

Part III

Legal, Regulatory, Environmental, and Stakeholder Considerations



Chapter 6

Who Owns the Heat? Navigating Subsurface Rights via New Mexico Regulation and Law

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New Mexico and the Tribes of the region are poised to lead the way in advancing the use of geothermal energy. Many legal and legislative resources can be helpful in clarifying pathways for exploring and leasing of lands so that all residents can benefit from this clean, firm energy source. Principles for addressing both the ownership of geothermal resources and the rights of property owners can likely be derived from well-established rules developed over the years in New Mexico's property law—particularly related to oil and gas, coal mining, and water extraction.

New Mexico's surface land is approximately 78 million acres—nearly half of which is private land (almost 45%, including county and city land), and then a mix of state and federal land and Tribal and Pueblo land.

As this report makes clear, new technology makes it feasible to tap into the heat in the dry rock below the surface of the Earth. New Mexico is ideally and uniquely situated to be a major producer of geothermal energy

production because of both its favorable geologies and the state's know-how in the oil and gas industry.

There are, however, potential legal bumps in the road. As geothermal energy is more widely used, energy developers will aim to establish lease agreements with more property owners that give the developers the rights to access and use the heat in the subsurface of owners' land. The state's long history of oil and gas development and mining means that



New Mexico has plenty of language covering the ownership of surface and subsurface properties and mineral estates. That language guides the severing of assets, especially if there aren't specific legal documents governing an estate.

Yet the state legislature has never directly addressed two big issues: (i) whether it definitively considers geothermal energy and associated properties to be separate from or part of a mineral estate, and (ii) who specifically owns the resources associated with geothermal energy (i.e., heat, water, steam). Without that clarity, a geothermal operator may not even know who they should speak with to legally establish a lease for geothermal exploration, development, and production.

Texas recently grappled with this very same bump in the road. In the Lone Star State's 1975 Geothermal Resources Act, the legislature abstained from determining if geothermal energy was owned by the mineral estate or the surface estate (in the absence of a controlling document with specific language).¹ To fix that problem, the Texas Legislature recently passed SB 785, which clarifies that heat, energy, steam, hot water, hot brines, and geopressured water aren't minerals under Texas law. That means that if there is a severance of the mineral estate from the surface estate in Texas, geothermal energy and its associated resources belong to the surface estate, unless there's a document that specifically conveys the geothermal energy and associated resources to the mineral estate.

The good news is that New Mexico's Legislature has been thoughtful about geothermal resources. The state covers aspects of geothermal extraction in its own constitution. New Mexico also passed legislation in 2016 in which it attempted to define *geothermal resources*, and it has also defined *geothermal heat* in regulations. As mentioned, for non-Tribal lands, New Mexico's history of oil and gas development has set a precedent for the leasing and development of properties on estates. The same holds for Tribal lands: Although each Tribe, Nation, or Pueblo is a unique sovereign in New Mexico governed by its own laws and federal laws, there's also plenty of case law precedence for the leasing of surface and subsurface properties.

Despite the state's advanced planning, a few aspects of the legal and regulatory language could appear contradictory.

There's a case to be made that the language found throughout New Mexico's legal and regulatory landscape supports the precedent that geothermal energy and associated resources are *not* a mineral. However, because there is so much legal structure in place around the business of mineral extraction, the state intends to *regulate* geothermal as a mineral. To put it more directly: Regulate it as a mineral, but that doesn't mean it's a mineral when it comes to property rights. (This is something that happens next door in Texas: When that legislature wrote its 1975 law governing geothermal resources, it laid out that geothermal energy and associated resources "shall be *treated and produced as mineral resources*" [emphasis ours], but they didn't define geothermal energy and associated resources as a mineral resource.²)

This chapter explores the existing laws and precedents that could help govern the issues of heat ownership in New Mexico, such as laws and regulations related to ownership of surface and mineral estates; laws and regulations related to geothermal resources and geothermal energy; considerations for geothermal resources on Tribal land; and ways the legislature could help clarify and prevent potential confusion. Creating more legal certainty regarding who owns the heat will accelerate the development of geothermal across New Mexico.

