water planning of the office of
8 the state engineer and the interstate stream commission;

9 (3) state water planning of the office of the
10 state engineer and the interstate stream commission;

11 (4) subdivision review of the office of the
12 state engineer; and

13 (5) water use and conservation of the office
14 of the state engineer, the interstate stream commission and
15 the department of environment.

16 G. The water rights and adjudication division is
17 responsible for the functions transferred from the former
18 office of the state engineer that are not otherwise assigned
19 to another division pursuant to this section.

20 Section 13. [NEW MATERIAL] ADVISORY COMMITTEES. --

21 A. Advisory committees may be created. "Advisory"
22 means furnishing advice, gathering information, making
23 recommendations and performing such other activities as may be
24 instructed or delegated and as may be necessary to fulfill
25 advisory functions or to comply with federal or private

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1 funding requirements and does not extend to administering a
2 program or function or setting policy unless specified by law.
3 Advisory committees shall be appointed in accordance with the
4 provisions of the Executive Reorganization Act.

5 B. Members of advisory committees may be
6 reimbursed for attendance at meetings pursuant to the Per Diem
7 and Mileage Act.

8 Section 14. [NEW MATERIAL] COOPERATION WITH THE FEDERAL
9 GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY
10 STATUS.--

11 A. The department is authorized to cooperate with
12 the federal government in the administration of environmental
13 programs in which financial or other participation by the
14 federal government is authorized or mandated under state or
15 federal laws, rules or orders. The secretary may enter into
16 agreements with agencies of the federal government to
17 implement environmental programs subject to availability of
18 appropriated state funds and any provisions of state laws
19 applicable to such agreements or participation by the state.

20 B. The governor or the secretary may by
21 appropriate order designate the department or any
22 organizational unit of the department as the single state
23 agency for the administration of any environmental program
24 when that designation is a condition of federal financial or
25 other participation in the program under applicable federal

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1 law, rule or order. Whether or not a federal condition
2 exists, the governor may designate the department or any
3 organizational unit of the department as the single state
4 agency for the administration of any environmental program.
5 No designation of a single state agency under the authority
6 granted in this section shall be made in contravention of
7 state law.

8 Section 15. [NEW MATERIAL] SHORT TITLE. -- Sections 15
9 through 29 of this act may be cited as the "Natural Resources
10 and Environment Department Act".

11 Section 16. [NEW MATERIAL] PURPOSE. -- The purpose of the
12 Natural Resources and Environment Department Act is to
13 establish a single, unified department to administer certain
14 laws and exercise specific functions formerly administered by
15 the department of environment; the environmental improvement
16 board; the department of game and fish; the state game
17 commission; the coal surface mining commission; the mining
18 commission; the New Mexico youth conservation corps
19 commission; and the energy, minerals and natural resources
20 department pertaining to natural resources and the
21 environment.

22 Section 17. [NEW MATERIAL] DEFINITIONS. -- As used in the
23 Natural Resources and Environment Department Act:

24 A. "department" means the natural resources and
25 environment department; and

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1 B. "secretary" means the secretary of natural
2 resources and environment.

3 Section 18. [NEW MATERIAL] NATURAL RESOURCES AND
4 ENVIRONMENT DEPARTMENT ESTABLISHED. --The "natural resources
5 and environment department" is created in the executive
6 branch. The department shall be a cabinet department and
7 shall include the following organizational units:

- 8 A. the office of the secretary;
- 9 B. the office of inspector general;
- 10 C. the administrative services division;
- 11 D. the energy conservation and management
12 division;
- 13 E. the environmental protection division;
- 14 F. the forestry division;
- 15 G. the mining and minerals division;
- 16 H. the natural resources and environment
17 litigation division;
- 18 I. the oil conservation division;
- 19 J. the state parks division; and
- 20 K. the wildlife division.

21 Section 19. [NEW MATERIAL] SECRETARY OF NATURAL
22 RESOURCES AND ENVIRONMENT--APPOINTMENT. --The chief executive
23 and administrative officer of the department is the "secretary
24 of natural resources and environment". The secretary shall be
25 appointed by the governor with the consent of the senate. The

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1 secretary shall hold the office at the pleasure of the
2 governor and shall serve in the executive cabinet; provided,
3 however, that the secretary appointed to serve as the
4 secretary of energy, minerals and natural resources and whose
5 appointment has been confirmed by the senate may serve as the
6 secretary of natural resources and environment at the pleasure
7 of the governor and without further confirmation.

8 Section 20. [NEW MATERIAL] SECRETARY-- DUTIES AND GENERAL
9 POWERS. --

10 A. The secretary is responsible to the governor
11 for the operation of the department. It is his duty to manage
12 all operations of the department and to administer and enforce
13 the laws with which he or the department is charged.

14 B. To perform his duties, the secretary has every
15 power expressly enumerated in the laws, whether granted to the
16 secretary, the department or any division of the department,
17 except where authority conferred upon any division is
18 explicitly exempt from the secretary's authority by statute.

19 In accordance with these provisions, the secretary shall:

20 (1) except as otherwise provided in the
21 Natural Resources and Environment Department Act, exercise
22 general supervisory and appointing authority over all
23 department employees, subject to any applicable personnel laws
24 and regulations;

25 (2) delegate authority to subordinates as he

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1 deems necessary and appropriate, clearly delineating that
2 delegated authority and the limitations thereto;

3 (3) organize the department into those
4 organizational units he deems will enable it to function most
5 efficiently, subject to any provisions of law requiring or
6 establishing specific organizational units;

7 (4) within the limitations of available
8 appropriations and applicable laws, employ and fix the
9 compensation of those persons necessary to discharge his
10 duties;

11 (5) take administrative action by issuing
12 orders and instructions, not inconsistent with the law, to
13 assure implementation of and compliance with the provisions of
14 law for which administration or execution he is responsible
15 and to enforce those orders and instructions by either
16 appropriate administrative action or actions in the courts;

17 (6) conduct research and studies that will
18 improve the operations of the department and the provision of
19 services to the citizens of the state;

20 (7) provide courses of instruction and
21 practical training for employees of the department and other
22 persons involved in the administration of programs with the
23 objective of improving the operations and efficiency of
24 administration;

25 (8) prepare an annual budget of the

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1 department; and

2 (9) appoint, with the governor's consent, a
3 "director" for each division. These appointed positions are
4 exempt from the provisions of the Personnel Act. Persons
5 appointed to these positions shall serve at the pleasure of
6 the secretary.

7 C. The secretary may apply for and receive, with
8 the governor's approval and in the name of the department, any
9 public or private funds, including United States government
10 funds, available to the department to carry out its programs,
11 duties or services.

12 D. The secretary may make and adopt such
13 reasonable and procedural rules as may be necessary to carry
14 out the duties of the department and its divisions. No rule
15 promulgated by the director of a division in carrying out the
16 functions and duties of the division shall be effective until
17 approved by the secretary unless otherwise provided by
18 statute. Unless otherwise provided by statute, no procedural
19 rule affecting a person or agency outside the department shall
20 be adopted, amended or repealed without a public hearing on
21 the proposed action before the secretary or a hearing officer
22 designated by the secretary. The public hearing shall be held
23 in Santa Fe unless otherwise permitted by statute. Notice of
24 the subject matter of the regulation, the action proposed to
25 be taken, the time and place of the hearing, the manner in

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1 which interested persons may present their views and the
2 method by which copies of the proposed regulation, proposed
3 amendment or repeal of an existing regulation may be obtained
4 shall be published once at least thirty days prior to the
5 hearing date in a newspaper of general circulation and mailed
6 at least thirty days prior to the hearing date to all persons
7 who have made a written request for advance notice of hearing.
8 All rules shall be filed in accordance with the State Rules
9 Act.

10 Section 21. [NEW MATERIAL] ORGANIZATIONAL UNITS OF THE
11 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW - ACCESS TO
12 INFORMATION. -- Those organizational units of the department and
13 the officers of those units specified by law shall have all
14 the powers and duties enumerated in the specific laws
15 involved. However, the carrying out of those powers and
16 duties shall be subject to the direction and supervision of
17 the secretary, and he shall retain the final decision-making
18 authority and responsibility for the administration of any
19 laws as provided in Subsection B of Section 20 of the Natural
20 Resources and Environment Department Act. The department
21 shall have access to all records, data and information of
22 other state departments, agencies and institutions, including
23 its own organizational units, not specifically held
24 confidential by law.

25 Section 22. [NEW MATERIAL] DIRECTORS. --

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1 A. The secretary, with the approval of the
2 governor, shall appoint "directors" of divisions established
3 within the department. Division directors, with the approval
4 of the secretary, may appoint "deputy directors" of divisions.
5 The positions so appointed are exempt from the Personnel Act.

6 B. Following are minimum qualifications for
7 division directors:

8 (1) for the director of the energy
9 conservation and management division, education in economics
10 or business with at least ten years' relevant experience;

11 (2) for the director of the environmental
12 protection division, education in environmental science or a
13 related field with at least ten years' relevant experience;

14 (3) for the director of the forestry
15 division, education in forestry with at least ten years'
16 relevant experience;

17 (4) for the director of the mining and
18 minerals division, education in geology or a related
19 engineering field with at least ten years' relevant
20 experience;

21 (5) for the director of the natural resources
22 and environment litigation division, licensed to practice law
23 in New Mexico;

24 (6) for the director of the oil conservation
25 division, education in petroleum engineering with at least ten

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1 years' experience;

2 (7) for the director of the state parks
3 division, education in recreation planning, management or a
4 related field with at least ten years' relevant experience;
5 and

6 (8) for the director of the wildlife
7 division, education in biology or wildlife management with at
8 least ten years' experience.

9 Section 23. [NEW MATERIAL] BUREAUS--CHIEFS. -- The
10 secretary may establish within the divisions such bureaus as
11 he deems necessary to carry out the provisions of the Natural
12 Resources and Environment Department Act. He shall employ a
13 "chief" to be the administrative head of each bureau. The
14 chiefs and all subsidiary employees of the department shall be
15 covered by the Personnel Act.

16 Section 24. [NEW MATERIAL] DIRECTORS' FUNCTIONAL
17 GROUP. -- The secretary and division directors, except the
18 administrative services division director and the office of
19 the inspector general, shall serve as the "directors'
20 functional group" with respect to the duties of the former
21 environmental improvement board, the state game commission,
22 the coal surface mining commission, the oil conservation
23 commission and the mining commission.

24 Section 25. [NEW MATERIAL] DIVISIONS--DUTIES. -- In
25 addition to the duties assigned to each division of the

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1 natural resources and environment department by the secretary
2 of natural resources and environment:

3 A. the administrative services division shall
4 provide clerical, recordkeeping, information technology and
5 administrative support to the department in the areas of
6 personnel, budget, procurement and contracting;

7 B. the office of inspector general shall be
8 responsible for oversight, investigations and auditing of the
9 activities of the department and shall report directly to the
10 secretary;

11 C. the energy conservation and management division
12 shall plan, administer, review, provide technical assistance,
13 maintain records and monitor state and federal energy
14 conservation and alternative energy technology programs;

15 D. the environmental protection division is
16 responsible for the functions of the following organizational
17 units transferred from the former department of environment:

- 18 (1) air quality bureau;
19 (2) occupational health and safety bureau;
20 (3) solid waste and construction bureau;
21 (4) department of energy oversight bureau;

22 and

23 (5) hazardous and radioactive materials
24 bureau;

25 E. the forestry division shall enforce and

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1 administer all laws and regulations relating to forestry on
2 lands within the state;

3 F. the mining and minerals division shall enforce
4 and administer laws and regulations relating to mine safety,
5 coal surface mine reclamation and abandoned mine lands
6 reclamation;

7 G. The director of the natural resources and
8 environment litigation division shall have the authority to
9 defend and prosecute all claims in the name of and against the
10 state of New Mexico, the department and any director within
11 the department relating to the duties and responsibilities of
12 the department. Legal actions undertaken by the division
13 shall not be subject to approval or oversight by the attorney
14 general;

15 H. the oil conservation division shall administer
16 the laws and regulations relating to oil, gas and geothermal
17 resources, except those laws specifically administered by
18 another authority;

19 I. the state parks division shall develop,
20 maintain, manage and supervise all state parks and state-owned
21 or state-leased recreation areas; and

22 J. the wildlife division shall have the powers and
23 duties of the former department of game and fish and the state
24 game commission.

25 Section 26. [NEW MATERIAL] ADVISORY COMMITTEES. --

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1 A. Advisory committees may be created. "Advisory"
2 means furnishing advice, gathering information, making
3 recommendations and performing such other activities as may be
4 instructed or delegated and as may be necessary to fulfill
5 advisory functions or to comply with federal or private
6 funding requirements and does not extend to administering a
7 program or function or setting policy unless specified by law.
8 Advisory committees shall be appointed in accordance with the
9 provisions of the Executive Reorganization Act.

10 B. Members of advisory committees may be
11 reimbursed for attendance at meetings pursuant to the Per Diem
12 and Mileage Act.

13 Section 27. [NEW MATERIAL] COOPERATION WITH THE FEDERAL
14 GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY
15 STATUS.--

16 A. The department is authorized to cooperate with
17 the federal government in the administration of environmental
18 programs in which financial or other participation by the
19 federal government is authorized or mandated under state or
20 federal laws, rules or orders. The secretary may enter into
21 agreements with agencies of the federal government to
22 implement environmental programs subject to availability of
23 appropriated state funds and any provisions of state laws
24 applicable to such agreements or participation by the state.

25 B. The governor or the secretary may by

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1 appropriate order designate the department or any
2 organizational unit of the department as the single state
3 agency for the administration of any environmental program
4 when that designation is a condition of federal financial or
5 other participation in the program under applicable federal
6 law, rule or order. Whether or not a federal condition
7 exists, the governor may designate the department or any
8 organizational unit of the department as the single state
9 agency for the administration of any environmental program.
10 No designation of a single state agency under the authority
11 granted in this section shall be made in contravention of
12 state law.

13 Section 28. [NEW MATERIAL] STATE ALTERNATIVE FUEL
14 PROGRAM MANAGER-- CREATION-- DUTIES. -- The "state alternative
15 fuel program manager" is created in the energy conservation
16 and management division of the natural resources and
17 environment department, and his duties shall include:

18 A. promoting, coordinating and monitoring the
19 implementation of state clean alternative fuel transportation
20 programs, including a mass transit demonstration project and
21 other demonstration projects that place New Mexico on the
22 leading edge of new clean fuel technologies;

23 B. coordinating and directing the provisions of
24 the Alternative Fuel Conversion Act; and

25 C. mobilizing and coordinating necessary resources

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1 and expertise from government, education and the private
2 sector to assist in clean alternative fuel transportation
3 programs and projects.

4 Section 29. [NEW MATERIAL] SECRETARY AS NATURAL
5 RESOURCES TRUSTEE. --The secretary shall serve as the natural
6 resources trustee.

7 Section 30. Section 9-5B-1 NMSA 1978 (being Laws 1992,
8 Chapter 91, Section 1) is amended to read:

9 "9-5B-1. SHORT TITLE. -- ~~[This act]~~ Chapter 9, Article 5B
10 NMSA 1978 may be cited as the "New Mexico Youth Conservation
11 Corps Act". "

12 Section 31. Section 9-5B-3 NMSA 1978 (being Laws 1992,
13 Chapter 91, Section 3) is amended to read:

14 "9-5B-3. DEFINITIONS. --As used in the New Mexico Youth
15 Conservation Corps Act:

16 [~~A.~~] ~~"commission" means the New Mexico youth~~
17 ~~conservation corps commission;~~

18 ~~B.]~~ A. "corps" means the New Mexico youth
19 conservation corps;

20 [~~C.]~~ B. "corps member" means a person enrolled in
21 the corps;

22 [~~D.]~~ C. "department" means the [~~energy, minerals~~
23 ~~and]~~ natural resources and environment department;

24 [~~E.]~~ D. "nonprofit organization" means any
25 organization that has been granted an exemption from federal

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1 income tax by the United States commissioner of internal
2 revenue as an organization described in Section 501(c) of the
3 United States Internal Revenue Code of 1986, as amended or
4 renumbered;

5 ~~[F.]~~ E. "project" means an activity that can be
6 completed in six months or less, results in a specific
7 identifiable service or product that otherwise would not be
8 accomplished with existing funds and does not duplicate the
9 routine services or functions of the sponsor;

10 ~~[G.]~~ F. "resident" means ~~[an individual]~~ a person
11 who has resided in New Mexico for at least six months before
12 applying for employment with the corps; and

13 ~~[H.]~~ G. "sponsor" means ~~[any]~~ a local unit of
14 government, state agency, federal agency, nonprofit
15 organization or federally recognized Native American tribe. "

16 Section 32. Section 9-5B-6 NMSA 1978 (being Laws 1992,
17 Chapter 91, Section 6) is amended to read:

18 "9-5B-6. ~~[COMMISSION]~~ DEPARTMENT- - POWERS AND DUTIES. - -

19 A. The ~~[commission]~~ department may:

20 (1) accept gifts, devises, grants and
21 donations from others to carry out the provisions of the New
22 Mexico Youth Conservation Corps Act;

23 ~~[(2) request assistance and staff support~~
24 ~~from the department;~~

25 ~~(3)]~~ (2) employ such personnel as necessary

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1 to carry out the provisions of the New Mexico Youth
2 Conservation Corps Act;

3 [~~(4)~~] (3) delegate responsibility for the
4 administration and implementation of conservation projects,
5 corps members' employment and supervision, project
6 coordination and other program matters;

7 [~~(5)~~] (4) establish work camps and long-term
8 residential facilities to house corps members and their
9 supervisors; and

10 [~~(6)~~] (5) contact potential sponsors and
11 funding sources for support.

