

# CHAPTER 75

## Miscellaneous Natural Resource Matters

### ARTICLE 1

#### Rural Infrastructure

##### 75-1-1. Short title.

Chapter 75, Article 1 NMSA 1978 may be cited as the "Rural Infrastructure Act".

**History:** 1953 Comp., § 75-41-1, enacted by Laws 1973, ch. 333, § 1; 1983, ch. 173, § 1; 1988, ch. 28, § 1.

#### ANNOTATIONS

**Cross references.** — For provisions relating to water supply associations, see 3-28-1 NMSA 1978 et seq.

**Laws 1988, ch. 28, § 1** changed the name of the Water Supply Construction Act to the Rural Infrastructure Act.

##### 75-1-2. Definitions.

As used in the Rural Infrastructure Act:

- A. "department" means the department of environment;
- B. "fund" means the rural infrastructure revolving loan fund;
- C. "local authority" means a mutual domestic association or water and sanitation district that supplies water, wastewater or solid waste services to, or a municipality that has, a population of less than twenty thousand or a county with a population of less than two hundred thousand;
- D. "operate and maintain" means all necessary activities, including replacement of equipment or appurtenances to assure the dependable and economical function of a facility in accordance with its intended purpose;
- E. "secretary" means the secretary of environment;
- F. "solid waste facility" includes transfer and convenience facilities, landfills or other equipment or systems used for the processing, transformation, recycling or disposal of solid waste;

G. "wastewater facility" includes collection lines, pumping equipment, treatment works and disposal piping or process units; and

H. "water supply facility" includes the source of supply of water, pumping equipment, storage facilities, transmission lines, treatment works and distribution systems.

**History:** 1953 Comp., § 75-41-2, enacted by Laws 1973, ch. 333, § 2; 1977, ch. 253, § 75; 1979, ch. 219, § 1; 1983, ch. 173, § 2; 1987, ch. 175, § 1; 1988, ch. 28, § 2; 1991, ch. 208, § 1; 2001, ch. 250, § 1; 2001, ch. 265, § 1; 2007, ch. 342, § 1.

## ANNOTATIONS

**The 2007 amendment,** effective July 1, 2007, eliminates an incorporated city, town or village and county and public water cooperative associations from the definition of "local authority"; defines "local authority" to mean associations or districts that supply water, wastewater or sold waste services to municipalities with a population less than 20,000 or a county with a population less than 200,000; and adds Subsection F.

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch 250, § 1 and Laws 2001, ch. 265, § 1, effective June 15, 2001, rewriting Subsection A, which formerly read "'division' means the environmental improvement division of the health and environment department"; deleting Subsection B, which defined "board", adding Subsections F and G, and renumbering the remaining subsections accordingly.

**The 1991 amendment,** effective July 1, 1991, deleted " 'agency' or" at the beginning of Subsection A and inserted "but is not limited to" in Subsection F.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 94 C.J.S. Waters § 241.

### 75-1-2.1. Purpose of act.

The purpose of the Rural Infrastructure Act is to provide financial assistance to local authorities for the planning, design and construction or modification of water supply, wastewater and solid waste facilities.

**History:** 1978 Comp., § 75-1-2.1, enacted by Laws 1983, ch. 173, § 3; 1988, ch. 28, § 3; 1991, ch. 208, § 2; 2001, ch. 250, § 2; 2001, ch. 265, § 2; 2007, ch. 342, § 2.

## ANNOTATIONS

**The 2007 amendment,** effective July 1, 2007, adds planning and design of facilities, including solid waste facilities.

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch 250, § 2 and Laws 2001, ch. 265, § 2, effective June 15, 2001, substituting "water supply and wastewater facilities to" for "water supply facilities that will". This section is set out as amended by Laws 2001, ch. 265, § 2. See 12-1-8 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, inserted "to local authorities" and made a related change and minor stylistic changes.

**Law reviews.** — For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

### **75-1-3. Fund created; administration; emergency fund.**

A. A special fund is created to be known as the "rural infrastructure revolving loan fund". Money appropriated to the fund or to the department to carry out the provisions of the Rural Infrastructure Act may be used to make loans and grants to local authorities, individually or jointly, for water supply, wastewater or solid waste facilities. Appropriations made to the fund but not expended at the end of the fiscal year for which appropriated shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the balance in the fund shall be credited to the fund. In addition, when the proceeds from the issuance of severance tax bonds appropriated to the fund are deposited in the state treasury, interest earned on that money during the period from deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund.

B. Ten percent of any appropriation to the fund or to the department to carry out the provisions of the Rural Infrastructure Act shall be set aside for emergency grants and loans pursuant to Section 75-1-5 NMSA 1978.

C. All water supply, wastewater and solid waste facilities shall be designed in compliance with the engineering requirements established by the secretary after consulting with and considering the recommendations of the professional engineering societies operating in New Mexico. The secretary shall also establish, by regulation, guidelines for the ranking of projects for top priority based on public health needs.

D. The department shall administer the fund and shall make grant and loan disbursements in accordance with the Rural Infrastructure Act. The secretary shall adopt regulations to govern the application procedure and requirements for disbursing grants and loans under the Rural Infrastructure Act, including requirements consistent with the purpose of the act for determining the eligibility and priority of local authorities for such grants and loans.

E. Receipts from the repayment of loans, including loans approved by the state board of finance pursuant to Section 75-1-5 NMSA 1978, shall be deposited in the fund by the department, including receipts from the repayment of loans made pursuant to

appropriations to carry out the purposes of the Water Supply Construction Act made prior to the effective date of the Rural Infrastructure Act.

F. Money in the fund is appropriated to the department to carry out the provisions of the Rural Infrastructure Act. The department may allocate up to two percent of the total balance in the fund to pay for administrative expenses necessary to carry out the provisions of the Rural Infrastructure Act. Money allocated for administrative expenses shall be placed in a separate administrative account in the fund to be used solely for administrative expenses, and the department shall at the beginning of the fiscal year determine the projected administrative costs for the year and deposit in the account the appropriate amount; provided that the amount to be deposited does not exceed two percent of the total balance in the fund. Money in the account shall remain in the account at the end of a fiscal year.

G. Loans and grants made pursuant to the provisions of the Rural Infrastructure Act shall not be used by the local authority on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act [47-5-1 to 47-5-8 NMSA 1978] or the New Mexico Subdivision Act [Chapter 47, Article 6 NMSA 1978].

**History:** 1953 Comp., § 75-41-3, enacted by Laws 1973, ch. 333, § 3; 1977, ch. 283, § 1; 1979, ch. 219, § 2; 1983, ch. 173, § 4; 1984, ch. 5, § 14; 1987, ch. 175, § 2; 1988, ch. 28, § 4; 1991, ch. 208, § 3; 2001, ch. 250, § 3; 2001, ch. 265, § 3; 2007, ch. 342, § 3.

## ANNOTATIONS

**Cross references.** — For public project revolving fund, see 6-21-6 NMSA 1978.

For appropriations to other funds from the public project revolving fund, see 6-21-6.1 NMSA 1978.

For distributions to the public project revolving fund from governmental gross receipts tax, see 7-1-6.38 NMSA 1978.

For exemption of environmental improvement board from authority of secretary of environment, see 9-7A-12 NMSA 1978.

**Compiler's notes.** — The Water Supply Construction Act, referred to in Subsection E, was replaced by the Rural Infrastructure Act, effective July 1, 1988.

The name of this act was changed from the "Water Supply Construction Act" to the "Rural Infrastructure Act" by Laws 1988, ch. 28, § 1.

**The 2007 amendment,** effective July 1, 2007, permits loans or grants for solid waste facilities and adds Subsection F.

