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# H2Oh, Brother!

Produced Water Law in Texas & New Mexico

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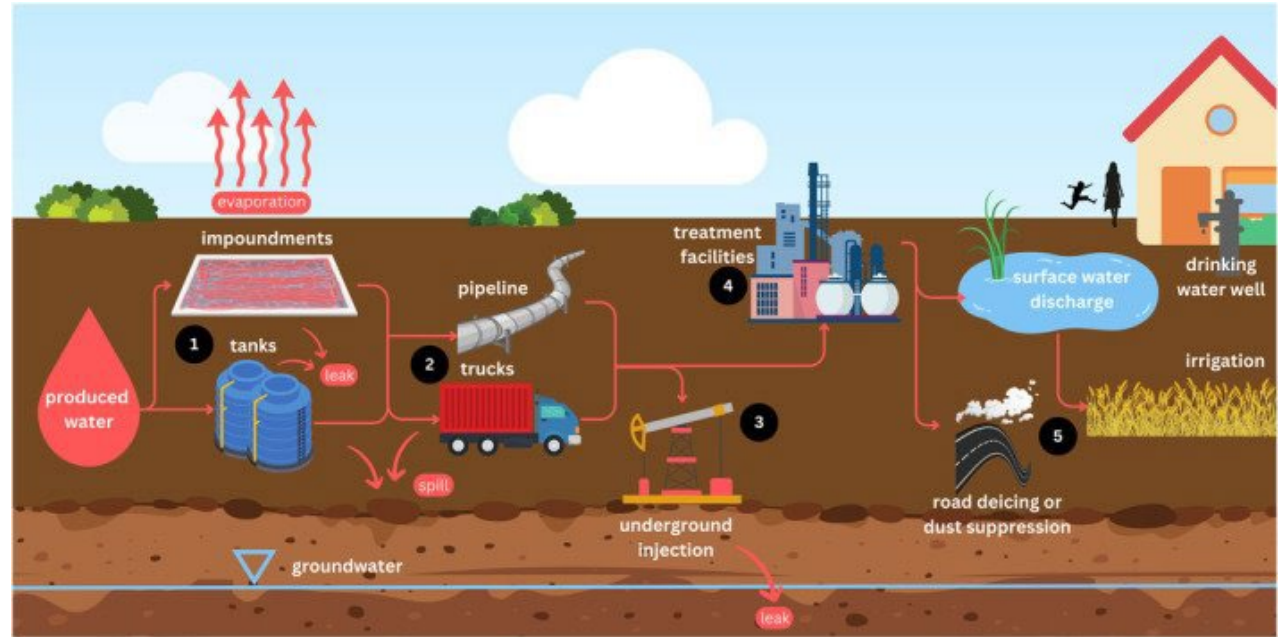
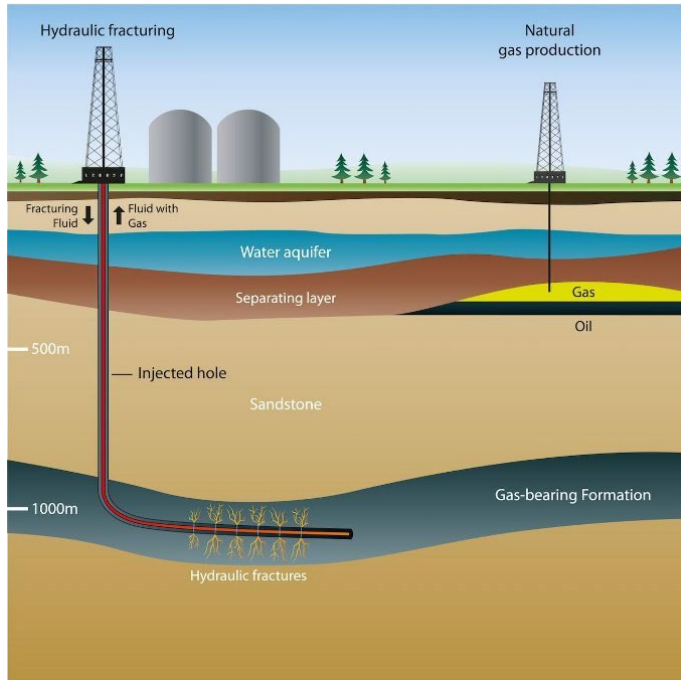
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# What is Produced Water?