12 B. The [~~commission~~] department shall:

13 (1) adopt rules [~~and regulations~~] that are
14 necessary for the proper administration of the New Mexico
15 Youth Conservation Corps Act;

16 (2) administer and enforce the provisions of
17 the New Mexico Youth Conservation Corps Act and rules [~~and~~
18 ~~regulations~~] adopted pursuant to [~~Paragraph (1) of this~~
19 ~~subsection~~] that act;

20 (3) develop and approve corps work projects,
21 activities and contracts with project sponsors;

22 (4) establish standards, procedures and
23 policies for selecting, hiring, providing compensation for and
24 other personnel matters involving corps members and other
25 personnel;

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1 (5) foster partnerships and cooperation
2 between the corps and New Mexico's secondary and post-
3 secondary schools to assist corps members in obtaining
4 education and job training; and

5 (6) hire a program manager, who shall be the
6 administrative officer of the corps. "

7 Section 33. Section 9-5B-7 NMSA 1978 (being Laws 1992,
8 Chapter 91, Section 7) is amended to read:

9 "9-5B-7. APPLICATION FOR PROJECT APPROVAL--
10 CONSIDERATIONS FOR APPROVAL. --

11 A. Sponsors shall apply to the [~~commission~~]
12 department for project approval.

13 B. A sponsor's application shall include:

- 14 (1) a comprehensive work plan;
15 (2) a complete project cost estimate;
16 (3) the number of corps members required; and
17 (4) the estimated time necessary to complete
18 the project.

19 C. The [~~commission~~] department shall examine the
20 following in considering a project for approval or rejection:

- 21 (1) the opportunities the project provides in
22 the development of skills, discipline and good work habits;
23 (2) the degree of difficulty in carrying out
24 the project;
25 (3) the project's compliance with

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1 conservation and community service objectives, as set forth in
2 Section [~~4 of the New Mexico Youth Conservation Corps Act~~]
3 9-5B-4 NMSA 1978;

4 (4) the sponsor's ability to contribute the
5 necessary financial and human resources to the project; and

6 (5) the project's compatibility with
7 concurrent corps projects, including the availability of the
8 required corps work force.

9 D. A project shall not be approved if its
10 implementation would result in the displacement of currently
11 employed workers, including a partial displacement, such as
12 reduction in hours or benefits. Participating sponsors shall
13 not terminate, lay off or reduce the working hours of any
14 employee in order to use a corps member to perform the
15 employee's duties. "

16 Section 34. Section 9-5B-8 NMSA 1978 (being Laws 1992,
17 Chapter 91, Section 8) is amended to read:

18 "9-5B-8. ELIGIBILITY REQUIREMENTS-- BENEFITS. --

19 A. Persons eligible for enrollment as corps
20 members are persons who:

- 21 (1) are unemployed;
- 22 (2) are between the ages of fourteen and
23 twenty-five years old;
- 24 (3) are New Mexico residents; and
- 25 (4) meet any additional eligibility standards

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1 for employment as deemed necessary by the [~~commission~~
2 department].

3 B. Corps members are not entitled to any employee
4 benefits provided to state employees under the Personnel Act.
5 Corps members shall be entitled to receive workers'
6 compensation benefits provided by the [~~commission~~
7 department]. "

8 Section 35. Section 9-5B-10 NMSA 1978 (being Laws 1992,
9 Chapter 91, Section 10) is amended to read:

10 "9-5B-10. FUND CREATED--DISPOSITION.--

11 A. The "New Mexico youth conservation corps fund"
12 is created in the state treasury. All appropriations, gifts,
13 devises, grants and donations received shall be deposited in
14 the fund. Money in the fund is appropriated to the
15 [~~commission~~] department for the purpose of carrying out the
16 provisions of the New Mexico Youth Conservation Corps Act.
17 Any interest accruing to the fund shall remain in the fund.
18 Money in the fund shall not revert at the end of a fiscal
19 year.

20 B. The fund shall be administered by the
21 department. Disbursements from the fund shall be made only
22 upon warrant drawn by the secretary of finance and
23 administration pursuant to vouchers signed by the [~~chairman of~~
24 the commission] secretary of natural resources and environment
25 or his designee for the purpose of carrying out the provisions

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1 of the New Mexico Youth Conservation Corps Act. "

2 Section 36. Section 9-5B-11 NMSA 1978 (being Laws 1992,
3 Chapter 91, Section 11) is amended to read:

4 "9-5B-11. REPORT BY [~~COMMISSION~~] DEPARTMENT. -- At least
5 forty-five days prior to each legislative session, the
6 [~~commission~~] department shall submit a report concerning its
7 activities, the projects implemented and any recommendations
8 to the governor and the legislature. "

9 Section 37. Section 16-2-2 NMSA 1978 (being Laws 1977,
10 Chapter 254, Section 113, as amended) is amended to read:

11 "16-2-2. STATE PARK AND RECREATION ADVISORY COMMITTEE
12 ~~CREATED-- MEMBERSHIP-- COMPENSATION-- DUTIES. --~~

13 A. The "advisory committee" to the state [~~park and~~
14 ~~recreation division of the energy, minerals and~~] parks
15 division of the natural resources and environment department
16 is created. It shall be composed of seven to eleven members
17 appointed by the governor.

18 B. The advisory committee shall provide advice and
19 make recommendations relating to the administration of the
20 state [~~park and recreation~~] parks division. It shall advise
21 on all matters of policy, regulations, the formulation of a
22 comprehensive statewide recreation plan and such other matters
23 as may be requested by the director of that division.

24 C. The advisory committee shall meet quarterly or
25 at the call of the chairman.

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1 D. Each member of the advisory committee shall
2 annually elect a chairman and vice chairman from its
3 membership. The director of the state [~~park and recreation~~
4 parks division [~~of the energy, minerals and natural resources~~
5 ~~department~~] shall serve as the executive secretary of the
6 committee. "

7 Section 38. Section 16-2-3 NMSA 1978 (being Laws 1977,
8 Chapter 254, Section 12, as amended) is amended to read:

9 "16-2-3. MEANING OF DESIGNATIONS. -- Wherever in the laws
10 of New Mexico, whether or not the statutes have been compiled
11 in NMSA 1978, reference is made to the "state park and
12 recreation commission" [~~or to the "commission"~~], the term
13 shall mean the state [~~park and recreation division of the~~
14 ~~energy, minerals and~~ parks division of the natural resources
15 and environment department. As used in Chapter 16 NMSA 1978,
16 "secretary" means the secretary of [~~energy, minerals and~~
17 natural resources and environment. "

18 Section 39. Section 16-3-2 NMSA 1978 (being Laws 1973,
19 Chapter 372, Section 2, as amended) is amended to read:

20 "16-3-2. DEFINITIONS. -- As used in the State Trails
21 System Act:

22 A. "local government" means any county,
23 municipality or other political subdivision of the state and
24 includes rural communities and unincorporated towns or
25 villages in the state; and

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1 B. "secretary" means the secretary of [~~energy,~~
2 ~~minerals and~~] natural resources and environment. "

3 Section 40. Section 16-4-3 NMSA 1978 (being Laws 1977,
4 Chapter 242, Section 3, as amended) is amended to read:

5 "16-4-3. DEFINITIONS. --As used in El Rio Chama Scenic
6 and Pastoral Act:

7 A. "corridor" means those lands immediately
8 adjacent to the riverbed essentially from rim to rim or four
9 hundred feet back from the river banks of the Rio Chama,
10 whichever is less;

11 B. "pastoral" means those free-flowing segments of
12 the river [~~which~~] that are affected by the works of man but
13 [~~which~~] that still possess natural and scenic value. Included
14 are areas with developed or partially developed shorelines;

15 C. "river" means a flowing body of water or any
16 segment, portion or tributary thereof within the corridor,
17 including rivers, streams, creeks, branches or small lakes;

18 D. "scenic" means those sections of the river that
19 are free of impoundments, with shorelines remaining largely
20 undeveloped, but [~~which~~] that may be accessible in places by
21 primitive roads; and

22 E. "secretary" means the secretary of [~~energy,~~
23 ~~minerals and~~] natural resources and environment. "

24 Section 41. Section 17-1-5.1 NMSA 1978 (being Laws 1994,
25 Chapter 129, Section 1) is amended to read:

1 "17-1-5.1. CONSERVATION SERVICES [~~DIVISION~~]

2 BUREAU- - DUTIES. - -

3 A. The "conservation services [~~division~~] bureau"
4 is created within the wildlife division of the natural
5 resources and environment department [~~of game and fish~~].

6 B. The conservation services [~~division~~] bureau is
7 responsible for:

8 (1) management, enhancement, research and
9 conservation of public wildlife habitat;

10 (2) the lease, purchase, enhancement and
11 management of state wildlife habitat;

12 (3) assisting landowners in improving
13 wildlife habitats;

14 (4) development of educational programs
15 related to conservation of wildlife and the environment,
16 including the expanded dissemination of wildlife publications;
17 and

18 (5) communication and consultation with
19 federal and other state agencies, local governments and
20 communities, private organizations and affected interests
21 responsible for habitat, wilderness, recreation, water quality
22 and environmental protection to ensure comprehensive
23 conservation services for hunters, anglers and nonconsumptive
24 wildlife users. "

25 Section 42. Section 17-1-9 NMSA 1978 (being Laws 1955,

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1 Chapter 181, Section 3, as amended) is amended to read:

2 "17-1-9. POWERS AND DUTIES OF RESERVE CONSERVATION
3 OFFICERS. --

4 A. Under the supervision of the [~~department of~~
5 ~~game and fish~~] wildlife division and subject to such
6 restrictions as may be provided by the [~~state game commission~~]
7 secretary of natural resources and environment, reserve
8 conservation officers shall have authority to enforce laws and
9 valid [~~regulations~~] rules of the [~~state game commission~~]
10 division relating to game and fish and perform such duties
11 with respect to wildlife management and conservation education
12 as may be assigned to them from time to time by the
13 [~~department of game and fish~~] division. When on duty, reserve
14 conservation officers shall be covered by the [~~Workmen's~~
15 Workers' Compensation Act. Reserve conservation officers
16 shall have only the rights of private citizens in the
17 enforcement of laws other than those relating to game and
18 fish.

19 B. For the purpose of calculating the amount of
20 reserve conservation officer's disability or death benefits
21 pursuant to the [~~Workmen's~~] Workers' Compensation Act, the
22 officer's average weekly wages shall be deemed to be the base
23 wage of a wildlife management officer II as classified by the
24 personnel board. "

25 Section 43. Section 17-1-14 NMSA 1978 (being Laws 1921,

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1 Chapter 35, Section 7, as amended) is amended to read:

2 "17-1-14. GENERAL POWERS AND DUTIES OF [~~STATE GAME~~
3 ~~COMMISSION~~] DIVISION--GAME PROTECTION FUND. --

4 A. The [~~state game commission~~] wildlife division
5 of the natural resources and environment department shall have
6 general control over the collection and disbursement of all
7 money collected or received under the state laws for the
8 protection and propagation of game and fish, which money shall
9 be paid over to the state treasurer to the credit of the game
10 protection fund, and the fund, including all earned income
11 therefrom, shall not be transferred to another fund. Chapter
12 17 NMSA 1978 shall be guaranty to the person who pays for
13 hunting and fishing licenses and permits that the money in
14 that fund shall not be used for any purpose other than as
15 provided in Chapter 17 NMSA 1978. The [~~state game commission~~]
16 division, with the approval of the secretary of natural
17 resources and environment, shall [have authority]:

18 (1) [~~to~~] establish and [~~through the director~~
19 ~~of the department of game and fish, to~~] operate fish
20 hatcheries for the purpose of stocking public waters of the
21 state and to furnish fish fry and fingerlings to stock private
22 waters, receipts from such sources to go into the game
23 protection fund;

24 (2) [~~to~~] declare closed seasons in any
25 specified locality and on any species of game or fish

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1 threatened with undue depletion from any cause;

2 (3) ~~[\tø]~~ establish game refuges for the
3 purpose of providing safe sanctuaries in which game may breed
4 and replenish adjacent hunting ranges, it being the purpose of
5 this provision to establish small refuges rather than large
6 preserves, or to close large areas to hunting;

7 (4) ~~[\tø]~~ purchase lands for game refuges
8 where suitable public lands do not exist, ~~[\tø]~~ purchase lands
9 for fish hatcheries and ~~[\tø]~~ purchase lands to be maintained
10 perpetually as public hunting grounds, particularly lands
11 suitable for waterfowl hunting, all such lands to be paid for
12 from the game protection fund;

13 (5) ~~[\tø]~~ receive by gift or bequest, in the
14 name and on behalf of the state, lands suitable for game
15 refuges, hunting grounds, fish hatcheries or for any other
16 purpose necessary to carry out the provisions of Chapter 17
17 NMSA 1978;

18 (6) ~~[\tø]~~ apply for and accept any state,
19 federal or private funds, grants or donations from any source
20 for game and fish programs and projects;

21 (7) ~~[\tø]~~ designate certain areas as rest
22 grounds for migratory birds, in which hunting shall be
23 forbidden at all times or at such times as the ~~[\state-game~~
24 ~~commission]~~ division shall provide, it being the purpose of
25 this provision not to interfere unduly with the hunting of

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1 waterfowl but to provide havens in which they can rest and
2 feed without molestation;

3 (8) [to] close any public stream or lake or
4 portion thereof to fishing when such action is necessary to
5 protect a recently stocked water, to protect spawning waters
6 or to prevent undue depletion of the fish;

7 (9) [to] propagate, capture, purchase,
8 transport or sell any species of game or fish needed for
9 restocking any lands or streams of the state;

10 (10) after reasonable notice and hearing [to]
11 before the directors' functional group of the natural
12 resources and environment department, suspend or revoke any
13 license or permit issued pursuant to the provisions of Chapter
14 17 NMSA 1978 and withhold license privileges for a definite
15 period not to exceed three years from any person procuring a
16 license through misrepresentation, violating any provisions of
17 Chapter 17 NMSA 1978 or hunting without a proper license;

18 (11) [to] adopt [~~regulations~~] rules
19 establishing procedures that provide reasonable notice and a
20 hearing before the [~~state game commission~~] directors'
21 functional group for the suspension, revocation or withholding
22 of license privileges of any person charged with violating the
23 provisions of Chapter 17 NMSA 1978, subject to such judicial
24 review as may be provided by law;

25 (12) [to] conduct studies of programs for the

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1 management of endangered and nongame species of wildlife; and

2 (13) ~~to~~ establish licenses, permits and
3 certificates not otherwise provided for in Section 17-3-13
4 NMSA 1978 and ~~to~~ charge and collect just and reasonable fees
5 for them; provided the fees shall not exceed the costs of
6 administration associated with the licenses, permits or
7 certificates.

8 ~~B. The director of the department of game and~~
9 ~~fish shall exercise all the powers and duties conferred upon~~
10 ~~the state game and fish warden by all previous statutes now in~~
11 ~~force not in conflict with Chapter 17 NMSA 1978.~~

12 ~~C. The state game commission shall have authority~~
13 ~~to~~

14 B. The division may prohibit all hunting in
15 periods of extreme forest fire danger at such times and places
16 as may be necessary to reduce the danger of destructive forest
17 fires.

18 ~~D.]~~ C. The hunting, pursuing, capturing, killing
19 or wounding of any game animals, birds or fish in or upon any
20 game refuge, rest ground or closed water or closed area or
21 during any closed season established or proclaimed by the
22 ~~[state game commission]~~ division in accordance with the
23 authority conferred in Chapter 17 NMSA 1978 constitutes a
24 misdemeanor and shall be punishable as prescribed in Chapter
25 17 NMSA 1978. "

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1 Section 44. Section 17-1-18 NMSA 1978 (being Laws 1964
2 (1st S.S.), Chapter 18, Section 3, as amended) is amended to
3 read:

4 "17-1-18. BONDING AUTHORITY.--Whenever the [~~state game~~
5 ~~commission, by vote of a majority of its full membership~~
6 ~~entered in its minutes]~~ natural resources and environment
7 department determines [~~by resolution~~] that it is necessary to
8 raise funds to provide for fish hatcheries and rearing
9 facilities, game and fish habitat acquisition, development and
10 improvement projects or other similar capital outlay projects,
11 the [~~commission]~~ department may issue and sell bonds of the
12 state [~~of New Mexico~~] as provided in the Game and Fish Bond
13 Act, provided that the total amount of [~~such~~] bonds issued
14 under the authority of [~~this~~] the Game and Fish Bond Act shall
15 not exceed two million dollars (\$2,000,000). The purposes
16 stated by the [~~commission]~~ department and the amount of each
17 bond issue shall be approved by the state board of finance
18 before issuance of the bonds. The [~~commission]~~ department
19 shall report annually to the legislature any bonds issued
20 pursuant to [~~this~~] the Game and Fish Bond Act and the purpose
21 for which issued. "

22 Section 45. Section 17-1-19 NMSA 1978 (being Laws 1964
23 (1st S.S.), Chapter 18, Section 4, as amended) is amended to
24 read:

25 "17-1-19. BONDS--FORM - TERMS.--Bonds issued under the

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1 Game and Fish Bond Act shall be payable in consecutive order
2 over a period of not more than twenty years from the date of
3 issue. They shall be issued in denominations determined by
4 the ~~[state game commission]~~ natural resources and environment
5 department and shall be sold at a net effective interest rate
6 not exceeding the maximum net effective interest rate
7 permitted by the Public Securities Act, as hereafter amended
8 and supplemented. The form of the bonds shall be determined
9 by the ~~[state game commission]~~ department, and, except with
10 respect to bonds issued in book entry or similar form without
11 the delivery of physical securities, signatures of the
12 governor, the state treasurer and the ~~[chairman of the state~~
13 ~~game commission]~~ secretary of natural resources and
14 environment shall be affixed in compliance with the Uniform
15 Facsimile Signature of Public Officials Act. The form and
16 terms of the bonds shall be approved by the state board of
17 finance before issuance of the bonds. "

18 Section 46. Section 17-1-20 NMSA 1978 (being Laws 1964
19 (1st S.S.), Chapter 18, Section 5, as amended) is amended to
20 read:

21 "17-1-20. SALE OF BONDS. -- Bonds issued under the Game
22 and Fish Bond Act shall be sold at public or private sale as
23 determined by the ~~[state game commission]~~ state board of
24 finance. If sold at public sale, the ~~[chairman of the~~
25 ~~commission]~~ board shall give notice of the time, place and

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1 terms of the sale by publication in a newspaper of general
2 circulation published in Santa Fe, New Mexico, not less than
3 twenty days nor more than sixty days prior to the sale date."

