

From: [Mary Beth Schubauer](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 10:42:07 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Mary Beth Schubauer and I am a COMMUNITY MEMBER from Albuquerque. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,

Mary Beth Schubauer, PhD

Mary Beth Schubauer
mbspedal@gmail.com
837 Fairway Rd. NW
Albuquerque, New Mexico 87107

From: [Aaron Villalpando](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 1:42:24 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Aaron Villalpando and I am the staff Attorney at the New Mexico Acequia Association. In the matter of the proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Aaron Villalpando
Staff Attorney at NMAA
aaron@lasacequias.org

Aaron Villalpando
aaron@lasacequias.org
1301 Silver Ave SW Apt C
Albuquerque , New Mexico 87102

From: [Alex Griffitts](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 12:53:13 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Alex Griffitts and I am a parciante from Acequia del Medio in San Cristobal, Taos County. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Alex Griffitts

Alex Griffitts
alex@lasacequias.org
50 Paw A Suki Rd
El Prado, New Mexico 87529

From: [Cameron Langner](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 8:03:25 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is [ADD YOUR NAME HERE] and I am a [ADD YOUR ROLE SUCH AS COMMUNITY MEMBER, PARCIANTE, MAYORDOMO, COMMISSIONER, FARMER/RANCHER, STUDENT] from [ADD YOUR TOWN AND/OR ACEQUIA NAME HERE]. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Cameron Langner, MA
cameronlangner@yahoo.com

Cameron Langner
cameronlangner@yahoo.com
837 Fairway Rd NW
Albuquerque, New Mexico 87107

From: [Javier Rios](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 11:24:23 AM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Javier Rios and I am a community member from Alameda/Albuquerque New Mexico and irrigate with the Chamisal Acequia. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Javier Rios

Javier Rios
Javrios@hotmail.com
10413 4th Street NW
Albuquerque, New Mexico 87114

From: [Jennifer Johnson](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 7:41:16 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Jennifer Johnson and I am a community owner from El Rito and Santa Fe. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Jennifer Johnson
(505)470-8555

Jennifer Johnson
jib-chested-0m@icloud.com
605 Sunset St
Santa Fe, New Mexico 87501

From: [Jennifer Beyss](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] WQCC 23-84 (R)
Date: Wednesday, May 15, 2024 12:23:37 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

My name is Jenny Beyss. I'm from Albuquerque, New Mexico. I support a prohibition of the discharge of produced water to ground and surface water in New Mexico.

Thank you,

Jenny Beyss

From: judithmessal@comcast.net
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] WQCC 23-84(R)
Date: Wednesday, May 15, 2024 7:06:42 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Administrator Jones and Commission:

Re: The New Mexico Water Quality Control Commission, Rule-Making Concerning Produced Water Usage (Re: WQCC 23-84 (R))

Lutheran Advocacy Ministry-NM, a voice for just public policy in our state, is grateful that the Water Quality Control Commission wants to protect our waters. We urge the adoption of the rule to protect our ground and surface waters from the discharge of produced water. Whether the water is treated or untreated, it should not be reused outside the oil and gas fields where it originated. Regarding the proposed authorization for the use of produced water in industrial projects, we stand with New Mexico Interfaith Power and Light in calling for the removal of this provision. Due to insufficient scientific information on the safe removal of toxic materials from produced water at this point, industrial-use authorization is premature. We also would like to see the definitions for uses such as agriculture be removed because they are not relevant to this rule-making. As part of ecumenical and interfaith communities which include the New Mexico Conference of Churches, we commit to environmental stewardship and consider the protection of New Mexico's water from contaminants an essential part of our caring for creation.

Judy Messal
Lutheran Advocacy Ministry-NM
575-496-4754

From: [lyla_meadows](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Water is life!
Date: Wednesday, May 15, 2024 12:30:27 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Lyla and I am a small farmer in the South Valley off of the Arenal Main Canal where I grow food for my local community using our ancestral practices of watering from the river. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I demand that the prohibition on discharge to surface and groundwater be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed in its entirety. There is absolutely no reason to kowtow to the climate and ecology destroying gas industry by socializing the costs of their dirty business. Water is life and these toxic chemicals once in our community's water will make their way to the bodies of our fellow New Mexican adults and children -- including yours and mine. I am sickened by the thought that "produced water," a quaint euphemism for minimally treated industrial waste, could be what waters my organic crops. At the bare minimum you all need to

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Don't allow the corrupt gas industry to spit in it.

Sincerely,
Lyla Meadows

lyla meadows
lylajmeadows@gmail.com
2108 Telesfor Dr SW
Albuquerque, New Mexico 87105

From: [Monica Rodriguez](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 12:37:35 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Monica Rodriguez and I am a concerned community member and acequia parciente. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,

Monica T Rodriguez

New Mexico Acequia Association and Concerned Community Member

7455 Sidewinder Dr. NE, Albuquerque, NM 87113

Monica Rodriguez

monicatrodiguez@gmail.com

7455 Sidewinder Dr. NE

Albuquerque, New Mexico 87113

From: [Serafina Lombardi](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 12:21:42 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Serafina Lombardi and I am an Acequia Commissioner, and board member for our regional acequia association from, the Acequia de los Martinez Arriba (Chimayo) and the Rio Quemado, Rio en Medio, Rio Frijoles, Santa Cruz River Stream Systems Acequia Association. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,

Serafina Lombardi

Rio Quemado, Rio en Medio, Rio Frijoles, Santa Cruz River Stream Systems Acequia
Association
505.577.5425

Serafina Lombardi

serafina3333@yahoo.com

8 los Ranchitos
Chimayo, New Mexico 87574

From: [Michael Pacheco](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 1:50:17 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Michael Pacheco and I am a PARCIANTE, COMMISSIONER, from ACEQUIA De Santiago del Alto Del Talco (Mora). In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

- 1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)
- 2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)
- 3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Michael Pacheco
Commissioner
1040 Sioux St.
Los Alamos, NM 87544
michaeldpacheco@hotmail.com

Michael Pacheco
michaeldpacheco@hotmail.com

1040 Sioux St
Los Alamos, New Mexico 87544

From: [Amanda Bramble](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] public comment
Date: Wednesday, May 15, 2024 1:51:39 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Pamela Jones,

Here is my public comment for the produced water rule.

I am writing in support of a complete and clearly stated prohibition against the discharge of untreated and treated produced water to ground and surface water. We don't know what's in the produced water so every precaution must be taken to prevent unknown chemicals from getting into the natural ecologies and human biological systems. I suffer from a medical condition caused by chemicals that found their way into my body. Many people do. We need to protect our health and the health of the environment with strict and transparent rules for any industry using toxic chemicals. Furthermore for any spills of treated produced water during demonstration projects, NMED should promptly and effectively take enforcement action against the violator and require immediate corrective action and cleanup.

We need to move away from relying on the oil and gas industry as it is a major contributor to catastrophic climate change. Our top priority should be transitioning to clean and sustainable energy alternatives to protect our climate, watersheds, and communities.

Thank you,
Amanda Bramble
po box 773
Cerrillos, NM
87010

--

Other places to find me:

website: www.ampersandproject.org

blog: <https://ampersandprojectblog.wordpress.com/>

radio show archives: <https://www.mixcloud.com/andybramble/>

instagram: https://www.instagram.com/ampersand_sustainable_center/

From: [BTNM](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Water Reuse public hearing comments
Date: Wednesday, May 15, 2024 2:29:45 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Hello Pamela,

I would like brief comments on the water reuse issue (remotely, via the webex link) tomorrow afternoon, May 16, in the 1pm - 2pm time period. Is there a time limit or recommendation on length of comments?

Thanks very much,

Larry Sonntag

From: [Eleanor Smith](#)
To: [Jones, Pamela, ENV](#)
Cc: [Jessica](#); [Nicole](#)
Subject: [EXTERNAL] Produced Water Rule, Docket # WQCC-23-84(R)
Date: Wednesday, May 15, 2024 2:09:59 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Yáá'át'éeéh (Hello/Greetings):

My name is Eleanor Smith from Shiprock, NM, and I fully support a prohibition of the discharge of produced water to ground and surface waters in New Mexico. My reasons are as follows:

- NMED has not put forth sufficient data on the safety of using produced water for industrial reuse, outside the oil fields;
- Demonstration projects and studies on the toxicity and treatment of produced water need to have the regulatory guardrails to protect human health and our environment;
- Many of the chemicals in produced water have great potential to cause cancer, developmental, reproductive, and other harmful health effects on humans and other life species;
- A U.S. EPA Study identified 692 ingredients in hydraulic fracturing fluids, 11% of which companies did not disclose to the public;
- Per NMED, there is insufficient data on produced water and treatment methods to discharge untreated or treated produced water into the environment in a way that complies with state water quality standards and protects drinking water, aquatic life, wildlife, recreation, and agriculture.

For all of these reasons and as a Mother Earth Protector on Diné Bikéyah (Navajo lands), I fully support the prohibition of the discharge of produced water to ground and surface waters in New Mexico, as proposed in the Produced Water Rule, Docket # WQCC-23-84(R). Thank you.

Eleanor Smith, Community Organizer
Tó Nizhóní Ání (Sacred Water Speaks) & T'iis Názbas Collaborative Coalition
www.ToNizhoniAni.org

From: [Isabelle Jenniches](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 1:42:45 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Isabelle Jenniches and I am a concerned citizen from Santa Fe. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Isabelle Jenniches
Co-Founder, NM Healthy Soil Working Group
505-231-8471

Isabelle Jenniches
imjenniches@gmail.com
6 Cerrado Loop
Santa Fe, New Mexico 87508

From: [Juliet Gonzales](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 1:56:16 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Juliet Gonzales, and I am a parciante on the Acequia Del Medio, and also, Board Chair of the Chamisal Mutual Domestic Water Consumer Association from Chamisal, NM. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

- 1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)
- 2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)
- 3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Juliet Gonzales
Board Chair, Chamisal Mutual Domestic Water Consumer Association
575-587-3134

Juliet Gonzales
edebardo@yahoo.com
PO Box 113
Chamisal, New Mexico 87521

From: [Kateri Sava](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 2:01:33 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is [ADD YOUR NAME HERE] and I am a [ADD YOUR ROLE SUCH AS COMMUNITY MEMBER, PARCIANTE, MAYORDOMO, COMMISSIONER, FARMER/RANCHER, STUDENT] from [ADD YOUR TOWN AND/OR ACEQUIA NAME HERE]. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Kateri Sava
Sava.kateri@gmail.com

Kateri Sava
sava.kateri@gmail.com
20 Fire Lizard lane
Edgewood, New Mexico 87015

From: [Mary Whiteman](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Rr. Produced Water
Date: Wednesday, May 15, 2024 1:47:22 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Ms. Pam. Jones,

I strongly oppose the Produced Water being used for ANY purpose other than for fracking.

Please stand strong for strict and strong laws to retain pristine water quality in our entire state and country.

Thanking you,
Mary J. Whiteman

From: [Naomi Engelman](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 10:50:23 AM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

New Mexico Water Quality Control Commissioners,

My name is Naomi Engelman and I am a community member from Santa Fe County. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge you to maintain the prohibition on discharge to surface and groundwater and that other problematic and overly broad language on use for agriculture and industrial projects be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

We are already dealing with forever chemicals in New Mexico. Do you really want to be responsible for allowing toxic produced water to enter our food, water, and environment?

Puro agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Naomi Engelman
naomi.engelman505@gmail.com

Naomi Engelman
naomi.engelman505@gmail.com
132 Romero St, Apt 23
Santa Fe, New Mexico 87501-7306

Good morning chair and members of the Commission.

Teresa Seamster, with the National Water Sentinels program and a former college & school administrator for 24 years in Farmington and Santa Fe. Water Sentinels is a national water network with projects in almost all 50 states that conduct water testing and report their seasonal data to the Water Quality Bureaus and Environment Departments in their states.

All of our primary NM rivers have segments that are in trouble.

I have been conducting water testing as a Water Sentinel in several northern NM rivers for the past 10 years and in the Pecos River (our 2nd longest and largest NM river) for the last 5. The upper Pecos River is now considered one of our top quality fishing destination spots in the state and has been restored to outstanding natural resource water eligibility after decades of cleanup - of waste dumping and contamination from the Tererro Mine from the 1930's to the 1990's.

The lower Pecos River that runs through the Permian Basin is a different story. I listened to the testimony on river contaminants by Dr. Pei Xu, Technical expert for the NMPWR Consortium to the Radioactive Hazardous Materials Committee last October. Her Gross Alpha findings and max combined levels of Radium 226/228 at 2-4x the federal standard in Pecos River samples were shocking. Even more shocking is the average produced water level of radioactive elements (Gross Alpha) at over 1105 picocuries per liter and Radium 226-228 at 195 pCi/L combined - when safe levels are 15 and 5 pCi/L respectively.