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch 250, § 3 and Laws 2001, ch. 265, § 3, effective June 15, 2001, substituting "department" for "division" throughout the subsection; inserting "or wastewater" following "water supply" in Subsections A and C; substituting "secretary" for "board" in Subsections C and D; and deleting the former last sentence of Subsection D, which read "The division shall coordinate its application procedures and funding cycle pursuant to the New Mexico Community Assistance Act". This section is set out as amended by Laws 2001, ch. 265, § 3. See 12-1-8 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, added the final sentence in Subsection A and inserted "including loans approved by the state board of finance pursuant to Section 75-1-5 NMSA 1978" in Subsection E.

#### **75-1-4. Conditions for grants and loans.**

A. Grants and loans shall be made only to local authorities that:

(1) agree to operate and maintain the water supply, wastewater or solid waste facilities so that the facilities will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide a written assurance, signed by an attorney, that the local authority has proper title, easements and rights of way to the property upon or through which the water supply, wastewater or solid waste facility proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;

(5) pledge sufficient revenues for repayment of the loan, provided that such revenues may by law be pledged for that purpose; and

(6) agree to properly maintain financial records and to conduct an audit of the project's financial records.

B. Except as otherwise provided in the Rural Infrastructure Act, a loan shall be for a period of time not to exceed twenty years. Loans may be interest free or bear an annual interest rate set by the secretary that is at or below market interest rates. The repayment of loans shall be in annual, quarterly or monthly installments, as approved by the department, beginning one year after completion of the project. The repayment of the interest on the loan accumulated during the design and construction of a project

may be included in the final loan amount, but it shall not be counted in determining the maximum loan amount.

C. No loan recipient eligible to receive a grant under the Rural Infrastructure Act shall receive grants in any one year totaling more than five hundred thousand dollars (\$500,000).

D. The maximum assistance, including both loans and grants, that a local authority may receive under the Rural Infrastructure Act in any one year is two million dollars (\$2,000,000).

E. Plans and specifications for a water supply, wastewater or solid waste facility construction project shall be approved by the department before grant or loan disbursements to pay for construction costs are made to a local authority. Interim loan disbursements to pay for engineering and other professional services may be made by the department prior to the approval of the plans and specifications.

F. Privately owned water supply, wastewater or solid waste facilities are not eligible for assistance under the Rural Infrastructure Act.

G. Grants and loans shall be made only for eligible items. Eligible items include but are not limited to the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering services, archaeological surveys and contracted construction. The costs of water rights, land, system acquisition, easements and rights of way, refinancing of program loans, legal costs and fiscal agents' fees are eligible items only for loan funds. Local authority administrative costs shall not be included as eligible items.

H. The department may:

(1) conduct periodic reviews of the operation of a local authority that has received funding from the department;

(2) require the local authority to submit information relevant to the loan to the department;

(3) require the submission of financial reports relevant to the ability of the local authority to repay the loan; and

(4) review and require changes to the rate-setting analysis that supports the loan payments.

I. In the event the local authority fails to make the prescribed loan repayment, the department is authorized to set solid waste, water or wastewater user rates in the area of the local authority's jurisdiction in order to provide sufficient money for repayment of the loan and proper operation and maintenance. Funds sufficient to provide for

repayment of the loan and proper operation and maintenance shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for nonmajor capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed on a yearly basis if necessary.

J. The department may enforce its rights as provided by law.

**History:** 1953 Comp., § 75-41-4, enacted by Laws 1973, ch. 333, § 4; 1977, ch. 283, § 2; 1983, ch. 173, § 5; 1984, ch. 4, § 7; 1984, ch. 5, § 15; 1987, ch. 175, § 3; 1988, ch. 28, § 5; 1991, ch. 208, § 4; 2001, ch. 250, § 4; 2001, ch. 265, § 4; 2007, ch. 342, § 4.

## ANNOTATIONS

**Cross references.** — For rural infrastructure revolving loan fund, see 75-1-3 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, permits grants and loans for wastewater or solid waste facilities; permits loans to be paid in quarterly or monthly installments; increases the maximum loan amount from \$200,000 to \$500,000 for any one year; increases the maximum combined grant and loan amount from \$500,000 to \$2,000,000 for any one year; requires that funds sufficient to provide for repayment of a loan and operation and maintenance shall be identified by a rate-setting analysis; and adds Subsections H and J.

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch 250, § 4 and Laws 2001, ch. 265, § 4, effective June 15, 2001, substituting "department" for "division" throughout the subsection; in Subsection B, deleting the provision that assigned interest rates for loans under specific circumstances, adding the second sentence, and deleting "equal" preceding "annual installments" in the third sentence; in Subsection D, inserting "in any one year"; inserting "or wastewater" following "water supply" in Subsections E, F and H; and deleting "delinquent" preceding "program loans" in Subsection G.

**The 1991 amendment,** effective July 1, 1991, in Subsection B, substituted "five hundred thousand dollars (\$500,000) in any one year" for "three hundred thousand dollars (\$300,000)" at the end of the first sentence, added "beginning one year after completion of the project" at the end of the second sentence and added the third sentence; in Subsection E, inserted "disbursement to pay for construction costs are" in the first sentence and added the second sentence; in Subsection G, inserted "but are not limited to" and "archaeological surveys" in the first sentence and substituted the second and third sentences for a sentence which read "The costs of water rights, land, easements and rights-of-way, legal costs, fiscal agents' fees, local authority and county administrative costs shall not be included as eligible items"; deleted former Subsection H which read "The division may make interim loans and grants to local authorities for contracted engineering services prior to approval of plans and specifications by the

division"; designated former Subsection I as Subsection H; and made minor stylistic changes in Subsection A and E.

### **75-1-5. Emergency loans and grants.**

Ten percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out the provisions of the Rural Infrastructure Act shall be reserved for emergencies and shall be allocated by the department only upon approval of the state board of finance. This amount shall not be deposited in the fund and shall be allocated only for emergency loans and grants. Emergency loans and grants shall be made in accordance with the applicable provisions for loans pursuant to the Rural Infrastructure Act; provided that a grant shall not exceed five hundred thousand dollars (\$500,000). At the end of the third quarter of each fiscal year, the unexpended balance of the reserved amount may be transferred by the department to the fund for use in accordance with the Rural Infrastructure Act.

**History:** 1978 Comp., § 75-1-5, enacted by Laws 1987, ch. 175, § 4; 1988, ch. 28, § 6; 2001, ch. 250, § 5; 2001, ch. 265, § 5; 2007, ch. 342, § 5.

#### **ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, increases the maximum amount of a grant from \$200,000 to \$500,000.

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch 250, § 5 and Laws 2001, ch. 265, § 5, effective June 15, 2001, substituting "department" for "division" throughout the section.

### **75-1-6. Average residential user cost reduction grants and zero percent loans.**

A. No more than twenty-five percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out the provisions of the Rural Infrastructure Act shall be reserved for average residential user cost reduction grants or zero percent loans to reduce average residential user cost to a reasonable level for eligible financially needy loan recipients whose water supply or wastewater facilities serve less than three thousand persons.

B. Average residential user cost reduction grants and zero percent loans shall be allocated by the department in accordance with the provisions for grants and loans pursuant to the Rural Infrastructure Act, provided that an average residential user cost reduction grant or zero percent loan shall not exceed five hundred thousand dollars (\$500,000). Such grants and loans shall reduce only the principal and interest portion of the average residential user cost to a reasonable cost as determined by the department.



C. A zero percent loan or average residential user cost reduction grant shall be approved by the department when, after construction bids have been received, the following conditions have been met by the local authority whose average residential user costs are in need of reduction:

- (1) the construction project is designed using the most cost-effective and dependable option;
- (2) the system is designed with adequate built-in expansion capacity;
- (3) other sources of grant funds have been sought and are not available in a timely manner;
- (4) the project cannot feasibly be reduced in scope or phased so as to bring it within available loan funds and within reasonable user cost; and
- (5) the local authority's median household income is less than ninety percent of the statewide non-metropolitan median household income based on the most current federal decennial census.

