

**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* No.

WQCC 23 - 84 (R)

NEW MEXICO ENVIRONMENT DEPARTMENT,  
WATER PROTECTION DIVISION,

Petitioner.

**NMOGA's RESPONSE TO JOINT MOTION TO DISQUALIFY  
WATER QUALITY CONTROL COMMISSIONER KRISTA McWILLIAMS**

The New Mexico Oil and Gas Association ("NMOGA"), through undersigned counsel, hereby responds to the *Joint Motion to Disqualify Water Quality Control Commissioner Krista McWilliams* ("Motion") filed on June 10, 2024 by New Energy Economy ("NEE"), Samuel Sage, and Daniel Tso (collectively, "Joint Movants").

**INTRODUCTION**

The Motion should be denied. There is **no** evidence of bias, prejudice, or prejudgment that would require Krista McWilliams' ("Commissioner McWilliams") disqualification from the Commission. The composition of the Water Quality Control Commission ("WQCC" or "Commission") is statutory. The New Mexico Water Quality Act ("WQA") prescribes who may sit on the Commission, and proscribes those conflicting interest actions that preclude a member from sitting on the Commission. By the express terms of the WQA, Commissioner McWilliams is permitted to serve as a Commission member.

Having affiliation with oil and gas industry entities is not evidence of bias, prejudice, or prejudgment. The WQA does not proscribe such affiliations, and in fact the WQA expressly recognizes that Commission members might have such affiliations. There is no evidence that

Commissioner McWilliams is in any way biased, prejudiced, or has prejudged any issue, or that she is anything but fair and impartial. In sum, the criteria for disqualification are not met.

### **BACKGROUND**

The Water Protection Division of the New Mexico Environment Department (NMED) filed a petition with the WQCC to adopt a new part 8 to Title 20, Chapter 6 of the New Mexico Administrative Code, titled “Ground and Surface Water Protection – Supplemental Requirements for Water Reuse”, intended to regulate emerging methods of water reuse including produced water. An original draft of these “Reuse Rules” was filed on December 27, 2023. The First Amended Reuse Rules were filed by the NMED on March 20, 2024.

Hearings regarding this water re-use rulemaking were held before the WQCC on May 13 through 17, 2024 and will be continued starting August 5, 2024.

### **STANDARD OF DECISION**

A “fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case.” *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Commission*, 2006-NMCA-115, ¶ 40, 140 N.M. 464, 143 P.3d 502. The party seeking to disqualify a tribunal member for a violation of due process must present “evidence” of “strong enough” bias, prejudice, or prejudgment to warrant disqualification. *Id.* ¶¶ 46, 58; *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997–NMCA–031, ¶ 24, 123 N.M. 239, 938 P.2d 1384. Those challenging the tribunal member “have a duty to overcome the presumption of integrity in those serving as administrative adjudicators.” *Phelps Dodge*, 2006-NMCA-115, ¶ 51 (citing *Jones v. N.M. State Racing Comm'n*, 100 N.M. 434, 437, 671 P.2d 1145, 1148 (1983) (holding that there is a “presumption of honesty and integrity in those serving as [administrative] adjudicators”).

## ARGUMENT

### I. THE FACTUAL GROUNDS ON WHICH JOINT MOVANTS BASE THEIR MOTION ARE WRONG

The factual grounds identified for bias are incorrect. As discussed below and supported by the attached declarations of Missi Currier, Jeffrey Wechsler, and Jim Winchester, many of the factual assertions identified as grounds for bias are incorrect.

#### A. LOGOS Is Not a Member of NMOGA

The Motion first asserts that LOGOS Energy LLC (“LOGOS”) is a NMOGA member. Mot. ¶ 17. That is false. LOGOS is not a member of the New Mexico Oil and Gas Association. Declaration of Missi Currier at 2, ¶ 6, attached as Exhibit A. LOGOS has not been a member of NMOGA since 2022. *Id.* Neither LOGOS nor Commissioner McWilliams has participated in NMOGA activities since that time. *Id.*