These untreatable elements are so grossly out of range -- **NO permit to release this liquid waste outside an oil field operation should be allowed.**

Select Water commented Monday on their 17 B gallons of treated and sold water. Treated for what and sold to whom for what use? Enduring Resources has applied for a permit to turn a "production well" into a "PW injection well" ½ mile from the home of a member of the Tri-Chapter Health Committee near Chaco CNHP. That PW is a toxic mix of salts, minerals, and hundreds of toxic trade secret chemicals and requires a state permit for its disposal. Injecting it underground at the rate of 20,000 barrels a day would create a huge toxic dump that may mean the permit gets denied.

We do need responsible rules to increase our water supply in NM – water restrictions on all users and repairing leaky delivery systems would save millions of gals a year. Releasing toxic PW into our overtaxed water system will save nothing and will cost us – everything.

Thank you.

From: [Tony Chacon](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 3:11:58 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Tony Chacon and I am a Land owner, farmer Commissioner of the Acequia de Lod Barriales and Molino and private portable water well owner from La Servilleta Plaza along the Tusas River. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

- 1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)
- 2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)
- 3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincere
Tony j Chacon
Commissioner of
The Acequia de Los Barriales and Molino.
Servilleta plaza
505 330-5896

Tony Chacon
tchacon1@msn.com

104 state Rd 341

La Madera , New Mexico 87539

From: [E. Amba Caldwell](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] docket number WQCC 23-84(R)
Date: Wednesday, May 15, 2024 4:41:32 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

My name is Ellen Caldwell. I'm from Corrales , NM. I support a **prohibition of the discharge of produced water to ground and surface waters in New Mexico.**

This prohibition is extremely important since it hasn't been shown that introducing produced water – treated or untreated – is safe for humans or the environment in our water resources.

Sincerely,
Ellen & David Caldwell
241Bosque Acres Rd
Corrales, NM 87048

From: [DIANE SMITH](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] NM Hearings on fracking produced water
Date: Wednesday, May 15, 2024 7:53:38 AM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Hello Pamela,

I was given your name as a contact person at the state level regarding public comment on the produced water from the fracking industry hearings in committee this week. The opportunity to hear from NM residents is appreciated.

Because of the hundreds of toxic chemicals that this wastewater carries it is clearly unsafe for re-use, storing or dumping onto public lands. Even on private lands, allowing this wastewater to seep back into the underground aquifers is dangerous and unethical. We need to hold the oil and gas industry, who are making record profits from oil extraction, accountable to engage with the science community in realistic ways of containing and storing this toxic water. Please consider the far reaching consequences of allowing them to continue with this unsafe and unsustainable practice!

In short, **I support a prohibition of the discharge of this produced wastewater into surface and ground waters in the state of New Mexico.**

Sincerely,
Diane Smith
Silver City, NM

From: [Laurie Zunner](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Produced water rule docket number WQCC23-84(R)
Date: Wednesday, May 15, 2024 8:19:42 AM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Commissioners,

I support a produced water rule that strictly prohibits the discharge of treated or untreated produced water to ground or surface water. This is necessary because it has not been scientifically demonstrated that produced water, which contains numerous known and unknown toxins, can be treated so it is safe for the public and for the environment.

Industrial use of produced water outside of the oil and gas industries must be prohibited as there is insufficient evidence that its use in industrial projects would be safe and not create an increased risk of spills and accidents.

Furthermore, definitions for "agricultural application" and "flood irrigation application" should be removed from the rule since the rule does not allow the discharge of produced water on land.

I urge you to adopt these changes to the proposed rule to safeguard our land and water and thereby the health of New Mexicans.

Thank you,
Laurie Zunner
Albuquerque, NM

From: [Javier Arellano](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 4:42:45 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Javier Arellano and I am a Commission President from Acequia Junta y Cienega in Embudo, Ne Mexico. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,

Javier Arellano

Acequia Junta y Cienega,

Javier Arellano

P.O Box 96

Embudo, NM 87531

505-423-5627

Javier.p.arellano@icloud.com

Javier Arellano

javier.p.arellano@icloud.com
SR 75 Drive 1105 69A
Embudo, New Mexico 87531

From: [Jorge M Midon](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 9:14:02 AM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is [ADD YOUR NAME HERE] and I am a [ADD YOUR ROLE SUCH AS COMMUNITY MEMBER, PARCIANTE, MAYORDOMO, COMMISSIONER, FARMER/RANCHER, STUDENT] from [ADD YOUR TOWN AND/OR ACEQUIA NAME HERE]. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments

Sincerely,

Jorge Midon

Mayordomo Acequia del Rincon, Embudo NM

jorgemidon@gmail.com

Jorge M Midon

jorgemidon@gmail.com

P.O.Box 2824

Santa FE, New Mexico 87504

From: [margo byrne](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Potable water
Date: Wednesday, May 15, 2024 8:23:38 AM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Life will CEASE without clean water!!!!

From: [Monica Trujillo](#)
To: [Jones, Pamela, ENV](#)
Subject: [EXTERNAL] Protect water - Keep prohibition on discharge of produced water
Date: Wednesday, May 15, 2024 5:43:11 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

WQCC Administrator Pamela Jones,

Dear New Mexico Water Quality Control Commissioners,

My name is Monica Trujillo and I am a parciante and commissioner from Acequia del Barranco BLanco. In the matter of proposed new rule 20.6.8 NMAC – Ground and Surface Water Protection - Supplemental Requirements For Water Reuse, I strongly urge that the prohibition on discharge to surface and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed.

1) Prohibit the discharge of reused produced water to surface or groundwater resources. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2) Removal of definitions for uses such as agriculture that are not consistent with this prohibition. Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, and acequias. (Section 20.6.8.7)

3) Remove language for use of reused produced water for industrial projects. The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

El agua es vida! Thank you for your careful consideration of my comments.

Sincerely,
Monica Trujillo
Acequia del Barranco Blanco

Monica Trujillo
pojoaquena@juno.com
1757 NM 502
Santa Fe, New Mexico 87506

State of New Mexico
Energy, Minerals and Natural Resources Department

Michelle Lujan-Grisham
Governor

Melanie A. Kenderdine
Cabinet Secretary

Dylan M. Fuge
Deputy Secretary

Dylan M. Fuge Division Director (Acting)
Oil Conservation Division



**The Oil Conservation Division’s comment on the New Mexico Environment Department’s
Water Reuse Regulations, Ground and Surface Water Protection – Supplemental
Requirements for Water Reuse (20.6.8 NMAC)**

May 13, 2024

Pamela Jones
WQCC Administrator
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502
(505) 660-4305
pamela.jones@env.nm.gov

Dear Administrator Jones,

Please accept the following as the official comment by the New Mexico Oil Conservation Division (“OCD”) concerning the New Mexico Environment Department’s (“NMED”) proposed **Water Reuse** Regulations, Ground and Surface Water Protection – Supplemental Requirements for Water Reuse, 20.6.8 NMAC (“proposed rule”):

As a preliminary matter, OCD does not object to NMED’s proposed rule and takes the position that the proposed rule is consistent with OCD obligations under the Oil and Gas Act, OCD’s own regulations, and OCD and the Water Quality Control Commission’s (“WQCC”) July 21, 1989, delegation agreement (“delegation agreement”). The purpose of these comments is to explain OCD’s understanding of the proposed rule and its position on it.

I. Authorities, generally.

Pursuant to the Oil and Gas Act (“OGA”), particularly § 70-2-12(B)(21)-(22) NMSA, OCD possesses the authority to regulate the disposition of non-domestic waste (e.g. sanitation waste) resulting from a host of oil and gas related operations, including administration of the Water Quality Act (“WQA”). Similarly, § 70-13-3(A) NMSA grants OCD the exclusive authority to regulate produced water pursuant to the remainder of the OGA. With regard to OCD’s jurisdiction, the WQA states that it “does not apply to any activity or condition subject to the authority of the oil conservation commission pursuant to the provisions of the OGA and other laws conferring power on” the OCC to deal with water pollution. § 74-6-12 NMSA.

The delegation agreement, which is attached hereto as Exhibit 1, outlines the respective roles of the WQCC and OCD in relation to the WQCA. The WQCC and OCD agreed that OCD would “administer and enforce applicable Commission regulations pertaining to surface and ground water discharges at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities, natural gas transmission lines, and discharges associated with activities of the oil field service industry.” Further, the delegation agreement confirmed that OCD has jurisdiction over “all activities associated with the exploration for or development, production, transportation before refinement, refinement, storage or treatment of unrefined oil and natural gas, or oil or gas products on refinery premises.” Finally, the delegation agreement delegated administration and enforcement of WQCC “regulations at brine manufacturing operations and concerning discharges to ground or surface water at brine manufacturing operations, including all brine production wells, holding ponds, and tanks. . . jurisdiction over all manufactured brine once it is transported, used or disposed of off brine plant premises for use in or directly related to oil and gas operations regulated by OCD. . .”

The NMED’s proposed rule, as a general principle, proposes to regulate “[a]ll persons subject to the Water Quality Act. . .and specifically to persons intending to reuse waste water and their operations.” 20.6.8.2 of the proposed rule. Proposed regulation 20.6.8.6 provides that the overall proposed rule is intended to supplement 20.6.2.2201 and 20.6.2 NMAC, generally. Proposed regulation 20.6.8.201 prohibits discharge permits and discharge permit modifications that include discharges for water reuse for direct or indirect potable applications, with exception for certain and specified feasibility studies. Proposed regulation 20.6.8.400(A) sets forth regulations, pursuant to § 70-13-3 NMSA (presumably subparagraph (B)), that prohibit the discharge of treated and untreated produced water to either surface or groundwater. Subparagraph (B) of proposed regulation 20.6.8.400 provides exceptions to Subparagraph (A), allowing certain projects to be permitted under specified conditions. As explained below, OCD does not believe these provisions, as proposed, would change the existing balance between OCD and NMED concerning the management of produced water or the reuse of produced water or treated produced water that is intend for use within oil and gas operations.

II. The proposed rule does not interfere with OCD’s authority concerning discharges and permits.

OCD does not have concerns about NMED’s proposed rule interfering with OCD’s obligations and duties pursuant to statute and regulatory law. OCD maintains independent authority under the §§ 70-2-12(B)(21)-(22) and 70-13-3(A) NMSA to address produced water, its reuse within oil and gas, and discharges from oil and gas activities. Further, the WQA, under which NMED proposes the proposed rule, specifically provides a carve-out for OCD authority to regulate the same, thereby limiting the authority of the NMED in that area. § 74-6-12 NMSA.

The WQCC and OCD further clarified this division of jurisdiction in the delegation agreement, reserving to OCD the authority to enforce WQCC regulations pertinent to oil and gas activities, to the point of providing a lengthy, but non-exhaustive, sets of examples of oil and gas activities over which OCD has jurisdiction. *See* delegation agreement at pp. 1-3. The proposed rule is consistent with that division of responsibility.

Finally, per proposed regulation 20.6.8.6, NMED specifically identified other NMED regulations to be supplemented by the proposed rule. Aside from the fact the OGA and WQA provides OCD with specific regulatory authority, the regulations cited in proposed regulation

20.6.8.6 do not govern OCD regulated activities. For example, proposed regulation 20.6.8.6 references 20.6.2.2201 NMAC, a broad rule that prohibits disposal of refuse in such a way as to impact natural watercourses. 20.6.2.10 NMAC, which outlines limitations to the enforcement of Title 20, Chapter 6, Part 2, specifically states in subparagraph (A) that the OCD retains its authority pursuant to § 70-2-12 NMSA. Based on the foregoing, OCD's authority concerning discharges and permits, should NMED's proposed rule be adopted as proposed, would not be altered or adversely affected.

III. OCD's jurisdiction is not hampered by the proposed rule.

OCD's jurisdiction to regulate the disposition of non-domestic waste from oil and gas related operations, pursuant to § 70-2-12(B)(21)-(22) NMSA, would not be affected by the proposed rule. OCD's position is that, for example, refineries and the oil field service industries (among other fields tied to oil and gas production) are encompassed by § 70-2-12 NMSA and, therefore, are under the jurisdiction of OCD.

The proposed rule does not infringe upon OCD's authority given the statutory delineation of authority found in multiple statutes. *See* § 70-13-3 NMSA; *see also* § 72-2-12 NMSA. For example, OCD's regulations concerning discharge permits address only those industries over which OCD has statutory authority. 19.15.36.12 NMAC. The above statutes and regulation, when viewed in tandem with the delegation agreement, ensure that OCD retains its jurisdiction over produced water.

IV. Summary

OCD supports NMED's proposed regulations and recognizes that they represent an important step towards implementation of the Produced Water Act. The proposed regulations do not undermine, alter, or otherwise change OCD's authority over produced water used in oil and gas activities. OCD appreciates the Commission's consideration of these comments.