**History:** 1978 Comp., § 75-1-6, enacted by Laws 1988, ch. 28, § 7; 1991, ch. 208, § 5; 2001, ch. 250, § 6; 2001, ch. 265, § 6; 2007, ch. 342, § 6.

## ANNOTATIONS

**The 2007 amendment,** effective July 1, 2007, increases the maximum average residential user cost reduction grant or zero percent loan from \$200,000 to \$500,000.

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch 250, § 6 and Laws 2001, ch. 265, § 6, effective June 15, 2001, substituting "department" for "division" throughout the section; inserting "or wastewater" following "water supply" in Subsection A; and rewriting Paragraph C(5), which formerly read "the local authority's average residential user cost in need of the reduction is at least eighteen dollars (\$18.00) per month".

**The 1991 amendment,** effective July 1, 1991, inserted "residential" following "average" throughout the section; substituted "eighteen dollars (\$18.00)" for "fifteen dollars (\$15.00)" in Paragraph (5) of Subsection C; and made a minor stylistic change in Subsection A.

## ARTICLE 2

### Water Research, Conservation and Development

#### 75-2-1. Short title.

This act [75-2-1 to 75-2-5 NMSA 1978] may be cited as the "Water Research, Conservation and Development Act".

**History:** 1953 Comp., § 75-42-1, enacted by Laws 1975, ch. 265, § 1.

### **75-2-2. Purpose.**

It is the purpose of the Water Research, Conservation and Development Act to provide means to seek solutions to water shortage, conservation and utilization problems through research, conservation or development projects for the benefit of the citizens of New Mexico.

**History:** 1953 Comp., § 75-42-2, enacted by Laws 1975, ch. 265, § 2.

### **75-2-3. Special fund created.**

There is created a special fund to be known as the "water research, conservation and development fund". All money appropriated to this fund or accruing to it through gifts, grants or bequests shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Water Research, Conservation and Development Act. The fund shall not revert at the end of the fiscal year. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of the interstate stream commission for research, conservation or development projects of merit and potential benefit to the state and approved by the interstate stream commission.

**History:** 1953 Comp., § 75-42-3, enacted by Laws 1975, ch. 265, § 3; 1977, ch. 247, § 201; 1989, ch. 324, § 40.

### **75-2-4. Interstate stream commission; additional powers and duties.**

In addition to its other powers and duties, the interstate stream commission shall:

- A. meet upon the call of its chairman;
- B. review and approve or deny water research, conservation or development project proposals submitted to the commission by institutions of higher learning, political subdivisions or other appropriate nonprofit research or development entities on the basis of potential merit, benefit to the state and feasibility;
- C. adopt guidelines for project preparation, review, application and approval;
- D. upon approval of a project, allocate available funds for such water research, conservation or development project, provided:

(1) no single project shall receive more than forty percent of the total available funds;

(2) no less than forty percent of the total available funds shall be allocated for conservation or development projects which have the potential of providing immediate solutions to problems facing the people of the state; and

(3) no funds appropriated to the water research, conservation and development fund shall be used for water distribution system construction, including, but not limited to, irrigation canals, acequias, reservoirs, dams or domestic or municipal water distribution systems;

E. adopt reporting and monitoring procedures for evaluation of research, conservation or development projects being conducted by recipients of disbursements under the Water Research, Conservation and Development Act, and, after making the appropriate evaluation of the project, make arrangements for termination of the project, if so indicated;

F. report annually to the governor and the legislature on the status of the various research, conservation or development projects, including a report on total funds expended under this act, including the amounts and sources of outside matching funds; and

G. expend no more than fifteen thousand dollars (\$15,000) from the water research, conservation and development fund for the administrative purposes of the Water Research, Conservation and Development Act during any fiscal year.

**History:** 1953 Comp., § 75-42-4, enacted by Laws 1975, ch. 265, § 4; 1977, ch. 205, § 1.

## ANNOTATIONS

**Cross references.** — For provisions relating to the interstate stream commission, see 72-14-1 to 72-14-44 NMSA 1978.

### **75-2-5. Acceptance of funds and donations.**

The interstate stream commission may accept for the purposes of the Water Research, Conservation and Development Act any federal matching funds or grants for water research, conservation or development projects and may accept similar donations and bequests from private sources for such projects.

**History:** 1953 Comp., § 75-42-5, enacted by Laws 1975, ch. 265, § 5.

## **ARTICLE 3**

# **Weather Control and Cloud Modification**

### **75-3-1. Short title.**

This act [75-3-1 to 75-3-15 NMSA 1978] may be cited as the "Weather Control Act".

**History:** 1953 Comp., § 75-37-1, enacted by Laws 1965, ch. 235, § 1.

#### **ANNOTATIONS**

**Law reviews.** — For article, "Weather Modification: Law and Administration," see 8 Nat. Resources J. 207 (1968).

### **75-3-2. Definition.**

As used in the Weather Control Act, "commission" means the interstate stream commission.

**History:** 1953 Comp., § 75-37-2, enacted by Laws 1965, ch. 235, § 2; 2003, ch. 194, § 1.

#### **ANNOTATIONS**

**The 2003 amendment**, effective June 20, 2003, substituted "Definition" for "Definitions" in the section catchline and substituted "interstate stream" for "weather control and cloud modification" near the end.

### **75-3-3. Declaration of rights.**

It is declared that the state of New Mexico claims the right to all moisture in the atmosphere which would fall so as to become a part of the natural streams or percolated water of New Mexico, for use in accordance with its laws.

**History:** 1953 Comp., § 75-37-3, enacted by Laws 1965, ch. 235, § 3.

### **75-3-4. License required.**

No person or corporation shall, without having first received a license from the commission, conduct any weather control or cloud modification operations or attempt to control precipitation.

**History:** 1953 Comp., § 75-37-4, enacted by Laws 1965, ch. 235, § 4.

### **75-3-5. Application for license.**

Any individual or corporation who proposes to operate weather control or cloud modification projects or who attempts to induce precipitation, shall, before engaging in any such operation, make application to the commission for a license to engage in the particular weather control or cloud modification operation contemplated.

**History:** 1953 Comp., § 75-37-5, enacted by Laws 1965, ch. 235, § 5.

### **75-3-6. Annual license fee; statement.**

At the time of applying for the license, the applicant shall pay to the commission a fee of one hundred dollars (\$100), and shall file an application in the form prescribed by the commission which shall be accompanied by a statement showing:

- A. the name and address of the applicant;
- B. the names of the operating personnel, and, if unincorporated, all individuals connected with the organization, or, if a corporation, the names of each of the officers and directors thereof, together with the address of each;
- C. the scientific qualifications of all operating and supervising personnel;
- D. a statement of all other contracts completed or in process of completion at the time the application is made, giving the names and addresses of the persons to whom the services were furnished and the areas in which such operations have been or are being conducted;
- E. the objective of the operation, methods of operation the licensee will use, and the description of the aircraft, ground and meteorological services to be used;
- F. names of the contracting parties within the state; including:
  - (1) the area to be served;
  - (2) the months in which operations will be conducted;
  - (3) the methods to be used in evaluating the operation; and
- G. any other information the commission deems necessary.

**History:** 1953 Comp., § 75-37-6, enacted by Laws 1965, ch. 235, § 6.

### **75-3-7. Issuance of license.**

The commission may issue a license to any applicant who demonstrates sufficient financial responsibility necessary to meet obligations reasonably likely to be attached to or result from weather control or cloud modification activities and skill and experience reasonably necessary to accomplishment of weather control without actionable injury to property or person.

**History:** 1953 Comp., § 75-37-7, enacted by Laws 1965, ch. 235, § 7; 2003, ch. 194, § 2.

## **ANNOTATIONS**

**The 2003 amendment**, effective June 20, 2003, deleted "to the satisfaction of the board" following "sufficient financial responsibility".