4 Section 47. Section 17-1-22.1 NMSA 1978 (being Laws
5 1983, Chapter 143, Section 2) is amended to read:

6 "17-1-22.1. GAME AND FISH CAPITAL OUTLAY FUND--CREATED--
7 TRANSFER OF MONEY--STATE BOARD OF FINANCE APPROVAL.--

8 A. There is created in the state treasury the
9 "game and fish capital outlay fund".

10 B. Upon request of the [~~state game commission~~]
11 wildlife division of the natural resources and environment
12 department, approved by the state board of finance, the state
13 treasurer shall transfer to the game and fish capital outlay
14 fund all money in the game and fish bond retirement fund
15 except the amount necessary to meet all principal and interest
16 payments on [~~state game commission~~] game and fish bonds due in
17 the ensuing twelve months.

18 C. Money in the game and fish capital outlay fund
19 may be expended by the [~~department of game and fish~~] division
20 to provide for fish hatcheries and rearing facilities, game
21 and fish habitat acquisition, development and improvements and
22 other similar capital projects.

23 D. Projects to be funded pursuant to Subsection C
24 of this section shall be approved by the [~~state game~~
25 ~~commission~~] secretary of natural resources and environment and

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1 the state board of finance prior to any money being encumbered
2 for the project.

3 E. At any time that the game and fish bond
4 retirement fund is insufficient to pay the principal and
5 interest on all bonds [~~which~~] that have been issued and are
6 outstanding, the unencumbered balance in the game and fish
7 capital outlay fund shall be transferred to the game and fish
8 bond retirement fund. "

9 Section 48. Section 17-1-23 NMSA 1978 (being Laws 1964
10 (1st S.S.), Chapter 18, Section 8) is amended to read:

11 "17-1-23. CONSTRUCTION. --The Game and Fish Bond Act is
12 full authority for authorization and issuance by the [~~state~~
13 ~~game commission~~] natural resources and environment department
14 of bonds authorized by the state board of finance, and the
15 [~~commission~~] department may do anything necessary to carry out
16 the powers granted by the Game and Fish Bond Act. "

17 Section 49. Section 17-1-25 NMSA 1978 (being Laws 1964
18 (1st S.S.), Chapter 18, Section 10) is amended to read:

19 "17-1-25. REFUNDING. --Any bonds issued under the Game
20 and Fish Bond Act may be refunded under the terms of
21 resolutions adopted by the [~~state game commission~~] natural
22 resources and environment department, subject to any
23 contractual limitations involved with any outstanding bonds,
24 claims or other obligations. The proceeds of refunding bonds
25 shall be applied to retirement of the bonds to be retired or

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1 refunded, or placed in escrow to be applied to payment of the
2 bonds upon presentation for payment by the holders. Refunding
3 bonds shall be issued under all applicable conditions
4 prescribed in the Game and Fish Bond Act for issuance of the
5 original bonds. "

6 Section 50. Section 17-1-27 NMSA 1978 (being Laws 1921,
7 Chapter 35, Section 10) is amended to read:

8 "17-1-27. RULES--NOTICE AND HEARING. --Whenever three
9 percent of the duly qualified electors of any county affected
10 by a rule [~~or regulation~~] promulgated by the [~~commission~~]
11 wildlife division of the natural resources and environment
12 department, concerning hunting or fishing within [~~said~~] that
13 county, [~~shall~~] petition the [~~commission~~] directors'
14 functional group of the department in writing requesting a
15 hearing, the [~~commission~~] directors' functional group shall
16 grant a public hearing, the time, place and purpose of which
17 shall be set forth by advertising in one or more newspapers of
18 general circulation within the state not less than ten [~~(10)~~]
19 days before the date of [~~such~~] the hearing, and shall, on the
20 date of hearing, give full opportunity for all persons to be
21 heard on the point in controversy; but nothing in this section
22 shall be construed as suspending or invalidating any such rule
23 [~~or regulation~~], unless it is suspended or revoked by the
24 [~~commission~~] directors' functional group. "

25 Section 51. Section 17-2-38 NMSA 1978 (being Laws 1974,

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1 Chapter 83, Section 2, as amended) is amended to read:

2 "17-2-38. DEFINITIONS.--As used in the Wildlife
3 Conservation Act:

4 A. "commission" or "functional group" means the
5 [~~state game commission~~] directors' functional group of the
6 natural resources and environment department;

7 B. "director" means the director of the
8 [~~department of game and fish~~] division;

9 C. "division" means the wildlife division of the
10 natural resources and environment department;

11 [~~E.-~~] D. "ecosystem" means a system of living
12 organisms and their environment;

13 [~~D.-~~] E. "endangered species" means any species of
14 fish or wildlife whose prospects of survival or recruitment
15 within the state are in jeopardy due to any of the following
16 factors:

17 (1) the present or threatened destruction,
18 modification or curtailment of its habitat;

19 (2) overutilization for scientific,
20 commercial or sporting purposes;

21 (3) the effect of disease or predation;

22 (4) other natural or ~~man-made~~ factors
23 affecting its prospects of survival or recruitment within the
24 state; or

25 (5) any combination of the foregoing factors.

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1 The term ~~may~~ also include any species of fish or wildlife
2 appearing on the United States list of endangered native and
3 foreign fish and wildlife as set forth in Section 4 of the
4 Endangered Species Act of 1973 as endangered species, provided
5 that the [~~commission~~] division adopts those lists in whole or
6 in part. The term shall not include any species covered by
7 the provisions of 16 U. S. C. 1331 through 1340 (1971) and shall
8 not include any species of the class insecta determined by the
9 director to constitute a pest whose protection under the
10 Wildlife Conservation Act would present an overwhelming and
11 overriding risk to man;

12 ~~[E.]~~ F. "investigation" means a process pursuant
13 to Subsections B through L of Section 17-2-40 NMSA 1978
14 undertaken whenever the director suspects that a species ~~may~~
15 be threatened or endangered and which consists of a formal
16 review of existing data and studies and ~~may~~ include additional
17 field research to determine whether a species is threatened or
18 endangered;

19 ~~[F.]~~ G. "land or aquatic habitat interests" means
20 interests in real property or water rights consisting of fee
21 simple title, easements in perpetuity, ~~time~~ certain easements,
22 long-term leases and short-term leases;

23 ~~[G.]~~ H. "management" means the collection and
24 application of biological information for the purposes of
25 establishing and ~~maintaining~~ a congruous relationship between

1 individuals within species and populations of wildlife and the
2 carrying capacity of their habitat. The term includes the
3 entire range of activities that constitutes a full scientific
4 resource program [øf], including [~~but not limited to~~]
5 research, census, law enforcement, propagation, acquisition or
6 maintenance of land or aquatic habitat interests appropriate
7 for recovery of the species; improvement and maintenance,
8 education and related activities; [øf] and protection and
9 regulated taking;

10 [~~H.-~~] I. "recovery plan" means a designated program
11 or methodology reasonably expected to lead to restoration and
12 maintenance of a species and its habitat;

13 [~~I.-~~] J. "peer review panel" means an advisory
14 panel of scientists, each of whom possesses expertise relevant
15 to the proposed investigation and at least one of whom is a
16 wildlife biologist, convened to review the scientific
17 methodology for collection and analysis of data by a
18 researcher based on commonly accepted scientific peer review;

19 [~~J.-~~] K. "species" means any species or subspecies;

20 [~~K.-~~] L. "substantial public interest" means a
21 nonfrivolous claim indicated by a broad-based expression of
22 public concern;

23 [~~L.-~~] M. "take" or "taking" means to harass, hunt,
24 capture or kill any wildlife or attempt to do so;

25 [~~M.-~~] N. "threatened species" means any species

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1 that is likely to become an endangered species within the
2 foreseeable future throughout all or a significant portion of
3 its range in New Mexico; the term may also include any species
4 of fish or wildlife appearing on the United States list of
5 endangered native and foreign fish and wildlife as set forth
6 in Section 4 of the Endangered Species Act of 1973 as
7 threatened species, provided that the [~~commission~~] functional
8 group adopts the list in whole or in part; and

9 [N-] 0. "wildlife" means any nondomestic mammal,
10 bird, reptile, amphibian, fish, mollusk or crustacean or any
11 part, egg or offspring or the dead body or parts thereof. "

12 Section 52. Section 17-2A-3 NMSA 1978 (being Laws 1996,
13 Chapter 89, Section 5, as amended) is amended to read:

14 "17-2A-3. HUNTING GUIDES AND OUTFITTERS. --

15 A. Effective April 1, 1997, it is unlawful to be a
16 hunting guide or outfitter in New Mexico without being
17 registered, except for a private landowner or his authorized
18 agent who outfits or guides pursuant to a landowner permit
19 issued by the [~~department of game and fish~~] wildlife division
20 of the natural resources and environment department for the
21 landowner's property or for the landowner's shared private and
22 public unit.

23 [~~B. The state game commission shall adopt~~
24 ~~regulations by September 1, 1997 to govern the granting of~~
25 ~~non-interim registration, permits and certificates to hunting~~

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1 ~~guides and outfitters and to regulate the operations and~~
2 ~~professional conduct of registered hunting guides and~~
3 ~~outfitters. Regulations shall be adopted in accordance with~~
4 ~~the following procedures and standards:~~

5 ~~(1) the commission shall establish dates and~~
6 ~~locations for a public hearing and provide reasonable prior~~
7 ~~public notice of a hearing. A public hearing shall be held at~~
8 ~~a place within any quadrant of the state affected by the~~
9 ~~proposed regulation when the commission determines there is~~
10 ~~substantial public interest in holding a hearing in that~~
11 ~~quadrant;~~

12 ~~(2) a hearing shall be held within six months~~
13 ~~of the date a proposed regulation is issued;~~

14 ~~(3) notice of a hearing shall:~~

15 ~~(a) include the date, time and location~~
16 ~~of the hearing;~~

17 ~~(b) include a statement of the~~
18 ~~recommended action;~~

19 ~~(c) include an indication of the~~
20 ~~location and availability of the public file on the~~
21 ~~regulation;~~

22 ~~(d) indicate where and by what date~~
23 ~~written and oral comments and testimony may be received; and~~

24 ~~(e) specify that the public record~~
25 ~~shall remain open for comments for thirty days after the date~~

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1 ~~of the final hearing; and~~

2 ~~(4) the commission shall make its decision~~
3 ~~and take action based upon relevant and reliable evidence.~~

4 ~~C.]~~ B. No person shall be allowed to work as a
5 registered hunting guide or outfitter in New Mexico:

6 (1) without being registered by the [~~state~~
7 ~~game commission~~] division;

8 (2) if the person has had a guide or
9 outfitter license, registration, permit or certificate revoked
10 in another state;

11 (3) if the person has had a guide or
12 outfitter license, registration, permit or certificate
13 suspended in another state and it has not been reinstated; or

14 (4) if the person has been convicted of a
15 felony.

16 ~~[D.]~~ C. The [~~state game commission~~] division shall
17 develop a point system for the suspension or revocation of a
18 guide or outfitter registration. The point system shall be
19 similar to the point system that governs individual hunting
20 and fishing license privileges.

21 ~~[E.]~~ D. To be granted a registration to be a
22 guide, an applicant shall, in addition to any other reasonable
23 criteria adopted by the [~~state game commission~~] division, and
24 except as provided for persons granted an interim
25 registration:

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- 1 (1) be at least eighteen years of age; and
2 (2) pass a written or oral examination
3 approved by the [~~department of game and fish~~] division at a
4 date and time approved by the [~~department~~] division.

5 [F-] E. A registered or interim registered guide
6 shall work only under the supervision of a New Mexico
7 registered or interim registered outfitter and in an area
8 designated by the registered or interim registered outfitter.

9 [G-] F. The [~~department of game and fish~~] division
10 may provide a registration for a temporary emergency guide,
11 provided the registration is limited to a maximum seven-day
12 period and is granted only in emergency circumstances as
13 determined by the [~~department~~] division. The fee for a
14 temporary emergency guide registration is ten dollars
15 (\$10.00).

16 [H-] G. To be granted a registration to be an
17 outfitter, an applicant shall, in addition to any other
18 reasonable criteria adopted by the [~~state game commission~~]
19 division, and except as provided for persons granted an
20 interim registration:

- 21 (1) be at least twenty-one years of age;
22 (2) have operated as a New Mexico registered
23 guide for at least three years or have been granted an interim
24 outfitter's registration;
25 (3) not be a convicted felon or have a

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1 history of violation of federal or state game and fish laws or
2 [~~regulations~~] rules or federal or state guide or outfitter
3 licensing or registration laws or [~~regulations~~] rules; and

4 (4) pass a written or oral examination
5 approved by the [~~department of game and fish~~] division at a
6 date and time determined by the [~~department~~] division.

7 [~~I.~~] H. A registered outfitter shall:

8 (1) provide proof of commercial liability
9 insurance of at least five hundred thousand dollars
10 (\$500,000);

11 (2) responsibly supervise each registered
12 guide working under his direction;

13 (3) provide a written contract for outfitting
14 services, signed by the registered outfitter and identifying
15 the outfitter's registration number, to each resident and
16 nonresident who seeks to use the services of a registered
17 outfitter;

18 (4) register with the taxation and revenue
19 department and provide proof of that registration to the
20 [~~department of game and fish~~] division; and

21 (5) provide at least one registered guide or
22 outfitter for every four or fewer resident or nonresident
23 hunters who have contracted for an outfitter's guided
24 services.

25 [~~J.~~] I. The [~~department of game and fish~~] division

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1 shall provide to the taxation and revenue department a copy of
2 each outfitter registration that is granted.

3 ~~[K.]~~ J. No person shall be allowed to charge a
4 processing or other fee to obtain for a resident or
5 nonresident a license that is granted from a special drawing
6 for a hunt on public lands pursuant to the provisions of
7 Section 17-3-16 NMSA 1978, except that nothing in this
8 subsection shall prohibit the ~~[department of game and fish]~~
9 division from collecting an application fee.

10 ~~[L.]~~ K. A New Mexico resident registered outfitter
11 shall be a registered outfitter who is a resident as defined
12 in Section 17-3-4 NMSA 1978. The ~~[state game commission]~~
13 division shall adopt ~~[regulations]~~ rules that set forth
14 additional requirements and that shall include at a minimum
15 that a resident registered outfitter shall maintain a business
16 address in New Mexico and, except as provided in Subsection Q
17 of this section, derive at least fifty percent of his guiding
18 or outfitting income from guiding or outfitting in New Mexico,
19 as determined by gross receipts or corporate or individual
20 income tax returns for the immediately preceding three years.

21 ~~[M.]~~ L. The ~~[department of game and fish]~~ division
22 shall maintain for public distribution a list of New Mexico
23 registered outfitters.

24 ~~[N.]~~ M. The annual registration fee for a
25 registered guide in New Mexico is fifty dollars (\$50.00) for a

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1 resident and one hundred dollars (\$100) for a nonresident.

2 [Ø-] N. The annual registration fee to be a
3 registered outfitter in New Mexico is five hundred dollars
4 (\$500) for either a resident or a nonresident.

5 [P-] O. Annual registration fees for guides and
6 outfitters shall be deposited in the game protection fund.

7 [Q-] P. A resident interim registered or
8 registered outfitter may apply for inactive status of his
9 registration for any period in which he does not operate as an
10 outfitter. The [~~state game commission~~] division shall
11 reactivate an outfitter registration at the request of the
12 outfitter and upon proof that the outfitter complies with the
13 provisions of this section and upon payment of the annual
14 registration fee for the year the registration is being
15 reinstated and payment of a reinstatement fee of not to exceed
16 fifty dollars (\$50.00).

17 [~~R.—The state game commission shall adopt by~~
18 ~~September 1, 1996 interim regulations, consistent to the~~
19 ~~greatest extent practicable with the provisions of this~~
20 ~~section, to provide for the granting of interim registrations~~
21 ~~to guides and outfitters.—The commission shall issue interim~~
22 ~~registrations prior to mailing applications for 1997 licensed~~
23 ~~hunts to persons who qualify for interim registration and~~
24 ~~submit applications to the department of game and fish.—~~

25 S-] Q. A person adversely affected by an action,

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1 other than a [~~regulation~~] rule, taken pursuant to the
2 provisions of this section, including the denial, suspension
3 or revocation of a registration, license, permit or
4 certificate, may seek review of the action pursuant to the
5 provisions of the Uniform Licensing Act.

6 [~~T.~~] R. A person adversely affected by a
7 [~~regulation~~] rule adopted by the [~~state game commission~~]
8 division pursuant to this section may appeal to the [~~court of~~
9 ~~appeals~~] directors' functional group of the natural resources
10 and environment department. Appeal of a decision of the
11 directors' functional group may be taken to the court of
12 appeals. All appeals shall be made upon the record at the
13 hearing and shall be taken to the court of appeals within
14 thirty days following the date of the action. The date of the
15 action shall be the date of the filing of the [~~regulation~~]
16 rule by the [~~commission~~] division, pursuant to the provisions
17 of the State Rules Act.

18 [~~U.~~] S. Upon appeal, the court of appeals shall
19 set aside a [~~regulation~~] rule only if it is found to be:

- 20 (1) arbitrary, capricious or an abuse of
21 discretion;
22 (2) not supported by substantial evidence in
23 the record; or
24 (3) otherwise not in accordance with law.

25 [~~V.~~] T. After a hearing and a showing of good

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1 cause by the appellant, a stay of a [~~regulation~~] rule being
2 appealed may be granted:

3 (1) by the [~~state game commission~~] directors'
4 functional group; or

5 (2) by the court of appeals if the [~~state~~
6 ~~game commission~~] directors' functional group denies a stay or
7 fails to act upon an application for a stay within sixty days
8 after receipt of the application.

9 [W-] U. The appellant shall pay all costs for any
10 appeal found to be frivolous by the court of appeals. "

11 Section 53. Section 17-6-2 NMSA 1978 (being Laws 1973,
12 Chapter 242, Section 2) is amended to read:

13 "17-6-2. DEFINITIONS. --As used in the Habitat Protection
14 Act:

15 A. "commission" means the [~~state game commission~~]
16 wildlife division of the natural resources and environment
17 department;

18 B. "cross-country" means travel over the
19 countryside other than by road;

20 C. "vehicle" means any motor-powered mechanical
21 device used for conveyance; and

22 D. "road" means any maintained or unmaintained
23 right of way that has been [~~utilized~~] used by the public, and
24 includes roads, streets, highways and state scenic, recreation
25 or historical trails. "

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1 Section 54. Section 68-2-3 NMSA 1978 (being Laws 1959,
2 Chapter 122, Section 3, as amended) is amended to read:

3 "68-2-3. STATE FORESTER--COMPENSATION--SEAL--
4 QUALIFICATIONS.-- [A.] The director of the forestry division of
5 the [energy, minerals and] natural resources and environment
6 department is the "state forester" and shall be paid a salary,
7 set by the secretary of [energy, minerals and] natural
8 resources and environment, to be paid from the forest
9 conservation fund. The division shall adopt a seal and such
10 seal affixed to any paper signed by the state forester shall
11 be prima facie evidence of the due execution thereof.