Regards,

Dylan Fuge
Deputy Secretary
Oil Conservation Division Director (Acting)

ATTACHMENT II

WATER QUALITY CONTROL COMMISSION

DELEGATION OF RESPONSIBILITIES TO
ENVIRONMENTAL IMPROVEMENT DIVISION AND
OIL CONSERVATION DIVISION

In an effort to prevent duplication of effort and to clarify the division of responsibilities pursuant to the provisions of the Water Quality Act, NMSA Sections 74-6-1 et seq. (1978), as administered and enforced by the Water Quality Control Commission, the Commission hereby approves the following list of delegated duties and responsibilities for two of the agencies that are constituent agencies to which authority can be delegated, the Environmental Improvement Division ("EID") and the Oil Conservation Division ("OCD"). The Commission is specifically authorized to take this action by NMSA Section 74-6-4E (1978) and by other general provisions of the Water Quality Act. The Commission notes that pursuant to NMSA Section 74-6-9C (1978), constituent agencies may "report to the Commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report." The Commission encourages OCD and EID to continue close communication and cooperation where responsibility is unclear, to ensure that water pollution is prevented or abated quickly, efficiently and consistently. In situations involving discharges or facilities under the jurisdiction of both agencies, the agencies shall mutually agree which shall be the lead agency and shall determine the method by which the discharge plan shall be evaluated and approved. In preparing this delegation statement, the Commission is cognizant of the limitations imposed on its authority by the Water Quality Act, especially NMSA Section 74-6-12G (1978) which prohibits it from taking any action which would "interfere with the exclusive authority of the Oil Conservation Commission over all persons and things necessary to prevent water pollution as a result of oil or gas operations...."

This delegation shall supersede all previous delegations to EID and OCD; reference to the dates and minutes of Commission meetings in which previous delegations were made are in parentheses and the minutes are attached. The specific grants of authority are not intended to be comprehensive. When a question of authority and jurisdiction arises, which is not specifically delegated, the general provisions below shall control.

1. General Provisions

As a general rule, OCD will administer and enforce applicable Commission regulations pertaining to surface and ground water discharges at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities, natural gas transmission lines, and discharges

associated with activities of the oil field service industry. The Commission recognizes that OCD also administers regulations under both the Oil and Gas Act and the Geothermal Resources Act, and that OCD shall have discretion as to which regulations to enforce in any given situation. OCD shall have jurisdiction over all activities associated with exploration for or development, production, transportation before refinement, refinement, storage or treatment of unrefined oil and natural gas, or oil or gas products on refinery premises.

EID will administer and enforce Commission regulations regarding discharges from transmission, transportation and storage facilities for oil or oil by-products after refinement including but not limited to gasoline stations, except those within refinery premises. EID will administer and enforce all Commission regulations pertaining to all other discharges to surface and ground water which are not specifically delegated to other departments and agencies. (Source: 1/13/69 and 5/8/84 Commission minutes)

2. Specific Grants of Authority

A. EID shall certify Section 404 dredge and fill material permits under the Clean Water Act ("CWA"). (Source: 1/13/76 and 6/14/83 Commission minutes)

B. EID shall administer the Wastewater Construction Grants program pursuant to Section 205 of the CWA. (Source: 6/14/83 Commission minutes)

C. EID shall certify NPDES permits pursuant to Title IV of the Federal Water Pollution Control Act Amendments of 1972 and S402 of the CWA. (Source: 1/1/74 and 8/14/84 Commission minutes)

D. EID shall certify hydropower licenses issued by the Federal Energy Regulatory Commission. (Source: 8/14/84 Commission minutes)

E. EID shall administer and enforce Commission regulations pertaining to the disposal of human excrement and bath water at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities and natural gas transmission lines when the treatment facilities for the sewage are a separate and isolated discharge unmixed with any produced water, oil field waste or oil field service waste. (Such an isolated discharge would include: a small sewage treatment plant, package plant, or septic tank and drainfield.) If, on the other hand, sewage is in a discharge combined or mixed with produced water, oil field waste or oil field service waste, OCD shall have jurisdiction. (Source: 5/8/84 Commission minutes)

F. OCD shall administer and enforce Commission regulations at brine manufacturing operations and concerning discharges to ground or surface water at brine manufacturing operations, including all brine production wells, holding ponds and tanks. OCD shall have jurisdiction over all manufactured brine once it is transported, used or disposed of off brine plant premises for use in or directly related to oil and gas operations regulated by OCD. OCD shall regulate brine injection through its Class II Underground Injection control (UIC) Program if the brine is used in the drilling for or production of oil and gas. EID shall regulate brine injection through its UIC Program if the brine is used for other purposes. (Source: 6/13/89 Commission minutes)

G. EID shall administer and enforce all programs implemented by the state under PL 92-500 (The Federal Water Pollution Control Act) and its Amendments, unless directed otherwise by the Commission. (Source: 7/8/75 Commission minutes)

H. OCD shall have general jurisdiction over the oil field service industry. Many activities that would ordinarily be regulated by EID are regulated by OCD when those activities occur in the oil field service industry. The following list, which is not intended to be inclusive, serves to help clarify this delegation:

<u>OCD</u>	<u>EID</u>
waste oil handled or processed by oil field service companies or treating plants	used motor oil handlers
all underground and above-ground tanks on refinery premises, unless the tanks contain unmixed sewage; all underground and above-ground tanks not on refinery premises which contain crude petroleum, produced water or oil field service chemicals	all underground and above-ground tanks not on refinery premises, unless the tanks contain crude petroleum, produced water or oil field service chemicals
tanker trucks hauling, spilling or disposing of well-service chemicals, kill water, produced water, crude oil, tank bottom sludge and other oil field wastes and oil field service materials	tanker trucks spilling or disposing of non-oil and gas production wastes, non-oil and gas service materials, or refined petroleum products
washings from trucks and other equipment used in the transport, production or refining of oil and gas crude products, production wastes or service materials	washings from trucks and other equipment not used for oil and gas production related purposes

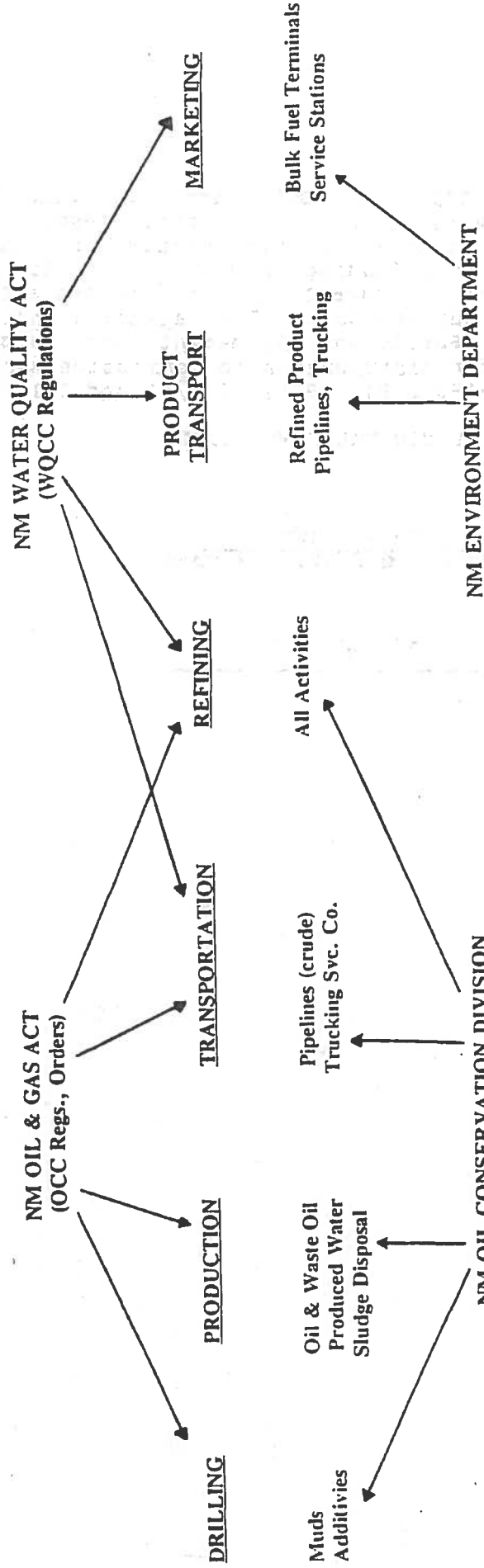
Both EID and OCD are authorized to continue to take appropriate legal action in their respective areas of delegation (including initiating proceedings in court) on behalf of the Commission on a finding of good cause to believe any person is violating or is threatening to violate a Commission regulation or the Water Quality Act. The agencies shall send a copy of each Complaint, Settlement Agreement and Judgment to the Commission Secretary for distribution to Commission members. (Source: NMSA Section 74-1-8.2(B) (1978), 2/8/71 and 1/11/83 Commission minutes)

WATER QUALITY CONTROL COMMISSION

Richard Mitzelfelt
By: Richard Mitzelfelt, Chairman

July 21, 1989
Date

REGULATORY AUTHORITY



ADMINISTRATING AGENCY

State Fresh Water Protection Programs-Oil

REGULATORY AUTHORITY

NM GEOTHERMAL RESOURCES ACT
(OCC Regs., Orders)

DRILLING

Muds
Additives

PRODUCTION

Recirculation Water

NM WATER QUALITY ACT*
(WQCC Regulations)

STORAGE/DISPOSAL

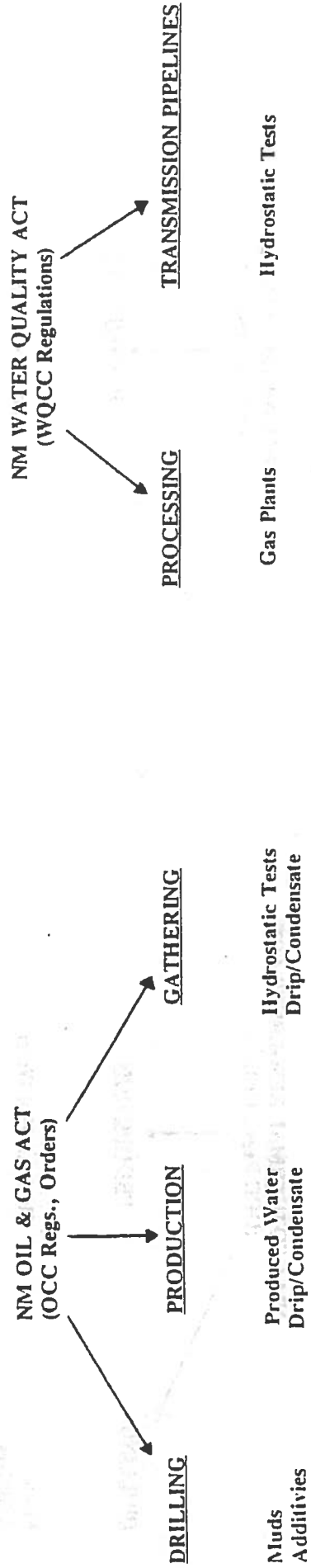
Cooled Water Residue

NM OIL CONSERVATION DIVISION
(All Activities)

ADMINISTRATING AGENCY

* Although both statutes are applicable to all activities, in practice the Water Quality Act is more likely to be applied only to disposal activities with the Geothermal Resources Act protecting fresh water from drilling and production activities.

REGULATORY AUTHORITY



**NM OIL CONSERVATION DIVISION
(All Activities)**

State Fresh Water Protection Programs-Natural Gas and Carbon Dioxide

ADMINISTRATING AGENCY

TABLE 1--SUMMARY OF NEW MEXICO ACTS APPLICABLE TO AND ADMINISTRATIVE AGENCIES RESPONSIBLE FOR UNDERGROUND INJECTION CONTROL

EPA UIC WELL CLASSIFICATION (40 CFR, PART 146.05)	NM STATUTORY AUTHORITY				NM ADMINISTRATIVE AGENCY			
	WATER QUALITY ACT (74-6-1 through 74-6-13 NMSA 1978)	OIL AND GAS ACT (70-2-1 through 70-2-38 NMSA 1978)	GEOTHERMAL RESOURCES CONSERVATION ACT (71-5-1 through 71-5-24 NMSA 1978)	SURFACE MINING ACT (69-25A-1 through 69-25A-35 NMSA 1978)	EID ¹ (ALL WQCC REGS)	OC ¹	OC ¹	CSMB ¹
Class I	X	--	--	--	X	X ² (WQCC REGS)	--	--
Class II	--	X	--	--	--	X (OIL & GAS RULES)	--	--
Class III	X	--	--	--	X	X ² (WQCC REGS)	--	--
Class IV	X	--	--	--	X	X ² (WQCC REGS)	--	--
Class V (1)	X ₃	--	--	--	X	X ² (WQCC REGS)	--	--
(2)	X	--	--	--	X	X ² (WQCC REGS)	--	--
(3)	X	--	--	--	X	--	--	--
(4)	X	--	--	--	X	--	--	--
(5)	X	--	--	--	X	--	--	--
(6)	X	--	--	--	X	--	--	--
(7)	X	--	--	--	X	--	--	--
(8)	X ₃	--	--	--	X	--	--	--
(9)	X	--	--	--	X	--	--	--
(10)	X	--	--	--	X	--	--	--
(11)	X	--	--	--	X	--	--	--
(12)	--	--	X	--	--	X (GEOTHERMAL RULES)	--	--
(13)	X	--	--	--	X	--	--	--
(14)	X	--	--	--	X	X (WQCC REGS OR GEOTHERMAL RULES)	X (SURFACE COAL MNG REGS)	X (SURFACE COAL MNG REGS)
(15)	X	--	X	--	X	X ⁴ (WQCC REGS)	X (SURFACE COAL MNG REGS)	X (SURFACE COAL MNG REGS)
(16)	X	--	--	--	X ⁴	X ⁴ (WQCC REGS)	X (SURFACE COAL MNG REGS)	X (SURFACE COAL MNG REGS)

- Abbreviations: CSMB - Coal Surface Mining Bureau of the Mining and Milling Division, Energy and Minerals Department
EID - Environmental Improvement Division of Health and Environment Department
OC¹ - Oil Conservation Division of the Energy and Minerals Department
WQCC - Water Quality Control Commission
- The OC¹ administrators WQCC Regulations as they pertain to discharges at refineries and natural gas transmission lines, and solution mining of salt.
- The WQCC Regulations cover all domestic septic and cesspool systems with capacity of 2,000 gallons per day or more (20 persons @ 100 gallons per day), and all non-domestic systems (any quantity).
- No injection wells for lignite, tar sands or oil shale are currently in existence in New Mexico; oil shale wells will be regulated by the WQCC Reqs. Lignite wells by the CSMB, and tar sands by the EID.