# Produced Water Volumes by State (2021)

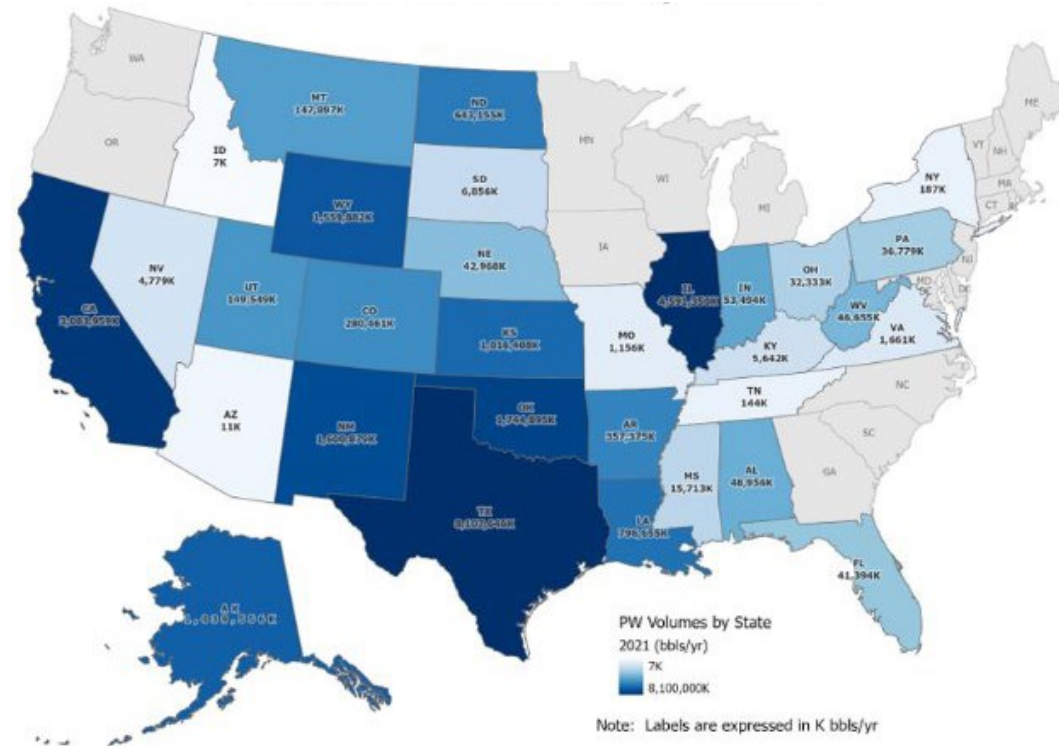


Figure 4-1 – Map of the Oil & Gas Producing States with 2021 Produced Water Volumes



# Produced Water in Texas

# Texas Produced Water Act

- Introduced as House Bill 2767 in 2013 (83<sup>rd</sup> Legislature)
- Effective September 1, 2013
- Texas Natural Resources Code, Chapter 122
- Defines produced water and establishes rules regarding ownership and tort liability
- Directs the Texas Railroad Commission (RRC) to regular the treatment and beneficial use of produced water



# Tex. Nat. Res. Code §§ 122.001-122.002

- Defines produced water as “fluid oil and gas waste,” which is generally any fluid arising or incidental to drilling or production.
- Produced water is the property of the person who takes possession for the purpose of treating it for subsequent beneficial use.
- Upon transfer of treated produced water to another person for subsequent disposal or beneficial use, becomes the transferee’s property.
- Parties are permitted to designate ownership of produced water by express provision in any legally binding document.



