

COUNTY OF GRANT, NEW MEXICO

GRANT COUNTY WATER POLLUTION NUISANCE ORDINANCE

An Ordinance declaring a Public Nuisance any introduction of offensive or dangerous substances into public bodies of water which flow or are located within the County of Grant, in order to protect the health of the inhabitants of the County, to prevent the spread of disease and to improve the environmental quality of the County of Grant; and providing penalties for the violation thereof; and declaring an Emergency:

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Grant County, New Mexico:

SECTION I - AUTHORITY

- A. This Ordinance shall be known and cited as the Grant County Water Pollution Nuisance Ordinance.

A public nuisance consists of creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

- (a) Injurious to public health, safety or welfare; or
- (b) Interferes with the exercise and enjoyment of public rights, including the right to use public property.

Whoever commits a public nuisance for which the act or penalty is not otherwise prescribed by law is guilty of a misdemeanor.

- B. This Ordinance applies to all persons, residents, agencies, businesses, visitors and transients within Grant County, New Mexico, and does not exclude any individual, group, organization, agency, business, visitor, transient or other person not residing within the County which may be in violation of this Ordinance within the County.
- C. The Board of County Commissioners has determined pursuant to Section 4-56-3(C) and Sections 4-37-2 and 3, N.M.S.A. 1978, in the interest of public health, safety and welfare, that the introduction of offensive or dangerous substances into public bodies of water within Grant County should be regulated as provided in this Ordinance.
- D. This Ordinance hereby repeals and supersedes all previous Ordinances and/or parts of Ordinances dealing with the same subject matter included herein.

9th May 1995
Gene M. [Signature]
County Clerk

SECTION II - DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words, and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "AGENCY" shall mean any public, governmental agency or any Federal, State or local body of government.
- B. "BODY OF PUBLIC WATER" shall mean any public river or tributary thereof, stream, lake, pond, reservoir, acequia, canal, ditch, spring, well or declared or known ground waters which flow or are located within the County.
- C. "CODE ENFORCEMENT OFFICER" is a County employee who is responsible for assuring public compliance with the Ordinances of the County of Grant. The Code Enforcement Officer shall have the authority to investigate and to issue citations for violations of this Ordinance.
- D. "COUNTY" shall include the area within the boundaries of the County of Grant, including privately-owned land or land owned by the United States, except the area within the limits of any incorporated municipality.
- E. "PERSON" is any person, agency, firm, association, company, partnership, corporation or organization of any kind.

SECTION III - POLLUTING WATER

- A. Polluting water consists of knowingly and unlawfully introducing any object or substance into any body of public water causing it to be offensive or dangerous for use or consumption by wildlife or by people within the County. Polluting water constitutes a public nuisance.
- B. Any agency which intends to introduce any object or substance into a body of public water shall notify the County of Grant. Such notification shall be in writing, not less than 90 days prior to the proposed action to afford the County an adequate amount of time to comment on or approve the proposed action. Such notification shall be addressed to the Grant County Manager's office at P.O. Box 898, Silver City, New Mexico 88062. In the event that the County is unable to determine the effects of the agency's intended introduction of objects or substances into a body of public water, the County shall

prohibit the intended agency action until such time as the County is able to determine its effects.

SECTION IV - PENALTIES, ENFORCEMENT

- A. PENALTY CLAUSE - Any person who shall violate any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished, pursuant to Section 4-37-3 (A) NMSA (1994 Supp.), by a fine not exceeding three hundred dollars (\$300.00) or imprisonment in the County Jail for a period not exceeding ninety (90) days or both such fine and imprisonment.
- B. ADDITIONAL PENALTY. In the event a person has introduced or disposed of hazardous materials or waste into a body of public water within Grant County, then in addition to the penalties provided herein and pursuant to Section 4-37-3 (A) (2) NMSA (1994 Supp.) such person shall be fined not more than Five Thousand Dollars (\$5,000.00).
- C. ENFORCEMENT - It shall be the duty of the Sheriff's Department, the Code Enforcement Officer or any other duty law enforcement officer within the County to enforce the provisions of this Ordinance upon proper information.

SECTION V - SAVINGS CLAUSE, DECLARATION OF EMERGENCY

- A. SAVING CLAUSE - If any of the sections, subsections, sentences, clauses or phrases of the Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be thereby affected since it is the express intent of the County Commission to pass each section, phrase, paragraph and word separately.
- B. EMERGENCY CLAUSE - This Ordinance is hereby declared an emergency Ordinance on the grounds of urgent public need and shall be effective immediately upon its passage. It has come to the attention of the County that the Federal Government is planning to introduce a hazardous substance into a stream within Grant County in order to kill fish living within the stream. It is further understood that the introduction of this substance may be imminent and that the substance may pose a danger to humans and wildlife within Grant County.
- C. PUBLICATION - No prior publication of this Ordinance shall be necessary. The Board of County Commissioners declares that an emergency exists and that there is an immediate danger to the

public health, safety and welfare of the County. This Ordinance shall be published once a week for two consecutive weeks after final passage to give notice to the public.

PASSED, APPROVED AND ADOPTED by the Board of County Commissioners of Grant County, this 8th day of May, 1995.

Manuel T. Serna
Manuel T. Serna, Chairman

Zeke Santa-Maria
Zeke Santa-Maria, Member

Carl W. Scholl
Carl Scholl, Member

ATTEST:

Rena Madrid-Cope
Rena Madrid-Cope, County Clerk

By: Mary Ann C. Carrillo,
Chief Deputy Clerk

Page 4 of 4

STATE OF NEW MEXICO
County of Grant

I hereby certify that this instrument was filed for record on the 9th day of May, A.D., 1995 at 2:51 o'clock P.M. and duly recorded in book 204 of the Ordinances at page 687-91

Witness my hand and seal of office
Rena Madrid-Cope
COUNTY CLERK, GRANT CO., N.M.
Alma Thomas Deputy