OWNERSHIP

It may be helpful to start the conversation about ownership of geothermal properties at the core of the matter: getting legal access to the resource.

The majority of New Mexico's private land is located to the east of the Rio Grande rift zone.³ Obtaining the rights to access and develop geothermal resources in New Mexico potentially involves several different landowners and resource development agencies. The responsibility for developing any kind of resource—whether water, minerals, or geothermal—falls under different entities.



New Mexico state law assumes that the owner or lessee of geothermal resources will file for a permit to drill an exploratory or extraction well for those resources.⁴ Language in Chapter 71 of the New Mexico Statutes regarding energy and minerals requires individuals “applying for permits to explore, develop or produce geothermal resources to demonstrate that they have the right to produce the geothermal resources through ownership, leases, permits or other documentation.”⁵ In addition to this requirement, New Mexico’s Energy, Minerals, and Natural Resources Department must allocate royalties from geothermal energy projects to the owners of these projects.⁶ None of this language, however, explicitly classifies ownership of geothermal resources or geothermal energy into the surface or subsurface estate.

Land ownership in New Mexico is mixed, with 34.7% owned by the federal government; 11.9% owned by the 23 sovereign Tribes, Pueblos, and Tribal Nations present in the state; 7.8% is owned by the state itself. The rest—44.9%—is owned by municipal governments or is private land.⁷

THE AMERICAN RULE AND CASE LAW

To dig deeper into minerals and surface ownership, it’s helpful to look at the “American Rule” and some case law.

According to the New Mexico Energy, Minerals, and Natural Resources Department, New Mexico is part of the bloc of states that follow the “American Rule” with regard to pore space ownership.⁸ The American Rule essentially states that a surface owner owns the geologic pore space formation below the surface with rights to store resources within the pore space, while the mineral estate holder has the right to the minerals but not to the geologic formation itself.⁹ (This rule wasn’t established with geothermal resources in mind.) Geothermal heat—unlike other minerals within a given geothermal resource—can be a component of the pore space rather than the mineral estate, so geothermal heat is retained by the surface owner.

In 1929, *Jones-Noland Drilling Co. v. Bixby* laid the groundwork for limiting the mineral estate to the removable substance, which is separate from the

structure of the Earth.¹⁰ In this case, fee ownership of the soil of the Earth was retained by the surface estate holder, while ownership of the mineral estate (in this case, oil and gas) was severed and belonged to the holder of the mineral estate.¹¹

In 2007, the Oil and Conservation Division of the New Mexico Energy, Minerals, and Natural Resources Department argued that the “subsurface [geologic formation] is legally part of the ‘surface estate,’ conveyed to or retained by the surface owner.”¹² This argument concluded that the severance of the mineral estate from the surface estate doesn’t result in a conveyance of the subsurface pore space.¹³

If we apply the American Rule and the court’s ruling in *Jones-Noland Drilling Co. v. Bixby*, along with existing regulations, geothermal heat—a property of the subsurface rock formations—could ostensibly be part of the surface estate, meaning there’s a reasonable case in New Mexico for treating geothermal energy as separate from the mineral estate. Surface estate owners could therefore retain ownership of the pore space formation but not the minerals within the pore space. The minerals present in geothermal resources could also be held by the owner of the mineral estate.

Water is also included in surface and subsurface ownership severance issues in many states, but it is a public resource in many Western states, including New Mexico. Groundwater resources are held by the state to be appropriated for beneficial use. In 2004, the case *New Mexico v. General Electric* addressed the state’s ownership of an aquifer, with the court determining that although the saline water within the aquifer was the property of the state, the geological aquifer formation was not.¹⁴ That case raised the question of state ownership of groundwater in relationship to geothermal resources and found that geothermal resources in water that must be pumped to the surface may be subject to permitting for water rights through the Office of the State Engineer.^{15,16}

CONSTITUTION, COURTS, AND CODES

The majority of definitions in New Mexico’s legal and regulatory language treat minerals as separate from geothermal resources and geothermal heat.