Further, the video referenced in Movants’ supplement was filmed many years ago, before LOGOS left NMOGA. *Id.* at 2, ¶ 7. NMOGA never consulted with Commissioner McWilliams about the video. *Id.* To NMOGA’s knowledge, Commissioner McWilliams was not aware that the video remained on the NMOGA website. *Id.* The video, which should have been removed from NMOGA’s website years ago, has now been removed from the website. *Id.*

Movants suggest that Commissioner McWilliams engaged in improper *ex parte* communications. However, NMOGA’s President and Chief Executive Officer has never spoken with Commissioner McWilliams about the reuse rules proposed by NMED; nor is she aware of any communications from any NMOGA staff and Commissioner McWilliams. *Id.* ¶ 8. NMOGA is not aware of any reason why Commissioner McWilliams cannot be impartial in this matter. *Id.* at 3, ¶ 9.

The Motion also asserts that Commissioner McWilliams' husband, Jay Paul McWilliams, is the Chief Executive Officer for LOGOS. Mot. ¶ 12. Standing alone, that is not enough to satisfy the standard for disqualification. Commissioner McWilliams' husband's involvement with LOGOS does not automatically rise to the level of Commissioner McWilliams displaying actual bias. Further, regardless of Commissioner McWilliams' position with LOGOS, LOGOS is not a party to this proceeding. This is a rulemaking proceeding; there are no parties.

#### **B. NMOGA Counsel's Law Firm Does Not Represent LOGOS**

The Motion also asserts that NMOGA counsel's law firm has represented LOGOS. Mot. ¶ 20. This statement is misleading. LOGOS is not currently represented by our law firm. Declaration of Jeffrey J. Wechsler at 2, ¶ 7, attached as Exhibit B. This firm has not represented LOGOS in any matter since mid-2022. *Id.* Of particular note, M&A does not represent LOGOS or Commissioner McWilliams in the current rulemaking either directly or indirectly. *Id.* at 4, ¶ 12.

The Motion also asserts that the firm actively engages in lobbying on oil and gas issues before the New Mexico Legislature. Mot. ¶ 20. This statement is not relevant. Moreover, and again, more importantly, the firm has never lobbied on behalf of LOGOS. Ex. B at 2, ¶ 9.

#### **C. Commissioner McWilliams Recused Herself from Any IPANM Discussion of Produced Water**

The Motion asserts that Commissioner McWilliams is a board member of the Independent Petroleum Association of New Mexico (IPANM), and so therefore IPANM must have discussed and reviewed produced water with its attorney, Jeffrey Wechsler of the firm previously known as Montgomery & Andrews, P.A. Mot. ¶¶ 33, 48. The Motion presumes that *ex parte* communication has taken place without any factual indication that *ex parte* communication has actually taken place. This presumption is erroneous. None of the lawyers who are actively representing NMOGA in this matter have ever spoken to or discussed this matter, or produced water generally, with

Commissioner McWilliams. Ex. B at 2, ¶ 8. Movants even admit that no evidence of *ex parte* communications exists. Mot. ¶ 48 (“Movants acknowledge that they don’t have evidence of unlawful *ex parte* communications . . .”). The Motion’s presumption of *ex parte* communication is unsupported and should be disregarded.

Moreover, Commissioner McWilliams has not had anything to do with produced water on any level (including reuse rules and other aspects) in her role with IPANM, and has recused herself from any such IPANM discussions. Declaration of Jim Winchester at 3, ¶¶ 13-14, attached as Exhibit C. Commissioner McWilliams was not involved in any of the produced water discussions held amongst IPANM board members. *Id.*; see Ex. B at 3, ¶ 11(d).

