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**REGULATIONS PERTAINING TO THE
ENVIRONMENTAL IMPROVEMENT ACT
SECTION 74-1-13 NMSA 1978**

[3.29.13 NMAC]

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**3.29.13 NMAC
REGULATIONS PERTAINING TO THE
ENVIRONMENTAL IMPROVEMENT ACT
SECTION 74-1-13 NMSA 1978**

**74-1-13. WATER CONSERVATION FEE--IMPOSITION—
DEFINITIONS.--**

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

B. The "water conservation fund" is created in the state treasury and shall be administered by the department. The fund shall consist of water conservation fees collected pursuant to this section. Balances in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. Money in the water conservation fund is appropriated to the department for administration of a public water supply program to:

(1) test public water supplies for the contaminants required to be tested pursuant to the provisions of the federal Safe Drinking Water Act, as amended, and collect chemical compliance samples as required by those provisions of the federal act;

(2) perform vulnerability assessments that will be used to assess a public water supply's susceptibility to those contaminants; and

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

D. The taxation and revenue department shall provide by regulation for the manner and form of collection of the water conservation fee. All water conservation fees collected by the taxation and revenue department, less the administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978, shall be deposited in the water conservation fund.

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

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

G. The department shall compile a list of the contaminants that require testing pursuant to Paragraph (1) of Subsection C of this section. The list shall be compiled no less than once every twelve months and include the contaminants that will be tested in the subsequent twelve months. The

department shall establish by rule procedures to compile the list and to determine which contaminants that require testing will be tested in the subsequent twelve months. The determination of which contaminants will be tested shall include consideration of the availability of funds in the water conservation fund, the needs of the public water supplies being tested for additional contaminants and public health and safety.

H. As used in this section:

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

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

(Laws 2013, Chapter 128, Section 1)

3.29.13.7 - DEFINITIONS: "PUBLIC WATER SUPPLY SYSTEM"

A. For so long as the definition of "public water supply system" in Section 20.7.1.103 NMAC is consistent with the definition in Section 74-1-13 NMSA 1978, a person who is considered to be an operator of a "public water supply system" for purposes of Section 20.7.1.103 NMAC is an operator of a public water supply system for the purposes of the water conservation fee.

B. A public water supply system which temporarily has fewer than 15 service connections remains a public water supply system. If a system permanently reduces its service connections below 15 and the system does not serve 25 or more individuals for 60 days or more, it no longer is a public water supply system.

[10/15/93, 4/15/97; 3.29.13.7 NMAC – Rn & A, 3 NMAC 29.13.7, 11/15/01]

3.29.13.8 - CERTAIN PUBLIC WATER SUPPLY SYSTEMS NEED NOT FILE

A public water supply system which does not produce water and therefore owes no water conservation fee is not required to file returns for the water conservation fee.

[10/15/93, 4/15/97; 3.29.13.8 NMAC – Rn, 3 NMAC 29.13.8, 11/15/01]

3.29.13.9 - WATER PRODUCED

A. When water is extracted from any surface or subsurface source by or for a public water supply system, that water is produced for purposes of the water conservation fee. A public water supply system produces water when another person, not a public water supply system, extracts water under contract with or as agent for the public water supply system. Water is produced only once.

B. Example 1: M, a New Mexico municipality, produces water from its own wells. M's sewerage system collects waste water and transports it to a treatment plant. After solid wastes have been removed, some of the water is withdrawn for use in watering a golf course. The water used to water the golf course is not produced for the purposes of Section 74-1-13 NMSA

1978.

C. Example 2: A, a New Mexico municipality, operates a public water supply system. The system's main reservoir is a lake. M also produces water from wells and produces water by diversion from streams in other watersheds. Some of the water produced from the wells and streams is pumped to the lake for storage. M does not produce water a second time when M withdraws from the lake the well and stream water stored in the lake.