State Constitution

In 1967, the residents of New Mexico passed legislation amending the New Mexico Constitution—the supreme law of non-Tribal land—to help manage leases on state lands¹⁷ and inserted the term *geothermal steam and waters*.¹⁸ The revised passage reads, “Leases and other contracts, reserving a royalty to the state, for the development and production of any and all minerals *or for the development and operation of geothermal steam and waters* [emphasis ours] on lands granted or confirmed to the state of New Mexico.” The additional language differentiated geothermal resources from the term *minerals*.¹⁹

That language, taken with other language in New Mexico Statutes and case law, also creates a reasonable interpretation that heat, steam, and water are not minerals. It would follow, then, that in the absence of a document in property records that says otherwise, heat, steam, and water should belong to a surface estate.

State Courts

When faced with surface and subsurface property disputes, courts in some Western states have followed the “ordinary and natural meaning” test.²⁰ In other words, when trying to determine property ownership, the courts evaluate whether the property in question would ordinarily and naturally be considered a mineral by people at the time when a relevant legal document was created.

In New Mexico, courts have treated the definition of *mineral* as seemingly separate from geothermal heat. Minerals, under state law, are defined as “substances” that are “extracted.”²¹ It is reasonable to assume that heat fails to meet the definition of a “substance” because it is not matter but rather is a state of particle excitation *within* a substance.²² Heat and energy are intangible qualities of the Earth itself. Again, it seems reasonable to assume geothermal heat doesn’t meet the definition of a mineral.



In Section 69 of the New Mexico Statutes, which covers mining, the state defines a mineral as a “nonliving commodity that is extracted from the earth for use or conversion into a saleable or usable product.”²³ (The same statute clarifies that the act of mining does not include the exploration or extraction of geothermal resources.²⁴) In this statute, the operative word is *commodity* as opposed to *substance*. Once again, a commodity could be considered something tangible, whereas heat and energy are intangible. So again, geothermal heat isn’t viewed as a mineral.

Therefore if New Mexico definitively adopted the “ordinary and natural meaning” test applied in many Western states, it could be clear that heat is not a mineral,²⁵ and ownership of heat would be retained by the surface estate holder.

Regulatory Language

In line with all of the above, the definition for *geothermal energy*, found in New Mexico Statute 69-2-7 (which outlines the functions of the New Mexico Bureau of Geology and Mineral Resources) is as follows: “The natural heat of the earth or the energy, in whatever form, below the surface of the earth present in, resulting from or created by or that may be extracted from, this natural heat.”²⁶ This definition is then expanded with this language: “Any person drilling a hole on state lands to a depth of ten feet or more who encounters or whose drill cuts into a geothermal energy source of one hundred degrees centigrade or more shall, within ninety days from the date of the penetration, report in writing to the director the depth, location and nature of the geothermal energy source.”²⁷

MIXED MESSAGES

Despite consistency in the state’s constitution, state codes, and regulations, language in other New Mexico legal guidelines could confuse matters.