Veterans For Peace

Donald and Sally-Alice Thompson Chapter #63
Albuquerque, New Mexico

John E. Wilks, III
Vice President, Chapter #63 VFP
1115 Republic Road
Winston, NM 87943

May 15, 2024

Ms. Pamela Jones, Commission Administrator
New Mexico Water Quality Control Commission (NMWQCC)
Via Email at "pamela.jones.env.nm.gov"

Re: In the Matter of Proposed Rule 20.6.8 NMAC—Ground and Surface Water Protection—Supplemental Requirements for Water Reuse

Dear Board Members:

We oppose adoption of Rule 20.6.8 (Reuse of Fracking Fluids) on the basis of the potential risks to the health and safety to residents, workers, consumers, wildlife, and the environment.

Fracking slurry is not water! Rather, it is a carcinogenic amalgamation of water and industrial chemicals and compounds designed to act as a solvent of subterranean soils and geologic structures. As a result of endless lobbying over many decades by the mineral extraction industries, primarily the oil and gas contingent, the US Congress has ordered federal regulators to grant exemptions and waivers from the disclosure to the public of the composite components of fracking slurry. Industry has hidden behind claims of propriety formulae and so-called trade secrets to deprive the public of common sense transparency and vital information which, if disclosed would inform the public and health professionals in addition to regulators.

Now industry, professional lobbyists, and their political friends come to the Board with a scheme to solve a waste challenge by drillers proposing a "water" reuse scheme. Industry proposes that the Board authorize fracking waste reuse in "demonstration projects" or "industrial projects" for agriculture, irrigation, potable water supplies, aquifer re-

charge, industrial processes or environmental restoration,” without delineating any scientific water quality or treatment standards to safeguard public health and the environment.

Fracking introduces toxic chemicals into the subterranean earth as well as excavating radium and other naturally occurring hazardous chemicals, to the surface. Toxic fracking waste (aka “produced” water) contains toxic chemicals, both known and unknown. Fracking waste contains not only toxic and hazardous pollutants, but also radiation. This radioactive material is known as NORM, or “naturally occurring radioactive materials.” When it has been concentrated or exposed to the environment by industrial activities, it is called “technologically enhanced” NORM, or TENORM.

Radioactivity brought to the surface in oil and gas production and the many different pathways of contamination poses an extreme health risk to the industry’s workers, the public and communities, and the environment. Failure to properly control and dispose of the radionuclides contained in fracking slurry pose an enormous risk to our land, water, and health in New Mexico.

We urge the Board to reject the proposed Rule 20.6.8. The Board should protect water quality by assuring policies, measures and standards are in place by taking actions as follows:

1. prohibiting the discharge, reuse, and disposal of all produced water, treated or untreated outside the oil field, and
2. designating hazardous waste from oil and gas production as hazardous waste, and
3. requiring drillers and frackers to disclose the chemical makeup of all fracking solutions and to receive permit from the NMED prior to conducting fracking operations.

Respectfully submitted,

/s/

John E. Wilks, III
Vice President
Chapter #63 (ABQ)
Veterans For Peace

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

IN THE MATTER OF PROPOSED NEW
RULE 20.6.8 NMAC – *Ground and Surface
Water Protection - Supplemental Requirements
For Water Reuse*

Docket No. WQCC 23-84(R)

NEW MEXICO ENVIRONMENT DEPARTMENT,
WATER PROTECTION DIVISION,

To: Pamela Jones, WQCC Administrator New Mexico
Environment Department Harold Runnels Building
P.O. Box 5469 Santa Fe, NM 87502

**Vidal E. Gonzales (Tribal Member of Santa Clara Pueblo) COMMENTS IN THE MATTER
OF PROPOSED NEW RULE 20.6.8 NMAC – *Ground and Surface Water Protection -
Supplemental Requirements For Water Reuse***

New Mexico is home to land based communities, lands grants, acequias, and tribal nations where intergenerational families continue to be stewards of the water and land. Protecting clean water for New Mexican communities is of utmost concern as caretakers of our waters and lands. To the tribal nations of the state the waters of New Mexico have always been sacred sites themselves and the water has always been used in cultural rights and practices. I urge the Water Quality Control Commission (WQCC) to ensure that New Mexico is governed by rigorous water quality protections, including stronger language in the proposed regulations for reuse of wastewater from oil and gas, referred to as produced water. My recommendations are as follow:

1. Prohibit the discharge of reused produced water to surface water or groundwater resources.

This includes the prohibition of discharging produced water to surface water or groundwater resources for any uses such as, but not limited to, agriculture. Furthermore, produced water should not be discharged into surface water or groundwater to prohibit the degradation of tribal sacred sites or contaminate water for its use in cultural rights and practices. Due to the cultural significance of water in American Indian cultural rights and practices, that New Mexico waters are sacred sites to American Indians, that produced water can negatively impact American Indian sacred sites, and that New Mexico waters runs through federal lands must take into consideration the American Indian Religious Freedom Act, the First Amendment, the State-Tribal Collaboration Act, NMSA 1978, § 11-18-1 etseq., and uphold the state's duty to conduct just government-to-government relationships. The current proposed rule contains this prohibition and also states that any federal permit that allows discharge of produced water to surface or groundwater will be denied by the state. This language in the rule must be retained. (Section 20.6.8.400.A)

2. Removal of definitions for uses such as agriculture that are not consistent with this prohibition.

Any language (which appears limited to the definitions section) for use of reused water for agriculture, environmental buffers, food crop applications, and other similar language should be removed from the rule to be absolutely clear that there will be no discharges for uses on land, rivers, sacred sites, and acequias. (Section 20.6.8.7) Furthermore, it is a substandard practice in law/rulemaking to include definitions in a law that are never referenced in the body of the law/rule itself (see Exhibit 3).

3. Remove language for use of reused produced water for industrial projects or limit the use only to projects in the oilfield.

The proposed rule would allow using reused produced water for industrial projects all over the state. There is no credible scientific data showing that current technology can reduce the toxic chemicals in produced water to safe levels. Even trace amounts of toxins can pose health risks. (Section 20.6.8.400.B)

In summary, I strongly urge that the prohibition on discharging produced water to surface water and groundwater will be retained and that other problematic and overly broad language on use for agriculture and industrial projects will be removed. The attached exhibits must be used as comments and suggested changes to RULE 20.6.8 NMAC – *Ground and Surface Water Protection - Supplemental Requirements For Water Reuse*. In the attached exhibits, you will find the proposed changes to 20.6.8 NMAC by Vidal E. Gonzales of Santa Clara Pueblo and a handbook titled “Legislative Council Service Legislative Drafting Manual (2015) [excerpts].”

Thank you for your consideration.

With Respect,
Vidal E. Gonzales
Vidal Gonzales
5/15/2024

Exhibit	Description
Ex. 1	Vidal E. Gonzales of Santa Clara Pueblo’s Proposed Amendments to 20.6.8 NMAC in redline/strikeout
Ex. 2	Vidal E. Gonzales of Santa Clara Pueblo’s Proposed Amendments to 20.6.8 NMAC accepting all changes
Ex. 3	Legislative Council Service Legislative Drafting Manual (2015) [excerpts]

EXHIBIT 1

**VIDAL E. GONZALES OF SANTA CLARA PUEBLO'S PROPOSED AMENDMENTS TO NMED'S MARCH 20,
2024 AMENDED PROPOSED RULE**

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 6 WATER QUALITY
PART 8 GROUND AND SURFACE WATER PROTECTION –
SUPPLEMENTAL REQUIREMENTS FOR WATER REUSE**

*Vidal E. Gonzales of Santa Clara Pueblo recommends deleting all definitions of terms not used in the rule, including terms only used in other definitions. Defined terms not used in the rule are **highlighted**.*

20.6.8.1 ISSUING AGENCY: Water Quality Control Commission.
[20.6.8.1 NMAC - N, mm-dd-yy]

20.6.8.2 SCOPE: ~~This rule applies to all~~ **All** persons subject to the Water Quality Act, ~~NMSA 1978,~~ Sections 74-6-1 through 74-6-17 ~~NMSA,~~ and specifically to persons intending to reuse wastewater and their operations.
[20.6.7.2 NMAC - N, mm-dd-yy]

20.6.8.3 STATUTORY AUTHORITY: Standards and regulations are adopted by the commission under the authority of the Water Quality Act, ~~NMSA 1978,~~ Sections 74-6-1 through 74-6-17 ~~NMSA 1978,~~ and the Produced Water Act, ~~NMSA 1978,~~ Subsection B of Section 70-13-3 and Subsection D of Section 70-13-4 ~~NMSA 1978.~~
[20.6.8.3 NMAC - N, mm/dd/yy]

20.6.8.4 DURATION: Permanent.
[20.6.8.4 NMAC - N, mm-dd-yy]

20.6.8.5 EFFECTIVE DATE: Month Day, Year, unless a later date is cited at the end of a section.
[20.6.8.5 NMAC - N, mm-dd-yy]

20.6.8.6 OBJECTIVE: The objective of 20.6.8 NMAC is to supplement the general requirements of 20.6.2.1200 through 20.6.2.2201 NMAC and 20.6.4.8 through 20.6.4.900 NMAC, and the general groundwater permitting requirements of 20.6.2.3000 through 20.6.2.3114 NMAC to control the discharges of water contaminants specific to water reuse.
[20.6.8.6 NMAC - N, mm-dd-yy]

20.6.8.7 DEFINITIONS: The following terms as used in this ~~p~~**P**art shall have the following meanings. ~~Terms defined in the Water Quality Act, but not defined in this p~~**P**art, ~~shall will~~ have the meaning given in theact.

A. Terms beginning with numerals or the letter “A,” and abbreviations for units.

(1) ~~“Agricultural application” means the application of reuse water for cultivating the soil and growing crops or irrigating pasture for livestock grazing. Agricultural application includes the use of water in connection with the operation or maintenance of feedlots or animal feeding operations (“AFOs”), but not those activities defined as livestock application.~~

(2) **“Application”** means a final disposition of a treated wastewater for reuse. Applications include, ~~but are not limited to~~ industrial, ~~agricultural,~~ direct potable, indirect potable, recreational turf, rangeland, or ecological restoration water reuse. ~~Applications may have effluent criteria to protect ground water, surface water, and aquatic health.~~

B. Terms beginning with the letter “B”.

(1) **“Bench-scale project”** means a project or study conducted in a laboratory.

C. Terms beginning with the letter “C”.

(1) ~~“Commercial application” means the application of reuse water in connection with any activity that provides, or offers to provide, goods or services for incidental use, such as but not limited to car washes, laundry facilities, window washing, chemical mixing, where public access is not restricted or limited.~~

D. Terms beginning with the letter “D”.

(1) **“Demonstration project”** means a bench-scale or pilot project, as defined in this Part.

(2) **“Department”** means the New Mexico environment department.

(3) ~~“Direct potable application” means the delivery of purified water to a drinking water plant or a drinking water distribution system without an environmental buffer. Additional treatment, monitoring, or an engineered buffer would be used in place of an environmental buffer to provide equivalent protection of public health and response time if the purified water does not meet specifications.~~

(4) **“Discharge permit”** as defined in 20.6.2 NMAC.

(5) ~~“Discharge plan” as defined in 20.6.2 NMAC.~~

(6) ~~“Discharge site” as defined in 20.6.2 NMAC.~~

(7) **“Disposal”** as defined in 20.6.2 NMAC.

(8) **“Domestic wastewater”** means untreated wastewater containing human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to, wastes from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains.

E. **Terms beginning with the letter “E”.**

(1) ~~“Environmental buffer” means any ground water, streams, lakes, or impoundments used for reuse water storage or conveyance purposes related to an indirect potable application.~~

F. **Terms beginning with the letter “F”.**

(1) **“Feasibility study”** means a study conducted by a person to determine if a new or modified domestic wastewater treatment technology will be technically, economically, or financially viable for use in a ~~direct or indirect~~ potable application.

(2) **“Flood irrigation application”** means land application of reuse water by ditches, furrows, pipelines, low flow emitters, and other non-sprinkler methods.