12 [B. ~~No individual may be appointed as the state~~
13 ~~forester unless he is, by reason of scientific education and~~
14 ~~experience, knowledgeable in the principles of forest~~
15 ~~management.~~]"

16 Section 55. Section 68-2-31 NMSA 1978 (being Laws 1990,
17 Chapter 96, Section 3, as amended) is amended to read:

18 "68-2-31. [DEFINITION] DEFINITIONS.--As used in the New
19 Mexico Forest Re-Leaf Act:

20 A. "division" means the forestry division of the
21 [energy, minerals and] natural resources and environment
22 department; and

23 B. "tree" means any living single-stemmed or
24 multi-stemmed woody material."

25 Section 60. Section 69-25A-3 NMSA 1978 (being Laws 1979,

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1 Chapter 291, Section 3, as amended) is amended to read:

2 "69-25A-3. DEFINITIONS. -- As used in the Surface Mining
3 Act:

4 A. "commission" means the ~~[coal surface mining~~
5 ~~commission]~~ directors' functional group of the natural
6 resources and environment department;

7 B. "director", when used without further
8 qualification, means the director of the mining and minerals
9 division of the ~~[energy, minerals and]~~ natural resources and
10 environment department or his designee;

11 C. "alluvial valley floors" means the
12 unconsolidated stream-laid deposits holding streams where
13 water availability is sufficient for subirrigation or flood
14 irrigation agricultural activities, but does not include
15 upland areas ~~[which]~~ that are generally overlain by a thin
16 veneer of colluvial deposits composed chiefly of debris from
17 sheet erosion, deposits by unconcentrated runoff or slope
18 wash, together with talus, other mass movement accumulation
19 and windblown deposits;

20 D. "approximate original contour" means that
21 surface configuration achieved by backfilling and grading of
22 the mined area so that the reclaimed area, including any
23 terracing or access roads, closely resembles the general
24 surface configuration of the land prior to mining and blends
25 into and complements the drainage pattern of the surrounding

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1 terrain with all highwalls and spoil piles eliminated; water
2 impoundments may be permitted where the director determines
3 that they are in compliance with Paragraph (8) of Subsection B
4 of Section 69-25A-19 NMSA 1978;

5 E. "imminent danger to the health and safety of
6 the public" means the existence of any condition or practice,
7 or any violation of a permit or other requirement of the
8 Surface Mining Act, in a surface coal mining and reclamation
9 operation, which condition, practice or violation could
10 reasonably be expected to cause substantial physical harm to
11 persons outside the permit area before the condition, practice
12 or violation can be abated. A reasonable expectation of death
13 or serious injury before abatement exists if a rational
14 person, subjected to the same conditions or practices giving
15 rise to the peril, would not expose himself to the danger
16 during the time necessary for abatement;

17 F. "operator" means any person engaged in coal
18 mining who removes or intends to remove more than two hundred
19 fifty tons of coal from the earth by coal mining within twelve
20 consecutive calendar months in any one location;

21 G. "other minerals" means clay, stone, sand,
22 gravel, metalliferous and nonmetalliferous ores and any other
23 solid material or substances of commercial value excavated in
24 solid form from natural deposits on or in the earth, exclusive
25 of coal, and those minerals ~~[which]~~ that occur naturally in

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1 liquid or gaseous form;

2 H. "permit" means a permit to conduct surface coal
3 mining and reclamation operations issued by the director
4 pursuant to the Surface Mining Act;

5 I. "permit applicant" or "applicant" means a
6 person applying for a permit;

7 J. "permit area" means the area of land indicated
8 on the approved map submitted by the operator with his
9 application, which area of land is to be covered by the
10 operator's bond as required by Section 69-25A-13 NMSA 1978 and
11 shall be readily identifiable by appropriate markers on the
12 site;

13 K. "permittee" means a person holding a permit;

14 L. "person" means an individual, partnership,
15 association, society, joint stock company, firm, company,
16 corporation or other business organization;

17 M. the term "prime farmland" is to be defined by
18 [~~regulation~~] rule of the commission after considering such
19 factors as moisture availability, temperature regime, chemical
20 balance, permeability, surface layer composition,
21 susceptibility to flooding, erosion characteristics, history
22 of use for intensive agricultural purposes and regulations
23 issued by the United States secretary of agriculture;

24 N. "reclamation plan" means a plan submitted by an
25 applicant for a permit [~~which~~] that sets forth a plan for

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1 reclamation of the proposed surface coal mining operations
2 pursuant to Section 69-25A-12 NMSA 1978;

3 0. "surface coal mining and reclamation
4 operations" means surface coal mining operations and all
5 activities necessary and incident to the reclamation of those
6 operations after the date of enactment of the Surface Mining
7 Act;

8 P. "surface coal mining operations" means:

9 (1) activities conducted on the surface of
10 lands in connection with a surface coal mine or activities
11 subject to the requirements of Section 69-25A-20 NMSA 1978
12 relating to surface operations and surface impacts incident to
13 an underground coal mine. The activities include excavation
14 for the purpose of obtaining coal, including such common
15 methods as contour, strip, auger, mountaintop removal, box
16 cut, open pit and area mining. These activities also include
17 uses of explosives and blasting and in situ distillation or
18 retorting, leaching or other chemical or physical processing
19 and the cleaning, concentrating or other processing or
20 preparation, including loading of coal at or near the mine
21 site; provided, however, that such activities do not include
22 the extraction of coal incidental to the extraction of other
23 minerals where coal does not exceed sixteen and two-thirds
24 percent of the tonnage of minerals removed for purposes of
25 commercial use or sale or coal exploration subject to Section

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1 69-25A-16 NMSA 1978; and

2 (2) the areas upon which these activities
3 occur or where the activities disturb the natural land
4 surface. These areas also include any adjacent land, the use
5 of which is incidental to any of the activities, all lands
6 affected by the construction of new roads or the improvement
7 or use of existing roads to gain access to the site of these
8 activities and for haulage and excavations, workings,
9 impoundments, dams, ventilation shafts, entryways, refuse
10 banks, dumps, stockpiles, overburden piles, spoil banks, culm
11 banks, tailings, holes or depressions, repair areas, storage
12 areas, processing areas, shipping areas and other areas upon
13 which are sited structures, facilities or other property or
14 materials on the surface, resulting from or incident to these
15 activities;

16 Q. "unwarranted failure to comply" means the
17 failure of a permittee to prevent the occurrence of any
18 violation of his permit or any requirement of the Surface
19 Mining Act due to indifference, lack of diligence or lack of
20 reasonable care, or the failure to abate any violation of the
21 permit or the Surface Mining Act due to indifference, lack of
22 diligence or lack of reasonable care; and

23 R. "lignite coal" means consolidated lignitic coal
24 having less than eight thousand three hundred BTUs per pound,
25 moisture- and mineral-matter free. "

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1 Section 57. Section 69-25B-3 NMSA 1978 (being Laws 1980,
2 Chapter 87, Section 3, as amended) is amended to read:

3 "69-25B-3. DEFINITIONS. -- As used in the Abandoned Mine
4 Reclamation Act:

5 A. "director" means the director of the mining and
6 minerals division of the [energy, ~~minerals and~~] natural
7 resources and environment department;

8 B. "eligible lands and water" means land or water
9 that was mined or that was affected by mining, wastebanks,
10 processing or other mining processes and abandoned or left in
11 an inadequate reclamation status and for which there is no
12 continuing reclamation responsibility under state or federal
13 laws;

14 C. "emergency" means a sudden danger or impairment
15 that presents a high probability of substantial physical harm
16 to health, safety or general welfare of people before the
17 danger can be abated under normal program procedures; and

18 D. "fund" means the abandoned mine reclamation
19 fund. "

20 Section 58. Section 69-25B-4 NMSA 1978 (being Laws 1980,
21 Chapter 87, Section 4, as amended) is amended to read:

22 "69-25B-4. ABANDONED MINE RECLAMATION FUND--CREATED. --
23 [~~There is created within the state treasury~~] The "abandoned
24 mine reclamation fund" is created in the state treasury. All
25 money received by the state pursuant to Title 4 of the Surface

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1 Mining Control and Reclamation Act of 1977, as amended, shall
2 be delivered to the state treasurer and be deposited in the
3 fund. Disbursements from the fund shall be made only upon
4 warrant drawn by the secretary of finance and administration
5 pursuant to vouchers signed by the secretary of [~~energy,~~
6 ~~minerals and~~] natural resources and environment in order to
7 carry out the purposes of the Abandoned Mine Reclamation Act."

8 Section 59. Section 69-36-3 NMSA 1978 (being Laws 1993,
9 Chapter 315, Section 3) is amended to read:

10 "69-36-3. DEFINITIONS.--As used in the New Mexico Mining
11 Act:

12 A. "affected area" means the area outside of the
13 permit area where the land surface, surface water, ground
14 water and air resources are impacted by mining operations
15 within the permit area;

16 B. "commission" means the [~~mining commission~~
17 ~~established in the New Mexico Mining Act~~] directors'
18 functional group of the natural resources and environment
19 department;

20 C. "director" means the director of the division
21 or his designee;

22 D. "division" means the mining and minerals
23 division of the [~~energy, minerals and~~] natural resources and
24 environment department;

25 E. "existing mining operation" means an extraction

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1 operation that produced marketable minerals for a total of at
2 least two years between January 1, 1970 and [~~the effective~~
3 ~~date of the New Mexico Mining Act~~] June 18, 1993;

4 F. "exploration" means the act of searching for or
5 investigating a mineral deposit, including sinking shafts,
6 tunneling, drilling core and bore holes, digging pits, making
7 cuts and other works for the purpose of extracting samples
8 prior to commencement of development or extraction operations
9 and the building of roads, access ways and other facilities
10 related to such work; however, activities that cause no or
11 very little surface disturbance, such as airborne surveys and
12 photographs, use of instruments or devices that are hand
13 carried or otherwise transported over the surface to perform
14 magnetic, radioactive or other tests and measurements,
15 boundary or claim surveying, location work or other work that
16 causes no greater disturbance than is caused by ordinary
17 lawful use of the area by persons not engaged in exploration,
18 are excluded from the meaning of "exploration";

19 G. "mineral" means a nonliving commodity that is
20 extracted from the earth for use or conversion into a saleable
21 or usable product, but does not include clays, adobe,
22 flagstone, potash, sand, gravel, caliche, borrow dirt, quarry
23 rock used as aggregate for construction, coal, surface water
24 or subsurface water, geothermal resources, oil and natural gas
25 together with other chemicals recovered with them,

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1 commodities, byproduct materials and wastes that are regulated
2 by the nuclear regulatory commission or waste regulated under
3 Subtitle C of the federal Resource Conservation and Recovery
4 Act of 1976;

5 H. "mining" means the process of obtaining useful
6 minerals from the earth's crust or from previously disposed or
7 abandoned mining wastes, including exploration, open-cut
8 mining and surface operation, the disposal of refuse from
9 underground and in situ mining, mineral transportation,
10 concentrating, milling, evaporation, leaching and other
11 processing. "Mining" does not mean the exploration and
12 extraction of potash, sand, gravel, caliche, borrow dirt [~~and~~]
13 or quarry rock used as aggregate in construction; the
14 exploration and extraction of natural petroleum in a liquid or
15 gaseous state by means of wells or pipes; the development or
16 extraction of coal; the extraction of geothermal resources;
17 smelting, refining, cleaning, preparation, transportation or
18 other off-site operations not conducted on permit areas; or
19 the extraction, processing or disposal of commodities,
20 byproduct materials or wastes or other activities regulated by
21 the federal nuclear regulatory commission;

22 I. "new mining operation" means a mining operation
23 that engages in a development or extraction operation after
24 [~~the effective date of the New Mexico Mining Act~~] June 18,
25 1993 and that is not an existing mining operation;

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1 J. "permit area" means the geographical area
2 defined in the permit for a new mining operation or for an
3 existing mining operation on which mining operations are
4 conducted or cause disturbance; and

5 K. "reclamation" means the employment during and
6 after a mining operation of measures designed to mitigate the
7 disturbance of affected areas and permit areas and, to the
8 extent practicable, provide for the stabilization of a permit
9 area following closure that will minimize future impact to the
10 environment from the mining operation and protect air and
11 water resources. "

12 Section 60. Section 70-2-2 NMSA 1978 (being Laws 1935,
13 Chapter 72, Section 1, as amended) is amended to read:

14 "70-2-2. WASTE PROHIBITED. -- The production or handling
15 of crude petroleum oil or natural gas of any type or in any
16 form or the handling of products [~~thereof~~] of crude petroleum
17 or natural gas in such manner or under such conditions or in
18 such amounts as to constitute or result in waste is [~~each~~
19 ~~hereby~~] prohibited. "

20 Section 61. Section 70-2-3 NMSA 1978 (being Laws 1935,
21 Chapter 72, Section 2, as amended) is amended to read:

22 "70-2-3. WASTE--DEFINITIONS. -- As used in [~~this~~] the Oil
23 and Gas Act: [~~the term~~]

24 A. "waste", in addition to its ordinary meaning,
25 [~~shall include~~] includes:

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1 [A-] (1) "underground waste" as those words
2 are generally understood in the oil and gas business and in
3 any event to embrace the inefficient, excessive or improper
4 use or dissipation of the reservoir energy, including gas
5 energy and water drive, of any pool and the locating, spacing,
6 drilling, equipping, operating or producing of any well [~~or~~
7 ~~wells~~] in a manner to reduce or tend to reduce the total
8 quantity of crude petroleum oil or natural gas ultimately
9 recovered from any pool and the use of inefficient underground
10 storage of natural gas;

11 [B-] (2) "surface waste" as those words are
12 generally understood in the oil and gas business and in any
13 event to embrace the unnecessary or excessive surface loss or
14 destruction without beneficial use, however caused, of natural
15 gas of any type or in any form or crude petroleum oil or any
16 product thereof, but including the loss or destruction,
17 without beneficial use, resulting from evaporation, seepage,
18 leakage or fire, especially such loss or destruction, incident
19 to or resulting from the manner of spacing, equipping,
20 operating or producing [~~well-or~~] wells or incident to or
21 resulting from the use of inefficient storage or from the
22 production of crude petroleum oil or natural gas in excess of
23 the reasonable market demand;

24 [C-] (3) the production of crude petroleum
25 oil in this state in excess of the reasonable market demand for

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1 [such] crude petroleum oil. [Such] Excess production causes or
2 results in waste [which] that is prohibited by [~~this~~] the Oil
3 and Gas Act. The words "reasonable market demand", as used
4 [~~herein~~] in that act with respect to crude petroleum oil, shall
5 be construed to mean the demand for [such] crude petroleum oil
6 for reasonable current requirements for current consumption and
7 use within or outside the state, together with the demand for
8 [such] amounts [~~as are~~] reasonably necessary for building up or
9 maintaining reasonable storage reserves of crude petroleum oil
10 or the products thereof or both [such] crude petroleum oil and
11 products;

12 [~~D.-~~] (4) the nonratable purchase or taking of
13 crude petroleum oil in this state. [Such] Nonratable taking
14 and purchasing causes or results in waste as defined in [~~the~~]
15 Subsections A, B and C of this section and causes waste by
16 violating Subsection A of Section [12 (a) of this act] 70-2-16
17 NASA 1978;

18 [~~E.-~~] (5) the production in this state of
19 natural gas from any gas well [~~or wells~~] or from any gas pool
20 in excess of the reasonable market demand from such source for
21 natural gas of the type produced or in excess of the capacity
22 of gas transportation facilities for such type of natural gas.
23 The words "reasonable market demand", as used [~~herein~~] in the
24 Oil and Gas Act with respect to natural gas, shall be construed
25 to mean the demand for natural gas for reasonable current

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1 requirements, for current consumption and for use within or
2 outside the state, together with the demand for [such] amounts
3 [as are] necessary for building up or maintaining reasonable
4 storage reserves of natural gas or gas or products thereof or
5 both [such] natural gas and products; and

6 [F-] (6) drilling or producing operations for
7 oil or gas within any area containing commercial deposits of
8 potash where [such] those operations would have the effect
9 unduly to reduce the total quantity of [such] the commercial
10 deposits of potash [~~which~~] that may reasonably be recovered in
11 commercial quantities or where [such] those operations would
12 interfere unduly with the orderly commercial development of
13 [such] the potash deposits;

14 B. "commission" or "functional group" means the
15 director's functional group of the natural resources and
16 environment department; and

17 C. "division" means the oil conservation division
18 of the natural resources and environment department. "

19 Section 62. Section 70-2-5 NMSA 1978 (being Laws 1977,
20 Chapter 255, Section 40, as amended) is amended to read:

21 "70-2-5. OIL CONSERVATION DIVISION--DIRECTOR--STATE
22 PETROLEUM ENGINEER. --

23 A. The director of the oil conservation division of
24 the [~~energy, minerals and~~] natural resources and environment
25 department shall be known as the "state petroleum engineer".

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1 B. The director shall be appointed by the secretary
2 of [~~energy, minerals and~~] natural resources and environment and
3 shall:

4 (1) be a resident of this state; and

5 (2) be registered by the state board of
6 registration for professional engineers and land surveyors as a
7 petroleum engineer; or

8 (3) by virtue of education and experience
9 have expertise in the field of petroleum engineering. "

10 Section 63. Section 70-2-6 NMSA 1978 (being Laws 1935,
11 Chapter 72, Section 4, as amended) is amended to read:

12 "70-2-6. [~~COMMISSION'S AND~~] DIVISION'S POWERS AND
13 DUTIES. --

14 A. The oil conservation division [~~shall have, and~~
15 ~~is hereby given~~] has jurisdiction and authority over all
16 matters relating to the conservation of oil and gas and the
17 prevention of waste of potash as a result of oil or gas
18 operations in this state. [~~It shall have~~] The division has
19 jurisdiction, authority and control of and over all persons,
20 matters or things necessary or proper to enforce effectively
21 the provisions of [~~this~~] the Oil and Gas Act or any other law
22 of this state relating to the conservation of oil or gas and
23 the prevention of waste of potash as a result of oil or gas
24 operations.