**Unsound, detrimental or undesirable projects may be refused.** — The weather control and cloud modification commission may refuse a license to conduct weather control and cloud modification activities in the state of New Mexico to an applicant who satisfies the requirements for a license specified in this section, but who proposes a weather modification project which, in the scientific judgment of the commission, may be unsound, detrimental or undesirable. 1971 Op. Att'y Gen. No. 71-53.

### **75-3-8. License fee; expiration.**

A license shall expire at the end of the calendar year in which it is issued and may be renewed upon payment of the annual license fee.

**History:** 1953 Comp., § 75-37-8, enacted by Laws 1965, ch. 235, § 8.

### **75-3-9. Reports required from licensees.**

Each licensee shall, within ninety days after conclusion of any weather control or cloud modification project, file with the commission a final evaluation of the project. Each three months, during the operation of any project which has not been completed, each licensee shall file a report evaluating the operations for the preceding three months in the project. Failure to file such reports constitute[s] grounds for immediate revocation of the license. Each evaluation report shall contain such information as required by the commission in order to aid in research and development in weather modification and to aid in the protection of life and property.

**History:** 1953 Comp., § 75-37-9, enacted by Laws 1965, ch. 235, § 9.

### **75-3-10. Revocation of license.**

The commission shall revoke any license if it shall appear that the licensee no longer possesses the qualifications necessary for the issuance of a new license, or is guilty of a violation of any of the provisions of the Weather Control Act. Such revocation shall

occur only after notice to the licensee, and a reasonable opportunity has been granted the licensee to be heard respecting the grounds of the proposed revocation.

**History:** 1953 Comp., § 75-37-10, enacted by Laws 1965, ch. 235, § 10.

### **75-3-11. Judicial review.**

Rulings by the commission on the issuance, refusal or revocation of a license are subject to review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 75-37-11, enacted by Laws 1965, ch. 235, § 11; 1998, ch. 55, § 93; 1999, ch. 265, § 95.

## **ANNOTATIONS**

**Cross references.** — For appeals from administrative agencies, see Rules 1-074 to 1-077 NMRA.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

### **75-3-12. Operations affecting weather in other states.**

Weather control or cloud modification operations may not be carried on in New Mexico for the purpose of affecting weather in any other state which prohibits such operations, or which prohibits operations in that state for the benefit of New Mexico or its inhabitants.

**History:** 1953 Comp., § 75-37-12, enacted by Laws 1965, ch. 235, § 12.

### **75-3-13. Enforcement.**

Enforcement of the Weather Control Act is vested in the commission. All fees collected by the commission shall be used by the commission for the purposes of carrying out the provisions of the Weather Control Act.

**History:** 1953 Comp., § 75-37-13, enacted by Laws 1965, ch. 235, § 13; 2003, ch. 194, § 3.

## **ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, rewrote this section.

### **75-3-14. Powers and duties of commission.**

The commission may:

- A. make all rules and regulations necessary to carry out the provisions of the Weather Control Act;
- B. make any field investigations and inspections necessary to the enforcement of the Weather Control Act;
- C. make periodic reports on weather control and cloud modification activities in this state together with evaluations of the results of such activities; and
- D. make recommendations to the legislature through the board of regents on needed legislation in the regard to weather control and cloud modification.

**History:** 1953 Comp., § 75-37-14, enacted by Laws 1965, ch. 235, § 14.

### **75-3-15. Penalty.**

Any person conducting weather control or cloud modification operations without first having procured a license, or who makes a false statement in the application for a license, or who fails to file any report or evaluation required by the Weather Control Act, or who conducts any weather control or cloud modification operation after revocation of his license, or who violates any provision of the Weather Control Act is guilty of a misdemeanor.

**History:** 1953 Comp., § 75-37-15, enacted by Laws 1965, ch. 235, § 15.

## **ARTICLE 4**

### **State Climatologist**

#### **75-4-1. Office of state climatologist created; state climatologist.**

The "office of state climatologist" is created within the New Mexico department of agriculture. The administrative and executive head of the office of state climatologist shall be known as the "state climatologist". The board of regents of New Mexico state university shall appoint and fix the salary of the state climatologist.

**History:** Laws 1979, ch. 192, § 1.

#### **75-4-2. Office of state climatologist; purpose.**



The purpose of the office of state climatologist is to assist the state to understand and respond to natural and man-induced climate processes and their implications, to cooperate with the federal government in activities relating to climate studies and advisory services, to promote and disseminate a general knowledge of the climatology of the state, to establish a state climate program in accordance with the provisions of the federal National Climate Program Act and regulations promulgated pursuant to that act and to receive and utilize grants made available to the state pursuant to the provisions of the federal National Climate Program Act and other grants, gifts, donations or bequests from any source to be used in carrying out its purpose.

**History:** Laws 1979, ch. 192, § 2.

## ANNOTATIONS

**Compiler's notes.** — The federal National Climate Program Act appears as 15 U.S.C. § 2901 et seq.

### **75-4-3. State climatologist; duties.**

The duties of the state climatologist shall include:

- A. assessing the effect of climate on the natural environment, agricultural production, land and natural resources and human health;
- B. coordinating climate impact studies and programs to improve understanding of climate processes, natural and man-induced, and of the social and economic implications of climate change;
- C. developing methods and procedures to enable interested state agencies and public institutions of higher education to participate in the program;
- D. disseminating climate data, information, advice and assessments to state agencies, local public bodies and the general public;
- E. establishing an effective mechanism for consultation and coordination with the federal government and other states in climate related activities; and
- F. administering the state intergovernmental climate program.

**History:** Laws 1979, ch. 192, § 3.

### **75-4-4. Agency cooperation.**

In carrying out the responsibilities enumerated in Section 3 [75-4-3 NMSA 1978] of this act, the state climatologist shall seek the assistance of the geophysical research center at the New Mexico institute of mining and technology, the remote sensing facility

at the university of New Mexico and other appropriate agencies and facilities for scientific support.

**History:** Laws 1979, ch. 192, § 4.

## **ARTICLE 5**

### **Natural Lands Protection**

#### **75-5-1. Short title.**

Sections 1 through 6 [75-5-1 to 75-5-6 NMSA 1978] of this act may be cited as the "Natural Lands Protection Act".

**History:** Laws 1987, ch. 192, § 1.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 1987, ch. 234, § 82, effective July 1, 1987, recompiled former 9-10-10 NMSA 1978 as 75-5-1 NMSA 1978, but, since Laws 1987, Chapter 192 had already enacted Article 5 of Chapter 75, former 9-10-10 NMSA 1978 has been recompiled as 75-6-1 NMSA 1978.

#### **75-5-2. Purpose.**

The purpose of the Natural Lands Protection Act is the joint acquisition and protection of unique and ecologically significant lands in New Mexico by the state of New Mexico and New Mexico corporations.

**History:** Laws 1987, ch. 192, § 2.

#### **75-5-3. Definitions.**

As used in the Natural Lands Protection Act:

A. "committee" means the natural lands protection committee;

B. "unique and ecologically significant lands" are lands which:

(1) afford habitat for species listed as rare, threatened or endangered by the state or federal government; and

(2) are identified by the natural resources department as constituting the best remaining examples of native ecological communities that are otherwise unprotected; and

C. "corporation" means a New Mexico not-for-profit corporation whose primary purpose is the preservation and conservation of lands.

**History:** Laws 1987, ch. 192, § 3.

#### **75-5-4. Administration of the act.**

A. The Natural Lands Protection Act shall be administered by the secretary of natural resources in consultation with a committee consisting of the secretary of natural resources, who shall serve as chairman of the committee, the director of the department of game and fish, the commissioner of public lands, the director of the New Mexico department of agriculture and three public members appointed by the governor, one of whom shall represent the ranching or farming industry.