Additionally, NMOGA counsel Jeffrey Wechsler has never discussed produced water with Commissioner McWilliams one on one, nor has Commissioner McWilliams been involved in discussions on produced water in previous matters in which NMOGA counsel’s law firm represented LOGOS. Ex. B at 2, ¶ 8. Mr. Wechsler has never discussed water reuse in any way shape or form in an *ex parte* manner with Commissioner McWilliams. *Id.*

#### **D. The *Atencio* Lawsuit is Irrelevant**

The Motion also argues that Commissioner McWilliams should be disqualified because the law firm representing NMOGA in this matter also represents IPANM in the *Atencio v. State of New Mexico* lawsuit, Case No. D-101-CV-2023-01038. Mot. ¶¶ 33, 48. The *Atencio* case raises different issues that are irrelevant to the present rulemaking proceeding. *Atencio* claims that the State of New Mexico’s regulation of the oil and gas industry has violated Article XX, Section 21 of the New Mexico Constitution in various ways. This is a wholly different issue than the current rulemaking issue before the Commission (i.e., whether discharge permits should be allowed for produced water). The *Atencio* lawsuit touches on produced water in a different context and claims

that produced water should be treated as hazardous waste. That is an unrelated question before NMED, not the WQCC, and that question is not part of this present rulemaking. *See* Ex. B at 3, ¶ 11(b).

Moreover, as counsel in *Atencio*, this firm reports to Jim Winchester, the Executive Director of IPANM, and the President of the Board. Counsel does not report directly to Commissioner McWilliams. *Id.* ¶ 11(c). Indeed, counsel does not know Commissioner McWilliams personally and has never spoken directly to her about produced water or the proposed rules in this matter. *Id.*

In sum, many factual assertions in the Motion are misleading or incorrect, and there is no evidence of actual bias in the factual record. NMOGA counsel knows of no reason why Commissioner McWilliams could not be impartial in this case or that suggests that she should recuse or be disqualified. *Id.* ¶ 11(d); *id.* at 4, ¶ 14.

## **II. THE WQA CONTEMPLATES HAVING QUALIFIED AND KNOWLEDGEABLE EXPERTS ON THE COMMISSION**

An informed WQCC is created by design. Individuals who have relevant experience are intended to be Commissioners. The “composition of the Commission is statutory.” *Phelps Dodge*, ¶ 41; *see also* NMSA 1978, § 74-6-3(A). “By design, the Commission represents a variety of philosophies and perspectives,” *Phelps Dodge*, ¶ 41, and “[i]t is impractical to require commissioners to sit with an entirely clean slate.” *Id.* ¶ 50 (citing *Las Cruces*, ¶ 26 (recognizing that every decisionmaker cannot be required to “start with a clean slate”)).

The WQA contemplates having informed commissioners, with an understanding that people who were involved in the regulatory regime and industry may serve as commissioners. Commissioner McWilliams’ experience with companies in the oil and gas industry lends expertise to the WQC. To utilize those involved in the regulatory process and industry is a feature of the system intended by the legislature.

Further, if Joint Movants’ asserted standard, the appearance of impropriety, Mot. ¶¶ 40-43, is accurate, there are a number of WQCC commissioners who would not be allowed to participate. For example, there is a Commission seat for the NMED secretary or the secretary’s staff designee. NMSA 1978 § 74-6-3(A)(1). NMED is the very entity proposing these rules. Following Joint Movants’ theory, the NMED Commission seat should then be disqualified. The statutory composition of the Commission clearly reflects that members’ expertise is a strength, not a conflict of interest.

### **III. THE MOTION DOES NOT SATISFY THE CRITERIA FOR DISQUALIFICATION**

#### **A. The Statutory Standard for Disqualification Is Not Met**

The Motion asserts that “appearance of bias” is the standard for an inquiry regarding disqualification. Mot. ¶¶ 40-43. However, that standard does not appear in the relevant statute. Under the WQA, disqualification only occurs under narrow circumstances. The WQCC is created by statute. NMSA 1978 § 74-6-3. In addition to various governmental leaders, Section 74-6-3(A)(11) requires “four representatives of the public to be appointed by the governor for terms of four years” as members of the Commission. Commissioner McWilliams was appointed by Governor Michelle Lujan Grisham in 2019 for a first term and reappointed in 2023 for a second term. The statute specifically addresses the circumstances under which disqualification is necessary. Section 74-6-3(B) states:

***A member of the commission shall not receive, or shall not have received during the previous two years, a significant portion of the member's income directly or indirectly from permit holders or applicants for a permit.*** A member of the commission shall, upon the acceptance of the member's appointment and prior to the performance of any of the member’s duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of the member's gross personal income in each of the preceding two years, that the member received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act. ***A member of the commission shall not***

***participate in the consideration of an appeal if the subject of the appeal is an application filed or a permit held by an entity that either employs the commission member or from which the commission member received more than ten percent of the member's gross personal income*** in either of the preceding two years.