25 B. The [~~commission shall have concurrent~~

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1 ~~jurisdiction and authority with the division to the extent~~
2 ~~necessary for the commission to perform its duties as required~~
3 ~~by law. In addition, any] functional group of the natural~~
4 ~~resources and environment department shall hold a hearing on~~
5 ~~any matter that may be held before the [commission] directors'~~
6 ~~functional group if the division director, in his discretion,~~
7 ~~determines that the [commission] directors' functional group~~
8 ~~shall hear the matter. "~~

9 Section 64. Section 70-2-7 NMSA 1978 (being Laws 1935,
10 Chapter 72, Section 5, as amended) is amended to read:

11 "70-2-7. RULES OF PROCEDURE IN HEARINGS [~~MANNER OF~~
12 ~~GIVING NOTICE--RECORD OF RULES, REGULATIONS AND ORDERS~~]. -- The
13 oil conservation division of the [~~energy, minerals and~~
14 natural resources and environment department shall prescribe by
15 rule [~~its~~] the rules of order or procedure in hearings or other
16 proceedings before it or the functional group under the Oil and
17 Gas Act. "

18 Section 65. Section 70-2-11 NMSA 1978 (being Laws 1935,
19 Chapter 72, Section 9, as amended) is amended to read:

20 "70-2-11. POWER [~~OF COMMISSION AND DIVISION~~] TO PREVENT
21 WASTE AND PROTECT CORRELATIVE RIGHTS. -- [~~A.~~] The oil
22 conservation division [~~is hereby empowered and it is its duty~~
23 ~~to~~] shall prevent waste prohibited by [~~this~~] the Oil and Gas
24 Act and to protect correlative rights as [~~in this act~~] provided
25 in that act. To that end, the division [~~is empowered to~~] may

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1 make and enforce rules [~~regulations and orders~~] and [~~to~~] do
2 whatever may be reasonably necessary to carry out the purpose
3 of [~~this~~] that act, whether or not indicated or specified in
4 any section [~~hereof~~] of that act.

5 [~~B. The commission shall have concurrent~~
6 ~~jurisdiction and authority with the division to the extent~~
7 ~~necessary for the commission to perform its duties as required~~
8 ~~by law.]"~~

9 Section 66. Section 70-6-2 NMSA 1978 (being Laws 1963,
10 Chapter 139, Section 2, as amended) is amended to read:

11 "70-6-2. DEFINITIONS. --As used in Chapter 70, Article 6
12 NMSA 1978:

13 A. "underground storage" means storage of natural
14 gas in a subsurface stratum or formation of the earth;

15 B. "natural gas" means natural gas either while in
16 its original state after withdrawal from the earth or after it
17 has been processed by removal of component parts not essential
18 to its use for light and fuel;

19 C. "native gas" means gas that has not been
20 previously withdrawn from the earth;

21 D. "division" means the oil conservation division
22 of the [~~energy, minerals and~~] natural resources and environment
23 department;

24 E. "commission" means the [~~oil conservation~~
25 ~~commission~~] directors' functional group of the natural

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1 resources and environment department;

2 F. "natural gas company" means any person, firm or
3 corporation engaged in the distribution, sale or furnishing of
4 natural gas to or for the public and subject to regulation by
5 the [~~New Mexico~~] public [~~utility~~] regulation commission under
6 the Public Utility Act or any person, firm or corporation
7 engaged in the business of transporting natural gas and subject
8 to regulation by the federal energy regulatory commission under
9 the Natural Gas Act; and

10 G. "public body" means the state or any department,
11 board, commission, bureau, institution, public agency, county
12 or political subdivision thereof, including bodies corporate,
13 bodies politic, municipal corporations, school districts,
14 conservancy districts and quasi-municipal corporations of all
15 kinds. "

16 Section 67. Section 70-11-2 NMSA 1978 (being Laws 1989,
17 Chapter 189, Section 2) is amended to read:

18 "70-11-2. OFFICE CREATED--DUTIES.-- [~~There is created~~]
19 The "office of interstate natural gas markets" [~~to be located~~]
20 is created in the [~~energy, minerals and~~] natural resources and
21 environment department. The office shall:

22 A. conduct economic and legal studies of the
23 interstate natural gas markets and of the trade policies and
24 practices of the federal energy regulatory commission and
25 regulatory agencies and local distributing companies lying

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1 outside New Mexico;

2 B. determine the impact of those practices on the
3 economic well-being of New Mexico, especially as it relates to
4 severance tax, royalty and general fund income of the state;

5 C. develop and implement marketing strategies and,
6 if applicable, prepare legislation to promote the use of
7 natural gas produced in New Mexico by markets in other states;

8 D. employ legal counsel and initiate or enter
9 lawsuits as appropriate for the purpose of protecting and
10 promoting the public interest in matters involving interstate
11 natural gas markets;

12 E. initiate or intervene in cases before the
13 federal energy regulatory commission, the California public
14 utility commission and other regulatory agencies lying outside
15 New Mexico to protect and promote the public interest of the
16 state;

17 F. present two progress reports to the legislative
18 finance committee each year; and

19 G. contract with state agencies and other
20 appropriate entities and persons as may be required to carry
21 out the purposes of ~~[this act]~~ Chapter 70, Article 11 NMSA 1978
22 and those purposes outlined in Laws 1988, Chapter 27, Section
23 3. "

24 Section 68. Section 71-5-3 NMSA 1978 (being Laws 1975,
25 Chapter 272, Section 3, as amended) is amended to read:

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1 "71-5-3. DEFINITIONS. --As used in the Geothermal

2 Resources Conservation Act:

3 A. "geothermal resources" means the natural heat of
4 the earth or the energy, in whatever form, below the surface of
5 the earth present in, resulting from, created by or ~~[which]~~
6 that may be extracted from this natural heat and all minerals
7 in solution or other products obtained from naturally heated
8 fluids, brines, associated gases and steam, in whatever form,
9 found below the surface of the earth, but excluding oil,
10 hydrocarbon gas and other hydrocarbon substances;

11 B. "commission" means the ~~[oil conservation~~
12 ~~commission]~~ directors' functional group of the natural
13 resources and environment department;

14 C. "correlative rights" means the opportunity
15 afforded, insofar as is practicable to do so, to the owner of
16 each property in a geothermal reservoir to produce his just and
17 equitable share of the geothermal resources within such
18 reservoir, being an amount, so far as can be practicably
19 determined and so far as can be practicably obtained without
20 waste, substantially in the proportion that the recoverable
21 geothermal resources under such property bear to the total
22 recoverable geothermal resources in the reservoir and, for such
23 purpose, to use his just and equitable share of the natural
24 heat or energy in the reservoir;

25 D. "division" means the oil conservation division

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1 of the [~~energy, minerals and~~] natural resources and environment
2 department;

3 E. "geothermal reservoir" means an underground
4 reservoir containing geothermal resources, whether the fluids
5 in the reservoir are native to the reservoir or flow into or
6 are injected into the reservoir;

7 F. "geothermal field" means the general area
8 [~~which~~] that is underlaid or reasonably appears to be underlaid
9 by at least one geothermal reservoir;

10 G. "low-temperature thermal reservoir" means a
11 geothermal reservoir containing low-temperature thermal water,
12 which is defined as naturally heated water, the temperature of
13 which is less than boiling at the altitude of occurrence, which
14 has additional value by virtue of the heat contained therein
15 and is found below the surface of the earth or in warm springs
16 at the surface;

17 H. "person" means:

18 (1) [~~any~~] an individual, estate, trust,
19 receiver, cooperative association, club, corporation, company,
20 firm, partnership, joint venture, syndicate or other entity; or

21 (2) the United States or any agency or
22 instrumentality thereof or the state of New Mexico or any
23 political subdivision thereof;

24 I. "well" means any well dug or drilled for the
25 discovery or development of geothermal resources or incident to

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1 the discovery or development of geothermal resources or for the
2 purpose of injecting or reinjecting geothermal resources or the
3 residue thereof or other fluids into a geothermal reservoir or
4 any well dug or drilled for any other purpose and reactivated
5 or converted to any of the aforesaid uses; and

6 J. "potash" means the naturally occurring bedded
7 deposits of the salts of the element potassium "

8 Section 69. Section 71-6-7 NMSA 1978 (being Laws 1981,
9 Chapter 379, Section 17, as amended) is amended to read:

10 "71-6-7. [~~ENERGY, MINERALS AND~~] NATURAL RESOURCES AND
11 ENVIRONMENT DEPARTMENT--DUTIES RELATING TO SOLAR COLLECTOR
12 STANDARDS. --

13 A. The secretary of [~~energy, minerals and~~] natural
14 resources and environment or his designee shall promulgate
15 [~~regulations~~] rules to:

16 (1) define minimum standards for the
17 durability and reliability of solar collectors; and

18 (2) establish criteria for testing the
19 durability, reliability and thermal efficiency of solar
20 collectors.

21 B. In promulgating the [~~regulations~~] rules required
22 by Subsection A of this section, the secretary or his designee
23 shall:

24 (1) consult with scientists, engineers and
25 individuals in research centers and professional societies such

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1 as the American society of testing and materials who are
2 engaged in the construction of, experimentation with and
3 research of solar energy systems in order to make changes,
4 modifications and improvements to the standards and
5 certification program;

6 (2) consider compliance costs to industry
7 and, insofar as practicable, make efforts to reduce such costs;
8 and

9 (3) consider similar standards and testing
10 criteria adopted by other states or included in nationally
11 recognized and accepted testing methodologies.

12 C. The secretary of [~~energy, minerals and~~] natural
13 resources and environment or his designee shall approve testing
14 facilities [~~which~~] that meet the criteria established by
15 Paragraph (2) of Subsection A of this section and [~~which~~] that
16 have no financial interest in the manufacture, distribution or
17 sale of solar collectors. Any approved testing facility
18 [~~which~~] that is partially or wholly supported by state funds
19 may collect a reasonable testing fee sufficient to cover the
20 costs of testing. "

21 Section 70. Section 72-2-1 NMSA 1978 (being Laws 1907,
22 Chapter 49, Section 4, as amended) is amended to read:

23 "72-2-1. APPOINTMENT-- REMOVAL-- QUALIFICATIONS-- DUTIES--
24 OFFICE-- PRIVATE PRACTICE PROHIBITED. -- [~~There shall be a~~] The
25 "state engineer" [~~who shall be a technically qualified and~~

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1 ~~registered professional engineer under the Engineering and Land~~
2 ~~Surveying Practice Act and~~] shall be appointed by the secretary
3 of water resources with the approval of the governor and be
4 confirmed by the senate. [~~He shall hold office for the term of~~
5 ~~two years or until his successor has been appointed and has~~
6 ~~qualified. He is subject to removal only for cause. He~~] The
7 state engineer shall be the director of the water rights and
8 adjudication division of the water resources department. The
9 state engineer has general supervision of waters of the state
10 and of the measurement, appropriation and distribution thereof
11 and such other duties as required. [~~The salary of the state~~
12 ~~engineer shall be set by the governor, and he shall receive~~
13 ~~necessary traveling expenses while away from his office in the~~
14 ~~discharge of official duties pursuant to the provisions of the~~
15 ~~Per Diem and Mileage Act. The "office of the state engineer"~~
16 ~~shall be located at the seat of government. He~~] The state
17 engineer shall not engage in any private practice. "

18 Section 71. Section 72-2-7 NMSA 1978 (being Laws 1907,
19 Chapter 49, Section 10, as amended) is amended to read:

20 "72-2-7. RECORDS--COPIES. -- [~~Sec. 10.~~] The records of the
21 [~~office of the state engineer~~] water rights and adjudication
22 division of the water resources department are public records
23 and shall remain on file in [~~his office~~] the division and
24 [~~shall~~] be open to the inspection of the public at all times
25 during business hours. [~~Such~~] The records shall show all

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1 applications filed, with date of filing, and shall show in full
2 all permits, certificates of completion of construction and
3 licenses issued, together with all action thereon, and all
4 [~~action~~] actions or decisions of the state engineer affecting
5 any rights or claims to appropriate water. Certified copies of
6 any records or papers on file in the [~~office of the state~~
7 ~~engineer~~] division shall be evidence equally with the originals
8 [~~thereof~~] and when introduced as evidence shall be held [~~as of~~]
9 to have the same validity as the originals. "

10 Section 72. Section 72-7-1 NMSA 1978 (being Laws 1907,
11 Chapter 49, Section 63, as amended) is amended to read:

12 "72-7-1. APPEAL TO DISTRICT COURT--PROCEDURE. --

13 A. Any applicant or other party dissatisfied with
14 [~~any~~] a decision, act or refusal to act of the state engineer
15 may appeal to the district court of the county in which the
16 work or point of desired appropriation is situated.

17 B. Appeals to the district court shall be taken by
18 serving a notice of appeal upon the state engineer and all
19 parties interested within thirty days after receipt by
20 certified mail of notice of the decision, act or refusal to
21 act. If an appeal is not timely taken, the action of the state
22 engineer is conclusive.

23 C. The notice of appeal may be served in the same
24 manner as a summons in civil actions brought before the
25 district court or by publication [~~is~~] in some newspaper printed

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1 in the county or water district in which the work or point of
2 desired appropriation is situated, once a week for four
3 consecutive weeks. The last publication shall be at least
4 twenty days prior to the date the appeal may be heard. Proof
5 of service of the notice of appeal shall be made in the same
6 manner as in actions brought in the district court and shall be
7 filed in the district court within thirty days after service is
8 complete. At the time of filing the proof of service and upon
9 payment by the appellant of the civil docket fee, the clerk of
10 the district court shall docket the appeal.

11 D. Costs shall be taxed in the same manner as in
12 cases brought in the district court, and bond for costs may be
13 required upon proper application.

14 E. The proceeding upon appeal shall be ~~[de novo as~~
15 ~~cases originally docketed in the district court. Evidence~~
16 ~~taken in a hearing before the state engineer may be considered~~
17 ~~as original evidence subject to legal objection, the same as if~~
18 ~~the evidence was originally offered in the district court. The~~
19 ~~court shall allow all amendments which may be necessary in~~
20 ~~furtherance of justice and may submit any question of fact~~
21 ~~arising therein to a jury or to one or more referees at its~~
22 ~~discretion]~~ on the record as provided in Section 72-2-16 NMSA
23 1978. "

24 Section 73. Section 72-7-2 NMSA 1978 (being Laws 1907,
25 Chapter 49, Section 64, as amended) is amended to read:

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1 "72-7-2. DUTY TO PRODUCE EVIDENCE--COPIES. -- It [~~shall~~
2 be] is the duty of the state engineer, upon being served with
3 notice of appeal as [~~aforsaid~~] provided in Section 72-7-1 NMSA
4 1978, to [~~forwith~~] transmit or produce before the district
5 court to which appeal may be taken [~~the papers, maps, plats,~~
6 ~~field notes and other data in his possession affecting the~~
7 ~~matter in controversy, or certified copies thereof, which~~
8 ~~copies shall be admitted in evidence as of equal validity with~~
9 ~~the originals~~] the record of the decision, act or refusal to
10 act. "

11 Section 74. Section 72-14-3 NMSA 1978 (being Laws 1935,
12 Chapter 25, Section 3) is amended to read:

13 "72-14-3. GENERAL POWERS--INTERSTATE COMPACTS--
14 EMPLOYEES. -- [~~That said commission is hereby authorized to~~] The
15 river and watershed management division of the water resources
16 department may negotiate compacts with other states to settle
17 interstate controversies [~~or~~] looking toward an equitable
18 distribution and division of waters in interstate stream
19 systems, subject, in all cases, to final approval by the
20 legislature of New Mexico; to match appropriations made by the
21 congress of the United States for investigations looking to the
22 development of interstate streams originating in or flowing
23 through the state [~~of New Mexico~~]; to investigate water supply,
24 to develop, to conserve, to protect and to do any and all other
25 things necessary to protect, conserve and develop the waters

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1 and stream systems of this state, interstate or otherwise; to
2 institute or cause to be instituted in the name of the state
3 [~~of New Mexico any and~~] all negotiations [~~and/or~~] or legal
4 proceedings as in its judgment are necessary to carry out the
5 provisions of [~~this Act~~] Sections 72-14-1 through 72-14-3 NMSA
6 1978; to do all other things necessary to carry out the
7 provisions of [~~this Act~~] those sections; to employ such
8 attorneys, engineers and clerical help as, in its judgment, ~~may~~
9 be necessary to carry out the provisions of [~~this Act~~] those
10 sections and to fix their compensation and expenses; together
11 with such other powers and duties as ~~may~~, from time to time, be
12 given [~~said commission~~] the division by the legislature [~~of New~~
13 ~~Mexico. The attorney general shall be the legal adviser of~~
14 ~~such commission and attorneys employed as above shall be~~
15 ~~subject to his approval and supervision and be designated as~~
16 ~~special assistant attorneys general~~]. "

17 Section 75. Section 72-14-4 NMSA 1978 (being Laws 1935,
18 Chapter 24, Section 1, as amended by Laws 1997, Chapter 241,
19 Section 1 and also by Laws 1997, Chapter 246, Section 1) is
20 amended to read:

21 "72-14-4. BUDGET AND PLAN SUBMITTED TO GOVERNOR
22 ANNUALLY. -- The [~~interstate stream commission~~] river and
23 watershed management division of the water resources department
24 shall annually prepare and submit a budget, together with a
25 complete and detailed plan looking toward the improvement of

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1 the Rio Grande in this state and increasing the surface flow of
2 water in the river during the ensuing fiscal year. The plan
3 and budget shall be submitted annually in accordance with the
4 provisions of Sections 6-3-1 through 6-3-22 NMSA 1978. "

5 Section 76. Section 73-2-65 NMSA 1978 (being Laws 1993,
6 Chapter 293, Section 1) is amended to read:

7 "73-2-65. ACEQUIA COMMISSION--CREATED--MEMBERSHIP--
8 TERMS.--

9 A. [~~There is created~~] The "acequia commission"
10 [~~which~~] is created and administratively attached to the [~~local~~
11 ~~government division of the department of finance and~~
12 ~~administration~~] water resources department.