(3) ~~“Flowback water” means the fluid returned after the hydraulic fracturing process is completed, where the internal pressure of the rock formation causes fluid to return to the surface through the wellbore. Flowback water is a component of produced water.~~

(4) ~~“Food crop application” means application of reuse water to domestic plants which are produced for the purpose of or may be used in whole or in part for, consumption by people or livestock, including, but not limited to nursery, root, seedstock to be used for the production of food crops.~~

(5) ~~“Formation water” means water that occurs naturally within the pores of rock.~~

G. **Terms beginning with the letter “G”.**

(1) **“Ground water”** as defined in 20.6.2 NMAC.

H. **Terms beginning with the letter “H”.**

(1) ~~“Hydraulic fracturing” means a technique that fractures a rock formation by pumping large quantities of fluids at high pressure down a borehole and into a target rock formation, which stimulates the flow of natural gas or oil, increasing the volumes that can be recovered. Fractures are created by pumping large quantities of fluids at high pressure down a wellbore and into the target rock formation. Hydraulic fracturing fluid, also referred to as fracking fluid, commonly consists of water, proppant, and chemical additives that open and enlarge fractures that can extend several hundred feet away from the wellbore. This technique is generally used in unconventional oil and gas production.~~

I. **Terms beginning with the letter “I”.**

(1) ~~“Indirect potable application” means the application of reclaimed wastewater for drinking water purposes with an intermediary environmental or constructed buffer.~~

(2) ~~“Industrial application” means the application of reuse water in any activity that is used in connection with industrial processes, such as alternative energy, hydrogen production, cooling water, process/boiler feeds, utility power plants, chemical plants, and metal working facilities where at a minimum, public access is restricted or limited.~~

(3) **“Industrial project”** means a reuse water project that does not discharge to ground or surface water and that is used in connection with industrial processes, such as alternative energy, hydrogen production, cooling water, process/boiler feeds, utility power plants, chemical plants, and metal working facilities where ~~at a minimum,~~ public access is restricted or limited.

(4) ~~“Injection” as defined in 20.6.2 NMAC~~

(5) ~~“Irrigation application” means application of reuse water to land areas to foster plant growth.~~

J. **Terms beginning with the letter “J”.** [RESERVED]

K. **Terms beginning with the letter “K”.** [RESERVED]

L. **Terms beginning with the letter “L”.**

(1) **“Land application”** means the application of reuse water to the ground surface in which no other application has been assessed and to which the application or run-off does directly or indirectly enter a surface or ground water of the state.

(2) **“Livestock application”** means the application of reuse water for the consumption of—

~~water for the care and feeding of domestic animals such as cattle or horses. Livestock application does not include the use of water in connection with the operation or maintenance of feedlots or agricultural application of water.~~

M. Terms beginning with the letter “M”. [RESERVED]

N. Terms beginning with the letter “N”.

(1) **“National Pollutant Discharge Elimination System”** means the federal program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the federal Clean Water Act. The NPDES program is administered by the United States Environmental Protection Agency (EPA) in the State of New Mexico.

(2) **“NTU”** means nephelometric turbidity units, measured by a nephelometer.

(3) **“NPDES permit”** means a national pollutant discharge elimination permit which is an authorization, license, or equivalent control document issued by the authorized permitting entity to implement the requirements of the federal program as identified in 40 C.F.R. Sections 122, 123, and 124.

O. Terms beginning with the letter “O”. [RESERVED]

P. Terms beginning with the letter “P”.

(1) **“Person”** as defined in 20.6.2 NMAC.

(2) **“Pilot project”** means a representative engineering scale model or prototype system that is beyond the bench-scale and tested in a non-laboratory environment. A pilot project represents an increase in the technological scale than otherwise achievable in a laboratory and often involves larger quantities of materials over longer periods of time.

(3) **“Potable”** ~~means describes~~ water that is suitable for human consumption that meets state drinking water standards at 20.7.10 NMAC.

(4) **“Potable application”** means the delivery to a drinking water plant or a drinking water distribution system of reuse water that has been purified to remove all contaminants.

(4) **“Pretreatment”** ~~means the reduction, elimination, or alteration of pollutants in wastewater prior to or in lieu of discharging into a publicly owned treatment works (POTW) or other wastewater treatment facility. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or by other means. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against volumetric or pollutant surges or load variations that might interfere with or otherwise be incompatible with the treatment facility.~~

(5) **“Produced water”** means a fluid ~~or (wastewater)~~ that is an incidental byproduct from drilling for or the production of oil and gas, and includes formation water, flowback water, and any chemicals added downhole during drilling, production, or maintenance processes during the life cycle of an oil or gas well. Produced water includes known and unknown water pollutants.

Q. Terms beginning with the letter “Q”. [RESERVED]

R. Terms beginning with the letter “R”.

(1) **“Reclaimed wastewater”** means domestic wastewater that has been treated to the specified levels for the defined applications and complies with other applicable local, state, or federal regulations.

(2) **“Recycled produced water”** ~~means produced water that is reconditioned by a recycling facility permitted or registered with the oil conservation division of the energy, minerals, and natural resources department, and is reused within the oil and gas industry for the exploration, drilling, production, treatment or refinement of oil and gas.~~

(3) **“Restoration application”** ~~or “ecological application”~~ means the use of water for the implementation of ecological or environmental restoration activities permitted under applicable state and federal regulations.

(4) **“Reuse water”** means a treated wastewater originating from domestic, industrial, or produced water sources, that has undergone a level of treatment appropriate for an application such as agriculture, irrigation, potable water supplies, aquifer recharge, industrial processes, or environmental restoration. Reuse water has a water quality, based on application, determined to be protective of the environment and human health. For purposes of this Part, reuse is categorized by the source of the water. ~~(e.g., “domestic reuse” is wastewater originated from domestic sources following appropriate treatment that may be used for various applications such as irrigation).~~

S. Terms beginning with the letter “S”.

(1) **“State”** means the state of New Mexico.

(2) **“Surface water”** means a “surface water(s) of the state” as defined in 20.6.4 NMAC.

T. Terms beginning with the letter “T”.

(1) **“Transference”** ~~means the distribution, temporary storage, or disposal of reuse water.~~

(2) **“Treated produced water”** means produced water that is reconditioned by mechanical

or chemical processes into a reusable form.

(3) ~~“Treated wastewater” means wastewater that has undergone treatment.~~

(4) **“Treatment”** means a process in which wastewater has been reconditioned by biological, mechanical, or chemical processes to remove or eliminate contaminants, creating an effluent that can be returned to the water cycle either through discharge, transfer, storage, disposal, transference, or reuse.

U. **Terms beginning with the letter “U”.**

(1) ~~“Untreated produced water” means produced water that has not undergone treatment.~~

(2) ~~“Untreated wastewater” means wastewater that has not undergone treatment.~~

V. **Terms beginning with the letter “V”. [RESERVED]**

W. **Terms beginning with the letter “W”.**

(1) **“Water contaminant”** means any substance that, if discharged or spilled, could alter the physical, chemical, biological or radiological qualities of water. “Water contaminant” does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, but may include all other radioactive materials, including ~~but not limited to radium, and accelerator produced isotopes.~~

(2) **“Water pollutant”** ~~as defined in 20.6.4 NMAC means a water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.~~

(3) **“Water pollution”** as defined in 20.6.2 NMAC.

(4) **“Wastewater”** means water or other fluids associated directly with sewerage systems, industrial processes, or produced water that is disposed of, or undergoes treatment for discharge, transference, or reuse. Wastewater in this Part does not include dairy ~~“wastewater”~~; as defined in 20.6.6 NMAC.

X. **Terms beginning with the letters “X” through “Z”. [RESERVED]**
[20.6.8.7 NMAC – N, mm-dd-yy]

20.6.8.8 – 20.6.8.99 [RESERVED]
[20.6.8.8-20.6.8.99 NMAC – N, mm-dd-yy]

20.6.8.100 GENERAL PROVISIONS: Unless otherwise required by this Part, all persons are subject to the state’s Ground and Surface Water Protection Regulations at (20.6.2 NMAC). ~~This includes, but is not limited to, regulations relating to spills, notices of intent, permitting, fees, penalties, compliance orders, and abatement.~~
[20.6.8.100 NMAC – N, mm-dd-yy]

20.6.8.101 UNAUTHORIZED APPLICATIONS OF PRODUCED WATER: The department shall not approve a discharge permit or a discharge permit modification that includes the discharge to ground or surface water of produced water for potable applications.

20.6.8.101 – 20.6.8.199 [RESERVED]
[20.6.8.101-20.6.8.199 NMAC – N, mm-dd-yy]

20.6.8.200 DOMESTIC WASTEWATER REUSE: [RESERVED]
[20.6.8.200 NMAC – N, mm-dd-yy]

20.6.8.201 ~~DIRECT AND INDIRECT~~ POTABLE APPLICATIONS FOR DOMESTIC WASTEWATER:

A. **Unauthorized applications.** The department shall not approve a discharge permit or a discharge permit modification that includes the discharge of reuse water for ~~direct or indirect~~ potable applications except for those authorized applications identified in Subsection B of 20.6.8.201 NMAC.

B. **Authorized applications.**

(1) **Feasibility studies:** Persons proposing to conduct a feasibility study for ~~direct or indirect~~ potable applications for domestic wastewater shall;

(a) Comply with all applicable permitting requirements in 20.6.2 and 20.6.4 NMAC.

(b) Ensure there is no connection between a potable water system and the water being studied and no cross connections exist between feasibility study-water and a community’s potable water supply.

(c) Ensure that all ~~direct and indirect~~ potable reuse feasibility studies are conducted in a manner that does not interfere with ongoing operations at the wastewater and drinking water facilities.

(d) Obtain approval from the department, through ~~either~~ a discharge permit or from

the U.S. environmental protection agency through a national pollutant discharge elimination system permit pursuant to section 402 of the Clean Water Act NPDES permit and comply with all conditions therein.

[20.6.8.201 – N, mm-dd-yy]

20.6.8.202-299 [RESERVED]

[20.6.8.202-20.6.8.299 NMAC – N, mm-dd-yy]

20.6.8.300 INDUSTRIAL WASTEWATER REUSE: [RESERVED]

[20.6.8.300 NMAC – N, mm-dd-yy]

20.6.8.301-399 [RESERVED]

[20.6.8.301-20.6.8.399 NMAC – N, mm-dd-yy]

20.6.8.400 PRODUCED WATER REUSE: As provided in the Water Quality Act, Subsection P of Section 74-6-4 NMSA 1978, and the Produced Water Oil and Gas Act, NMSA 1978, Subsection B of Section 70-13-3 NMSA 1978, the following provisions apply to the discharge of produced water for activities unrelated to the exploration, drilling, production, treatment, or refinement of oil or gas.

A. General requirements.

(1) **Untreated produced water discharge to surface water:** No person shall cause or allow untreated produced water to discharge so that it may move directly or indirectly to a surface water. The department shall deny certification of any federal permit proposing to discharge untreated produced water to a surface water.

(2) **Treated produced water discharge to surface water:** No person shall cause or allow treated produced water to discharge so that it may move directly or indirectly to a surface water. The department shall deny certification of any federal permit proposing to discharge treated produced water to a surface water.

(3) **Untreated produced water discharge to ground water:** No person shall cause or allow untreated produced water to discharge so that it may move directly or indirectly into ground water. The department shall not approve a discharge permit ~~plan~~ or a discharge permit ~~plan~~ modification that includes the discharge of untreated produced water.

(4) **Treated produced water discharge to ground water:** No person shall cause or allow treated produced water to discharge so that it may move directly or indirectly into ground water. The department shall not approve a discharge permit ~~plan~~ or a discharge permit ~~plan~~ modification that includes the discharge of treated produced water. ~~without development and adoption of standards specific to treated produced water (Subsection D of 20.6.8.400 NMAC). Demonstration projects or industrial projects submitted to the department through the notice of intent process in Subsection C of 20.6.8.400 NMAC are authorized to operate, following the determination of no discharge permit required issued by the department.~~

B. Authorized applications.

(1) Demonstration projects or industrial projects, determined by the department not to require a discharge permit because the ~~D~~demonstration project or industrial project will not discharge in a manner that may directly or indirectly affect ground or surface water, are subject to the following requirements:

(a) Persons intending to conduct a ~~D~~demonstration project or industrial project shall secure and comply with all applicable federal, state, and local statutes, permits, and certifications, including the Produced Water Act, ~~NMSA 1978~~, Sections 70-13-1 through 70-13-5 NMSA 1978, ~~et. Seq.~~, and including payment of department fees and satisfying department financial assurance requirements.

(b) The ~~D~~demonstration project or industrial project shall be designed to provide information specific to untreated produced water quality, treatment technologies, treated produced water quality, treatment volumes, and toxicity studies for potential produced water reuse applications.

(c) In accordance with 20.6.2.1201 NMAC, any person intending to use produced water for approved purposes, unrelated to the production of oil and gas, shall submit to the ground water quality bureau of the department a produced water notice of intent prior to use.

(d) Demonstration projects or industrial projects shall not commence until the ~~D~~department has made a determination of no permit required on the notice of intent.

