

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PETITION TO
DESIGNATE SURFACE WATERS OF THE
UPPER PECOS WATERSHED AS
OUTSTANDING NATIONAL RESOURCE WATERS,**

No. WQCC 21-51(R)

**Village of Pecos, San Miguel County, Upper Pecos
Watershed Association, New Mexico Acequia
Association, and Molino de la Isla Organics LLC,**

Petitioners.

**PETITIONERS' COMMENTS AND EXCEPTIONS TO THE HEARING OFFICER'S
DRAFT REPORT**

In accordance with the Amended Scheduling Order, Petitioners Village of Pecos, San Miguel County, Upper Pecos Watershed Association, New Mexico Acequia Association, and Molino de la Isla Organics, LLC (collectively "Petitioners"), respectfully submit the following Comments and Exceptions to the Hearing Officer's Draft Report, filed June 21, 2022.

Comments and Exceptions to Hearing Officer's Draft Report

I. Procedural Background

1. On page 1, the Draft Report notes that "this is the second attempt to achieve the designation of the surface waters of the Upper Pecos Watershed as ONRWs."

While this statement is correct, in the interest of fairly representing the prior proceedings and its relation to this docketed matter, Petitioners suggest adding the context for this second Petition. Petitioners respectfully request amending the language as follows:¹

¹ Proposed new language is underlined, and proposed deleted language is shown in ~~strikeout~~.

“Note: this is the second petition attempt to achieve the designation of the surface waters of the Upper Pecos Watershed as ONRWs. Petitioners filed the first petition on April 20, 2020, subsequently docketed as WQCC 20-18, and then withdrawn on April 7, 2021, prior to hearing or consideration by the Commission. The first petition was withdrawn to provide additional opportunity for Petitioners to collaborate cooperatively with the New Mexico Environment Department (“NMED”) in order to present a unified position before the Commission, and more efficiently proceed with the rulemaking process. The second petition (the subject matter of this Report) came before the Commission at the November 9, 2021, regular meeting. The ~~New Mexico Environment Department’s~~ (“NMED”) Surface of Water Quality Bureau was represented by John Verheul, Petitioners were represented by Kelly Nokes and Tannis Fox, and Dennis McQuillan appeared pro se.”

II. Public Notice and Hearing

2. On page 3, the Draft Report states: “Public comments were heard from several persons [Tr. 112:17–123:3, 206:5–211:21], only one of whom expressed opposition to the ONRW designation [Tr. 121:19–123:3].”

In the interests of transparency and fairly representing the evidence in the record, Petitioners suggest amending the language of this sentence by replacing the word “several” with the actual number of public commenters heard at the hearing, which is six. The amended language would read as follows:

“Public comments were heard from six ~~several~~ persons [Tr. 112:17–123:3, 206:5–211:21], only one of whom expressed opposition to the ONRW designation [Tr. 121:19–123:3].”

VIII. Public Comment

3. In the interest of fairly representing the evidence in the record, Petitioners respectfully request amending the language in the section regarding public comment that begins on page 16. While the Draft Report acknowledges that “the designation received overwhelming support for various environmental reasons,” the Draft Report does not provide the full context of the exceptionally broad support for the nomination from the local communities impacted and the general public, which included over 1,600 persons who supported the Petition. Instead, the Draft Report highlights the two singular public comments opposing the nomination. *See* pages 16–17, elaborating for two paragraphs on opposition comments, while failing to include any elaboration or quoted text from the vast comments received in support of the nomination. This omission of any supporting commentary, while highlighting the minimal opposing commentary, unfairly characterizes the evidence in the record on the extent of public support, and creates a lopsided view of the public comment received in this matter. Accordingly, Petitioners request the second and third paragraphs of the public comment section be deleted and replaced as follows:

“The nomination received overwhelming public support for various reasons. As presented in the testimony of Ms. Lela McFerrin, Petitioners undertook extensive community outreach efforts throughout the nomination proceedings. Tr. 31:19–25, 64:11–68:2. Petitioners’ Exhibit 16 is a compilation of letters of support, including resolutions passed by the New Mexico Acequia Association, San Miguel County, and the Village of Pecos, as well as letters from the Jemez Pueblo, elected officials, local landowners, business entities, nonprofit organizations, and individuals with close

connections to the Upper Pecos Watershed. See Pet’rs Ex. 16. Additionally, Ms. McFerrin testified that since Petitioners filed their Notice of Intent to Present Technical Testimony on March 10, 2022, over 1,600 other individuals and organizations had written in support of the Petition, including federal, state, and local elected officials, and no party had entered an appearance in opposition. Tr. 31:25–32:4, 66:24–67:6. Only two public comments were received opposing the nomination, one from the New Mexico Farm and Livestock Bureau, and a second from a concerned citizen from outside the Upper Pecos Watershed region. Exhibit A, Comment I-17-1, Comment I-26. These opposition comments opposed ONRW designations in general, and did not rebut the evidence put forth by Petitioners in support of the criteria for ONRW for the nominated waters of the Upper Pecos Watershed. See id.”

IX. Proposed Conclusions of Law

4. Finally, Petitioners request the inclusion of the following additional provision in the Proposed Conclusions of Law section:

“3. All Parties to the rulemaking support the designation, and no party entered an appearance objecting to the proposed amendments to 20.6.4.9.D NMAC, as proposed in Petitioners’ Exhibit 1.”

CONCLUSION

Petitioners respectfully request that their comments and exceptions be incorporated into the Hearing Officer’s Final Report.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing pleading was emailed to the following counsel and parties on June 27, 2022:

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