HB 311, RECLAIMED WATER ACT FACT SHEET

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The **Reclaimed Water Act**, introduced in New Mexico's 57th Legislature, aims to establish Reclaimed Water Authorities to facilitate the use, sale, and provision of reclaimed water. However, this bill raises serious concerns regarding scientific uncertainty, environmental risks, and regulatory loopholes—particularly regarding the potential inclusion of produced water from oil and gas operations because:

1. This bill is an end run around current law (Water Quality Control Act and Produced Water Act); this bill creates a whole new legal schematic because current law holds industry accountable to scientific standards that protect human health and the environment. Thus far, industry has been unable to effectively make their case for reclaimed water reuse. Science matters.

2. Water Quality Standards are insufficient to address "reclaimed water" (Orwellian for "fracking waste" also known as "produced water") because current water standards do not account for the thousands of chemical constituents found in reclaimed water/produced water. (Section 2, I.)

3. This bill allows for *any* reuse, except for nonpotable use, after reclaimed water "treatment" – though there are no standards about treatment.

4. The bill is silent about what will be done with all the residual waste and how it will be transported or handled.

5. The bill creates a water authority that has broad authority to determine wastewater usage yet is not an agency of the government, is immune from liability pursuant to the Tort Claims Act, pricing is exempt from the Inspection of Public Records Act, pricing may be deemed "confidential" which leaves the public without an understanding of economic feasibility, immunizes board members and officers for negligent acts.

Lack of Scientific Support for Produced Water Reuse

The current state of scientific research does not support any offsite use of produced water due to insufficient data on its toxicity and environmental impact. The New Mexico Produced Water Research Consortium has failed to produce meaningful data over five years, and peer-reviewed studies indicate that New Mexico is still in the early stages of understanding produced water composition. Scientific studies have determined that a comprehensive assessment of produced water quality and toxicity is missing, making it impossible to develop safe treatment and reuse strategies.

Expert testimony presented at a regulatory hearing last summer outlined several critical issues with produced water reuse:

1. **No Commercially Viable Treatment Technologies Exist** - A New Mexico oil and gas expert testified that no existing cost-effective technology can treat the massive volumes of produced water generated in the Permian Basin.
2. **Produced Water Contains Hazardous Contaminants** - Produced water is known to contain radioactive materials, volatile organic compounds (VOCs), petroleum hydrocarbons, chemical fracking additives, and other harmful substances. Testing has revealed radioactivity levels averaging 195 pCi/L—far exceeding the EPA's drinking water limit of 5 pCi/L.
3. **Risk Assessment Requires Comprehensive Toxicity Studies** - Scientific studies stress that before considering reuse, there must be an **a priori understanding of ecotoxicity effects** on different organisms. Without this data, risk management strategies and treatment methods remain inadequate.

4. **Regulatory Bodies Acknowledge Science is Incomplete** - Representatives from the New Mexico Environment Department (NMED) and the NM Produced Water Research Consortium confirmed that science has not yet advanced enough to establish protective regulations for produced water reuse.
5. **No Plan for Hazardous Waste Management or Energy Impact** - The bill does not address how hazardous waste byproducts from water treatment facilities will be managed or disposed of. Additionally, treatment plants require significant energy, contributing to increased greenhouse gas emissions and climate change impacts.

Regulatory Concerns: A Loophole for Produced Water Disposal

This bill, while branded as a water reclamation effort, functions as an end run around existing water protection laws such as the Water Quality Act and the Produced Water Act. By setting up a new "Reclaimed Water Authority", largely controlled by industry representatives, the bill sidesteps these protective regulations. The authority's board makeup ensures that industry voices dominate, with only one representative from the Environment Department, making it easy to push through lax regulations favoring industry interests.

Speaker Egolf's 2020 Warning: A Reality Check

Former Speaker of the House Brian Egolf, who sponsored the Produced Water Act, warned regulators in 2020 that no law should allow the use of produced water outside oil and gas operations. He emphasized:

- No scientifically proven safe use exists for produced water.
- The NMED and Water Quality Control Commission must thoroughly evaluate all research before permitting use.
- The science has not confirmed safety, but instead revealed more unknowns about the dangers of produced water.

Since 2020, research has shown that produced water contains even more harmful elements than previously thought, including radioactive nuclides, forever chemicals, and heavy metals. No evidence supports its safe use outside the oilfield.

Financial Health and Environmental Liabilities

The bill also presents **significant financial risks** and health and environmental harms if the reclaimed water treatment fails.

- Produced water treatment is not cost-effective—if it were, the oil and gas industry would already be doing it.
- The Reclaimed Water Act's immunizes the authority and its members, leaving New Mexicans vulnerable to environmental cleanup and health costs.
- Failed water treatment plants could become stranded assets, costing taxpayers hundreds of millions of dollars.

Conclusion: A Dangerous Proposal

House Bill 311 is not a simple water reclamation bill—it is a produced water bill disguised as a general reclaimed water initiative. By creating a new authority with industry-heavy decision-making, it threatens to weaken existing environmental protections and facilitate the unregulated disposal of toxic wastewater.

Without a scientifically validated framework, moving forward with produced water reuse poses unacceptable risks to public health, water resources, and the environment. The bill must be rejected to ensure New Mexico's water policies remain rooted in scientific evidence and public safety rather than industry-driven interests.