(e) Persons transporting, storing, treating, or utilizing untreated or treated produced water shall have written procedures at the locations where the ~~D~~demonstration project or industrial project is physically located to prevent releases onto the ground, directly or indirectly into ground or surface water.

(f) All untreated and treated produced water shall be handled, transported, and

stored in accordance with all other applicable local, state, and federal regulations.

(g) Any release of untreated or treated produced water is subject to the notifications and corrective actions in 20.6.2.1203 NMAC except releases under the authority of the oil conservation commission pursuant to the provisions of the Oil and Gas Act, ~~NMSA 1978~~, Section 70-2-12 NMSA 1978, and other laws conferring power on the oil conservation commission and the oil conservation division of the energy, minerals, and natural resources department to prevent or abate water pollution.

(h) Persons disposing of untreated or treated produced water, as part of the final disposition following a ~~D~~demonstration project or industrial project, shall use one of the following methods in accordance with the relative permit: discharge to a produced water disposal well permitted pursuant to the oil conservation commission's regulations for oil and gas injection at 19.15.26 NMAC, delivery to a surface waste management facility permitted pursuant to the oil conservation commission's regulations for oil and gas surface waste management facilities ~~at~~ (19.15.36 NMAC), or disposal in a permanent pit permitted pursuant to the oil conservation commission's regulations for oil and gas pits, closed-loop systems, below-grade tanks and sumps at 19.15.17 NMAC. The ~~D~~department may consider alternative disposal options on a case-by-case basis.

(i) Persons disposing of the components of a ~~D~~demonstration project or industrial project using untreated or treated produced water, as part of the final disposition must adhere to all local, state, and federal regulations, as applicable.

C. Notice of intent.

(1) Any person intending to use produced water for an authorized application under Subsection B of 20.6.8.400 NMAC shall submit to the ground water quality bureau of the department a produced water notice of intent prior to use.

(a) Notices shall be on a form provided by the department and shall include the following information:

- (i) the name and address of the person intending to conduct the ~~D~~demonstration project or industrial project;
- (ii) the location of the intended ~~D~~demonstration project or industrial project;
- (iii) estimate of the concentration of water contaminants in the produced water used in the demonstration project or industrial project;
- (iv) the quantity of produced water used in the produced water used in the demonstration project or industrial project;
- (iii) the ~~D~~demonstration project or industrial project research plan and objectives;
- (iv) documentation that the ~~D~~demonstration project or industrial project design is consistent with the approved applications in Subsection B of 20.6.8.400 NMAC;
- (v) the storage, secondary containment and spill prevention methods that will be used to prevent accidental discharges;
- (vi) a plan to transport in and transport out any untreated produced water or treated produced water in a safe manner, in accordance with state and federal regulations;
- (vii) plans for safe handling and proper disposal of produced water and any materials that come into contact with untreated produced water or treated produced water, including soils, plant material, treatment equipment, and containment area materials;
- (viii) the health and safety considerations that minimize the risk of human exposure to produced water via any exposure pathway; and
- (ix) financial assurance in place to cover the cost of cleanup and remediation in the event of failure during operation and closure of the ~~D~~demonstration project or industrial project.

(b) The department, at its discretion, may request additional information.

(c) Based on the information provided in the notice of intent, the department shall make a determination if the ~~D~~demonstration project or industrial project meets the requirements in this section. If the ~~D~~demonstration project or industrial project does not meet the requirements in this section, the person shall not implement the ~~D~~demonstration project or industrial project as proposed.

(2) Persons implementing ~~D~~demonstration projects or industrial projects pursuant to Subsection B of 20.6.8.400 NMAC shall submit to the department all research results, including lab analyses of all water contaminants in the untreated produced water and treated produced water, to assist the department in developing standards and assist the commission in promulgation of regulations for the use of treated produced water

in a manner that prevents water pollution and protects human health and the environment.

D. ~~Effluent quality. [RESERVED]~~
~~[20.6.8.400 NMAC – N, mm-dd-yy]~~

20.6.8.401-20.6.8.899 [RESERVED]
[20.6.8.401-20.6.8.899 NMAC – N, mm-dd-yy]

20.6.8.900 REFERENCES: [RESERVED]
[20.6.8.900 NMAC – N, mm-dd-yy]

EXHIBIT 2

**VIDAL E. GONZALES OF SANTA CLARA PUEBLO'S PROPOSED AMENDMENTS TO NMED'S
MARCH 20, 2024 AMENDED PROPOSED RULE**

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 6 WATER QUALITY
PART 8 GROUND AND SURFACE WATER PROTECTION –
SUPPLEMENTAL REQUIREMENTS FOR WATER REUSE**

20.6.8.1 ISSUING AGENCY: Water Quality Control Commission.
[20.6.8.1 NMAC - N, mm-dd-yy]

20.6.8.2 SCOPE: This rule applies to all persons subject to the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA, and specifically to persons intending to reuse wastewater and their operations.
[20.6.7.2 NMAC - N, mm-dd-yy]

20.6.8.3 STATUTORY AUTHORITY: Standards and regulations are adopted by the commission under the authority of the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978, and the Produced Water Act, Subsection B of Section 70-13-3 and Subsection D of Section 70-13-4 NMSA 1978.
[20.6.8.3 NMAC - N, mm/dd/yy]

20.6.8.4 DURATION: Permanent.
[20.6.8.4 NMAC - N, mm-dd-yy]

20.6.8.5 EFFECTIVE DATE: Month Day, Year, unless a later date is cited at the end of a section.
[20.6.8.5 NMAC - N, mm-dd-yy]

20.6.8.6 OBJECTIVE: The objective of 20.6.8 NMAC is to supplement the general requirements of 20.6.2.1200 through 20.6.2.2201 NMAC and 20.6.4.8 through 20.6.4.900 NMAC, and the general groundwater permitting requirements of 20.6.2.3000 through 20.6.2.3114 NMAC to control the discharges of water contaminants specific to water reuse.
[20.6.8.6 NMAC - N, mm-dd-yy]

20.6.8.7 DEFINITIONS: The following terms as used in this Part shall have the following meanings. Terms defined in the Water Quality Act, but not defined in this Part, shall have the meaning given in the act.

A. Terms beginning with numerals or the letter "A," and abbreviations for units.

(1) **"Application"** means a final disposition of a treated wastewater for reuse. Applications include industrial, direct potable, indirect potable, recreational turf, rangeland, or ecological restoration water reuse.

B. Terms beginning with the letter "B".

(1) **"Bench-scale project"** means a project or study conducted in a laboratory.

C. Terms beginning with the letter "C". [RESERVED]

D. Terms beginning with the letter "D".

(1) **"Demonstration project"** means a bench-scale or pilot project, as defined in this Part.

(2) **"Department"** means the New Mexico environment department.

(3) **"Discharge permit"** as defined in 20.6.2 NMAC.

(4) **"Disposal"** as defined in 20.6.2 NMAC.

(5) **"Domestic wastewater"** means untreated wastewater containing human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to, wastes from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains.

E. Terms beginning with the letter "E". [RESERVED]

F. Terms beginning with the letter "F".

(1) **"Feasibility study"** means a study conducted by a person to determine if a new or modified domestic wastewater treatment technology will be technically, economically, or financially viable for use in a potable application.

G. Terms beginning with the letter "G".

(1) **"Ground water"** as defined in 20.6.2 NMAC.

H. Terms beginning with the letter "H".

(1) **“Hydraulic fracturing”** means a technique that fractures a rock formation by pumping large quantities of fluids at high pressure down a borehole and into a target rock formation, which stimulates the flow of natural gas or oil, increasing the volumes that can be recovered.

I. Terms beginning with the letter “I”.

(1) **“Industrial project”** means a reuse water project that does not discharge to ground or surface water and that is used in connection with industrial processes, such as alternative energy, hydrogen production, cooling water, process/boiler feeds, utility power plants, chemical plants, and metal working facilities where public access is restricted or limited.

J. Terms beginning with the letter “J”. [RESERVED]

K. Terms beginning with the letter “K”. [RESERVED]

L. Terms beginning with the letter “L”. [RESERVED]

M. Terms beginning with the letter “M”. [RESERVED]

N. Terms beginning with the letter “N”. [RESERVED]

O. Terms beginning with the letter “O”. [RESERVED]

P. Terms beginning with the letter “P”.

(1) **“Person”** as defined in 20.6.2 NMAC.

(2) **“Pilot project”** means a representative engineering scale model or prototype system that is beyond the bench-scale and tested in a non-laboratory environment. A pilot project represents an increase in the technological scale than otherwise achievable in a laboratory and often involves larger quantities of materials over longer periods of time.

(3) **“Potable”** means water that is suitable for human consumption that meets state drinking water standards at 20.7.10 NMAC.

(4) **“Potable application”** means the delivery to a drinking water plant or a drinking water distribution system of reuse water that has been purified to remove all contaminants.

(4)

(5) **“Produced water”** means a fluid or wastewater that is an incidental byproduct from drilling for or the production of oil and gas, and includes formation water, flowback water, and any chemicals added downhole during drilling, production, or maintenance processes during the life cycle of an oil or gas well. Produced water includes known and unknown water pollutants.

Q. Terms beginning with the letter “Q”. [RESERVED]

R. Terms beginning with the letter “R”.

(1) **“Reclaimed wastewater”** means domestic wastewater that has been treated to the specified levels for the defined applications and complies with other applicable local, state, or federal regulations.

(2) **“Reuse water”** means a treated wastewater originating from domestic, industrial, or produced water sources that has undergone a level of treatment appropriate for an application such as agriculture, irrigation, potable water supplies, aquifer recharge, industrial processes, or environmental restoration. Reuse water has a water quality, based on application, determined to be protective of the environment and human health. For purposes of this Part, reuse is categorized by the source of the water.

S. Terms beginning with the letter “S”.

(1) **“State”** means the state of New Mexico.

(2) **“Surface water”** means a “surface water(s) of the state” as defined in 20.6.4 NMAC.

T. Terms beginning with the letter “T”.

(1) **“Treated produced water”** means produced water that is reconditioned by mechanical or chemical processes into a reusable form.

(2) **“Treatment”** means a process in which wastewater has been reconditioned by biological, mechanical, or chemical processes to remove or eliminate contaminants, creating an effluent that can be returned to the water cycle either through discharge, transfer, storage, disposal, or reuse.

U. Terms beginning with the letter “U”. [RESERVED]

V. Terms beginning with the letter “V”. [RESERVED]

W. Terms beginning with the letter “W”.

(1) **“Water contaminant”** means any substance that, if discharged or spilled, could alter the physical, chemical, biological or radiological qualities of water. “Water contaminant” does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, but may include all other radioactive materials, including radium.

(2) **“Water pollutant”** as defined in 20.6.4 NMAC.

(3) **“Water pollution”** as defined in 20.6.2 NMAC.

(4) **“Wastewater”** means water or other fluids associated directly with sewerage systems, industrial processes, or produced water that is disposed of, or undergoes treatment for discharge, transference, or

reuse. Wastewater in this Part does not include dairy “wastewater” as defined in 20.6.6 NMAC.

X. Terms beginning with the letters “X” through “Z”. [RESERVED]
[20.6.8.7 NMAC – N, mm-dd-yy]

20.6.8.8 – 20.6.8.99 [RESERVED]
[20.6.8.8-20.6.8.99 NMAC – N, mm-dd-yy]

20.6.8.100 GENERAL PROVISIONS: Unless otherwise required by this Part, all persons are subject to the state’s Ground and Surface Water Protection Regulations at 20.6.2 NMAC. [20.6.8.100 NMAC – N, mm-dd-yy]

20.6.8.101 UNAUTHORIZED APPLICATIONS OF PRODUCED WATER: The department shall not approve a discharge permit or a discharge permit modification that includes the discharge to ground or surface water of produced water for potable applications.

20.6.8.101 – 20.6.8.199 [RESERVED]
[20.6.8.101-20.6.8.199 NMAC – N, mm-dd-yy]

20.6.8.200 DOMESTIC WASTEWATER REUSE: [RESERVED]
[20.6.8.200 NMAC – N, mm-dd-yy]

20.6.8.201 POTABLE APPLICATIONS FOR DOMESTIC WASTEWATER:

A. Unauthorized applications. The department shall not approve a discharge permit or a discharge permit modification that includes the discharge of reuse water for potable applications except for those authorized applications identified in Subsection B of 20.6.8.201 NMAC.

B. Authorized applications.

(1) Feasibility studies: Persons proposing to conduct a feasibility study for potable applications for domestic wastewater shall:

(a) Comply with all applicable permitting requirements in 20.6.2 and 20.6.4 NMAC.

(b) Ensure there is no connection between a potable water system and the water being studied and no cross connections exist between feasibility study-water and a community’s potable water supply.

(c) Ensure that all potable reuse feasibility studies are conducted in a manner that does not interfere with ongoing operations at the wastewater and drinking water facilities.

(d) Obtain approval from the department through a discharge permit or from the U.S. environmental protection agency through a national pollutant discharge elimination system permit pursuant to section 402 of the Clean Water Act and comply with all conditions therein.