B. The secretary of natural resources shall present a list of projects to the committee based on priorities generated by the natural resources department.

C. The committee shall recommend lands to be acquired under the provisions of the Natural Lands Protection Act and, subject to appropriation for such purpose by the legislature, pay the state's share of acquisitions. No land shall be acquired unless a corporation jointly acquires the land with the state. A corporation must participate in acquiring a minimum of at least ten percent undivided interest in the land or the state cannot participate in the acquisition. Title to lands acquired shall be held as cotenants having undivided interests in proportion to the state's and the corporation's share of the acquisition and shall be held in the name of the state of New Mexico and the corporation.

D. Priority among projects qualified under the Natural Lands Protection Act shall be determined in descending order as follows:

- (1) the degree to which the lands in question are subject to the threat of immediate alteration or destruction;
- (2) the degree to which ecosystems in question are unduplicated elsewhere;  
and
- (3) usefulness for teaching and research.

**History:** Laws 1987, ch. 192, § 4.

#### **75-5-5. Management.**

A. The purposes of management shall be for education, research and preservation, provided that no use of the lands acquired under the Natural Lands Protection Act shall compromise or endanger the natural attributes for which they were acquired.

B. The secretary of natural resources may assign responsibility for management of lands acquired under the Natural Lands Protection Act to the corporation which jointly owns the land.

C. The corporation shall be required to develop and submit to the secretary of natural resources for review a plan for the management of lands for which they are responsible. The secretary of natural resources, in consultation with the committee, will review these plans to insure compliance with the purposes of the Natural Lands Protection Act.

D. Lands adjacent to the land acquired under the Natural Lands Protection Act shall not be subjected to any regulation or restriction as a result of such acquisition [acquisition].

E. Access to the land by the general public may be restricted to visits conducted under the direct supervision of an employee or designated representative of the managing corporation.

F. The corporation shall annually pay to the state and its political subdivisions a sum equal to an amount which would have been paid in taxes, levies and assessments. This payment shall be in lieu of such taxes, levies and assessments.

**History:** Laws 1987, ch. 192, § 5.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **75-5-6. Acquisition of lands.**

No lands or rights of access will be acquired under the Natural Lands Protection Act through exercise of the state's power of eminent domain or any other condemnation process.

**History:** Laws 1987, ch. 192, § 6.

## **ARTICLE 6**

### **Endangered Plants**

#### **75-6-1. Endangered plant species; definition; conservation; penalty protection; permits.**

A. As used in this section, "endangered plant species" means any plant species whose prospects of survival within the state are in jeopardy or are likely, within the

foreseeable future, to become jeopardized. Regulations passed by the natural resources department establishing a list of endangered plant species shall include those species listed in the federal Endangered Species Act of 1973 or as that act may be amended.

B. The natural resources department shall conduct investigations of all species of plants in the state in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data, and to determine conservation measures and requirements necessary for their survival. On the basis of these investigations, the department shall establish a list of endangered plant species.

C. The department shall establish a program necessary for the conservation of listed endangered plant species. That program shall include research, census, law enforcement, habitat maintenance, propagation and transplantation. As used in this section, law enforcement shall be defined to be law enforcement for purposes of enforcement of the prohibition against taking, possession, transportation, exportation from this state, processing, sale or offer for sale or shipment within this state of listed plants or plant materials.

D. The department shall have authority to protect species of plants determined to be endangered by prohibiting the taking, possession, transportation, exportation from this state, processing, sale or offer for sale or shipment within this state of such species. Any person who violates the provisions of this subsection or any regulations issued pursuant to this subsection is guilty of a misdemeanor and upon conviction shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000) or be imprisoned for a term of not more than one hundred twenty days or both. As used in this section, "possession" shall be defined to be possession of listed plants or plant materials for purposes of taking, transportation, exportation from this state, processing, sale or offer for sale or shipment within this state.

E. The department may by permit allow collection otherwise prohibited by this section for scientific purposes or to enhance the propagation or survival of the affected species by transplanting or other means, but such permit shall not authorize any action that would violate federal laws or regulations.

F. The department may enter into agreements with federal agencies, other states, agencies or political subdivisions of the state, or with individuals for administration and management of any program established under this section.

**History:** 1978 Comp., § 9-10-10, enacted by Laws 1985, ch. 143, § 1; recompiled as 1978 Comp., § 75-5-1 by Laws 1987, ch. 234, § 82.

## ANNOTATIONS

**Recompilation note.** — Laws 1987, ch. 234, § 82, effective July 1, 1987, recompiled former 9-10-10 NMSA 1978 as 75-5-1 NMSA 1978, but, since Laws 1987, Chapter 192

had already enacted Article 5 of Chapter 75, former 9-10-10 NMSA 1978 has been recompiled as 75-6-1 NMSA 1978.

**Endangered Species Act of 1973.** — The federal Endangered Species Act of 1973, referred to near the end of Subsection A, principally appears as 16 U.S.C. § 1531 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Criminal prosecution under Endangered Species Act of 1973 (16 USCS §§ 1531-1543), 128 A.L.R. Fed. 271.

## **ARTICLE 7**

### **Natural Resources Trustee**

#### **75-7-1. Short title.**

Chapter 75, Article 7 NMSA 1978 may be cited as the "Natural Resources Trustee Act".

**History:** Laws 1993, ch. 292, § 1; 2007, ch. 249, § 1.

#### **ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, changes the statutory reference to the act.

**Law reviews.** — For article, "Natural Resources Damages under CERCLA: Failures, Lessons Learned, and Alternatives," see 38 N.M. L. Rev. 409 (2008).

#### **75-7-2. Natural resources trustee; office of natural resources trustee.**

A. The "natural resources trustee" is created. The trustee is appointed by and serves at the pleasure of the governor pursuant to the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the federal Superfund Amendments and Reauthorization Act of 1986, the Federal Water Pollution Control Act and any other applicable federal law. The natural resources trustee shall act on behalf of the public as trustee of natural resources within the state or belonging to, managed by, controlled by or appertaining to the state, including protecting and representing the state's interest under applicable federal laws regarding injury to, destruction of or loss of natural resources in the state.

B. The "office of natural resources trustee" is created. The office shall be administratively attached to the department of environment. The administrative head of the office of natural resources trustee is the natural resources trustee. For purposes of

this subsection, the term "administratively attached" means the same as specified in Section 9-1-7 NMSA 1978.

**History:** Laws 1993, ch. 292, § 2; 2007, ch. 249, § 2.

### **ANNOTATIONS**

**Federal acts.** — The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is found at 42 U.S.C. § 9601 et seq. The federal Water Pollution Control Act is found at 33 U.S.C. § 1251 et seq.

**The 2007 amendment,** effective June 15, 2007, clarifies the reference to the Superfund Amendments and Reauthorization Act as being to the federal act.

### **75-7-3. Natural resources trustee powers and duties.**

A. The natural resources trustee shall take all actions necessary to carry out the responsibilities of the natural resources trustee as provided in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the federal Water Pollution Control Act and any other applicable federal law, including the responsibility to:

- (1) act on behalf of the public to protect New Mexico's natural resources by recovering damages for injury to, destruction of or loss of those resources;
- (2) investigate injury to, destruction of or loss of natural resources;
- (3) determine the amount and cause of injury to, destruction of or loss of natural resources;
- (4) determine the liability of any person for injury to, destruction of or loss of natural resources;
- (5) assess and collect damages for injury to, destruction of or loss of natural resources, including bringing legal actions and collecting the costs of assessing and collecting the damages; and
- (6) expend money for the purposes set forth in the Natural Resources Trustee Act.

