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NMED-GWQB
Attn: Water Reuse Regulation
P.O. Box 5469
Santa Fe, NM, 87502

RE: Public Comment on Proposed Water Reuse Regulation

To whom it may concern:

New Mexico Department of Agriculture (NMDA) submits the following comments in response to the New Mexico Environment Department's (NMED) proposed water reuse regulation, *Ground and Surface Water Protection – Supplemental Requirements for Water Reuse (20.6.8 NMAC)*.

Part of NMDA's role is to advocate proactively on behalf of New Mexico's agricultural communities and the natural resources that sustain them. The proposed rulemaking could have significant impacts to water resources in New Mexico. Establishing a safe and responsible regulatory framework for the reuse of domestic and produced waters will contribute to the long-term water security of New Mexico's farms and ranches while mitigating the risk of contaminants. NMDA provides the following comments on specific sections of the proposed rule that could be clarified.

20.6.8.7 DEFINITIONS: What is NMED's purpose for including such a thorough and specific list of definitions for terms that are not used within the draft rule? To the outside reader, this implies that NMED has already either contemplated or drafted a future rule amendment which will use these specific terms. However, it is impossible to assess the accuracy or appropriateness of regulatory definitions without knowing the context in which they will be used. If NMED includes these definitions in the final regulation, they should commit to reevaluate this section in

the event that the rule is updated to include these terms in new provisions. Below, NMDA has identified several definitions that may require revision, with regulatory text italicized.

A. (2) "Agricultural application" means the application of domestic or industrial water for cultivating the soil and growing crops or irrigating pasture for livestock grazing. Agriculture application includes the use of water in connection with the operation or maintenance of feedlots or agricultural application of water, but not those activities defined as livestock application.

By only mentioning domestic and industrial water, does this definition preclude treated produced water from being used in agricultural applications?

NMED should change "agriculture application" to "agricultural application" in the second sentence for consistency. It also seems circular that "agriculture application" would include "agricultural application of water."

Additionally, NMED should define "feedlots" as applied in this definition and rulemaking. Otherwise, there could be ambiguity about the livestock facilities to which this term applies.

F. (2) "Flood irrigation" means land application of reclaimed wastewater by ditches furrows, pipelines, low flow emitters, and other non-sprinkler methods.

Flood irrigation includes "low flow emitters," which NMDA interprets to mean drip irrigation. Drip irrigation is generally considered distinct from flood irrigation in agriculture. Drip irrigation can be precisely applied to minimize infiltration to groundwater much more effectively than standard flood irrigation. Without knowing how these definitions will be applied, it is impossible to evaluate whether conflating these two irrigation methods will cause unintended impacts.

S. (2) "Spray irrigation" means land application of water through the air utilizing equipment that provides low trajectory application and minimizes misting of the water.

Why do the definitions for different agricultural uses all refer to different types of water in the draft rule? For example, agricultural application and food crop application apply to "domestic or industrial water"; flood irrigation applies to the narrower term "reclaimed wastewater"; irrigation and spray irrigation simply apply to "water." NMDA wonders whether these inconsistencies are intentional. Without further context, it is impossible to know whether such distinctions will matter and require correction in future rulemakings.

Also, does this definition intend to only refer to the application of water for growing crops? By the plain language, it would also seem to apply to a much broader set of uses, especially without further standards for "low trajectory" or "minimizes misting." Activities such as aerial firefighting or aerial application of pesticides could potentially fall under this plain language definition. NMDA suggests adding the stipulation that this

term applies to growing crops and, if NMDA's interpretation is correct, clarifying that the definition is intended to apply to forms of sprinkler irrigation.

20.6.8.400 PRODUCED WATER REUSE

B. (1) Demonstration projects, determined by the department to not require a discharge permit because the project will not discharge in a manner that may directly or indirectly affect ground or surface water, given the following provisions:

NMDA requests that this provision be reworded to improve clarity. In Section 20.6.8.7 D. (5), the draft rule defines discharge as "spilling, leaking, pumping, pouring, emitting, dumping of a water contaminant in a location and manner where there is a reasonable probability that the water contaminant may reach ground or surface water." Thus, by the definition, discharge entails the threat of directly or indirectly affecting ground or surface water. By stating, "the project will not discharge in a manner that may directly or indirectly affect," the phrasing in B. (1) introduces some ambiguity over whether there are types of discharges that may not affect state waters. NMDA proposes two alternatives, either: (1) simply stating that the project will not discharge or (2) replacing "discharge" with "dispose of effluent."

***D. Effluent Quality*:** This section requires that NMED establish new water quality criteria for produced water authorized uses before permitting any discharges. Would these standards be in addition to water use criteria for the final designated use? For example, if treated produced water were to be used for irrigation would it have to meet two separate standards: a new one for produced water reuse and the existing one for irrigation use? Or does NMED anticipate having a single new water quality criteria that specifically covers produced water reuse for irrigation?

Thank you for your consideration of NMDA's comments. If you have any questions please contact Mr. Max Henkels at mhenkels@nmda.nmsu.edu or 575-339-5052.

Sincerely,

Julie Maitland
Division Director
JM/mh