[20.6.8.201 – N, mm-dd-yy]

20.6.8.202-299 [RESERVED]
[20.6.8.202-20.6.8.299 NMAC – N, mm-dd-yy]

20.6.8.300 INDUSTRIAL WASTEWATER REUSE: [RESERVED]
[20.6.8.300 NMAC – N, mm-dd-yy]

20.6.8.301-399 [RESERVED]
[20.6.8.301-20.6.8.399 NMAC – N, mm-dd-yy]

20.6.8.400 PRODUCED WATER REUSE: As provided in the Water Quality Act, Subsection P of Section 74-6-4 NMSA 1978, and the Produced Water Act, Subsection B of Section 70-13-3 NMSA 1978, the following provisions apply to the discharge of produced water for activities unrelated to the exploration, drilling, production, treatment, or refinement of oil or gas.

A. General requirements.

(1) Untreated produced water discharge to surface water: No person shall cause or allow untreated produced water to discharge so that it may move directly or indirectly to a surface water. The department shall deny certification of any federal permit proposing to discharge untreated produced water to a surface water.

(2) Treated produced water discharge to surface water: No person shall cause or allow treated produced water to discharge so that it may move directly or indirectly to a surface water. The department

shall deny certification of any federal permit proposing to discharge treated produced water to a surface water.

(3) Untreated produced water discharge to ground water: No person shall cause or allow untreated 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 produced water.

(4) Treated produced water discharge to ground water: No person shall cause or allow 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 treated produced water.

B. Authorized applications.

(1) Demonstration projects or industrial projects, determined by the department not to require a discharge permit because the demonstration project or industrial project will not discharge in a manner that may directly or indirectly affect ground or surface water, are subject to the following requirements:

(a) Persons intending to conduct a demonstration project or industrial project shall secure and comply with all applicable federal, state, and local statutes, permits, and certifications, including the Produced Water Act, Sections 70-13-1 through 70-13-5 NMSA 1978, and including payment of department fees and satisfying department financial assurance requirements.

(b) The demonstration project or industrial project shall be designed to provide information specific to untreated produced water quality, treatment technologies, treated produced water quality, treatment volumes, and toxicity studies for potential produced water reuse applications.

(c) In accordance with 20.6.2.1201 NMAC, any person intending to use produced water for approved purposes, unrelated to the production of oil and gas, shall submit to the ground water quality bureau of the department a produced water notice of intent prior to use.

(d) Demonstration projects or industrial projects shall not commence until the department has made a determination of no permit required on the notice of intent.

(e) Persons transporting, storing, treating, or utilizing untreated or treated produced water shall have written procedures at the locations where the demonstration project or industrial project is physically located to prevent releases onto the ground, directly or indirectly into ground or surface water.

(f) All untreated and treated produced water shall be handled, transported, and stored in accordance with all other applicable local, state, and federal regulations.

(g) Any release of untreated or treated produced water is subject to the notifications and corrective actions in 20.6.2.1203 NMAC except releases under the authority of the oil conservation commission pursuant to the provisions of the Oil and Gas Act, Section 70-2-12 NMSA 1978, and other laws conferring power on the oil conservation commission and the oil conservation division of the energy, minerals, and natural resources department to prevent or abate water pollution.

(h) Persons disposing of untreated or treated produced water, as part of the final disposition following a demonstration project or industrial project, shall use one of the following methods in accordance with the relative permit: discharge to a produced water disposal well permitted pursuant to the oil conservation commission's regulations for oil and gas injection at 19.15.26 NMAC, delivery to a surface waste management facility permitted pursuant to the oil conservation commission's regulations for oil and gas surface waste management facilities at 19.15.36 NMAC, or disposal in a permanent pit permitted pursuant to the oil conservation commission's regulations for oil and gas pits, closed-loop systems, below-grade tanks and sumps at 19.15.17 NMAC. The department may consider alternative disposal options on a case-by-case basis.

(i) Persons disposing of the components of a demonstration project or industrial project using untreated or treated produced water, as part of the final disposition must adhere to all local, state, and federal regulations, as applicable.

C. Notice of intent.

(1) Any person intending to use produced water for an authorized application under Subsection B of 20.6.8.400 NMAC shall submit to the ground water quality bureau of the department a produced water notice of intent prior to use.

(a) Notices shall be on a form provided by the department and shall include the following information:

(i) the name and address of the person intending to conduct the demonstration project or industrial project;

(ii) the location of the intended demonstration project or industrial project;
(iii) estimate of the concentration of water contaminants in the produced water used in the demonstration project or industrial project;
(iv) the quantity of produced water used in the produced water used in the demonstration project or industrial project;
(iv) the demonstration project or industrial project research plan and objectives;
(v) documentation that the demonstration project or industrial project design is consistent with the approved applications in Subsection B of 20.6.8.400 NMAC;
(v) the storage, secondary containment and spill prevention methods that will be used to prevent accidental discharges;
(vi) a plan to transport in and transport out any untreated produced water or treated produced water in a safe manner, in accordance with state and federal regulations;
(vii) plans for safe handling and proper disposal of produced water and any materials that come into contact with untreated produced water or treated produced water, including soils, plant material, treatment equipment, and containment area materials;
(viii) the health and safety considerations that minimize the risk of human exposure to produced water via any exposure pathway; and
(ix) financial assurance in place to cover the cost of cleanup and remediation in the event of failure during operation and closure of the demonstration project or industrial project.

(b) The department, at its discretion, may request additional information.

(c) Based on the information provided in the notice of intent, the department shall make a determination if the demonstration project or industrial project meets the requirements in this section. If the demonstration project or industrial project does not meet the requirements in this section, the person shall not implement the demonstration project or industrial project as proposed.

(2) Persons implementing demonstration projects or industrial projects pursuant to Subsection B of 20.6.8.400 NMAC shall submit to the department all research results, including lab analyses of all water contaminants in the untreated produced water and treated produced water, to assist the department in developing standards and assist the commission in promulgation of regulations for the use of treated produced water in a manner that prevents water pollution and protects human health and the environment.

20.6.8.401-20.6.8.899 [RESERVED]
[20.6.8.401-20.6.8.899 NMAC – N, mm-dd-yy]

20.6.8.900 REFERENCES: [RESERVED]
[20.6.8.900 NMAC – N, mm-dd-yy]

EXHIBIT 3

LEGISLATIVE DRAFTING MANUAL



Legislative Drafting Manual



Legislative Council Service

September 22, 2015

Legislative Drafting Manual
Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501
202.190005B

Legislative Drafting Manual

Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501

TABLE OF CONTENTS

FOREWORD.....	<i>i</i>
CHAPTER 1 – BILLS – DRAFTING GUIDELINES AND BILL PREPARATION.....	1
Drafting Guidelines	1
Bill Preparation	6
Introduction of Bills	7
Prefiling Bills	7
Printing of a Bill.....	8
Referral to Committees	8
Final Passage of a Bill.....	8
Enrolling & Engrossing a Bill.....	8
Action by the Governor.....	9
Assignment of Session Law Chapter Numbers.....	9
Zoos.....	9
202 Files.....	10
Confidentiality and Neutrality.....	10
CHAPTER 2 – SESSION LAWS, NMSA 1978, HISTORIES AND CITATIONS.....	13
Session Laws.....	13
The Comp — NMSA 1978	13
Organization of the Comp.....	15
Compiler's Notes	15
Compilations	17
Citation of New Mexico Law.....	19
Comp Numbers	19
Histories	20
Session Law Citations	24
Citation to the Constitution of New Mexico	25
Cross-Reference to Another Bill of Same Session.....	25
Internal Citations	25
Cross-Reference Citations.....	26
Federal Citations	27
Citation of Court Cases	28
Codification or Revision	28
Provisions Pertaining to Drafting Issues	29
CHAPTER 3 – BILL BASICS – STANDARDS, PARTS OF BILL AND FORMAT	31
Standards	32
Bill Paper.....	32
Discussion Draft.....	32
Parts of Bills.....	34
Top of the Bill	34
Heading	34
Endorsement Line	35
Title	36

TABLE OF CONTENTS

Enacting Clause	47
Body of the Bill.....	47
Short Titles.....	48
Legislative Findings and Purpose of Act Sections.....	51
Definition Sections	53
Main Provision Sections	57
Penalty Sections.....	58
Liberal Interpretation Sections.....	63
Saving Clause Sections.....	64
Back of the Bill	65
Temporary Provision Sections.....	65
Appropriation Sections	68
Repeal Sections.....	75
Severability Sections.....	75
Applicability Sections.....	76
Effective Date Sections.....	77
Emergency Clause Sections.....	82
Bill Format and Subdivisions.....	83
Section Headings	84
CHAPTER 4 – BILLS – LEGISLATIVE ACTIONS.....	87
Enacting a New Section	88
New Material Designation	88
Amending Existing Law	94
Bracketing and Underscoring.....	95
Repealing Existing Law	101
Delayed Repeal.....	103
Sunset Provisions	105
Repealing Existing Section and Enacting New Section.....	106
Recompiling Existing Law	108
Recompiling and Amending Existing Law.....	110
Combination of Sections.....	112
Uniform Acts and Model Legislation.....	112
CHAPTER 5 – SUBSTITUTE BILLS	113
Format of Substitute Bills	114
Committee Substitutes	114
Floor Substitutes	118
Generic Bills	120
CHAPTER 6 – AMENDMENTS	123
Proposed Amendment Directed to a Committee.....	124
Floor Amendments	127
Committee Reports with Amendments	130
Conference Committee Reports	133

TABLE OF CONTENTS

Language and Technical Requirements	134
Page and Line Numbers	134
Use of Markers	136
Amending to Change Money Amounts	138
Global E&E Instruction – Changing Money Amounts	138
Amending to Add or Delete Subdivisions	138
Renumber or Reletter Instruction	140
Global E&E Instruction for Subdivision Changes	142
Amending to Remove a Section	143
Amending to Add a Compiled Section (Zoo)	143
Amending to Add Multiple Sections	144
Global E&E Instruction for Section Changes	145
Amending to Add a New Material Section	146
Insertion After Line 25	146
End of Bill Insertion	147
Amending Cross-References	147
Quotation Marks	148
Punctuation and Capitalization	148
Striking Previous Amendments	148
Restoring Bracketed Language and Striking Underscored Language	149
Mock-Up Bills	151
Enrolled and Engrossed Bills	153
The Journal	155
Legislative Reference Documents	155
CHAPTER 7 – RESOLUTIONS	157
Simple Resolutions	157
Joint Resolutions	159
Constitutional Amendments	160
Title on Ballot	160
Resolving Clause	161
Sections in Constitutional Amendment	161
Election Section	162
Single-Subject Requirement	163
Other Joint Resolutions	163
Concurrent Resolutions	166
CHAPTER 8 – MEMORIALS	169
Simple Memorials	169
Joint Memorials	173
Preparation of Memorials	177
Certificates of Condolence, Congratulations and Recognition	177

TABLE OF CONTENTS

CHAPTER 9 – LEGISLATIVE STYLE AND LANGUAGE PROVISIONS AND INFORMATION MEMORANDA	179
General Language Guidelines	179
Statutory Construction.....	180
Number.....	180
Voice	180
Tense	180
Gender Neutrality.....	181
Parallel Construction	181
Cross-References.....	181
Word Usage.....	182
Commonly Misused Words.....	187
British Spelling.....	187
Abbreviations and Acronyms.....	188
Concise Language	188
Capitalization.....	190
Punctuation.....	193
Commas.....	193
Semicolons	194
Colons	195
Quotation Marks.....	195
Hyphen and Dashes.....	197
Information Memoranda.....	198
 CHAPTER 10 – MONEY AND NUMBERS IN LEGISLATIVE DOCUMENTS.....	201
Money	201
Numbers	202
Formulas, Charts and Tables.....	204
Forms	205
 CHAPTER 11 – WORD PROCESSING AND FORMAT	207
Spacing.....	207
Paper.....	208
Page Numbering – Bills	208
Reports and Amendments	209
Slug Lines	210
Copies.....	210
Colors	210
Bill Jackets	210
Assembly.....	211
Sponsors' Names	212
Standing Committee Acronyms	212

TABLE OF CONTENTS

APPENDICES	215
------------------	-----

Appendix A – Provisions of Common Bills	215
Boards and Commissions	215
Licensing Acts.....	217
Licensing Boards.....	217
Licensure	217
Miscellaneous Considerations	218
Executive Reorganization.....	218
Creating or Reorganizing Department or Agency.....	218
Capital Outlay	219
General Issues	219
Authorization for Bonds.....	220
Tax Bills.....	220
Motor Vehicle Code.....	220
Funds	221
Judgeships	221
 Appendix B – Assignment of Compilation Numbers.....	 223
 Appendix C – Internal Citations	 227
Constitutional Provisions	227
Federal Provisions	228
State Provisions	228
Judicial Decisions.....	230
 Appendix D – The General Appropriation Act.....	 231
Budget Chart of Accounts	233
 Index.....	 235

Be consistent in the arrangement of comparable provisions. Arrange provisions in the same way as provisions are arranged in sections of the bill containing similar material.