Acts, Statutes, and Codes

In February 2016, the New Mexico Legislature updated the Geothermal Resources Development Act²⁸ to grant the Energy Conservation and Management Division of the Energy, Minerals, and Natural Resources Department the

Despite the state’s advanced planning for geothermal energy use, a few aspects of the legal and regulatory language could appear contradictory—and therefore confusing—which could hinder the development of geothermal energy.

ability to regulate geothermal energy.²⁹ More recently, this act has been further amended to encourage the deployment of geothermal in the state. (However, the act is silent on the issue of geothermal resources on privately owned lands.³⁰)

The act does offer definitions that can apply to various aspects of expanded geothermal energy usage. Unfortunately, the definition of *geothermal resources* (also used in NMSA 19-13-2, 7-2-18.38, and 7-2A-24.1) is broad and introduces confusion in attempts to determine how to define geothermal properties specifically:

The natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, or the energy in whatever form below the surface of the earth present in, resulting from, created by or which may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit, *and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam in whatever form found below the surface of the earth*, [emphasis ours] but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, as may be used for the heating and cooling of buildings through an on-site geoechange heat pump or similar on-site system.³¹

By adding “all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam in whatever form found below the surface of the earth” and explicitly excluding other minerals that could also be extracted, such as oil and hydrocarbon substances, the language could seem contradictory to the state constitution, case law



decisions, and other regulatory language, even though this definition was written later.

This addition could be especially confusing if interested parties were looking for language to help them understand how to expand leasing. Much of the state's language—including the definition of *geothermal energy* provided earlier—points to the idea that geothermal energy is *not* a mineral.

In this case, looking east could again be helpful: It is well known in Texas law that while a mineral may be suspended in a solution, the mineral belongs to the mineral owner and the solution belongs to the surface owner. The most common example is lithium suspended in brine or salt water. The lithium belongs to the mineral estate and the brine or salt water belongs to the surface estate. This notion was specifically incorporated into Texas regulations in SB 785 in a recent legislative session.³²

To expand development of geothermal energy within New Mexico, the state and federal governments could take specific steps to clarify terms and eliminate potential confusion.

In addition to these examples, a few other areas of legal and legislative language could create confusion concerning ownership.

The Tax Code in Section 7 of the New Mexico Statutes includes “steam and other geothermal resources” under the definition of *mineral*.³³ The language refers to the same definition of *geothermal resources* as is used in the Geothermal Resources Development Act.³⁴ It's quite possible that the tax code includes geothermal resources as a mineral because of the minerals present in geothermal brines. It would follow, then, that the language was included to cover sources of tax revenue.

The state also has some confusing case law, including *Bogle Farms, Inc. v. Baca* (1996), which offers some interpretation of *minerals* in the context of patents for state lands.³⁵ In this case, however, the court determined that the term *mineral* must be determined

on a case-by-case basis, considering the intent of each party and the public policy issues involved. In 2011, in *Prather v. Lyons*—another case relating to patents for state lands—the court applied the *Bogle Farms* ruling and examined the meaning of *minerals* in the context of this specific case. This case found that the interpretation of the term *minerals* is limited and does not apply to private lands.³⁶

Later in this chapter, we discuss potential approaches to clearing up the confusion stemming from these various cases and statutes.

Geothermal Energy on Tribal Lands

Tribes have a unique trust relationship with the federal government, a sovereign-to-sovereign relationship with states, and a sovereign-to-sovereign relationship with one another.³⁷ A common saying in the Colorado River basin is “If you know one Tribe, you know one Tribe.”³⁸ Each Tribe has its own set of governing laws, as well as applicable federal and state laws. Within New Mexico, there are 23 sovereign Tribes, Nations, and Pueblos,³⁹ as well as individual Indian land allottees.

In general, lease terms on Tribal and individual Indian lands are similar to federal lease terms, as approved by both the Tribe and the U.S. secretary of the interior.⁴⁰ (Currently, there is no specific public record of individual Tribal law within New Mexico pertaining to geothermal resources; however, some Tribes outside of New Mexico have laws related to geothermal resources.⁴¹ These limited laws tend to treat geothermal resources not as a mineral but as a water source.⁴²)

In general, all allotted or Tribal Indian lands are exempted from New Mexico state laws regarding mining.⁴³ Geothermal project development for Pueblos, Tribes, and Nations is conducted with the Tribes, and the Bureau of Indian Affairs, within the Department of Interior under Title 25 CFR Part 225. Under federal law, an Indian land allottee may lease allotted lands for mining purposes.⁴⁴

New Mexico state law doesn't have any specific references to geothermal resources and Tribal land, but Nations, Tribes, and Pueblos are eligible to receive funding from the state's Geothermal Projects Revolving Loan Fund.⁴⁵



MOVING FORWARD WITH CLARITY

To expand development of geothermal energy, the state and federal governments could take specific steps to clarify terms and eliminate potential confusion.