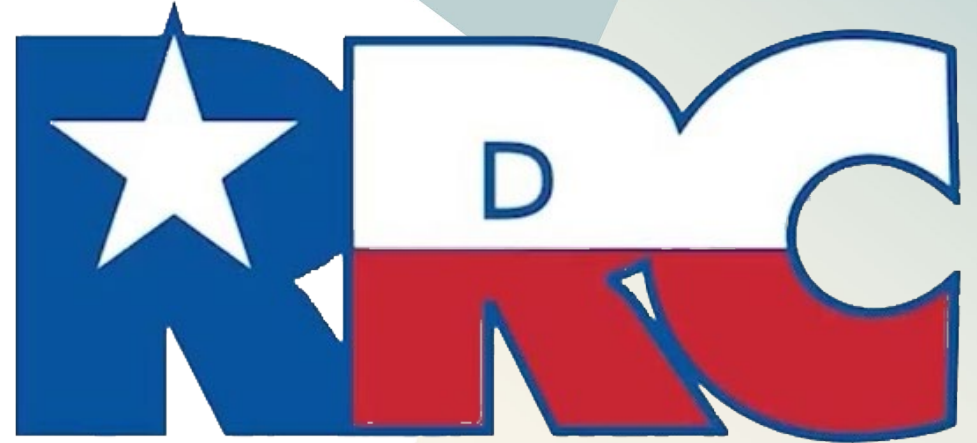
# Tex. Nat. Res. Code §122.003

- Owner of produced water supplying to a treatment facility is not liable in tort for the subsequent treatment, use of treated water, or exposure to any byproduct of treatment.
- Producer of treated water who puts it to beneficial use or transfers to another under contract for beneficial use has no tort liability for subsequent use of the treated water.
- Surface owner is not liable for personal injury, death, or property damage resulting from exposure to produced water, treated produced water, or any byproduct of the treatment process.



# Tex. Nat. Res. Code §122.004

- RRC in charge of adopting rules to encourage treatment and beneficial use of produced water
- RRC also responsible for issuing permits for the commercial recycling of produced water



# *Cactus Water Servs., LLC v. COG Operating, LLC*

## **718 S.W.3d 214 (Tex. 2025)**

- Absent any express provision otherwise in the lease, the lessee owns the produced water
- Subsurface water remains subject to the mineral estate's right to use the surface as reasonably necessary to produce oil and gas
- Produced water is distinctly different from groundwater
- Liability for improper disposal of produced water lies with the lessee/operator



# Texas Produced Water Consortium

- Created by Senate Bill 601 in 2021 (87<sup>th</sup> Legislature)
- Established to explore innovative ways to treat and reuse produced water
- In 2023, the Texas Legislature allocated \$5,000,000 to the TPWC to advance its efforts



**Texas Produced  
Water Consortium**

# Texas Produced Water Consortium

- 2024 Report to the Texas Legislature
  - Pilot projects for utilization of produced water
  - Work with RRC and TCEQ on review of data and analysis of produced water treatment and qualities
  - Research into use with alternative crops and mineral recovery from produced water



**Texas Produced  
Water Consortium**

# Produced Water in New Mexico

# New Mexico Oil and Gas Production

- Two major areas of oil and gas production
  - San Juan Basin
    - Coal, gas, and some oil
    - Located in northwestern New Mexico, southwestern Colorado, and parts of Utah and Arizona
  - Permian Basin
    - Oil and gas
    - Located in east New Mexico and west Texas

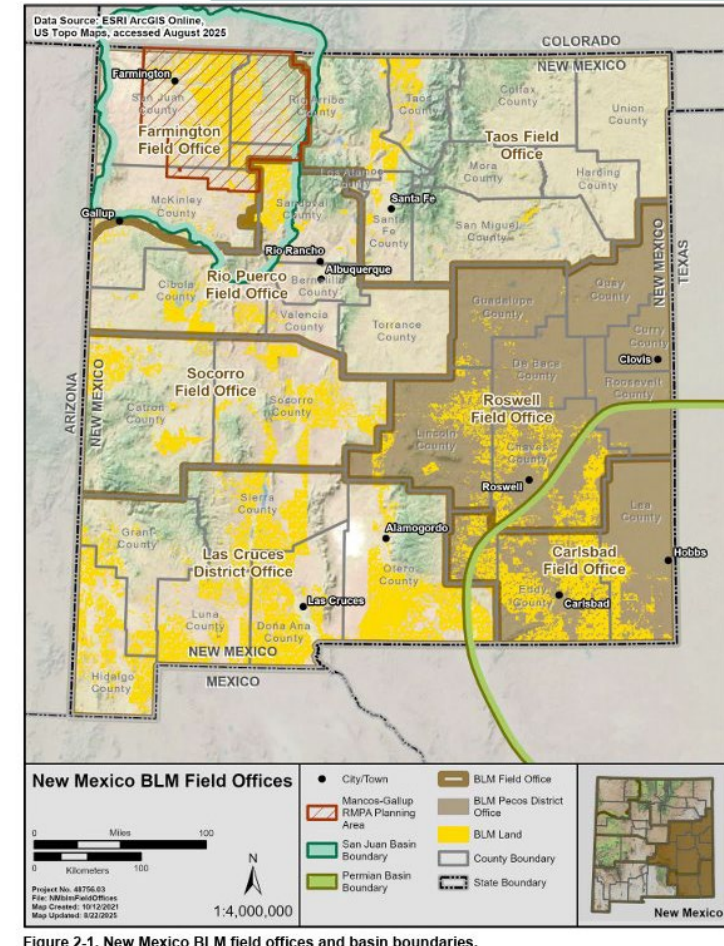


Figure 2-1. New Mexico BLM field offices and basin boundaries.

