

# Oil and Gas, Natural Resources, and Energy Journal

---

Volume 5 | Number 2  
*The 2019 Survey on Oil & Gas*


---

September 2019

## New Mexico

Garrett L. Korbitz

Follow this and additional works at: <https://digitalcommons.law.ou.edu/onej>

 Part of the [Energy and Utilities Law Commons](#), [Natural Resources Law Commons](#), and the [Oil, Gas, and Mineral Law Commons](#)

---

### Recommended Citation

Garrett L. Korbitz, *New Mexico*, 5 OIL & GAS, NAT. RESOURCES & ENERGY J. 189 (2019),  
<https://digitalcommons.law.ou.edu/onej/vol5/iss2/15>

This Article is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in Oil and Gas, Natural Resources, and Energy Journal by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact [darinfox@ou.edu](mailto:darinfox@ou.edu).

# ONE J

*Oil and Gas, Natural Resources, and Energy Journal*

---

VOLUME 5

NUMBER 2

---

NEW MEXICO



*Garrett L. Korbitz\**

## *I. Introduction*

Although New Mexico is an oil-rich state experiencing record breaking hydrocarbon production and a much-needed boost to their economy, the state is also on the cusp of an environmental revolution headed by Governor

---

\* Garrett L. Korbitz, an associate of Steptoe & Johnson PLLC, focuses his practice in the area of energy law and mineral title law, and is licensed to practice in Texas.

Michelle Lujan Grisham.<sup>1</sup> The state legislature did not pass either the proposed moratorium on hydraulic fracturing or a bill proposing state environmental reviews of new wells; however, there are signs that these bills could become a reality in the near future.<sup>2</sup> Other indications of an environmental revolution are House Bill 546 and Senate Bill 489, discussed below, and Governor Lujan's support for reduced methane emissions from venting and flaring.<sup>3</sup> Due to these recent developments and the Governor's support of a perceived more environmentally conscious New Mexico the next legislative session could lead to successful developments.

## *II. Legislative and Regulatory Developments*

During the 2019 legislative session, a couple bills were passed that will have a material impact on the oil and gas industry.

House Bill 546, also referred to as the Produced Water Act, amends the Oil and Gas Act (the "Act") to give the state broader power to regulate and impose violations on producers who fail to meet state standards for the management of produced water.<sup>4</sup> House Bill 546 provides a couple material changes to the Act and went partially into effect July 1, 2019 and will become fully effective January 1, 2020.<sup>5</sup>

The first material change is that the Oil Conservation Division ("OCD") of the Energy, Minerals and Natural Resources Department is given jurisdiction to regulate produced water.<sup>6</sup> The OCD lost this power in 2009, as well as the power to assess violations, in a 2009 New Mexico Supreme Court case that forced the OCD to rely on the New Mexico Attorney General's office to enforce such judgments.<sup>7</sup>

---

1. Nathan Rott, *In the Midst Of An Oil Boom, New Mexico Sets Bold New Climate Goals*, NPR (Mar. 13, 2019, 12:36 PM), <https://www.npr.org/2019/03/13/702877664/in-midst-of-an-oil-boom-new-mexico-sets-bold-new-climate-goals>.

2. Elizabeth Miller, *Oil and gas had little to fear during legislative session*, NEW MEXICO IN DEPTH (April 4, 2019), <http://nminddepth.com/2019/04/04/oil-and-gas-had-little-to-fear-during-legislative-session/>.

3. Rott, *supra* note 1.

4. H.B. 546, 54th Leg., 1st Sess. (N.M. 2019).

5. *Id.* § 13.

6. *Id.* § 3.

7. John Goldstein & Nichole Saunders, *New Mexico legislation marks new focus on improved oil and gas oversight under Gov. Lujan Grisham*, ENVIRONMENTAL DEFENSE FUND (July 1, 2019, 12:03 PM), <http://blogs.edf.org/energyexchange/2019/03/22/new-mexico-legislation-marks-new-focus-on-improved-oil-and-gas-oversight-under-gov-lujan-grisham/>.

The second material change relates to penalties for violations of the Act.<sup>8</sup> This section of House Bill 546 provides for a \$2,500 civil penalty per day for each violation.<sup>9</sup> However, if the violation presents a risk to the health or safety of the public or presents a risk of causing serious environmental harm, the penalty may go up to, but not exceed, \$10,000 per day for each violation.<sup>10</sup> No penalty assessed may exceed \$200,000.<sup>11</sup> The Act also provides for a criminal penalty of not more than \$5,000 or imprisonment for a term not to exceed three years for any knowing and willful violation of the Act.<sup>12</sup>

Senate Bill 489, also referred to as the “Energy Transitions Act”, was approved by the Governor on March 22, 2019, directing state regulated utility companies to be 100% carbon free by 2045.<sup>13</sup> The bill provides, for energy that comprises retail sales to its New Mexico customers, for a phase out plan of nonrenewable energy resources for renewables.<sup>14</sup> The plan provides that by January 1, 2020, renewable resources will comprise at least 20% of the company’s sales to retail customers; by January 1, 2030, it will comprise no less than 50%; by January 1, 2040 it will comprise no less than 80%; and by January 1, 2045, 100% of the retail sales to New Mexico customers will be generated by renewable energy.<sup>15</sup>

---

8. H.B. 546, 54th Leg., 1st Sess., § 7(D) (N.M. 2019).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* § 7(F)

13. Rott, *supra* note 1.

14. S.B. 489, 54th Leg., 1st Sess., § 29 (N.M. 2019).

15. *Id.* § 29(A).