One way forward could be for the judicial or legislative body to provide clarity on the state's adoption of the "ordinary and natural meaning" test. If this standard interpretation is applied in New Mexico, the state could create a more predictable environment for the meanings of *minerals* and *other minerals*, which would be a step toward clearly defining *geothermal energy* and the associated resources.

The state could also benefit from changing the unclear language in the definition of *geothermal resources* in the Geothermal Resources Development Act that includes "minerals in solution." The law recently passed in Texas, SB 785, amends that state's relevant statutes and provides that any minerals found in a geothermal geologic zone are not included in the definition of *geothermal energy* and its associated resources. This revised language could be especially helpful in New Mexico because, as mentioned, none of the definitions in the state's legal and legislative language governing geothermal heat or energy were intended to provide clarity on the ownership of these resources. Chapter 7 outlines specific policy recommendations for how to address this issue.

As for the tax code, after consulting with the appropriate tax officials in order to keep the state whole for tax purposes, legislators could consider removing *geothermal* from the definition of *mineral* under the tax code. Chapter 7 outlines 15 policy recommendations for how New Mexico can catalyze more geothermal development, one of which is to clarify the state's legal structures that indicate that the surface estate is the owner of the heat.

Finally, geothermal project development for Pueblos, Tribes, and Nations are conducted with the Tribes and the Bureau of Indian Affairs within the Department of Interior, and supported by the Bureau of Land Management.⁴⁶

CONCLUSION

New Mexico and the Tribes that reside in the region are poised to lead the way in advancing the use of geothermal energy. Many legal and legislative resources could be helpful in clarifying legal pathways for exploring and leasing of lands to benefit from this clean, firm energy source. Principles for addressing both the ownership of geothermal resources and the rights of property owners can likely be derived from well-established rules developed over the years in New Mexico's property law—particularly related to oil and gas, coal mining, and water extraction.

Taken all together, one reasonable interpretation is that New Mexico treats geothermal resources as a mineral for *regulatory* purposes only and that the language found throughout the state's legal and regulatory landscape supports the precedent that geothermal energy and associated resources are *not* a mineral. As mentioned at the beginning of this chapter, the state might intend to *regulate* geothermal as a mineral, but that doesn't mean it *is* a mineral where property rights are concerned.

It would go a long way for the courts or legislature to chart a clear path forward, determining whether the titles to geothermal resources and geothermal energy are held by the surface estate owner or the mineral estate owner.