# New Mexico Produced Water Act

- Introduced as House Bill 546
- Effective July 1, 2019
- Defines produced water
- Provides authority to state agencies under the Act
- Clarifies ownership of produced water



# New Mexico Produced Water Act

Oil Conservation Division of  
the New Mexico Energy,  
Minerals and Natural  
Resources Department

- Regulates produced water with the respect to the reuse of produced water for oil and gas uses

New Mexico Water Quality  
Control Commission

- All other uses

New Mexico State Engineer

- Permit not needed for the disposition of produced water, recycled water, or treated water



# New Mexico Produced Water Act

- Unless provided by law, contract, bill of sale, or other legally binding contract, all produced water from an oil or gas well is the responsibility of and under the control of the working interest owners and operator of that oil or gas well.
  - The working interest owners and the operator has the possessory interest in the produced water.
  - The operator has the duty to handle the use, disposition, transfer, sale, conveyance, transport, recycling, reuse, or treatment of the produced water as a reasonably prudent operator.
- Once transferred, sold, or conveyed, the transferee shall have control and responsibility for the produced water until transferred again.



# New Mexico Produced Water Consortium

- A statewide partnership created to fill the scientific and technical gaps needed to guide protective, science-based regulations for the safe treatment and reuse of produced water.



# New Mexico Produced Water Consortium

- Pilot projects
  - “Pre-rule”
    - 12 listed
    - Four completed
  - Produced water pilot projects
    - None ongoing



# Federal Lands

- 45 million acres of mineral estate and two million acres of Native American mineral estate located in Bureau of Land Management New Mexico

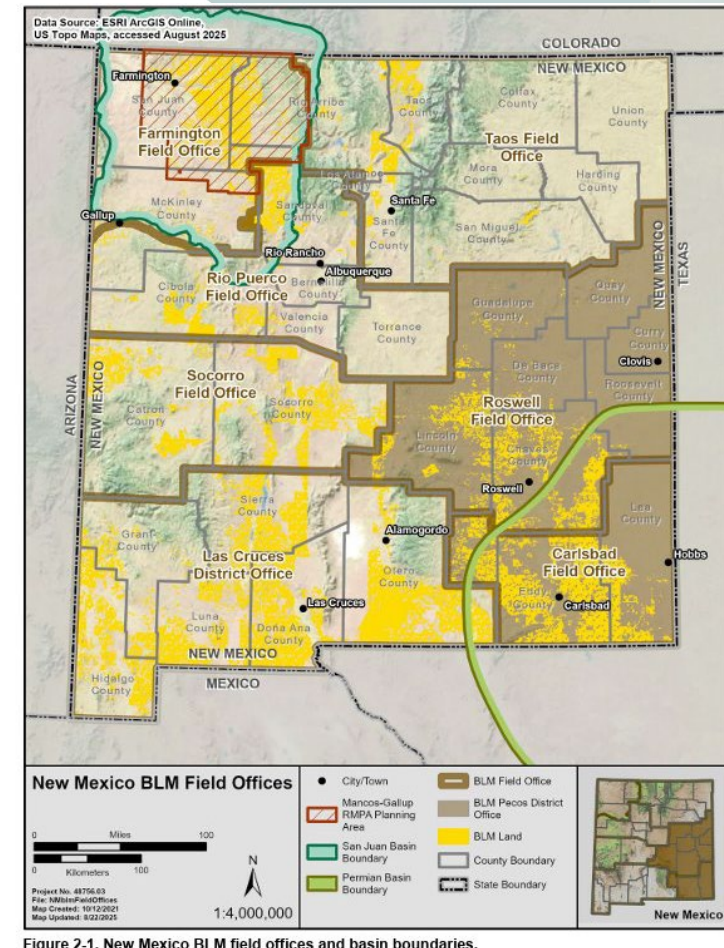


Figure 2-1. New Mexico BLM field offices and basin boundaries.