13 B. The acequia commission shall be appointed by the
14 governor and shall consist of eleven members who reside in the
15 irrigated areas of the state containing acequias. Members
16 shall own land irrigated from an acequia or community ditch
17 organized pursuant to a ditch or acequia statute. Each member
18 appointed by the governor shall serve a term of four years.

19 C. The initial appointments to the acequia
20 commission shall include the ten persons serving as members of
21 the governor's acequia commission, organized pursuant to
22 executive order 88-06, and one member of the public who has a
23 background in business. Of the initial appointees, four
24 members shall be appointed by lot for two-year terms, four
25 members shall be appointed by lot for three-year terms and

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1 three members shall be appointed by lot for four-year terms.

2 D. The acequia commission shall meet at the call of
3 the chairman not less than quarterly and not more than once a
4 month. The chairman shall be elected from among the members of
5 the commission. "

6 Section 77. Section 73-2A-3 NMSA 1978 (being Laws 1988,
7 Chapter 157, Section 3, as amended) is amended to read:

8 "73-2A-3. FUND CREATED. --

9 A. An "acequia and community ditch fund" is created
10 in the state treasury, to be expended upon order of the
11 [~~director of the New Mexico department of agriculture~~]
12 secretary of water resources to carry out the purposes of
13 contracting with acequia and ditch associations constituting a
14 majority of acequias or ditches within an adjudication suit or
15 a separately administered portion of an adjudication suit to
16 provide assistance to acequias and community ditch associations
17 in the adjudication process, including historical studies,
18 economic impact reports, expert witness fees, legal fees and
19 other technical services related to the adjudication process.

20 B. Money in the acequia and community ditch fund
21 may be used to enter into agreements for grants-in-aid to
22 satisfy costs and expenses incurred by acequias and community
23 ditch associations. The amount of funding provided to acequia
24 and ditch associations in any given year shall be determined by
25 a simple majority of a committee consisting of the director of

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1 the New Mexico department of agriculture, the ~~[chairman of the~~
2 ~~interstate stream commission]~~ secretary of water resources or
3 his designee and a third person who will be elected from within
4 the New Mexico acequia commission. The committee shall
5 consider financial need, progress of the adjudication and the
6 trial schedule; however, the committee is not limited to these
7 factors in awarding grant agreements. No more than one-fourth
8 of the money allocated from the acequia and community ditch
9 fund shall be allocated to one acequia association; provided,
10 however, that at least the eight most qualified applicant
11 associations may be considered to receive money that is in the
12 fund and available for any given fiscal year. The committee
13 shall consider the state engineer's report on the eligibility
14 and priority of applicants for funds. Disbursement of the fund
15 shall be made upon a warrant drawn by the secretary of finance
16 and administration ~~[transferring money in the fund to the New~~
17 ~~Mexico department of agriculture for expenditure]~~ pursuant to
18 vouchers signed by the ~~[director or his representative]~~
19 secretary of water resources or his authorized representative.
20 Balances in the fund at the end of any fiscal year shall not
21 revert to the general fund and may be expended to carry out the
22 purposes of the Acequia and Community Ditch Fund Act. "

23 Section 78. Section 74-1-3 NMSA 1978 (being Laws 1971,
24 Chapter 277, Section 3, as amended) is amended to read:

25 "74-1-3. DEFINITIONS.--As used in the Environmental

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1 Improvement Act:

2 [A. ~~"board" means the environmental improvement~~
3 ~~board;~~

4 B. ~~"department" or "environmental improvement~~
5 ~~department" means the department of environment;~~

6 ~~C.]~~ A. "on-site liquid waste system" means a liquid
7 waste system, or part thereof, serving a dwelling,
8 establishment or group, and using a liquid waste treatment unit
9 designed to receive liquid waste followed by either a soil
10 treatment or other type of disposal system. "On-site liquid
11 waste system" includes holding tanks and privies but does not
12 include systems or facilities designed to receive or treat mine
13 or mill tailings or wastes;

14 ~~D.]~~ B. "person" means the state or any agency,
15 institution or political subdivision thereof, any public or
16 private corporation, individual, partnership, association or
17 other entity and includes any officer or governing or managing
18 body of any political subdivision or public or private
19 corporation; and

20 ~~E.]~~ C. "residential on-site liquid waste system"
21 means an on-site liquid waste system serving up to four
22 dwelling units [~~and~~

23 ~~F. "secretary" means the secretary of~~
24 ~~environment]. "~~

25 Section 79. Section 74-1-6 NMSA 1978 (being Laws 1971,

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1 Chapter 277, Section 9, as amended) is amended to read:

2 "74-1-6. DEPARTMENT--POWERS.--The natural resources and
3 environment department shall have power to:

4 A. sue and be sued;

5 B. make contracts to carry out its delegated
6 duties;

7 C. enter into agreements with environmental and
8 consumer protection agencies of other states and the federal
9 government pertaining to duties of the department;

10 D. enter into investigation and remediation
11 agreements with persons potentially responsible for sites
12 within New Mexico subject to the federal Comprehensive
13 Environmental Response, Compensation and Liability Act of 1980
14 [~~and such agreements shall not duplicate or take any authority~~
15 ~~from the oil conservation commission~~];

16 E. serve as agent of the state in matters of
17 environmental management and consumer protection not expressly
18 delegated by law to another department, commission or political
19 subdivision in which the United States is a party;

20 F. enforce the rules [~~regulations and orders~~]
21 promulgated by the [~~board~~] department and environmental
22 management and consumer protection laws for which the
23 department is responsible by appropriate action in courts of
24 competent jurisdiction;

25 G. on the same basis as any other person, recommend

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1 and propose [~~regulations~~] rules for promulgation [~~by the~~
2 ~~board~~];

3 H. on the same basis as any other person, present
4 data, views or arguments and examine witnesses and otherwise
5 participate at all hearings conducted by the [~~board~~] directors'
6 functional group of the department or any other administrative
7 agency with responsibility in the areas of environmental
8 management or consumer protection, but shall not be given any
9 special status over any other party; and

10 I. have such other powers as may be necessary and
11 appropriate for the exercise of the powers and duties delegated
12 to the department. "

13 Section 80. Section 74-1-7 NMSA 1978 (being Laws 1971,
14 Chapter 277, Section 10, as amended by Laws 2000, Chapter 86,
15 Section 1 and also by Laws 2000, Chapter 96, Section 1) is
16 amended to read:

17 "74-1-7. NATURAL RESOURCES AND ENVIRONMENT DEPARTMENT--
18 DUTIES. --

19 A. The natural resources and environment department
20 is responsible for environmental management and consumer
21 protection programs. In that respect, the department shall
22 promulgate, maintain, develop and enforce rules and standards
23 in the following areas:

24 (1) food protection;

25 [~~(2) water supply, including implementing a~~

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1 ~~capacity development program to assist water systems in~~
2 ~~acquiring and maintaining technical, managerial and financial~~
3 ~~capacity in accordance with Section 1420 of the federal Safe~~
4 ~~Drinking Water Act and establishing administrative penalties~~
5 ~~for enforcement;~~

6 ~~(3) liquid waste, including exclusive~~
7 ~~authority to collect on-site liquid waste system fees that are~~
8 ~~no more than the average charged by the contiguous states to~~
9 ~~New Mexico for similar permits and services and to implement~~
10 ~~and administer an inspection and permitting program for on-site~~
11 ~~liquid waste systems;~~

12 ~~(4)]~~ (2) air quality management as provided
13 in the Air Quality Control Act;

14 ~~[(5)]~~ (3) radiation control and establishment
15 of license, registration and other related fees as provided in
16 the Radiation Protection Act;

17 ~~[(6)]~~ (4) noise control;

18 ~~[(7)]~~ (5) nuisance abatement;

19 ~~[(8)]~~ (6) vector control;

20 ~~[(9)]~~ (7) occupational health and safety as
21 provided in the Occupational Health and Safety Act;

22 ~~[(10)]~~ (8) sanitation of public swimming
23 pools and public baths;

24 ~~[(11)]~~ (9) plumbing, drainage, ventilation
25 and sanitation of public buildings in the interest of public

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1 health;

2 [~~(12)~~] (10) medical radiation, health and
3 safety certification and standards for radiologic technologists
4 as provided in the Medical Radiation Health and Safety Act;

5 [~~(13)~~] (11) hazardous wastes and underground
6 storage tanks as provided in the Hazardous Waste Act; and

7 [~~(14)~~] (12) solid waste as provided in the
8 Solid Waste Act.

9 B. Nothing in Subsection A of this section imposes
10 requirements for the approval of subdivision plats in addition
11 to those required elsewhere by law. Nothing in Subsection A of
12 this section preempts the authority of any political
13 subdivision to approve subdivision plats. "

14 Section 81. A new Section 74-1-7.1 NMSA 1978 is enacted
15 to read:

16 "74-1-7.1. [NEW MATERIAL] WATER RESOURCES DEPARTMENT--
17 DUTIES. --

18 A. The water resources department is responsible
19 for environmental management and consumer protection programs
20 related to water supply liquid and waste. In that respect, the
21 department shall promulgate, maintain, develop and enforce
22 rules and standards in the following areas:

23 (1) water supply, including implementing a
24 capacity development program to assist water systems in
25 acquiring and maintaining technical, managerial and financial

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1 capacity in accordance with Section 1420 of the federal Safe
2 Drinking Water Act of 1974 and establishing administrative
3 penalties for enforcement; and

4 (2) liquid waste, including exclusive
5 authority to collect on-site liquid waste system fees that are
6 no more than the average charged by the contiguous states to
7 New Mexico for similar permits and services and to implement
8 and administer an inspection and permitting program for on-site
9 liquid waste systems.

10 B. Nothing in Subsection A of this section imposes
11 requirements for the approval of subdivision plats in addition
12 to those required elsewhere by law. Nothing in Subsection A of
13 this section preempts the authority of any political
14 subdivision to approve subdivision plats.

15 C. Administrative penalties collected pursuant to
16 Paragraph (1) of Subsection A of this section shall be
17 deposited in the water conservation fund.

18 D. On-site liquid waste system fees shall be
19 deposited in the liquid waste fund. "

20 Section 82. Section 74-1-9 NMSA 1978 (being Laws 1971,
21 Chapter 277, Section 13, as amended) is amended to read:

22 "74-1-9. ADOPTION OF [REGULATIONS] RULES--NOTICE AND
23 HEARING--APPEAL. --

24 A. Any person may recommend or propose
25 [~~regulations~~] rules to [~~the board~~] the natural resources and

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1 environment department or the water resources department
2 pertaining to the Environmental Improvement Act, as
3 applicable, for promulgation. [~~The board~~] Either department
4 shall determine whether [~~or not~~] to hold a hearing within sixty
5 days of submission of a proposed regulation.

6 B. No [~~regulation~~] rule shall be adopted until
7 after a public hearing by [~~the board~~] either department. As
8 used in this section, [~~"regulation"~~] "rule" includes any
9 amendment or repeal thereof. Hearings on [~~regulations~~] rules
10 of nonstatewide application shall be held within that area
11 [~~which~~] that is substantially affected by the [~~regulation~~]
12 rule. Hearings on [~~regulations~~] rules of statewide application
13 may be held at Santa Fe or within any area of the state
14 substantially affected by the [~~regulation~~] rule. In making its
15 [~~regulations~~] rules, [~~the board~~] either department shall give
16 the weight it deems appropriate to all relevant facts and
17 circumstances presented at the public hearing, including [~~but~~
18 ~~not limited to~~]:

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

22 (2) the public interest, including the
23 social, economic and cultural value of the regulated activity
24 and the social, economic and cultural effects of environmental
25 degradation; and

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1 (3) technical practicability, necessity for
2 and economic reasonableness of reducing, eliminating or
3 otherwise taking action with respect to environmental
4 degradation.

5 C. The standards for ~~[regulations]~~ rules set forth
6 in Subsection A of this section do not apply to the
7 promulgation of ~~[regulations]~~ rules under the Air Quality
8 Control Act or any other act in which specific standards are
9 set forth for ~~[the board's]~~ either department's consideration.

10 D. Notice of the hearing shall be given at least
11 sixty days prior to the hearing date and shall state the
12 subject, the time and the place of the hearing and the manner
13 in which interested persons may present their views. The
14 proposed language amending any existing ~~[regulation]~~ rule or
15 any proposed new ~~[regulation]~~ rule shall be made available to
16 the public as of the date the notice of the hearing is given.
17 The notice shall also state where interested persons may secure
18 copies of any proposed amendment or new ~~[regulation]~~ rule. The
19 notice shall be published in a newspaper of general circulation
20 in the area affected. Reasonable effort shall be made to give
21 notice to all persons who have made a written request to ~~[the~~
22 ~~board]~~ either department for advance notice of hearings.

23 E. At the hearing, ~~[the board]~~ either department
24 shall allow all interested persons reasonable opportunity to
25 submit data, proposed changes to the proposed ~~[regulation]~~

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1 rule, views or arguments orally or in writing and to examine
2 witnesses testifying at the hearing. Any person heard or
3 represented at the hearing shall be given written notice of the
4 action of [~~the board~~] either department.

5 F. [~~The board~~] Either department may designate a
6 hearing officer to take evidence in the hearing. A transcript
7 shall be made of the entire hearing proceedings.

8 G. No [~~regulation or amendment or repeal thereof~~]
9 rule adopted by [~~the board~~] either department shall become
10 effective until thirty days after its filing under the State
11 Rules Act.

12 H. Any person who is or may be affected by a
13 [~~regulation~~] rule adopted by [~~the board~~] either department may
14 appeal to the court of appeals for further relief. All such
15 appeals shall be upon the transcript made at the hearing and
16 shall be taken to the court of appeals within thirty days after
17 filing of the [~~regulation~~] rule under the State Rules Act.

18 I. The procedure for perfecting an appeal to the
19 court of appeals under this section consists of the timely
20 filing of a notice of appeal with a copy attached to the
21 [~~regulation~~] rule from which the appeal is taken. The
22 appellant shall certify in his notice of appeal that
23 arrangements have been made with [~~the board~~] either department
24 for preparation of a sufficient number of transcripts of the
25 record of the hearing on which the appeal depends to support

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1 his appeal to the court, at the expense of the appellant,
2 including three copies [~~which~~] that he shall furnish to [~~the~~
3 ~~board~~] either department.

4 J. Upon appeal, the court of appeals shall set
5 aside the [~~regulation~~] rule only if found to be:

6 (1) arbitrary, capricious or an abuse of
7 discretion;

8 (2) not supported by substantial evidence in
9 the transcript; or

10 (3) otherwise not in accordance with law. "

11 Section 83. Section 74-1-10 NMSA 1978 (being Laws 1973,
12 Chapter 340, Section 8, as amended) is amended to read:

13 "74-1-10. PENALTY. --

14 A. A person who violates [~~any regulation~~] a rule of
15 the [~~board~~] natural resources and environment department or
16 water resources department, as applicable, is guilty of a petty
17 misdemeanor. This section does not apply to [~~any regulation~~] a
18 rule for which a criminal penalty is otherwise provided by law.

19 B. Whenever, on the basis of any information, the
20 secretary of water resources determines that a person has
21 violated, is violating or threatens to violate [~~any provision~~
22 ~~of~~] a rule or permit condition pursuant to Paragraph [(2)] (1)
23 or [(3)] (2) of Subsection A of Section [74-1-8] 74-1-7.1 NMSA
24 1978 or any rule [regulation] or permit condition adopted and
25 promulgated thereunder, the secretary may:

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1 (1) issue a compliance order stating with
2 reasonable specificity the nature of the violation or
3 threatened violation, requiring compliance immediately or
4 within a specified time period and assessing a civil penalty
5 for any past or current violation, or both; or

6 (2) commence a civil action in district court
7 for appropriate relief, including a temporary or permanent
8 injunction.

9 C. An order issued pursuant to Subsection B of this
10 section may include suspension or revocation of any permit
11 issued by the water resources department. Any penalty assessed
12 in the order, except for residential on-site liquid waste
13 systems, shall not exceed one thousand dollars (\$1,000) for
14 each violation. Any penalty assessed in the order for a
15 residential on-site liquid waste system shall not exceed one
16 hundred dollars (\$100) for each violation. A penalty imposed
17 for violation of drinking water [~~regulations~~] rule 20 NMAC 7.1
18 or permit conditions shall not exceed one thousand dollars
19 (\$1,000) per violation per day. In assessing the penalty, the
20 secretary shall take into account the seriousness of the
21 violation and any good-faith efforts to comply with the
22 applicable requirements. [~~D.~~] If a violator fails to take
23 corrective actions within the time specified in the compliance
24 order, the secretary shall:

25 (1) assess civil penalties of not more than

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1 one thousand dollars (\$1,000) for each noncompliance with the
2 order; and

3 (2) suspend or revoke [~~any~~] a permit issued
4 to the violator pursuant to Paragraph [~~(3)~~] (2) of Subsection A
5 of Section [~~74-1-8~~] 74-1-7.1 NMSA 1978.

6 [~~E.~~] D. An order issued pursuant to this section
7 shall become final unless, no later than thirty days after the
8 order is served, the person named in the order submits a
9 written request to the secretary for a hearing. Upon such a
10 request, the secretary shall conduct a hearing. The secretary
11 shall appoint an independent hearing officer to preside over
12 the hearing. The hearing officer shall make and preserve a
13 complete record of the proceedings and forward his
14 recommendation based on the record to the secretary, who shall
15 make the final decision.

16 [~~F.~~] E. In connection with any proceeding pursuant
17 to this section, the secretary may issue subpoenas for the
18 attendance and testimony of witnesses and the production of
19 relevant papers, books and documents and may adopt and
20 promulgate rules for discovery procedures.

21 [~~G.~~] F. Penalties collected pursuant to violations
22 of rules [~~regulations~~] or permit conditions adopted pursuant to
23 Paragraph [~~(3)~~] (2) of Subsection A of Section [~~74-1-8~~]
24 74-1-7.1 NMSA 1978 shall be deposited in the state treasury to
25 be credited to the general fund.