CHAPTER REFERENCES

- 1 Sebree, B. (2023). Who owns the heat? Ownership of geothermal energy and associated resources under Texas law. In J. C. Beard & B. A. Jones (Eds.), *The future of geothermal in Texas: The coming century of growth and prosperity in the Lone Star State* (pp. 332–49). Project InnerSpace. <https://repositories.lib.utexas.edu/server/api/core/bitstreams/b793efab-df3d-478f-8936-ae4c7c2c3f00/content>
- 2 Sebree, B. (2023). Who owns the heat? Ownership of geothermal energy and associated resources under Texas law. In J. C. Beard & B. A. Jones (Eds.), *The future of geothermal in Texas: The coming century of growth and prosperity in the Lone Star State* (pp. 332–49). Project InnerSpace. <https://repositories.lib.utexas.edu/server/api/core/bitstreams/b793efab-df3d-478f-8936-ae4c7c2c3f00/content>
- 3 To view land status across the state, see New Mexico State Land Office. (2022). *Land status map*. <https://www.nmstatelands.org/wp-content/uploads/2022/03/LandStatus11x17.pdf>.
- 4 New Mexico Administrative Code 19.11.2.9 states that permits can only be issued to “the person who has the right to produce the geothermal resource either through ownership, lease, permit or other right.”
- 5 NM § 71-9-6 (1978)
- 6 See NM § 71-9-5 (1978), which states that “the division shall allocate and distribute the allowable production, insofar as is practicable, to afford each ownership or lease interest in a geothermal reservoir the opportunity to produce its just and equitable share of the geothermal resources in the reservoir.”
- 7 New Mexico Energy, Minerals and Natural Resources Department. (2023). *30x30 New Mexico report: Protecting New Mexico's lands, watersheds, wildlife, and natural heritage*. <https://www.emnrd.nm.gov/wp-content/uploads/30x30-NM-Report-2023.pdf>
- 8 Email correspondence with the New Mexico Energy, Minerals, and Natural Resources Department in September 2024. See also Schremmer, J. (2024). Conflicts and confluences between surface and mineral estates with CCUS. *Wyoming Law Review*, 24(2), 295–372.
- 9 See *State v. Michels Pipeline Construction, Inc.*, 217 N.W.2d 339 (Wis. 1974).
- 10 *Jones-Noland Drilling Co. v. Bixby*, 34 N.M. 413, 282 P. 382 (N.M. 1929)
- 11 *Jones-Noland Drilling Co. v. Bixby*, 34 N.M. 413, 282 P. 382 (N.M. 1929), at 417
- 12 State of New Mexico Energy, Minerals and Natural Resources Department. (2007). *Application of the New Mexico Oil Conservation Division for repeal of existing Rule 50 concerning pits and below grade tanks and adoption of a new rule governing pits, below grade tanks, closed loop systems and other alternative methods to the foregoing, and amending other rules to make conforming changes; statewide*. https://ocdimage.emnrd.nm.gov/imaging/Filestore/SantaFeAdmin/CF/61748/14015_619_CF.pdf
- 13 State of New Mexico Energy, Minerals and Natural Resources Department. (2007). *Application of the New Mexico Oil Conservation Division for repeal of existing Rule 50 concerning pits and below grade tanks and adoption of a new rule governing pits, below grade tanks, closed loop systems and other alternative methods to the foregoing, and amending other rules to make conforming changes; statewide*. https://ocdimage.emnrd.nm.gov/imaging/Filestore/SantaFeAdmin/CF/61748/14015_619_CF.pdf
- 14 *New Mexico v. General Elec. Co.*, at 1205 (“Absent proof of some possessory ownership interest in land...the State has no legally cognizable interest in the aquifer...”)
- 15 NM § 72-12-1 (2024)
- 16 For more information, see *Hydro Resources Corp. v. Gray*, 143 N.M. 142, 173 P.3d 749 (2007).
- 17 *Hydro Resources Corp. v. Gray*, 143 N.M. 142, 173 P.3d 749 (2007)
- 18 New Mexico Legislative Council Service. (2016). *Piecemeal amendment of the Constitution of New Mexico Since 1911*. https://www.nmlegis.gov/Publications/New_Mexico_State_Government/Piecemeal_Amendment_Dec2016.pdf#page=79. See also N.M. Const. art. XXIV, § 1., Annotation 1: “The 1967 amendment, which was proposed by H.J.R. No. 17 (Laws 1967) and adopted at a special election held on November 7, 1967, with a vote of 37,897 for and 14,765 against, inserted ‘or for the development and operation of geothermal steam and waters’ after ‘all minerals’ near the beginning of the section.”

19 N.M. Const. art. XXIV, § 1.

20 *Moser v. U.S. Steel Corporation*, 676 S.W.2d 99, 102 (Tex. 1984)

21 See New Mexico Administrative Code 3.6.5.29: “[A] mineral is any lifeless natural substance having sufficient value to be mined, quarried or extracted from the earth, except water, oil and gas.”