D. Water used in the production of water, such as in priming pumps, and returned directly to the surface or subsurface source from which it was extracted is not produced for the purposes of the water conservation fee. Water used in the production of water but not returned directly to the source from which it was extracted is produced for the purposes of the water conservation fee.

E. Example 3: D, the water department of a municipality, extracts water from wells. Periodically D uses some of the water from the wells to flush the pipes and tanks of its well pumping plant. The flushed water and sediment is discharged into an arroyo. The water is not returned to the source from which it was extracted. It is produced for the purposes of the water conservation fee.

[10/15/93, 4/15/97; 3.29.13.9 NMAC – Rn, 3 NMAC 29.13.9, 11/15/01]

3.29.13.10 - WATER CONSERVATION FEE - WHO MUST REPORT AND PAY

A. A public water supply system must report and pay the water conservation fee due both on water which it produces and on water which it acquires if the water is acquired from a person not a public water supply system who has not reported and paid the fee with respect to that water.

B. Example 1: H and L are both public water supply systems. H is a New Mexico municipality which distributes water by pipe to businesses and residents within its boundaries. H acquires all of the water distributed from L, another New Mexico municipality, which extracted the water from wells and surface sources. L must report and pay the water conservation fee with respect to all water which it produces, including the water sold to H. H has not produced water, owes no water conservation fee and need not file water conservation fee returns.

C. Example 2: E is an agency of the United States. E maintains facilities in New Mexico. E produces water from wells associated with its New Mexico facilities. E uses half of the water for its own purposes and sells the remainder to L, a New Mexico county and a public water supply system. L distributes the water by pipe to residences and businesses in the county. E is immune from the application of the water conservation fee and does not report or pay the water conservation fee with respect to any of the water E produces. L must report and pay the water conservation fee with respect to the water acquired from E because the water has been produced but no fee has been paid.

[10/15/93, 4/15/97; 3.29.13.10 NMAC – Rn, 3 NMAC 29.13.10, 11/15/01]

3.29.13.11 - APPLICATION OF FEE - USE OF WATER NOT DETERMINATIVE

A. The water conservation fee applies solely to the production of water by a public water supply system.

B. Example 1: Z is an individual who owns and lives alone in a single family residence. Water for the residence is supplied by a well. The well is used by no one else.

Although Z extracts water, Z is not a public water supply system, owes no water conservation fee and need not file a water conservation fee return.

C. The use to which water produced by a public water supply system is put has no bearing on the application of the water conservation fee. The fee applies to all water produced by the public water supply system. Section 74-1-13 NMSA 1978 provides no exemptions or deductions of water produced.

D. Example 2: P, a New Mexico municipality, operates a public water supply system, which includes a plant to render the water potable. P extracts water from ground and surface sources which is then piped to the plant. Prior to arrival at the plant, some of the water is diverted for watering vegetation, street cleaning and fire-fighting. P also uses untreated water to flush the system's pipes; the flushed water is discharged into the environment. The remaining water is made potable. Most of the potable water is distributed to businesses and residences for their consumption. Some is used to fill the municipal swimming pool.

(1) P argues that the water conservation fee is intended to provide funds for the testing of water for consumption by humans. Therefore the fee should apply only to water distributed to its businesses and residences for consumption. Water used for other purposes is not subject to the fee.

(2) Regardless of the intended use of the revenues generated by the water conservation fee, Section 74-1-13 NMSA 1978 clearly imposes the fee on the production of water by a public water supply system. Imposition is not conditioned on use of the water. The water conservation fee applies to the total amount of water extracted by P from the subsurface and surface sources.

[10/15/93, 4/15/97; 3.29.13.11 NMAC – Rn, 3 NMAC 29.13.11, 11/15/01]

3.29.13.12 - EXEMPTION OF FEDERAL AND INDIAN GOVERNMENTS

A. The water conservation fee does not apply to water produced by the federal government or any of its agencies or instrumentalities. The federal government is immune from such a fee under provisions of the United States Constitution. The immunity applies regardless of the use to which the water is put. The fact that the federal government is immune from paying the fee, however, does not preclude the state of New Mexico from entering into contracts with the federal government, under which contracts appropriate charges are made for services provided.