Avoid gender-based language. Use gender-neutral terms when possible, such as "worker" for "workman" or "drafter" for "draftsman". Avoid gender-based pronouns by omitting them, rewriting the sentence or repeating the noun.

Use definitions sparingly. Other than administrative terms, which are defined for ease of use, a word should be defined only if the drafter is actually adding to or subtracting from the ordinary dictionary meaning of the word, since it is superfluous to enact into law the common dictionary meaning. In constructing a definition, the drafter is cautioned against straying from the path of logical thought. Perhaps a deviation from such logic produced this definition of a new building: "any building pulled or burnt down to or within ten feet from the surface of the adjoining ground". Another example in New Mexico law defined a motor boat as "any vessel propelled, or designed to be propelled, by sail".

Take care when drafting powers and duties. A duty could be incomplete without some form of sanction. To require an act without the sanction could undercut the effectiveness of the law. Penalties should be sufficient but not excessive, and they should bear some relevance to the degree of the offense. Ensure that penalties do not duplicate or conflict with other penalties.

Write general provisions to apply in most cases. Most requests are for general legislation. It is not possible to anticipate all exceptions or to preempt all legal arguments. The drafter is urged to resist the temptation to write an answer to every possible imagined argument against the bill; it makes for tortured writing and unreadable legislation.

Consider separation of powers. The drafter who puts administrative detail in a bill may create a separation of powers problem. The New Mexico Supreme Court has ruled that the New Mexico Legislature cannot impinge on the executive management function. Thus, the drafter should avoid micromanagement in legislation. Usually, the goal of legislation is to require a state agency or an entity to dot its "I"s and cross its "T"s, not how to draw the dot and

Drafters are reminded that **amendment by reference is prohibited by the Constitution of New Mexico**. The New Mexico Supreme Court has ruled that only procedural law may be adopted by reference. This rule is not always as clear-cut as drafters would like; distinguishing between substantive and procedural provisions may be difficult in certain cases.

Drafters are also reminded that the purpose of bill drafts is to clearly inform members of the legislature, and the public, what changes to the law are proposed. Drafters should endeavor to limit the reader's need to research other statutes, or even other pages of the bill, to understand the provisions of a given section. **For example, a drafter should define a term in the section in which it is used or in the definition section of the short title act to which it applies, instead of sending the reader to another act or chapter to find the defined term's meaning.** (An exception to this practice would be the use of references to federal citations and defined terms.)

Cross-Reference Citations

In a cross-reference or internal citation in the text of a bill, use the Comp number without any history (being Laws). Review the following example.

Example: Citation to Comp Number — No "Being Laws"

"...pursuant to the provisions of Section 45-6-4 NMSA 1978"

When citing an entire chapter or article of the NMSA 1978, the following form is correct:

Example: Citation to Chapter and Article

"... pursuant to Chapter 5, Article 23 NMSA 1978"

If citing to the section level, the cite is:

Example: Citation to Section

"... pursuant to Section 5-23-56 NMSA 1978"

When citing to a subdivision of a compiled section, the following example should be followed.

Example: Citation to Subdivision of a Compiled Section

"... pursuant to Subsection A of Section 5-23-56 NMSA 1978"

act" or "Sections 1 through 8 of this act" must be converted to the actual Comp numbers in order to include the new section.

For example, to add a new section to the Per Diem and Mileage Act, it is also necessary to amend the short title section to make sure that the reference will include the new section. There are two acceptable ways to change a short title. Review the following examples. The first example is preferred where possible because it is a broader reference, which alleviates the need for future amendment, and it does not require the assignment of a Comp number to the new section. Its use, of course, depends on how the short title act fits in the Comp.

Example: Short Title Conversion — All-Inclusive Reference — Preferred

```
15 | SECTION 1. Section 10-8-1 NMSA 1978 (being Laws 1963,  
16 | Chapter 31, Section 1, as amended) is amended to read:  
17 | "10-8-1. SHORT TITLE.--[Sections 10-8-1 through 10-8-8]  
18 | Chapter 10, Article 8 NMSA 1978 may be cited as the "Per Diem  
19 | and Mileage Act"."
```

Example: Short Title Conversion — Specific Reference — Narrow

```
15 | SECTION 1. Section 10-8-1 NMSA 1978 (being Laws 1963,  
16 | Chapter 31, Section 1, as amended) is amended to read:  
17 | "10-8-1. SHORT TITLE.--Sections 10-8-1 through [10-8-8  
18 | 10-8-9 NMSA 1978 may be cited as the "Per Diem and Mileage  
19 | Act"."
```

Short Title and Application of Definitions

Once a section is made part of a short title act, the definitions of the act apply to that section. Conversely, an act's definitions do not apply to sections of law outside the confines of that act.

Definition Sections

A definition section should be drafted when certain terms used in an act need to be defined or when it is desirable to substitute a single word for a long phrase that will be used many times. If a term is used in only one section, it may be defined in that section. The following guidelines should be used when drafting definitions.

Do not define words that are being used in their normal dictionary meaning. Unnecessary or superfluous definitions cloud meaning.

Do not put substantive law in a definition section. The problems caused by having substantive law in the definition section are both immediate and long lasting. The most obvious problem with legislating in the definition section is that no one will think to look for it there. This can cause unnecessary problems with amendments, as well as enforcement of the law.

List defined terms alphabetically. When creating a definition section, the drafter should resist the temptation to list definitions hierarchically; the drafter will find that, more often than not, other people will not agree with or even understand such a schema. Drafters are encouraged to maintain the alphabetical order of existing definition sections even when adding definitions by amendment. However, they must be sensitive to highly litigious areas of law, heavily amended definition sections and overly cross-

Definition Drafting Key Points

- ◆ Do not define words that are being used in their normal dictionary meaning.
- ◆ **Do not put substantive law** in a definition section.
- ◆ List defined terms alphabetically.
- ◆ Enclose defined terms in quotation marks.
- ◆ Place each definition in its own subdivision.
- ◆ Use the verb "means" and "includes" in the singular.
- ◆ If the definition is restrictive, use the word "means".
- ◆ If the definition is extensive, use the word "includes".
- ◆ Do not use "but is not limited to".
- ◆ Do not define "act" or "federal act".
- ◆ Do not define acronyms or abbreviations.
- ◆ Define administrative terms.
- ◆ Do not define terms that are not used in the bill.
- ◆ Do not define terms solely to use them in another definition.

referenced acts to ensure that they are not causing more harm than good when opting to reorder an existing definition section.

Enclose defined terms in quotation marks. Whatever is within the quotation marks must be the **precise** term that will be used in the bill. A different grammatical form of the defined term is allowed if the sentence structure requires, but if the precise term is not used predominantly, the drafter needs to rewrite the term.

Place each defined term in its own subdivision. Usually, each defined term occupies its own subdivision, that is subsection or paragraph, in a single definition section, but there are rare exceptions. Extensive codifications may have individual sections for each definition or series of definitions, particularly when a single definition section is several pages long and is frequently amended. The Motor Vehicle Code, which has close to 150 defined terms, has 21 definition sections, based on alphabetical order, to make it easier to change or add definitions.

Use the verb "means" and "includes" in the singular. Whether the defined word is singular, plural or collective, the verb "means" or "includes" always remains singular.

If the definition is restrictive, use the word "means"; if the definition is extensive, use the word "includes". If it is necessary to exclude a meaning from an extensive definition, add the phrase "but does not include".

Do not define "act" or "federal act". It is not acceptable drafting style to define "act" or "federal act" to avoid using a long short title.

Do not define acronyms or abbreviations. It is not acceptable drafting style to define acronyms or use other abbreviations in the law, except for "a.m.", "p.m." and "NMSA" and, in certain sections, "DWI".

Define administrative terms. For example, define "department", "division", "board", "commission", "fund" and similar terms. Beware of defining a word that crosses governmental

lines. For example, defining "agency" to mean both a state agency and a municipal agency can cause untold — and unnecessary — problems in future amendments. Similarly, the drafter must ensure that a definition of "agency" does not inadvertently encompass legislative or judicial agencies if the scope of the term is intended to include executive agencies only; such an oversight can create separation of powers issues.

Do not define terms that are not used in the bill. This sometimes occurs when a drafter defines terms in the beginning of the drafting process that the drafter believes will be used in the act, but are not actually used in the completed bill draft or are subsequently removed from the bill. The drafter must remember to remove such terms from the definition section.

Do not define terms solely to use them in another definition. A defined term may be used in another definition; this is particularly prevalent with administrative terms. Do not use circular definitions.

Context of Defined Terms

The definition section does not need to state that the definitions "control unless the context requires otherwise"; that is understood.

Rules of Statutory Construction

The drafter must be familiar with the definition of "person" in the Uniform Statute and Rule Construction Act. "Person" will need to be defined in the bill if the drafter wants a definition other than that in the statutory construction act. Unlike the old statutory construction act, the new law is not permissive. The usual definitions of "person" include both natural (individuals) and artificial (corporate) persons; therefore, the drafter should not try to distinguish individuals from entities in the text. This is one of the best examples of the admonition against using synonyms in the law. There may be rare occasions when there is a legitimate reason to differentiate between person and individual, but the drafter would have to change the normal definition of person to accommodate the differentiation. Every drafter should be familiar with all of the terms defined in the Uniform Statute and Rule Construction Act.

Example: Definition Section

12 **SECTION 3.** [NEW MATERIAL] DEFINITIONS.--As used in the
13 Fish Act:
14 A. "department" means the department of game and
15 fish;
16 B. "fingerling" means a fish shorter than six inches
17 in length;
18 C. "fish" includes both game fish and nongame fish,
19 but does not include carp;
20 D. "fund" means the fish replenishment loan fund;
21 E. "hatchery" means a fish farm licensed by the
22 department and the federal department of the interior; and
23 F. "poaching" means the taking of fingerlings from a
24 lake or stream in the state by someone other than a department
25 representative.

Like the title of the bill, it is a matter of personal preference whether the definition section is drafted first or last. Perhaps the easiest way is to write the common or known definitions first, then leave the section open to revise, add or delete defined terms as the bill is drafted.

If a bill draft is conformed before introduction, the drafter should check to see if the revisions have necessitated the removal of a definition because it is no longer used or if the material added by revision requires a new defined term. The same is true of a bill that is amended after introduction. An amendment to strike an existing defined term or insert a new defined term may be necessary.

"Herein", "Hereinbefore", "Hereinafter", "Above" and "Below"

Words and phrases such as "herein", "hereinbefore", "hereinafter", "above", "below", "the preceding section", "the following section" and the like will lose meaning even quicker than "this act". Absent a direct order from the requester, there is no instance when these words are acceptable in bill drafting.

"Including, But Not Limited To"

There is no need to write "including but is not limited to"; the word "including" implies an incomplete listing. Put another way, "including" or "includes" includes the concept of "not limited to".

Commonly Misused Words

There are a number of words that are commonly misused.

Examples: Misused Words

"Utilize" means to use something in a new and different way; most times, "use" is the correct word.

"Presently" means future; "at present" or "currently" means now.

"Insure" means insurance; "ensure" means to make certain.

The phrase "ex officio" indicates only that a person holds one office by virtue of holding another office. A law saying that "the governor is ex-officio president of the state board of finance" is unnecessary and simply means that any person holding the office of governor automatically becomes president of the State Board of Finance.

The phrase does not restrict any powers or duties of an officer while serving in the officer's ex-officio capacity; in particular, the phrase has nothing to do with the ability to vote. The drafter must specify that the ex-officio member cannot vote if that is the intent. Often, the phrase is not needed, because it is a given that the person serves ex officio — if the *governor* is president of the State Board of Finance, it is obvious that the *person* changes with who holds the office of governor.

British Spelling

Avoid the use of British spelling. "Canceled", "traveler" and the like should be spelled with one "l". "Judgement" should be spelled "judgment" without the middle "e".

Use quotation marks on new sections that are being assigned Comp numbers or new sections that are being inserted in an existing short title act or a chapter or article of the NMSA 1978. **That is, use quotation marks on sections if the lead-in ends with a colon.**

Example: New Material Lead-In and Quotation Marks

21	SECTION 23. A new section of the Drafting Act is enacted
22	to read:
23	" <u>[NEW MATERIAL]</u> QUOTATION MARKS--WHEN USED.--

Use quotation marks when defining or referring to a term in a definition section or other section if there is no definition section.

Example: Defined Term and Quotation Marks

1	D. "shopper" means all persons who shop within the
2	exterior boundaries of the state, but "shopper" does not
	include residents of the state who shop by catalogue;

Use quotation marks in first stating the short title of an act or the name of a department, board, commission, program, position, fund or other thing created by an act.

Examples: Creations and Quotation Marks

13	SECTION 1. <u>[NEW MATERIAL]</u> SHORT TITLE.--This act may be
14	cited as the "Good Examples Act".

7	SECTION 10. <u>[NEW MATERIAL]</u> PROBATE CODE COMMITTEE
8	CREATED.--The "Probate Code committee" is created as a joint
9	interim committee of the legislature.

7	SECTION 11. <u>[NEW MATERIAL]</u> INSURANCE PUBLICATIONS
8	REVOLVING FUND CREATED.--The "insurance publications revolving
9	fund" is created in the state treasury.