B. The natural resources trustee may:

- (1) hire staff, in accordance with the Personnel Act [Chapter 10, Article 9 NMSA 1978], to carry out the provisions of the Natural Resources Trustee Act;

(2) contract with economists, consultants and other experts; and

(3) accept gifts and grants to carry out the provisions of the Natural Resources Trustee Act. Gifts and grants accepted by the natural resources trustee shall be deposited in the natural resources trustee fund.

C. The attorney general shall provide legal counsel and representation to the natural resources trustee and the office of the natural resources trustee.

**History:** Laws 1993, ch. 292, § 3; 2004, ch. 120, § 1.

### **ANNOTATIONS**

**Federal acts.** — The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is found at 42 U.S.C. § 9601 et seq. The federal Water Pollution Control Act is found at 33 U.S.C. § 1251 et seq.

**The 2004 amendment,** effective May 19, 2004, amended Subsection A, Paragraph (6) to change "monies" to "money". A new Subsection D was line-item vetoed by the governor. It would have provided: "D. A person may appeal a decision of the natural resources trustee to the district court in the judicial district in which the damages or violations occurred." See 2004 note following Section 75-7-5 NMSA 1978 for appropriation. See also N.M. Const. art IV, § 22 for line-item veto power of the governor.

#### **75-7-4. Natural resources damage; liability; awards for damages.**

Awards for damage to natural resources in the state shall consist of those amounts calculated in accordance with federal law, including:

A. the cost of restoration, replacement or acquisition of equivalent resources, plus compensation for the loss of use or enjoyment of the natural resources; and

B. compensation for the state's expenses in investigating, assessing and collecting damages and enforcing the state's rights.

**History:** Laws 1993, ch. 292, § 4.

#### **75-7-5. Natural resources trustee fund.**

A. The "natural resources trustee fund" is created in the state treasury. Money appropriated to the fund or accruing to it through gifts, grants, fees, penalties, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. Money recovered for the state by or on behalf of the natural resources trustee shall be deposited in the natural resources trustee fund. The fund shall be administered by the natural resources trustee as a separate account and may consist of subaccounts that the natural resources trustee deems necessary to carry out the purposes of the fund.



Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the natural resources trustee or the trustee's designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. Pursuant to the following criteria, money in the natural resources trustee fund shall be used to carry out the provisions of the Natural Resources Trustee Act by restoring, replacing or acquiring natural resources in an area where natural resources have been injured, destroyed or lost, provided that money deposited in the fund because of injury to, destruction of or loss of natural resources in an area shall be disbursed to restore, replace or acquire natural resources in that same area:

(1) if an expenditure from the fund is necessary to comply with a court order or court-approved settlement or to match federal funds, then, pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, the natural resources trustee may request a budget increase and, if approved, the amount of the expenditure is appropriated;

(2) if money is received for reimbursement of assessment costs, then the natural resources trustee may expend money for injury assessment, and money is appropriated in that amount for that purpose; and

(3) any other expenditures from the fund shall be made only pursuant to appropriation by the legislature.

C. In addition to expenditures made pursuant to Subsection B of this section, money shall be appropriated annually by the legislature from the general fund for the purpose of providing for necessary personnel and other costs of the natural resources trustee, the attorney general and the office of natural resources trustee in carrying out the provisions of the Natural Resources Trustee Act, including the cost of investigation, assessment, collection or enforcement.

D. For purposes of this section, "assessment costs" means the costs of restoration and the costs of collecting, compiling and analyzing information, statistics or data to determine damages for injuries to natural resources pursuant to the Natural Resources Trustee Act.

E. Money in the natural resources trustee fund shall be invested as other state funds are invested, and interest and earnings from the fund shall not revert to the general fund but shall be credited to the natural resources trustee fund.

**History:** Laws 1993, ch. 292, § 5; 2004, ch. 120, § 2; 2007, ch. 249, § 3.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, provides that the fund shall be administered as a separate account and may consist of subaccounts and adds Paragraph (2) of Subsection B and Subsection D.

**The 2004 amendment**, effective May 19, 2004, deleted the annual appropriation requirement at the beginning of Subsection B and inserted in its place: "Pursuant to the following criteria, money in the natural resources trustee fund", added new Paragraphs (1) and (2), redesignated former Paragraph (2) as Subsection C and inserted before "providing for necessary personnel" "In addition to expenditures made pursuant to Subsection B of this section, money in the natural resources trustee fund shall be appropriated annually by the legislature for the purpose of", redesignated former Subsection C as Subsection D and amended that subsection to delete language providing for appropriations to pay expenses of the natural resources trustee, the attorney general and the office of natural resource trustee and the transfer of the balance of the fund natural resources trustee fund to the game protection fund.

## **ARTICLE 8**

### **Wetlands Area Restoration**

#### **75-8-2. Conditions.**

A. Any funds expended for the purpose of restoring native riparian vegetation and wetland areas in the Pecos River valley are contingent upon:

- (1) the development of comprehensive plans to monitor all impacts of control activities and to restore native riparian vegetation throughout each project area;
- (2) the provision of sufficient funds to undertake those restoration activities;  
and
- (3) the approval of all control, restoration and monitoring plans by the New Mexico department of agriculture, the department of game and fish and the department of environment in consultation with the interstate stream commission.

B. In addition to the conditions set out in Subsection A of this section, any funds expended for the purpose of restoring native riparian vegetation and wetland areas in the Pecos River valley for projects on private lands are contingent upon the owners of those lands agreeing to a sixteen-year covenant running with the land providing for the management and continuity of all restored native riparian vegetation. The covenant shall be enforced by the energy, minerals and natural resources department.

**History:** Laws 1994, ch. 118, § 1.

#### **ANNOTATIONS**

**Cross references.** — For creation of energy, minerals and natural resources department, see 9-5A-3 NMSA 1978.

For divisions of energy, minerals and natural resources department, see 9-5A-4 NMSA 1978.

For creation of department of environment, see 9-7A-4 NMSA 1978.

For creation of department of game and fish, see 17-1-5 NMSA 1978.

For declarations of purpose on diminishing the impact of man-made depletions of the stream flow in the Pecos River area, see 72-1-2.2 NMSA 1978.

For interstate stream commission, see 74-14-1 to 74-14-44 NMSA 1978.

For creation of department of agriculture, see 76-1-1 NMSA 1978.

**Compiler's notes.** — There is not a 75-8-1 NMSA 1978.

## **ARTICLE 9**

### **Land Conservation Incentives**

#### **75-9-1. Short title.**

Sections 1 through 6 [75-9-1 to 75-9-6 NMSA 1978] of this act may be cited as the "Land Conservation Incentives Act".

**History:** Laws 2003, ch. 331, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

**Law reviews.** — For student article, "Conservation Easements and Urban Parks: From Private to Public Use," see 51 Nat. Resources J. 357 (2011).

#### **75-9-2. Purpose.**

The purpose of the Land Conservation Incentives Act is to encourage private landowners to be stewards of lands that are important habitat areas or contain significant natural, open space and historic resources by providing private landowners with incentives that encourage the protection of private lands for open space, natural resources, biodiversity conservation, outdoor recreation, farmland and forest land preservation, historic preservation and land conservation purposes.

**History:** Laws 2003, ch. 331, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

**Conservation of land is a charitable use** if conservation of the land provides a substantial benefit to the public and if the property is used directly, immediately, primarily, and substantially for conservation and the use of the property promotes the object or purpose of conservation. *Pecos River Open Spaces, Inc. v. County of San Miguel*, 2013-NMCA-029.

Conservation of land in its natural and undeveloped state generally benefits the public in the context of environmental preservation and beautification of the State of New Mexico. *Pecos River Open Spaces, Inc. v. County of San Miguel*, 2013-NMCA-029.

