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♦ Diné Centered Research and Evaluation ♦ Earth Care ♦ Earthworks ♦ Environmental Defense  
Fund ♦ First Congregational United Church of Christ Albuquerque ♦ Gila Resources Information  
Project ♦ New Mexico Acequia Association ♦ New Energy Economy ♦ New Mexico Interfaith  
Power and Light ♦ New Mexico Wild ♦ Sierra Club, Rio Grande Chapter ♦ Youth United for  
Climate Crisis Action ♦ Water Advocates for NM and the Middle Rio Grande ♦ Western  
Environmental Law Center

November 30, 2023

Ground Water Quality Bureau  
New Mexico Environment Department  
Attn: Water Reuse Regulation  
P.O. Box 5469  
Santa Fe, New Mexico 87502

Sent via email to: [pw.environment@env.nm.gov](mailto:pw.environment@env.nm.gov)

Dear Ground Water Quality Bureau:

On November 1, 2023, the New Mexico Environment Department (NMED) Ground Water Quality Bureau issued draft rules at 20.6.8.1 NMAC, "Ground and Surface Water Protection - Supplemental Requirements for Water Reuse." The undersigned groups would like to thank the bureau for your efforts to protect New Mexico's waters, as well as register our comments and suggestions in the spirit of improving and strengthening the proposed rule. Our comments are outlined in several key topic areas that are important to the goal of our organizations to protect the water, land, people, and wildlife of New Mexico.

General Support for the Rulemaking:

Our organizations support NMED in its efforts to protect New Mexico's water resources from the potential impacts of discharges of produced water and generally support the provisions laid out in the proposed rule. We thank NMED for your leadership and vision in proposing these much needed regulations.

Clarify the Prohibition of Discharge of Produced Water (20.6.8.400 NMAC): Language in this section of the proposed rule is confusing because, while the proposed rule broadly prohibits discharge of produced water to any ground or surface water of the state, there are references to potential discharge permits for produced water in several places in this section. We suggest removing all references to discharge permits in this section of the proposed rule to clarify the prohibition.

Specifically, we suggest removing language found at 20.6.8.400.A(3) NMAC and including language clearly prohibiting the discharge of treated produced water into 20.6.8.400.A(2) NMAC as follows:

“20.6.8.400.A(2) Untreated and treated produced water discharges to ground water: No person shall cause or allow untreated produced water or treated produced water to discharge so that it may move directly or indirectly into ground water. The department shall not approve a discharge permit or a discharge permit modification that includes the discharge of untreated or treated produced water.”

The language currently proposed at 20.6.8.400.A(3) NMAC is unnecessary and is premised on uncertain future action of the Water Quality Control Commission (Commission), that is, adoption of water quality criteria associated with as yet unknown water quality contaminants found in treated produced water. If at any time in the future the Commission adopts such water quality criteria, such language can be considered. Therefore we propose to delete this language.

In addition, we find the reference below to discharge permits at 20.6.8.400.B(1) NMAC to be unnecessary:

“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:”

This language is confusing because the general prohibition against discharging produced water to ground or surface water found in section 20.6.8.400.A NMAC means that no projects related to produced water, demonstration or otherwise, are allowed to receive a discharge permit. It would be clearer to say here:

“Demonstration projects, determined by the department not to discharge in a manner that may directly or indirectly affect ground or surface water, given the following provisions:”

Unnecessary Definitions: The draft rule contains unnecessary definitions. There are over 40 definitions of technical terms that are not used in the proposed rule. Given the lack of context how these terms will ultimately be used, it is impossible to analyze whether the definitions are sufficient. In addition, the inclusion of these terms at this stage, before they are used in the body of the rule, creates unnecessary work both because they may never be incorporated into the body of the rule and, even if they are, the definitions may need to be amended once the context of their use is more clear. We believe members of the Commission will find it difficult to promulgate definitions of unused terms. We recommend deleting all unused terms.

### Creating a New Category of Water

The proposed rule introduces a new category of water, brackish water, that may not fit with the Commission framework for protection of ground water of the state. Currently Commission rules protect all ground water that has a total dissolved solids (TDS) concentration of 10,000 mg/l or less for potential future use for domestic or agricultural purposes as set forth in 20.6.2.3101.A NMAC. The proposed rule defines brackish water as having between 1,000 and 10,000 mg/L TDS. Creating a new subcategory of water within this TDS range suggests future attempts to regulate this water differently, with potentially weaker protections, than water that is less than 1,000 mg/L TDS. Therefore, we propose to remove the definition of brackish water for two reasons: one, the term does not appear in the body of the regulations; and, two, it sets up a system where this water could be less protected than other water sources.

Feasibility Studies (20.6.8.201.B NMAC): Inclusion of this section regulating feasibility studies in the proposed rule is confusing because NMED has indicated that this rulemaking is intended to focus on the “limited and restricted use of produced water”.<sup>1</sup> Including this section in this rulemaking, which is not related to produced water, raises questions about its intent and purpose. And, again, without the context of a full rule that relates to its subject matter, it is difficult to analyze the proposal. We suggest removing this section and including it in the forthcoming second round of water reuse rulemaking, which is scheduled for late 2024 and early 2025. Alternatively, if this section remains in this current rulemaking, we suggest clarifying that the feasibility study provisions do not apply to any waters except the reuse of domestic wastewater. In particular, it should be clear that feasibility studies are not applicable for produced water.

### Emerging Contaminants

Monitoring of and safeguards for contaminants of emerging concern (defined in 20.6.4 NMAC as “emerging contaminants”) is critical for protecting our state’s groundwater. We suggest that NMED include language allowing for demonstration projects to provide information related to monitoring and identification of emerging contaminants. In addition, we suggest adding a definition of “emerging contaminants” to the definition section. The Commission has already adopted a definition for “emerging contaminants” in 20.6.4.NMAC, and therefore the definition from 20.6.4 NMAC could be incorporated into 20.6.8 NMAC. Due to the unknown nature of many of the chemicals in produced water it is important to include provision for tracking emerging contaminants and their potential impact to the state’s ground water resources.

Proposed changes to 20.6.8.400.B(1)(b) NMAC:

(b) The demonstration project shall be designed to provide information specific to untreated produced water quality, treatment technologies, treated produced water quality,

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<sup>1</sup> <https://www.env.nm.gov/water-reuse/>.

treatment volumes, ~~and~~ toxicity studies, monitoring and identification of emerging contaminants, or potential produced water reuse applications.

Thank you for the opportunity to provide comments.

Sincerely,

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