22 Encyclopedia Britannica. (n.d.). *Heat*. Retrieved October 30, 2024, from <https://www.britannica.com/science/heat>

23 NM § 69-36-3(g)(1978)

24 NM § 69-36-3(g)(1978)

25 *Moser v. U.S. Steel Corporation*, 676 S.W.2d 99, 102 (Tex. 1984)

26 NM § 69-2-7(1978)

27 NM § 69-2-7(1978)

28 NM § 71-9(1978)

29 New Mexico Energy, Minerals, and Natural Resources Department. (n.d.). *Geothermal resource permits*. Retrieved October 30, 2024, from <https://www.emnrd.nm.gov/ecmd/geothermal/>

30 New Mexico Energy, Minerals, and Natural Resources Department. (n.d.). *Geothermal resource permits*. Retrieved October 30, 2024, from <https://www.emnrd.nm.gov/ecmd/geothermal/>

31 NM § 71-9-3(E)(1978)

32 S.B. 785(88R) codified at Tex. Nat. Res. Code § 141.003(5) and § 141.004(c)(1); Benjamin W. Seebree, *Who Owns the Heat? Ownership of Geothermal Energy and Associated Resources Under Texas Law: Surface Versus Mineral Ownership and Newly Enacted Senate Bill 785*, 19 TEX. J. OIL, GAS, & ENERGY L. 236 at 244, 258-261 (2024) <https://www.tjogel.org/Home|TJOGEL>

33 NM § 7-8A-1(1978)

34 NM § 7-8A-1(1978)

35 *Bogle Farms, Inc. v. Baca*, 925 P.2d 1184 (1996)

36 *Prather v. Lyons*, 267 P.3d 78, 93 (2011)

37 White House. (2022, November 30). Uniform standards for Tribal consultation. *Federal Register*. <https://www.federalregister.gov/documents/2022/12/05/2022-26555/uniform-standards-for-Tribal-consultation>; see generally New Mexico Health and Human Services Departments. (2020). *State-Tribal consultation protocol*. https://www.hsd.state.nm.us/wp-content/uploads/2020/12/HHS_STC.pdf

38 Jacobs, J. P. (2021, November 3). Tribes seek water-management role as Colorado River shrivels. *E&E News by Politico*. <https://www.eenews.net/articles/Tribes-seek-water-management-role-as-colorado-river-shrivels/>

39 New Mexico Secretary of State. (n.d.). *23 NM federally recognized Tribes in NM counties*. Retrieved October 30, 2024, from <https://www.sos.nm.gov/voting-and-elections/native-american-election-information-program/23-nm-federally-recognized-tribes-in-nm-counties/>

40 25 C.F.R. § 172.1(2023)

41 See, for example, Oglala Sioux Tribe Environmental Health Technical Team, Environmental Protection Program. (2002). *Oglala Sioux Water Quality Management Code*. National Indian Law Library. https://narf.org/nill/codes/ogla_soux/ogla_lawater.html.

42 Oglala Sioux Tribe Environmental Health Technical Team, Environmental Protection Program. (2002). *Oglala Sioux Water Quality Management Code*. National Indian Law Library. https://narf.org/nill/codes/ogla_soux/ogla_lawater.html

43 See, for example, NM § 69-9-2 (1978); N.M. Bureau of Mines and Mineral Res., *supra* note 35.

44 25 U.S.C. § 396 (2023); see also Verity, V. H., & Young, R. J. (1971). *Laws and regulations governing mineral rights in New Mexico*. New Mexico State Bureau of Mines and Mineral Resources. <https://geoinfo.nmt.edu/publications/monographs/bulletins/downloads/104/Bulletin104.pdf>.

45 NM § 71-9-13 (2024)

46 NM § 71-9 (1978)