# Federal Lands

## **Subpart 3177 – Onshore Oil and Gas Production: Disposal of Produced Water (June 16, 2023)**

- Applicable to disposal of produced water from completed wells on Federal and Indian (except Osage) oil and gas leases
- All produced waste from Federal and Indian leases must be disposed of by injection into the subsurface, discharging into pits, or other acceptable methods approved by the authorized officer
- Injection is generally the preferred method of disposal
- Outlines different procedures for disposal on Federal/Indian Lands (on and off lease) and State/private owned lands



# Texas vs. New Mexico

# We Face Similar Issues

- Drought
  - As of April 2026, two-thirds of New Mexico is in the “Severe Drought” category
  - Texas could face a 2.25 trillion-gallon water shortage by 2070
- Decades long water dispute
  - Pecos River Compact Commission
    - Allocates the waters of the Pecos River between the two states
    - In the event of importation of water by man’s activities to the Pecos River Basin from any other basin, the state making the importation shall have the exclusive use of such imported water



# We Face Similar Issues

- Decades long water dispute
  - Rio Grande Compact
    - Ensures Texas receives its equitable share of quality water from the Rio Grande and its tributaries in Colorado, New Mexico, and Texas above Fort Quitman
  - Years long legal battle in the Supreme Court
    - February 6, 2026: In the Fourth Interim Report of the Special Master of the Supreme Court of the United States recommended that Court grant approve the settlement and the 2013 be dismissed



# We Face Similar Issues

- Increased production in the Permian Basin
- Incoming innovation
  - Texas is on track to become the largest data center market on Earth
  - New Mexico currently has 22 data centers operated by 11 providers



# Produced Water Acts Similar in Writing...

- Governing board
  - Produced water in Texas is primarily governed by the Railroad Commission for treatment and all non-discharge beneficial use, and the Texas Commission on Environmental Quality for direct surface discharges to “water in the state.”
  - Produced water in New Mexico is primarily governed by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department with the respect to the reuse of produced water for oil and gas uses and the New Mexico Water Quality Control Commission for all other uses.
- Ownership
  - Unless contracted for otherwise, produced water is owned by the person who takes possession of it.



# ...but Different in Application

- New Mexico has effectually halted permitting of injection wells
- Pilot programs
  - New Mexico pilot programs focused on treatment
    - In April 2025, the Water Quality Control Commission adopted a draft version of the rule that would allow pilot projects using oil and gas wastewater to discharge up to 84,000 gallons per day into groundwater.
    - In May 2025, the Water Quality Control Commission went back on this decision, saying there was not enough evidence to support discharge of the wastewater.
    - “Nobody’s going to do a small pilot project that takes a year and a half to get permitted when they can go to Texas and get it with no permit or a permit that takes a couple of weeks.” —Mike Hightower, Produced Water Consortium Program Director
  - Texas pilot programs have moved on to using the produced water
    - As of early 2026, the TCEQ is reviewing at least four permit applications that would discharge treated produced water in the Pecos River watershed and the Lower Atascosa River.
    - At least six pilot projects permitted for the use of treated produced water in crop irrigation in west Texas.

**Where do we go  
from here?**

# Texas

- Future leases
  - Compensation to lessor/surface owner for produced water
  - Stronger indemnities for disposal and transport
- Existing leases
  - Does the lessee owe lessor/surface owner royalties on produced water?
  - How do parties account for any profit or loss realized from disposal or transportation?
  - Are lessees subject to any implied covenants with respect to management or disposal of produced water?
  - Does transferring ownership of the surface owner's real property right to groundwater to the operator/recycler an unconstitutional taking?



# New Mexico

- Senate Memorial 11
  - Introduced to 57<sup>th</sup> Legislature (2026)
  - Requests the Water Quality Control Commission to promulgate rules enabling the beneficial reuse of treated produced water
  - Focuses on the ability to use this treated produced water for data centers, instead of freshwater
- House Bill 207
  - Introduced in 2026 session
  - For the purpose of amending the Duties and Powers of the Water Quality Commission set forth in §74-6-4 NMSA, to allow the Commission to adopt rules regarding the “discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas” no later than December 31, 2026

# Federal

- In 2020, the Federal Government identified “oil and gas produced water” as potential source for future water sources
- February 2026, the BLM New Mexico released “Policy and Guidance Relating to Produced Water from Oil and Gas Production on Public Land”
  - BLM is encouraging the support of water reuse practices
  - The BLM will work with industry to identify opportunities for reusing and recycling produced water
  - It is intended to promote the adoption of practices that preserve and increase freshwater supplies by recycling produced water for a variety of applications



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