B. Example: F is a federal agency with facilities in New Mexico. F produces water, mainly for its own use. F also sells small amounts of water to two private businesses adjacent to its New Mexico facilities. Neither business is a public water supply system. F has no obligation to report or pay the water conservation fee on the water sold to the businesses. Neither business has an obligation to report or pay the fee.

C. The water conservation fee does not apply to water produced by any Indian nation, tribe or pueblo or any agency or instrumentality of the Indian nation, tribe or pueblo on the land of that Indian nation, tribe or pueblo. Indian governments are immune from the water conservation fee on water produced on their land by provision of federal law and treaties. The immunity applies regardless of the use to which the water is put. The fact that an Indian nation, tribe or pueblo is immune from paying the fee, however, does not preclude the state of New Mexico from entering into contracts with the Indian nation, tribe or pueblo, under which contracts appropriate charges are made for services provided.

D. The immunity of federal and Indian governments from application of the water

conservation fee to water produced by those governments does not extend to water acquired by those governments from public water supply systems which are subject to the fee.

E. Example: B is a federal military reservation located near a New Mexico municipality. B produces water for its own use. B also acquires water produced by the municipality's water department, a public water supply system. The water conservation fee applies to water produced by the municipal water department and sold to B. [10/15/93, 4/15/97; 3.29.13.12 NMAC – Rn, 3 NMAC 29.13.12, 11/15/01]

3.29.13.13 - DEFAULT WATER USAGE LEVELS

A. For the purposes of Section 3.29.13.13 NMAC:

(1) “community water system” means a public water supply system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents;

(2) “noncommunity water system” means any public water supply system that is not a “community water system” or a “nontransient noncommunity water system” and includes but is not limited to seasonal facilities, such as children's camps or recreational camping areas and year-round facilities which serve more than 25 persons who are not residents thereof, such as gasoline service stations, marinas, rest areas and restaurants which are not served by a community water system; and

(3) “nontransient noncommunity water system” means a public water supply system that is not a “community water system” and that regularly serves at least 25 of the same persons for more than 6 months per year, including but not limited to schools and factories.

B. Community and noncommunity water systems which do not meter water produced shall report and pay amounts of water conservation fee due based upon estimated water usage in accordance with Subsection C of Section 3.29.13.13 NMAC. The operator of the public water supply system will estimate annual usage by selecting the usage factor in the table below and multiplying the usage factor by the number of persons served. The result is then divided by 12 to convert the annual estimate to a monthly estimate for monthly reporting periods, divided by 4 for quarterly reporting periods or by 2 for semi-annual reporting periods. The water conservation fee applies to the estimated water usage for the reporting period.

C. Default Water Use Estimates

(1) For Noncommunity Water Systems - 18,250 gallons annually per person served.

(2) For Community Water Systems:

Public Water Supply System Size by Population	Usage Factor: Gallons Used Annually per Person
Less than 100	52,825
101 - 500	56,181
501 - 1,000	59,537
1,001 - 2,500	62,893
2,501 - 3,300	66,249

[10/15/93, 4/15/97; 3.29.13.13 NMAC – Rn & A, 3 NMAC 29.13.13, 11/15/01]

74-1-13.1. NONTRANSIENT NONCOMMUNITY PUBLIC WATER SYSTEMS; DEFINITION; TESTING AND NOTICE REQUIREMENTS.--

A. The department of environment shall test nontransient noncommunity water systems for arsenic, fluoride and radionuclides and adopt rules for reporting and public notification for those contaminants comparable to reporting and notification requirements for community water systems. Money in the water conservation fund may be used to fulfill the requirements of this subsection.

B. As used in this section:

(1) "community water system" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents; and

(2) "nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year including but not limited to schools and factories.

(Laws 2001, Chapter 148, Section 1)
