

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

**IN THE MATTER OF THE PETITION FOR  
A PERMIT REVIEW OF DISCHARGE  
PERMIT RENEWAL, DP 1342**

**WQCC No. 22-42**

**CITY OF GALLUP,  
Petitioner**

**v.**

**NEW MEXICO ENVIRONMENT  
DEPARTMENT,  
Respondent**

**SETTLEMENT AGREEMENT**

The Ground Water Quality Bureau of the Water Protection Division of the New Mexico Environment Department (Department or NMED) and the City of Gallup (Gallup) (collectively the Parties), pursuant to 20.1.3.22(B)(2) NMAC, stipulate to resolve the issues raised in Gallup’s Petition for Permit Review, Notice of Appeal of Permit Renewal DP 1342, and Motion for Stay and Remand, filed September 12, 2022 (Petition). The Parties have agreed on the terms and conditions specified in this Settlement Agreement (Agreement).

**I. Background**

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, Section 9-7A-4. The Department is authorized to administer and enforce the New Mexico Water Quality Act (WQA), NMSA 1978, Sections 74-6-1 to -17, and the Ground and Surface Water Protection Regulations (Regulations), 20.6.2 NMAC, including making permitting decisions pursuant to authorization contained within the WQA. NMSA 1978, § 74-6-5 (2009).
2. The Department originally issued discharge permit 1342 (DP-1342) to Gallup on November 15, 1996, in order to protect groundwater and those segments of surface water

gaining from groundwater inflow for present and potential future use as domestic and agricultural water supply and other uses. [AR 00007 – 00008].

3. Gallup submitted an application for a ground water discharge permit renewal on June 17, 2016, and the Department issued a renewal of DP-1342 on August 11, 2022. [AR 00008].

4. In its Petition, Gallup objected to certain permit conditions, including:

- a. Permit conditions 16, 17, and 44 – The requirement to plug, abandon, and replace monitoring wells 4, 5, and 6; and
- b. Permit condition 27 – The requirement of quarterly testing for arsenic;
- c. And that supply chain constraints would make compliance with the conditions of DP-1342 impossible. Petition, pp 2-5.

5. Since Gallup filed the Petition, the Department and Gallup have engaged in productive settlement negotiations and resolved the issues raised by Gallup.

## **II. Compromise and Settlement**

6. In recognition that protection of groundwater resources and avoiding protracted legal dispute is in the interest of both the Parties, and generally the State of New Mexico, the Department and Gallup agree to the terms and conditions of this Agreement to resolve the objections raised in the Petition. The Parties are knowledgeable and fully advised by counsel. The Parties agree that the terms reached in this settlement sufficiently protect ground water from discharges associated with DP-1342 in conformance with the purposes of the WQA.

7. Specifically, the Parties agree:

- a. DP-1342 Condition 27 is amended to read: “If the results of two consecutive quarterly sampling events indicate no dissolved arsenic above 0.01 mg/L and if

elevated dissolved arsenic is determined to be an existing groundwater condition per Condition #33, the Permittee may request to remove quarterly dissolved arsenic sampling.”

- b. Regarding DP-1342 Conditions 16, 17, and 44, relating to the replacement of Monitoring Wells (MW) 4, 5, and 6:

In conformance with the NMED Monitoring Well Construction and Abandonment Guidelines, Revision 1.1 (March, 2011) (Guidelines), NMED will coordinate with Gallup in order to determine a feasible location for Proposed Monitoring Well 7 (PMW 7), preferably near MW 5. Gallup will drill to 15 feet below first water in conformance with Guidelines Well Specification ¶ 6. Gallup will collect continuous core samples, from the ground surface to completion, while the borehole is drilled in order to have a more comprehensive understanding of the geology at the site. In the event that a confining layer is identified within the 15 feet below first water, the Parties shall confer to avoid unnecessarily penetrating the confining layer.

Water Table Monitoring Well Completion: Gallup will complete PMW 7 to conform with the Guidelines, including General Drilling Specification 3 requiring a minimum of 12-hour stabilization, and Specification 4, requiring water to flow freely through the screen and is not turbid. Stabilization for greater than 12 hours may be necessary to determine presence of groundwater.