**Conservation of land in its natural and undeveloped state is a charitable use.** — Where plaintiff, pursuant to its corporate purpose to acquire vacant, undeveloped, and unimproved land in the vicinity of the Pecos River, to preserve the land in its natural state, and thereby to contribute to the preservation of the environment and the ecology of the Pecos River for the benefit of New Mexico and its citizens, acquired a tract of vacant, undisturbed land located near the Pecos River; the land contained significant natural, open space, and historic resources; plaintiff granted a strict conservation easement on the property to another corporation which prevented, in perpetuity, the development of the land; defendant had a policy of conservation of the Pecos River; and the conservation of the land conferred a benefit on the public, the conservation of the land conferred a substantial public benefit and constituted a charitable purpose that qualified the land for tax exemption under Article VIII, Section 3 of the New Mexico constitution. *Pecos River Open Spaces, Inc. v. County of San Miguel*, 2013-NMCA-029.

### 75-9-3. Definitions.

As used in the Land Conservation Incentives Act:

A. "interest in real property" means a right in real property, including access, improvements, water rights, fee simple interest, easement and land use easement. The interest shall comply with the requirements of the Section 170(h) of the Internal Revenue Code of 1986, partial interest, mineral right, remainder or future interest or other interest or right in real property;

B. "land" means real property, including rights of way, easements, privileges and all other rights or interests of a land or description relating to or connected with real property; and

C. "public or private conservation agency" means a governmental body or a private not-for-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land conservation or historic preservation purposes and that has tax-exempt status as a public charity under the federal Internal Revenue Code of 1986, and the power to acquire, hold or maintain land or interests in land.

**History:** Laws 2003, ch. 331, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

**Internal Revenue Code of 1986.** — The federal Internal Revenue Code of 1986 appears as Title 26 of the United States Code. Section 170(h) of that Code appears as 26 USC § 170(h).

#### **75-9-4. Administration.**

A. The Land Conservation Incentives Act shall be administered by the secretary of energy, minerals and natural resources in consultation with the committee established pursuant to the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978].

B. The secretary of energy, minerals and natural resources may promulgate rules as may be deemed necessary to certify eligible projects for treatment in fulfillment of the purposes of this act. The secretary of taxation and revenue, in consultation with the secretary of energy, minerals and natural resources, shall promulgate rules as may be deemed necessary to administer the tax incentives provided for in the Land Conservation Incentives Act and shall coordinate the preparation of the report to the legislature showing the fiscal impact on the treasury of the credits claimed pursuant to that act.

**History:** Laws 2003, ch. 331, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

#### **75-9-5. Applicability and limitations.**

A. The tax credits provided by the Land Conservation Incentives Act apply to transfers of land or interests therein in taxable years beginning on or after January 1, 2004 and all taxable years thereafter.

B. A taxpayer claiming a tax credit pursuant to the Land Conservation Incentives Act may not claim a credit pursuant to a similar law for costs related to the same project.

C. A tax credit that is claimed pursuant to the Land Conservation Incentives Act from the donation of land or an interest in land made by a pass-through tax entity, such as a trust, estate, partnership, limited liability corporation or partnership, limited partnership, S corporation or other fiduciary, shall be used either by an entity in the event it is the taxpayer on behalf of the entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to his interest in the entity in the event that income, deductions and tax liability pass through the entity to the member, manager, partner, shareholder or beneficiary. Tax credits may not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

**History:** Laws 2003, ch. 331, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

#### **75-9-6. Interpretation.**

No part or segment of the Land Conservation Incentives Act shall be interpreted to alter or amend permit requirements, reporting requirements, allocation procedures or other requirements as set forth in any other provision of state law.

**History:** Laws 2003, ch. 331, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

## **ARTICLE 10**

### **Natural Heritage Conservation**

#### **75-10-1. Short title.**

This act [75-10-1 to 75-10-9 NMSA 1978] may be cited as the "Natural Heritage Conservation Act".

**History:** Laws 2010, ch. 83, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## **75-10-2. Purpose.**

The purpose of the Natural Heritage Conservation Act is to protect the state's natural heritage, customs and culture by funding conservation and agricultural easements and by funding land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation and trails and land and habitat restoration and management.

**History:** Laws 2010, ch. 83, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## **75-10-3. Definitions.**

As used in the Natural Heritage Conservation Act:

A. "committee" means the natural lands protection committee;

B. "conservation entity" means a private nonprofit charitable corporation or trust authorized to do business in New Mexico that has tax-exempt status as a public charity pursuant to the federal Internal Revenue Code of 1986 and that has the power to acquire, hold or maintain land or interests in land;

C. "conservation project" means the acquisition of conservation or agricultural easements from a willing seller or a land restoration project;

D. "department" means the energy, minerals and natural resources department;

E. "fund" means the natural heritage conservation fund; and

F. "qualified entity" means a state agency, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a political subdivision of the state or, for conservation projects wholly within New Mexico, an Indian tribe or pueblo.

**History:** Laws 2010, ch. 83, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

#### **75-10-4. Department; powers and duties.**

A. The department may:

(1) after consultation with landowners, conservationists and other interested persons, adopt and promulgate rules to carry out the provisions of the Natural Heritage Conservation Act;

(2) enter into contracts;

(3) enter into joint powers agreements pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to carry out the provisions of the Natural Heritage Conservation Act;

(4) make grants to qualified entities for conservation projects;

(5) apply for and receive in the name of the department, any public or private funds available to the department to carry out the purposes of the Natural Heritage Conservation Act;

(6) acquire conservation or agricultural easements by itself or with a conservation entity or qualified entity; and

(7) do all other things necessary or appropriate to carry out the provisions of the Natural Heritage Conservation Act.

B. The department shall:

(1) establish a competitive application process for grants from the fund; and

(2) establish criteria and priorities for funding conservation projects.

**History:** Laws 2010, ch. 83, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

#### **75-10-5. Fund created; purpose; expenditures.**



The "natural heritage conservation fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations, bequests, income from investment of the fund and any other money credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to fund conservation projects. Expenditures from the fund shall be by warrants of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's authorized representative.

**History:** Laws 2010, ch. 83, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

### **75-10-6. Conservation projects; procedures.**

A. All conservation projects shall be maintained to protect the public health and welfare and shall be for:

- (1) preserving and conserving water quality and quantity;
  - (2) protecting agricultural production on working farms, ranches and other agricultural lands;
  - (3) protecting and restoring New Mexico's forests and watersheds;
  - (4) conserving wildlife habitat;
  - (5) maintaining natural areas;
  - (6) providing outdoor recreation opportunities, including hunting and fishing;
- or
- (7) preserving cultural and historic sites with natural resource heritage value.

B. The department, working with the committee, landowners, conservationists and other interested persons, shall establish criteria for evaluating possible conservation projects. Criteria shall include:

- (1) the degree to which the conservation project serves the purposes of the Natural Heritage Conservation Act;
- (2) the amount of matching financial support for the conservation project from sources other than the state;

(3) the technical qualifications of the applicant and its ability to complete and maintain the proposed conservation project;

(4) the degree to which the conservation project fosters and integrates with existing conservation plans, strategies and initiatives;

(5) the potential for benefits at landscape and ecosystem scale;

(6) the potential for improved public access for outdoor recreation opportunities, including hunting and fishing;

(7) the potential for economic benefits of the completed conservation project;  
and

(8) other measurements and requirements required by the department and the committee.

C. The committee shall receive applications for conservation projects and shall evaluate them against the department's criteria. The committee may reject any incomplete applications or applications that do not meet the established criteria. After review, the committee shall make its recommendations on all evaluated conservation projects to the department.

**History:** Laws 2010, ch. 83, § 6.

## ANNOTATIONS

**Compiler's notes.** — Laws 2010, ch. 83, § 6 contained a Subsection D, which provided that "The department shall make recommendations to the legislature from the committee's recommendation for approval.", but was line-item vetoed.