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1 ~~[H-]~~ G. Penalties collected pursuant to violations
2 of drinking water [~~regulations~~] rule 20 NMAC 7.1 or permit
3 conditions pursuant to Paragraph [~~(2)~~] (1) of Subsection A of
4 Section [~~74-1-8~~] 74-1-7.1 NMSA 1978 shall be deposited in the
5 state treasury to the credit of the water conservation fund. "

6 Section 84. Section 74-1-13 NMSA 1978 (being Laws 1993,
7 Chapter 317, Section 2, as amended) is amended to read:

8 "74-1-13. WATER CONSERVATION FEE--IMPOSITION--

9 DEFINITIONS. --

10 A. There is imposed on every person who operates a
11 public water supply system a water conservation fee in an
12 amount equal to three cents (\$.03) per thousand gallons of
13 water produced on which the fee imposed by this subsection has
14 not been paid.

15 B. The "water conservation fund" is created in the
16 state treasury and shall be administered by the water resources
17 department [~~of environment~~]. The fund shall consist of water
18 conservation fees collected pursuant to this section. Balances
19 in the fund at the end of any fiscal year shall not revert to
20 the general fund but shall accrue to the credit of the fund.
21 Earnings on the fund shall be credited to the fund.

22 C. Money in the water conservation fund is
23 appropriated to the department [~~of environment~~] for
24 administration of a public water supply program to:

25 (1) test public water supplies for the

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1 contaminants required to be tested pursuant to the provisions
2 of Section 1412 of the federal Safe Drinking Water Act of 1974,
3 as finalized through July 1, 1992, and collect chemical
4 compliance samples as required by those provisions of the
5 federal act;

6 (2) perform vulnerability assessments [~~which~~
7 ~~will~~] that shall be used to assess a public water supply's
8 susceptibility to those contaminants; and

9 (3) implement new requirements of the Utility
10 Operators Certification Act and provide training for all public
11 water supply operators.

12 D. The taxation and revenue department shall
13 provide by regulation for the manner and form of collection of
14 the water conservation fee. All water conservation fees
15 collected by the taxation and revenue department, less the
16 administrative fee withheld pursuant to Section [~~1 of this 1997~~
17 ~~act~~] 7-1-6.41 NMSA 1978, shall be deposited in the water
18 conservation fund.

19 E. The fee imposed by this section shall be
20 administered in accordance with the provisions of the Tax
21 Administration Act and shall be paid to the taxation and
22 revenue department by each person who operates a public water
23 supply system in the manner required by the department on or
24 before the twenty-fifth day of the month following the month in
25 which the water is produced.

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1 F. Each operator of a public water supply system
2 shall register and comply with the provisions of Section 7-1-12
3 NMSA 1978 and furnish such information as may be required by
4 the taxation and revenue department.

5 G. As used in this section:

6 (1) "person" means [~~any~~] an individual or
7 other legal entity and also means, to the extent permitted by
8 law, any federal, state or other governmental unit or
9 subdivision or an agency, department or instrumentality
10 thereof; and

11 (2) "public water supply system" means a
12 system that provides piped water to the public for human
13 consumption and that has at least fifteen service connections
14 or regularly services an average of at least twenty-five
15 individuals at least sixty days per year. "

16 Section 85. Section 74-1-15 NMSA 1978 (being Laws 2000,
17 Chapter 96, Section 3) is amended to read:

18 "74-1-15. LIQUID WASTE FUND CREATED. --The "liquid waste
19 fund" is created in the state treasury. On-site liquid waste
20 system fees shall be deposited in the fund. Money in the fund
21 is appropriated to the water resources department for
22 administration of liquid waste [~~regulations~~] rules.

23 Disbursements from the fund shall be by warrant drawn by the
24 secretary of finance and administration pursuant to vouchers
25 signed by the secretary of [~~environment~~] water resources or his

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1 designee. Any unexpended or unencumbered balance or income
2 earned from the money in the liquid waste fund remaining at the
3 end of any fiscal year shall not revert to the general fund."

4 Section 86. Section 74-2-2 NMSA 1978 (being Laws 1967,
5 Chapter 277, Section 2, as amended) is amended to read:

6 "74-2-2. DEFINITIONS.--As used in the Air Quality
7 Control Act:

8 A. "air contaminant" means any substance, including
9 but not limited to any particulate matter, fly ash, dust,
10 fumes, gas, mist, smoke, vapor, micro-organisms, radioactive
11 material, any combination thereof or any decay or reaction
12 product thereof;

13 B. "air pollution" means the emission, except
14 emission that occurs in nature, into the outdoor atmosphere of
15 one or more air contaminants in quantities and of a duration
16 that may with reasonable probability injure human health or
17 animal or plant life or as may unreasonably interfere with the
18 public welfare, visibility or the reasonable use of property;

19 C. "department" means the natural resources and
20 environment department [~~of environment~~];

21 D. "director" means the administrative head of a
22 local agency;

23 E. "emission limitation" [~~and~~] or "emission
24 standard" [~~mean~~] means a requirement established by the
25 environmental improvement board or the local board, the

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1 department, the local authority or the local agency or pursuant
2 to the federal act that limits the quantity, rate or
3 concentration, or combination thereof, of emissions of air
4 contaminants on a continuous basis, including any requirements
5 relating to the operation or maintenance of a source to assure
6 continuous reduction;

7 F. "federal act" means the federal Clean Air Act,
8 its subsequent amendments and successor provisions;

9 G. "federal standard of performance" means any
10 standard of performance, emission limitation or emission
11 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

12 H. "hazardous air pollutant" means an air
13 contaminant that has been classified as a hazardous air
14 pollutant pursuant to the federal act;

15 I. "local agency" means the administrative agency
16 established by a local authority pursuant to Paragraph (2) of
17 Subsection A of Section 74-2-4 NMSA 1978;

18 J. "local authority" means any of the following
19 political subdivisions of the state that have, by following the
20 procedure set forth in Subsection A of Section 74-2-4 NMSA
21 1978, assumed jurisdiction for local administration and
22 enforcement of the Air Quality Control Act:

23 (1) a county that was a class A county as of
24 January 1, 1980; or

25 (2) a municipality with a population greater

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1 than one hundred thousand located within a county that was a
2 class A county as of January 1, 1980;

3 K. "local board" means a municipal, county or joint
4 air quality control board created by any local authority;

5 L. "mandatory class I area" means any of the
6 following areas in this state that were in existence on August
7 7, 1977:

8 (1) national wilderness areas that exceed
9 five thousand acres in size; and

10 (2) national parks that exceed six thousand
11 acres in size;

12 M. "modification" means any physical change in, or
13 change in the method of operation of, a source that results in
14 an increase in the potential emission rate of any regulated air
15 contaminant emitted by the source or that results in the
16 emission of any regulated air contaminant not previously
17 emitted, but does not include:

18 (1) a change in ownership of the source;

19 (2) routine maintenance, repair or
20 replacement;

21 (3) installation of air pollution control
22 equipment, and all related process equipment and materials
23 necessary for its operation, undertaken for the purpose of
24 complying with regulations adopted by the environmental
25 improvement board or the local board or pursuant to the federal

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1 act; or

2 (4) unless previously limited by enforceable
3 permit conditions:

4 (a) an increase in the production rate,
5 if such increase does not exceed the operating design capacity
6 of the source;

7 (b) an increase in the hours of
8 operation; or

9 (c) use of an alternative fuel or raw
10 material if, prior to January 6, 1975, the source was capable
11 of accommodating such fuel or raw material or if use of an
12 alternate fuel or raw material is caused by any natural gas
13 curtailment or emergency allocation or any other lack of supply
14 of natural gas;

15 N. "nonattainment area" means for any air
16 contaminant an area that is designated "nonattainment" with
17 respect to that contaminant within the meaning of Section
18 107(d) of the federal act;

19 O. "person" includes an individual, partnership,
20 corporation, association, the state or political subdivision of
21 the state and any agency, department or instrumentality of the
22 United States and any of their officers, agents or employees;

23 P. "potential emission rate" means the emission
24 rate of a source at its maximum capacity in the absence of air
25 pollution control equipment that is not vital to production of

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1 the normal product of the source or to its normal operation;

2 Q. "regulated air contaminant" means any air
3 contaminant, the emission or ambient concentration of which is
4 regulated pursuant to the Air Quality Control Act or the
5 federal act;

6 R. "secretary" means the secretary of natural
7 resources and environment;

8 S. "significant deterioration" means any increase
9 in the ambient concentrations of any air contaminant above the
10 levels allowed by the federal act or federal regulations for
11 that air contaminant in the area within which the increase
12 occurs;

13 T. "source" means any structure, building,
14 equipment, facility, installation or operation that emits or
15 may emit any air contaminant;

16 U. "standard of performance" means a requirement of
17 continuous emission reduction, including any requirement
18 relating to operation or maintenance of a source to assure
19 continuous emission reduction;

20 V. "state implementation plan" means any plan
21 submitted by New Mexico to the federal environmental protection
22 agency pursuant to 42 U.S.C. Section 7410; and

23 W. "toxic air pollutant" means any air contaminant,
24 except a hazardous air pollutant, classified by the
25 environmental improvement board or the local board as a toxic

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1 air pollutant. "

2 Section 87. Section 74-2-3 NMSA 1978 (being Laws 1967,
3 Chapter 277, Section 3, as amended) is amended to read:

4 "74-2-3. [~~ENVIRONMENTAL IMPROVEMENT BOARD~~] DIRECTORS'
5 FUNCTIONAL GROUP OF THE NATURAL RESOURCES AND ENVIRONMENT
6 DEPARTMENT. --

7 A. In taking any action under the Air Quality
8 Control Act, a majority of the [~~environmental improvement~~
9 ~~board~~] directors' functional group of the natural resources and
10 environment department constitutes a quorum, but any action,
11 order or decision of the [~~environmental improvement board~~]
12 directors' functional group requires the concurrence of three
13 members present at a meeting.

14 B. Except as provided in the Air Quality Control
15 Act, the jurisdiction of the [~~environmental improvement board~~]
16 directors' functional group extends to all areas of the state
17 except within the boundaries of a local authority. "

18 Section 88. Section 74-3-2 NMSA 1978 (being Laws 1959,
19 Chapter 185, Section 2, as amended) is amended to read:

20 "74-3-2. RADIATION TECHNICAL ADVISORY COUNCIL-- CREATION
21 AND ORGANIZATION. --

22 A. [~~There is established~~] A "radiation technical
23 advisory council" is created, consisting of seven members. The
24 members shall be appointed by the governor, after consultation
25 with the director [~~of the agency~~], for five-year staggered

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1 terms. The governor shall fill by appointment any vacancy
2 occurring on the council. The replacement appointee shall
3 serve the remainder of the original member's unexpired term.

4 B. The members of the [~~radiation technical~~
5 ~~advisory~~] council shall be [~~individuals~~] persons with
6 scientific training in one or more of the following fields:
7 diagnostic radiology, radiation therapy, nuclear medicine,
8 radiation or health physics or related sciences with
9 specialization in radiation.

10 C. Notwithstanding the provisions of Subsections A
11 and B of this section, the [~~radiation technical advisory~~]
12 council [~~includes~~] shall also include four additional members
13 who shall sit as full council members on matters to which the
14 Medical Radiation Health and Safety Act applies, including [~~but~~
15 ~~not limited to regulations~~] rules necessary to effectuate the
16 provisions of that act. The additional members shall be four
17 radiologic technologists appointed by the governor, whose
18 initial appointments shall be made in such manner that two
19 members shall be appointed for terms of three years and two
20 members [~~who~~] shall be appointed for terms of five years.
21 Thereafter, the additional members shall be appointed by the
22 governor for staggered terms of five years each. The
23 radiologic technologist members of the council shall be
24 appointed from lists submitted to the governor by any generally
25 recognized organization of radiologic technologists in this

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1 state. Vacancies shall be filled by appointment by the
2 governor for the unexpired term within sixty days of the
3 vacancy. "

4 Section 89. Section 74-3-4 NMSA 1978 (being Laws 1971,
5 Chapter 284, Section 4, as amended) is amended to read:

6 "74-3-4. DEFINITIONS. --As used in the Radiation
7 Protection Act:

8 A. "board" or "functional group" means the
9 [~~environmental improvement board~~] directors' functional group
10 of the natural resources and environment department;

11 B. "agency" or "division" means the environmental
12 [~~improvement agency~~] protection division of the natural
13 resources and environment department;

14 C. "council" means the radiation technical advisory
15 council;

16 D. "radiation" includes particulate and
17 electromagnetic radiation and ultrasound, but does not include
18 audible sound;

19 E. "radioactive material" includes any materials or
20 sources, regardless of chemical or physical state, [~~which~~] that
21 emit radiation;

22 F. "radiation equipment" means any device [~~which~~]
23 that is capable of producing radiation;

24 G. "agreement state" means [~~any~~] a state with which
25 the nuclear regulatory commission [~~or its successor~~] has

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1 entered into an agreement under Section 274(b) of the Atomic
2 Energy Act of 1954, as amended;

3 H. "person" means ~~[any]~~ an individual, partnership,
4 firm, public or private corporation, association, trust,
5 estate, political subdivision or agency, or any other legal
6 entity or their legal representatives, agents or assigns;

7 I. "continued care fund" means the radiation
8 protection continued care fund;

9 J. "director" means the director of the
10 ~~[environmental improvement agency]~~ division; and

11 K. "nuclear regulatory commission" means the United
12 States atomic energy commission, the United States nuclear
13 regulatory commission or its successor. "

14 Section 90. Section 74-4-3 NMSA 1978 (being Laws 1977,
15 Chapter 313, Section 3, as amended) is amended to read:

16 "74-4-3. DEFINITIONS. --As used in the Hazardous Waste
17 Act:

18 A. "board" or "functional group" means the
19 ~~[environmental improvement board]~~ directors' functional group
20 of the natural resources and environment department;

21 B. "director" or "secretary" means the secretary of
22 natural resources and environment;

23 C. "disposal" means the discharge, deposit,
24 injection, dumping, spilling, leaking or placing of any solid
25 waste or hazardous waste into or on ~~[any]~~ land or water so that

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1 such solid waste or hazardous waste or constituent thereof may
2 enter the environment or be emitted into the air or discharged
3 into any waters, including ground waters;

4 D. "division" or "department" means the [~~department~~
5 ~~of~~] natural resources and environment department;

6 E. "federal agency" means [~~any~~] a department,
7 agency or other instrumentality of the federal government and
8 [~~any~~] an independent agency or establishment of that
9 government, including [~~any~~] a government corporation and the
10 government printing office;

11 F. "generator" means [~~any~~] a person producing
12 hazardous waste;

13 G. "hazardous agricultural waste" means hazardous
14 waste generated as part of his licensed activity by [~~any~~] a
15 person licensed pursuant to the Pesticide Control Act or [~~any~~]
16 a hazardous waste designated as hazardous agricultural waste by
17 the board, but does not include animal excrement in connection
18 with farm, ranch or feedlot operations;

19 H. "hazardous substance incident" means [~~any~~] an
20 emergency incident involving a chemical or chemicals, including
21 [~~but not limited to~~] transportation wrecks, accidental spills
22 or leaks, fires or explosions, which incident creates the
23 reasonable probability of injury to human health or property;

24 I. "hazardous waste" means any solid waste or
25 combination of solid wastes [~~which~~] that because of [~~their~~] its

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1 quantity, concentration or physical, chemical or infectious
2 characteristics may:

3 (1) cause or significantly contribute to an
4 increase in mortality or an increase in serious irreversible or
5 incapacitating reversible illness; or

6 (2) pose a substantial present or potential
7 hazard to human health or the environment when improperly
8 treated, stored, transported, disposed of or otherwise managed.
9 "Hazardous waste" does not include any of the following, until
10 the board determines that they are subject to Subtitle C of the
11 federal Resource Conservation and Recovery Act of 1976, as
12 amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced
13 waters and other wastes associated with the exploration,
14 development or production of crude oil, ~~[or]~~ natural gas or
15 geothermal energy; ~~[any]~~ fly ash waste; bottom ash waste; slag
16 waste; flue gas emission control waste generated primarily from
17 the combustion of coal or other fossil fuels; solid waste from
18 the extraction, beneficiation or processing of ores and
19 minerals, including phosphate rock and overburden from the
20 mining of uranium ore; or cement kiln dust waste;

21 J. "manifest" means the form used for identifying
22 the quantity, composition, origin, routing and destination of
23 hazardous waste during transportation from point of generation
24 to point of disposal, treatment or storage;

25 K. "person" means ~~[any]~~ a individual, trust, firm,

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1 joint stock company, federal agency, corporation including a
2 government corporation, partnership, association, state,
3 municipality, commission, political subdivision of a state or
4 [~~any~~] an interstate body;

5 L. "regulated substance" means:

6 (1) [~~any~~] a substance defined in Section
7 101(14) of the federal Comprehensive Environmental Response,
8 Compensation and Liability Act of 1980, but not including [~~any~~]
9 a substance regulated as a hazardous waste under Subtitle C of
10 the federal Resource Conservation and Recovery Act of 1976, as
11 amended; and

12 (2) petroleum, including crude oil or any
13 fraction thereof that is liquid at standard conditions of
14 temperature and pressure of sixty degrees Fahrenheit and
15 fourteen and seven-tenths pounds per square inch absolute;

16 M. "solid waste" means [~~any~~] garbage, refuse,
17 sludge from a waste treatment plant, water supply treatment
18 plant or air pollution control facility and other discarded
19 material, including solid, liquid, semisolid or contained
20 gaseous material resulting from industrial, commercial, mining
21 and agricultural operations, and from community activities, but
22 does not include solid or dissolved materials in domestic
23 sewage or solid or dissolved materials in irrigation return
24 flows or industrial discharges which are point sources subject
25 to permits under Section 402 of the Federal Water Pollution

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1 Control Act, as amended (86 Stat. 880), or source, special
2 nuclear or byproduct material as defined by the federal Atomic
3 Energy Act of 1954, as amended (68 Stat. 923);

4 N. "storage" means the containment of hazardous
5 waste, either on a temporary basis or for a period of years, in
6 such a manner as not to constitute disposal of such hazardous
7 waste;

8 O. "tank installer" means ~~[any individual]~~ a person
9 who installs or repairs an underground storage tank;

10 P. "transporter" means a person engaged in the
11 movement of hazardous waste, not including movement at the site
12 of generation, disposal, treatment or storage;