IF/THEN Conditions: Recognizing the subsurface conditions may require deviation from the Guidelines, and that the Guidelines provide for such situations, the following conditions may require deviation from the Guidelines:

**IF** PMW 7, at first water doesn't stabilize, per Guideline General Drilling Specification 3, and/or water is not flowing freely per Guideline General Specification 4:

**THEN** Gallup will allow for an additional 12-24 hours to stabilize.

**IF** PMW 7, at first water doesn't stabilize over a 24-36- hour period:

**THEN** Gallup will request NMED approval to plug and abandon the borehole. The Department will review the request and respond in writing with a determination. NMED will require documentation that stabilization was not achieved in the request.

**IF** the first water is determined through a field test to be greater than 10,000 mg/L total dissolved solids (TDS):

**THEN** Gallup will submit the groundwater sample for a laboratory certified analysis of the TDS to confirm it is greater than 10,000 mg/L and inform NMED of the field test results. Once the laboratory certified analysis confirms the TDS is greater than 10,000 mg/L, Gallup will consult with NMED to determine if Gallup will plug and abandon the borehole.

**IF** PMW 7, with respect to first water, meets all the general specifications in the guidelines:

**THEN** Gallup will replace MWs 4, and 6 per the current conditions, and plug and abandon MW 5.

**IF** any one of the following conditions occur while constructing PMW 7:

- a) PMW 7 does not stabilize over a 12-36 hour period;
- b) laboratory certified analysis confirms the TDS is greater than 10,000 mg/L; or
- c) matching conditions occur while drilling PMW 7 as occurred during the construction of MWs 4, 5, and 6;

**THEN** Gallup will request NMED approval to plug and abandon MWs 4, 5, and 6. Following NMED review and approval, Gallup will plug and abandon MWs 4, 5, and 6.

**IF** any of MWs 4, 5, and 6 are plugged and abandoned pursuant to the terms above:

**THEN** Gallup will not be required to perform any applicable testing requirements of a plugged and abandoned well currently required under DP 1342.

**IF** PMW 7, with respect to first water, meets all the general specifications in the guidelines:

**THEN** the City will replace MWs 4, and 6 per the current conditions, and plug and abandon MW 5.

- c. The procedures outlined in subparagraph (b) of paragraph 7 of this Agreement shall be completed within 365 days of the Commission's approval of this Agreement. If Gallup is unable to meet this deadline, it will notify the Department prior to expiration of the deadline to seek additional guidance.

### **III. Other Terms and Conditions**

8. Except as otherwise provided herein, the Department reserves the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the WQA and the Regulations for any past, present, or future violations not at issue in this matter. In any such action, Gallup reserves the right to assert any defenses that it may have.

9. The Parties retain the right to enforce this Agreement by administrative or judicial action should the other party fail to comply with its terms, and party against whom enforcement is sought reserves the right to assert any defenses that it may have.

10. **Effective Date:** This Agreement shall become effective on the date that it is approved and a stipulated final order signed by the duly authorized representative of the Commission.

11. **Integration:** This Agreement merges all prior written and oral communications between the Department and Gallup concerning the subject matter of the Agreements and contains the entire agreement between the Department and Gallup.

12. Binding Effect: This Agreement shall be binding upon the Department and its successor agencies and shall be binding upon Gallup and its successors.

**IV. Authority of Signatories**

13. The persons executing this Agreement represent that they have the authority to bind either the Department or Gallup, as appropriate, to this Agreement, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or Gallup to this Agreement.

14. The signatory for NMED is signing through a one-time delegation of authority from the Cabinet Secretary to the Director of the Water Protection Division.

15. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

For the New Mexico Environment Department

By: John Rhoderick Digitally signed by John Rhoderick  
Date: 2023.03.24 15:06:19 -06'00' Date: \_\_\_\_\_

John Rhoderick  
Director  
Water Protection Division

For the City of Gallup

By:  Date: 3-1-2023

Maryann Ustick  
City Manager