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

### **75-10-7. Conservation projects; public-private projects.**

A. The department may acquire conservation or agricultural easements and hold them in the name of the state.

B. When approving a conservation project that is the acquisition of a conservation or agricultural easement by a conservation entity, the department shall require the conservation entity to:

(1) acquire no less than ten percent of the easement, and title to the easement shall be held by the conservation entity and a qualified entity as cotenants having undivided interests in proportion to each one's share of the acquisition; and

(2) submit a plan for the management of lands for which the conservation entity and the qualified entity are responsible. The department, in consultation with the committee, shall review the plan to ensure compliance with the purposes of the Natural Heritage Conservation Act.

C. When approving a conservation project that is for land restoration by a conservation entity, the department shall require that the conservation entity provide at least ten percent of the cost of the conservation project.

**History:** Laws 2010, ch. 83, § 7.

### **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

### **75-10-8. Conservation projects; limitations.**

The department may acquire or receive by gift or bequest conservation or agricultural easement interests in real property to advance the purposes of the Natural Heritage Conservation Act. No easement interests, water rights or other rights of access shall be acquired pursuant to the Natural Heritage Conservation Act through exercise of the state's power of eminent domain or any other condemnation process. Land adjacent to any land subject to a conservation or agricultural easement that was acquired pursuant to the Natural Heritage Conservation Act shall not be subjected to any rules or restrictions as a result of such easement acquisition.

**History:** Laws 2010, ch. 83, § 8.

### **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

### **75-10-9. Annual report to the governor and the legislature.**

The department and the committee shall report annually to the governor and the legislature on the status of applications and funded conservation projects.

**History:** Laws 2010, ch. 83, § 9.

## ANNOTATIONS

**Effective dates.** — Laws 2010, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

### **ARTICLE 11**

### **Carlsbad Brine Well Remediation Authority**

#### **75-11-1. Carlsbad brine well remediation authority; created; membership; powers and duties. (Repealed effective July 1, 2026.)**

A. The "Carlsbad brine well remediation authority" is created and is administratively attached to the energy, minerals and natural resources department.

B. The membership of the board of directors of the authority shall consist of the following eight members:

- (1) the secretary of energy, minerals and natural resources or the secretary's designee, who shall serve as chair of the board;
- (2) the chair of the Eddy county board of county commissioners or the chair's designee;
- (3) the mayor of the city of Carlsbad or the mayor's designee;
- (4) the secretary of environment or the secretary's designee;
- (5) the secretary of transportation or the secretary's designee;
- (6) the manager of the Carlsbad irrigation district or the manager's designee;
- (7) the state engineer or the state engineer's designee; and
- (8) the attorney general or the attorney general's designee.

C. The authority shall set policy and regulate, supervise and administer the remediation of the Carlsbad brine well.

D. The authority may:

- (1) promulgate rules to carry out the provisions of this section;
- (2) make and execute all contracts and other instruments;

- (3) contract with the municipality or county in fulfillment of its duties; and
- (4) acquire, maintain or contract for property.

E. On or before November 15 of each year, the authority shall report to the radioactive and hazardous materials interim committee and the legislative finance committee on the status of the remediation of the Carlsbad brine well and expenditures from the Carlsbad brine well remediation fund.

F. Nothing in this section shall be construed as a waiver or alteration of the immunity from liability granted pursuant to the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] or as a waiver of any other immunity or privilege under law.

G. For the purposes of this section:

- (1) "authority" means the Carlsbad brine well remediation authority; and
- (2) "Carlsbad brine well" means the brine well located at SW/4 of the SW/4 in Section 17, Township 22 South, Range 27 East, NMPM; Eddy County, New Mexico.

**History:** Laws 2017, ch. 11, § 1; 2017, ch. 118, § 1; 2018, ch. 26, § 1.

## ANNOTATIONS

**Delayed repeals.** — For delayed repeal of this section, see 75-11-3 NMSA 1978.

**The 2018 amendment**, effective February 28, 2018, amended the powers and duties of the Carlsbad Brine Well Remediation Authority (Authority), administratively attached the Authority to the energy, minerals and natural resources department (EMNRD), replaced the mayor of the city of Carlsbad with the EMNRD secretary as the chair of the Authority, required the Authority to report annually to the radioactive and hazardous materials interim committee and the legislative finance committee on the status of the remediation of the Carlsbad brine well and expenditures from the Carlsbad brine well remediation fund, and defined "authority" and "Carlsbad brine well" for purposes of this section; in the catchline, deleted "administration of the carlsbad brine well remediation" and added "powers and duties"; in Subsection A, after "remediation", deleted "advisory", after "created", deleted "The authority is a governmental entity of the state" and added "and is administratively attached to the energy, minerals and natural resources department."; added new subsection heading "B." and redesignated former Subsection B as Subsection C; in Paragraphs B(1) and B(3), deleted "mayor of the city of Carlsbad or the mayor's" and added "secretary of energy, minerals and natural resources or the secretary's"; in Subsection C, after "The", deleted "advisory", after "authority", deleted the colon and the paragraph designation "(1)", after "shall", deleted "recommend policy for and advise the oil conservation division of the energy, minerals and natural resources department on the" and added "set policy and regulate, supervise and administer the", and after "Carlsbad brine well", deleted the remainder of the

subsection, which provided the location of the Carlsbad brine well and granted certain powers to the advisory authority; added new Subsections D and E, and redesignated former Subsection C as Subsection F; and added Subsection G.

### **75-11-2. Carlsbad brine well remediation fund; created; purpose; conditions. (Repealed effective July 1, 2026.)**

A. The "Carlsbad brine well remediation fund" is created in the state treasury. The energy, minerals and natural resources department shall administer the fund. The fund shall be used by the Carlsbad brine well remediation authority to the extent that revenues are available to remediate the Carlsbad brine well or to acquire property adjacent to the Carlsbad brine well as required for its remediation.

B. Money in the fund may consist of federal grants, appropriations, donations, earnings from investment of the fund and other revenue that from time to time may accrue to the fund from other sources for remediation of the Carlsbad brine well.

C. Money in the fund shall be subject to appropriation by the legislature and shall not revert at the end of any fiscal year.

D. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

**History:** Laws 2017, ch. 11, § 2; 2017, ch. 118, § 2; 2018, ch. 26, § 2.

### **ANNOTATIONS**

**Delayed repeals.** — For delayed repeal of this section, see 75-11-3 NMSA 1978.

**The 2018 amendment,** effective February 28, 2018, authorized the Carlsbad brine well remediation authority to use funds from the Carlsbad brine well remediation fund to remediate the Carlsbad brine well or to acquire property adjacent to the Carlsbad brine well for its remediation; in Subsection A, deleted "There is created", after "remediation fund", added "is created in the state treasury", after "shall be used by the", deleted "oil conservation division of the energy, minerals and natural resources department" and added "Carlsbad brine well remediation authority", and after "remediate the Carlsbad brine well", added "or to acquire property adjacent to the Carlsbad brine well as required for its remediation".

### **75-11-3. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)**

The Carlsbad brine well remediation authority is terminated on July 1, 2025 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The authority shall continue to

operate according to the provisions of Sections 75-11-1 and 75-11-2 NMSA 1978 until July 1, 2026. Effective July 1, 2026, Sections 75-11-1 and 75-11-2 NMSA 1978 are repealed.

**History:** Laws 2017, ch. 11, § 3; 2017, ch. 118, § 3; 2018, ch. 26, § 3.

### **ANNOTATIONS**

**The 2018 amendment**, effective February 28, 2018, changed the termination, operation and repeal dates for the Carlsbad brine well remediation authority; in the first sentence, after "remediation", deleted "advisory", and after "July 1", changed "2029" to "2025"; in the second sentence, deleted "advisory", changed "this act" to "Sections 75-11-1 and 75-11-2 NMSA 1978", and after "July 1", changed "2030" to "2026"; and in the third sentence, after "July 1", changed "2030" to "2026", and changed "this act is" to "Sections 75-11-1 and 75-11-2 NMSA 1978 are".