

# UPPER HONDO SOIL & WATER CONSERVATION DISTRICT

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December 2, 2021

Wendy Mason

EMNRD, Forestry Division

1220 South St. Francis Drive

Santa Fe, NM 87505

RE: Proposed Rulemaking 19.20.5 NMAC Prescribed Burn Manager Certification Program

Greetings:

The Upper Hondo Soil and Water Conservation District (SWCD) board of supervisors would like to take this opportunity to thank Energy, Minerals, and Natural Resources-Forestry Division for allowing the Upper Hondo SWCD to review and comment on the proposed Prescribed Burn Manager Certification Program.

HM 42 Prescribed fire working group was carried by Representative McQueen and signed during the 2019 legislative session. The memorial directed the energy, minerals, and natural resource department to convene a working group to study the expansion of prescribed fire in New Mexico. The memorial emphasized that New Mexico residents, scientists, and stakeholders agree that the current level of prescribed fire use in New Mexico is insufficient to maintain or build upon restored landscapes. Further, the memorial also states that New Mexico needs to increase the use of prescribed fire as a management tool. HM 42 and its accompanying report led to the enactment of HB 57 the Prescribed Burning Act.

After reviewing the divisions draft rule, the Upper Hondo SWCD feels that this proposal will not expand the use of prescribed fire in New Mexico but will inhibit that option for the majority of New Mexico landowners. The draft rule as written places highly stringent and complex certification requirements in place, many of which will be out of reach for landowners. Section 7, Paragraph D, of HB 57 states "Nothing in this section may be construed as creating a mandatory prescribed burn manager certification requirement to conduct prescribe burning."

The proposed rule is vague and lacks critical information for managing and complying with this rule when obtaining burn manager certification. As such, publication of this rule should be delayed until the details can be worked out and added to the rule.

1. Nowhere in this rule does it address whether or not this process would be mandatory for burning on private land or obtaining a prescribed burn permit defined in Article 5, 68-5-5. Article 5, 68-5-7. D indicates certification is not required; however, 68-5-4 implies individuals should be certified or plan to be held negligent for any unplanned damages resulting from a prescribed burn and pay double the actual damages. Article 5, 68-5-5 is

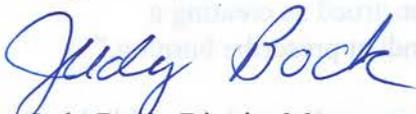
silent on burn manager certification. Request you add wording to the proposed rule summarizing the liability and requirements of having this certification.

2. Basic details on "working level" administration of this program are missing from this rule and should be added prior to release of this rule. Such as:
  - a. Who is the "division face" for the public/customer?
  - b. Where are certification applications, waiver requests and appeals to be sent?
  - c. Who conducts the training and where can on-line training be found?
  - d. Who certifies/administers certification and recertification training and tests?
  - e. Who in the Division accepts and tracks waiver requests?
3. Article 5 mentions the application of fees, this rule should identify the costs/fees associated with the training and certification process.
4. Where can a list of reciprocity states be found (19.20.5.9.C. and 19.20.10.C.)?
5. If Burn Manager Certification is truly not required, what are the consequences of having one's certification suspended (19-20-5-9. E. and 19-20-5-10. D.) or denied (19-20-5-12. C.3.)?

We also suggest the State Forestry consider the development of a Prescribed Burn Education Program versus a Certification Program, where the goal is to educate people on safely managing prescribed fires. Certification could be one of the products of an education program.

We thank you for the opportunity to review and comment on the proposed rule. The increased use of prescribed fire in New Mexico has immense potential to assist in building resilient forests, rangelands, and watersheds, while also working to reduce out of control and heavy fuel loads that threaten our very way of life. The legislature has spoken through the passage of the prescribed burn act to support efforts that work to increase prescribed burning in New Mexico while working to reduce an individual's liability when executing a burn. The division must work to support the will of the legislature by creating a certification program that increases and promotes the use of prescribed fire in the state. The certification must be practical, easily accessible, user friendly, and must meet the needs of those utilizing prescribed burns while considering cultural, historical, and traditional uses and practices. We urge the division to amend the proposed rule to better fit the needs of its intended users.

Respectfully submitted,

  
Judy Bock, District Manager