13 Q. "treatment" means ~~[any]~~ a method, technique or
14 process, including neutralization, designed to change the
15 physical, chemical or biological character or composition of
16 ~~[any]~~ hazardous waste so as to neutralize such waste or so as
17 to render such waste nonhazardous, safer for transport,
18 amenable to recovery, amenable to storage or reduced in volume.
19 ~~[Such term]~~ "Treatment" includes ~~[any]~~ an activity or
20 processing designed to change the physical form or chemical
21 composition of hazardous waste so as to render it nonhazardous;
22 and

23 R. "underground storage tank" means a single tank
24 or combination of tanks, including underground pipes connected
25 thereto, that are used to contain an accumulation of regulated

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1 substances and the volume of which, including the volume of the
2 underground pipes connected thereto, is ten percent or more
3 beneath the surface of the ground. [~~The term~~] "Underground
4 storage tank" does not include [~~any~~] a:

5 (1) farm, ranch or residential tank of one
6 thousand one hundred gallons or less capacity used for storing
7 motor fuel or heating oil for noncommercial purposes;

8 (2) septic tank;

9 (3) pipeline facility, including gathering
10 lines that are regulated under the federal Natural Gas Pipeline
11 Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the
12 federal Hazardous Liquid Pipeline Safety Act of 1979, 49
13 U.S.C. App. 2001, et seq., or that is an intrastate pipeline
14 facility regulated under state laws comparable to either act;

15 (4) surface impoundment, pit, pond or lagoon;

16 (5) storm water or wastewater collection
17 system;

18 (6) flow-through process tank;

19 (7) liquid trap or associated gathering lines
20 directly related to oil or gas production and gathering
21 operations;

22 (8) storage tank situated in an underground
23 area, such as a basement, cellar, mineworking drift, shaft or
24 tunnel, if the storage tank is situated upon or above the
25 surface of the undesignated floor; or

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1 (9) pipes connected to ~~[any]~~ a tank that is
2 described in Paragraphs (1) through (8) of this subsection. "

3 Section 91. Section 74-4A-1 NMSA 1978 (being Laws 1979,
4 Chapter 377, Section 1, as amended) is amended to read:

5 "74-4A-1. RADIOACTIVE MATERIAL TRANSPORT-- CONDITIONS. --

6 A. The ~~[environmental improvement board]~~ directors'
7 functional group of the natural resources and environment
8 department shall have exclusive authority to promulgate
9 ~~[regulations]~~ rules prescribing the conditions for transport of
10 radioactive material on the highways. Such conditions shall
11 include the conditions of transport that the ~~[environmental~~
12 ~~improvement board]~~ directors' functional group finds necessary
13 to protect the health, safety and welfare of the citizens of
14 the state. Except as specifically preempted by federal law,
15 the state highway commission shall have the exclusive authority
16 within New Mexico to designate highway routes for the transport
17 of radioactive material. Any rule ~~[or regulation]~~ adopted by
18 the ~~[environmental improvement board]~~ directors' functional
19 group that designates highway routes for the transport of
20 radioactive material and that was in effect prior to March 1,
21 1991 is ~~[deemed null and]~~ void. The state highway commission
22 shall incorporate into the record and consider in the initial
23 designation of routes for the transport of radioactive material
24 the evidentiary record from the ~~[environmental improvement~~
25 ~~board]~~ directors' functional group's public hearings held for

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1 the purpose of receiving public comment regarding the
2 designation of routes for the transport of radioactive
3 material.

4 B. For the purposes of this section, "radioactive
5 material" means any material or combination of materials
6 ~~[which]~~ that spontaneously emits ionizing radiation. Materials
7 in which the estimated specific activity is not greater than
8 0.002 microcuries per gram of material, and in which the
9 radioactivity is essentially uniformly distributed, are not
10 considered to be radioactive materials. "Radioactive
11 ~~[materials]~~ material" includes ~~[but is not limited to]:~~

12 (1) materials associated with the operation
13 and decommissioning of nuclear reactors and the supporting fuel
14 cycle;

15 (2) industrial radioisotope sources;

16 (3) radioactive materials used in nuclear
17 medicine;

18 (4) radioactive materials used for research,
19 education or training; and

20 (5) radioactive wastes;

21 but does not include radioactive material the regulation of
22 which has been specifically preempted by federal law.

23 C. The ~~[environmental improvement division of the~~
24 ~~health]~~ natural resources and environment department ~~[shall~~
25 ~~have the authority to]~~ may impose fines not to exceed one

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1 thousand dollars (\$1,000) as set by [~~regulation~~] rule of the
2 [~~environmental improvement board~~] directors' functional group
3 for any violation of the [~~board's regulations~~] directors'
4 functional group's rules pertaining to the transport of
5 radioactive materials.

6 D. Nothing in this section shall be construed to
7 alter the obligation of the state under the April 3, 1974
8 agreement between the state and the atomic energy commission
9 for the discontinuance of certain commission regulatory
10 authority and responsibility. "

11 Section 92. Section 74-4A-6 NMSA 1978 (being Laws 1979,
12 Chapter 380, Section 5, as amended) is amended to read:

13 "74-4A-6. TASK FORCE. -- There is created the "radioactive
14 waste consultation task force". The task force shall consist
15 of the secretaries of [~~energy, minerals and~~] natural resources
16 and environment; taxation and revenue; health [~~and~~
17 environment]; public safety; and highway and transportation or
18 their designees. The chairman and vice chairman, or their
19 designees from the committee, shall be advisory members of the
20 task force. "

21 Section 93. TEMPORARY PROVISION-- IMPLEMENTATION
22 COMMITTEE-- MEMBERS-- PURPOSE-- DUTIES. --

23 A. The "water and environment implementation
24 committee" is created, composed of the following members:

- 25 (1) the governor's science advisor;

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1 (2) the secretary of environment or his
2 designee;

3 (3) the secretary of energy, minerals and
4 natural resources or his designee;

5 (4) the state engineer or his designee; and

6 (5) five members appointed by the New Mexico
7 legislative council from a list prepared by the governor's
8 science advisor and the state agency members as follows:

9 (a) a hydrologist or water resource
10 management scientist with at least ten years' relevant
11 experience and no significant connection to or association with
12 a state agency involved in water resource management, natural
13 resources management or environmental regulation or
14 nongovernmental entities in New Mexico with interests in water
15 resource planning, development or water supply acquisitions;

16 (b) an attorney licensed in New Mexico
17 who specializes in water law with at least ten years'
18 experience in prior appropriation water law; substantial
19 experience in natural resources and environmental law; and no
20 significant connection to or association with any state agency
21 involved in water resource management, natural resource
22 management, environmental regulation or water rights disputes
23 or with any nongovernmental entities within New Mexico with
24 interests in water resource planning, development, water rights
25 disputes or water supply acquisitions;

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1 (c) a natural resource economist with at
2 least ten years' relevant experience; and no significant
3 connection to or association with any state agency involved in
4 water resource management, natural resource management, or
5 environmental regulation or with any nongovernmental entities
6 within New Mexico with interests in water resource planning,
7 development or water supply acquisitions; and

8 (d) two public members.

9 B. The implementation committee shall serve from
10 its appointment until December 1, 2001. Members who are not
11 employed by a state agency may receive reimbursement for per
12 diem and mileage expenses as provided in the Per Diem and
13 Mileage Act.

14 C. The implementation committee shall develop an
15 implementation plan for the newly created water resources
16 department and natural resources and environment department and
17 shall oversee the implementation of the plan by December 1,
18 2001.

19 D. The implementation committee may propose to the
20 legislature the assignment of responsibilities over programs
21 and additional duties as they relate to specific duties and
22 functions formerly administered by the department of
23 environment; the office of the state engineer; the interstate
24 stream commission; the water quality control commission; the
25 environmental improvement board; the coal surface mining

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1 commission; the mining commission; and the energy, minerals and
2 natural resources department.

3 Section 94. TEMPORARY PROVISION--IMPLEMENTATION PLAN FOR
4 DEPARTMENTS.--

5 A. The implementation plan for the water resources
6 department shall include:

7 (1) reorganization of the specific duties and
8 functions formerly administered by the department of
9 environment; the office of the state engineer; the interstate
10 stream commission; the water quality control commission; the
11 environmental improvement board; the coal surface mining
12 commission; the mining commission; and the energy, minerals and
13 natural resources department as they related to the newly
14 created divisions within the water resources department;

15 (2) all budget and financial reorganization
16 plans and systems; and

17 (3) all administrative and personnel
18 reorganization plans and systems.

19 B. The implementation plan for the natural
20 resources and environment department shall include:

21 (1) reorganization of the specific duties and
22 functions formerly administered by the department of
23 environment; the environmental improvement board; the
24 department of game and fish; the state game commission; the
25 coal surface mining commission; the mining commission; and the

1 energy, minerals and natural resources department as they
2 related to the newly created divisions within the natural
3 resources and environment department;

4 (2) all budget and financial reorganization
5 plans and systems; and

6 (3) all administrative and personnel
7 reorganization plans and systems.

8 Section 95. TEMPORARY PROVISION-- TRANSFERS OF PERSONNEL
9 AND PROPERTY-- CONTRACTUAL OBLIGATIONS-- STATUTORY REFERENCES. --

10 A. On the effective date of this section, all
11 personnel, appropriations, money, records, files, furniture,
12 equipment and other personal and real property belonging to the
13 following agencies are transferred to the water resources
14 department:

15 (1) office of the state engineer;

16 (2) interstate stream commission;

17 (3) ground water protection and remediation
18 bureau, surface water quality bureau, drinking water bureau,
19 underground storage bureau, water and wastewater construction
20 bureau, the construction programs bureau and any other water
21 supply and liquid waste programs of the department of
22 environment;

23 (4) water quality control commission; and

24 (5) any other personnel, appropriations or
25 property belonging to the department of environment or the

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1 environmental improvement board that the water and environment
2 implementation committee determines should be transferred to
3 the water resources department.

4 B. On the effective date of this section, all
5 contractual and other obligations of the following agencies
6 shall be obligations of the water resources department:

7 (1) office of the state engineer;

8 (2) interstate stream commission;

9 (3) ground water protection and remediation
10 bureau, surface water quality bureau, drinking water bureau and
11 underground storage bureau and any other water supply and
12 liquid waste programs of the department of environment;

13 (4) water quality control commission; and

14 (5) contractual and other obligations of the
15 department of environment or the environmental improvement
16 board that the water and environment implementation committee
17 determines should be obligations of the water resources
18 department.

19 C. On the effective date of this section,
20 references in law shall be as follows:

21 (1) references to the water rights division
22 of the office of the state engineer shall be deemed to be
23 references to the water rights and adjudication division of the
24 water resources department;

25 (2) references to the interstate stream

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1 commission shall be deemed to be references to the river and
2 watershed management division of the water resources
3 department;

4 (3) references to the ground water protection
5 and remediation bureau and the surface water quality bureau of
6 the water and waste management division of the department of
7 environment shall be deemed to be references to the water
8 quality protection division of the water resources department;

9 (4) references to the drinking water bureau
10 of the field operations division of the department of
11 environment shall be deemed to be references to the water
12 quality protection division of the water resources department;

13 (5) references to the water and wastewater
14 construction bureau or the construction programs bureau of the
15 administrative services division of the department of
16 environment shall be deemed to be references to the water
17 quality protection division of the water resources department;

18 (6) references to the underground storage
19 tank bureau of the environmental protection division of the
20 department of environment shall be deemed to be references to
21 the water quality protection division of the water resources
22 department;

23 (7) references in law to the water quality
24 control commission shall be deemed to be references to the
25 directors' functional group of the water resources department;

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1 and

2 (8) references in law to the environmental
3 improvement board as it relates to the board's powers and
4 duties for water supply and liquid waste programs shall be
5 deemed to be references to the director's functional group of
6 the water resources department.

7 Section 96. TEMPORARY PROVISION-- TRANSFERS OF PERSONNEL
8 AND PROPERTY-- CONTRACTUAL OBLIGATIONS-- STATUTORY REFERENCES. --

9 A. On the effective date of this section, all
10 personnel, appropriations, money, records, files, furniture,
11 equipment and other personal and real property belonging to the
12 following agencies are transferred to the natural resources and
13 environment department:

14 (1) energy, minerals and natural resources
15 department or the several organizational units of the
16 department;

17 (2) department of game and fish;

18 (3) state game commission;

19 (4) New Mexico youth conservation corps
20 commission;

21 (5) oil conservation commission;

22 (6) mining commission;

23 (7) coal surface mining commission; and

24 (8) any other personnel, appropriations or
25 property belonging to the department of environment or the

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1 environmental improvement board that the water and environment
2 implementation committee determines should be transferred to
3 the natural resources and environment department.

4 B. On the effective date of this section, all
5 contractual and other obligations of the following agencies
6 shall be obligations of the natural resources and environment
7 department:

- 8 (1) energy, minerals and natural resources
9 department;
- 10 (2) department of game and fish;
- 11 (3) state game commission;
- 12 (4) New Mexico youth conservation corps
13 commi ssi on;
- 14 (5) oil conservation commi ssi on;
- 15 (6) mi ni ng commi ssi on;
- 16 (7) coal surface mi ni ng commi ssi on; and
- 17 (8) contractual and other obligations of the
18 department of environment or the environmental improvement
19 board that the water and environment implementation committee
20 determines should be obligations of the natural resources and
21 environment department.

22 C. On the effective date of this section,
23 references in law shall be as follows:

- 24 (1) references to the state game commission
25 or the department of game and fish shall be deemed to be

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1 references to the wildlife division of the natural resources
2 and environment department;

3 (2) references to the state park and
4 recreation commission, the state parks division or the state
5 parks and recreation division of the energy, minerals and
6 natural resources department shall be deemed to be references
7 to the state parks division of the natural resources and
8 environment department;

9 (3) references to the New Mexico youth
10 conservation corps commission shall be deemed to be references
11 to the secretary of natural resources and environment;

12 (4) references to the forestry division of
13 the energy, minerals and natural resources department shall be
14 deemed to be references to the forestry division of the natural
15 resources and environment department;

16 (5) references to the oil conservation
17 division of the energy, minerals and natural resources
18 department shall be deemed to be references to the oil
19 conservation and management division of the natural resources
20 and environment department;

21 (6) references in the law to the oil
22 conservation commission shall be deemed to be references to the
23 directors' functional group of the natural resources and
24 environment department;

25 (7) references to the mining and minerals

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1 division of the energy, minerals and natural resources
2 department shall be deemed to be references to the mining and
3 minerals division of the natural resources and environment
4 department;

5 (8) references to the mining commission shall
6 be deemed to be references to the directors' functional group
7 of the natural resources and environment department;

8 (9) references to the coal surface mining
9 commission shall be deemed to be references to the directors'
10 functional group of the natural resources and environment
11 department;

12 (10) references to the energy conservation
13 and management division and the state alternative fuel program
14 of the energy, minerals and natural resources department shall
15 be deemed to be references to the energy conservation and
16 management division of the natural resources and environment
17 department;

18 (11) references to the office of interstate
19 natural gas markets of the energy, minerals and natural
20 resources department shall be deemed to be references to the
21 office of interstate natural gas markets of the natural
22 resources and environment department;

23 (12) references to the air quality bureau of
24 the environmental protection division of the department of
25 environment shall be deemed to be references to the

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1 environmental protection division of the natural resources and
2 environment department;

3 (13) references to the occupational health
4 and safety bureau or the solid waste bureau of the
5 environmental protection division of the department of
6 environment shall be deemed to be references to the
7 environmental protection division of the natural resources and
8 environment department;

9 (14) references to the hazardous and
10 radioactive materials bureau or the department of energy
11 oversight bureau of the water and waste management division of
12 the department of environment shall be deemed to be references
13 to the environmental protection division of the natural
14 resources and environment department;

15 (15) references to the community service
16 bureau, food protection program, vector control program,
17 nuisance control program or the sanitation of public swimming
18 pools and public baths program of the field operations division
19 of the department of environment shall be deemed to be
20 references to the environmental protection division of the
21 natural resources and environment department; and

22 (16) references in law to the natural
23 resources trustee shall be deemed to be references to the
24 secretary of natural resources and environment.

25 Section 97. APPROPRIATION.--Six hundred thousand dollars

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1 (\$600,000) is appropriated from the general fund to the office
2 of the governor for expenditure in fiscal year 2002 to
3 establish the water resources department and the natural
4 resources and environment department and to pay expenses of the
5 water and environment implementation committee. Any unexpended
6 or unencumbered balance remaining at the end of fiscal year
7 2002 shall revert to the general fund.

8 Section 98. REPEAL. -- Sections 9-5A-1 through 9-5A-8,
9 9-5B-5, 9-7A-1 through 9-7A-14, 16-2-5, 17-1-2 through 17-1-5,
10 17-2-5, 69-25A-4, 69-36-6, 70-2-4, 72-2-2 through 72-2-4, 72-2-
11 10, 72-14-1, 73-2-67, 74-1-4, 74-1-5 and 74-1-8 NMSA 1978
12 (being Laws 1987, Chapter 234, Sections 1 through 6, Laws 1997,
13 Chapter 149, Section 3, Laws 1987, Chapter 234, Section 7, Laws
14 1992, Chapter 58, Section 8, Laws 1992, Chapter 91, Section 5,
15 Laws 1991, Chapter 25, Sections 1 through 12, Laws 1977,
16 Chapter 253, Sections 77 and 78, Laws 1935, Chapter 57, Section
17 4, Laws 1921, Chapter 35, Sections 2 through 4, Laws 1931,
18 Chapter 117, Sections 5 and 4, Laws 1979, Chapter 291, Section
19 4, Laws 1993, Chapter 315, Section 6, Laws 1935, Chapter 72,
20 Section 3, Laws 1907, Chapter 49, Sections 5 through 7 and 38,
21 Laws 1935, Chapter 25, Section 1, Laws 1993, Chapter 293,
22 Section 3, Laws 1971, Chapter 277, Sections 5 and 6 and Laws
23 1971, Chapter 277, Section 11, as amended) are repealed.

24 Section 99. EFFECTIVE DATE. --

25 A. The effective date of the provisions of Sections

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1 93 and 94 of this act is July 1, 2001.

2 B. The effective date of the provisions of Sections
3 1 through 92 and 95 through 98 of this act is December 1, 2001.

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