(emphasis added). Movants fail to address or satisfy this statutory standard, which is inapplicable here for at least reasons.

First, LOGOS is neither a permit holder nor an applicant under the WQA.<sup>1</sup> Commissioner McWilliams thus could not have received a significant portion of her income from LOGOS as a permit holder or applicant, as the Motion implies. There is no evidence that Commissioner McWilliams received a significant portion of her income directly or indirectly from permit holders or applicants for a permit.

Second, this WQCC proceeding is a rulemaking, not an appeal nor application for a permit. There is no evidence, and Joint Movants do not assert, that Commissioner McWilliams participated in the consideration of an appeal on or an application for a permit by “an entity that either employs the commission member or from which the commission member received more than ten percent of the member’s gross personal income in either of the preceding two years.” *See id.* Therefore, Commissioner McWilliams is not participating in the consideration of an appeal regarding an application or permit held by LOGOS. This is a policymaking endeavor; there are no parties involved.

The fact that the WQA anticipates that Commission members may have affiliations with permittees is telling. *See id.* It shows that unless a Commission member crosses a particular threshold, recusal or disqualification is not required. *See id.* Here, Commissioner McWilliams has not crossed this threshold. That should end the inquiry.

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<sup>1</sup> The WQA exempts activities subject to the Oil and Gas Act at Section 74-6-12(G).



By the express terms of the WQA, which prescribes who may serve on the Commission and proscribes certain conduct of Commissioners, Commissioner McWilliams is permitted to serve as a Commission member on this matter. Commissioner McWilliams' actions do not require recusal or disqualification under the WQA. The statutory standard for disqualification is not met, and the Motion should be denied for this reason alone.

#### **B. There is No Evidence of Actual Bias**

No actual bias can be shown. Even if the Commission were to look outside of the WQA, Joint Movants' argument still lacks merit. To warrant disqualification, New Mexico case law makes clear that a showing of actual bias is required. There must be "evidence" showing bias, prejudice, or prejudgment; there must be a "demonstrat[ion of] a violation of due process." *See Phelps Dodge*, ¶¶ 46, 58. Further, that evidence must be "strong enough" to warrant disqualification. *Id.* (citing *Las Cruces*, ¶ 24). It must do more than show a potential attitude about an issue; it must be a "strong enough" showing of personal bias or personal prejudice (animosity or favoritism) to demonstrate partiality. *Las Cruces*, ¶ 24 (suggesting that personal bias or personal prejudice may require disqualification *if* it is "strong enough" to show partiality).

Joint Movants present *no* evidence of bias, prejudice, or prejudgment whatsoever, let alone any personal prejudice or personal bias "strong enough" to require disqualification. Joint Movants point to *no* statement, *see Phelps Dodge*, ¶ 43, *no* comment or expressed opinion, *see Reid v. N.M. Bd. of Examiners*, 92 N.M. 414, 415–16, 589 P.2d 198, 199–200 (1979);<sup>2</sup> *Jones*, 100 N.M. at 437, 671 P.2d at 1148, *no* questioning, *Las Cruces*, ¶¶ 24, 31, *nor* any other fact demonstrating any bias,

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<sup>2</sup> In *Reid*, where disqualification was found warranted, a Board of Examiners in Optometry member stated, in advance of the hearing, that "...it didn't matter...because Dr. Reid would be losing his license soon anyway, or wouldn't be practicing soon anyway....," clearly demonstrating bias and prejudgment of the charges brought against Dr. Reid. *Reid*, 92 N.M. at 415, 589 P.2d at 199.

prejudice, or prejudgment by Commissioner McWilliams, and certainly none “strong enough” to warrant disqualification.

Rather than presenting evidence of bias, prejudice, or prejudgment, Joint Movants seek to condemn the mere professional accomplishments of Commissioner Williams as *ipso facto* demonstrating an incurable bias, prejudice, or prejudgment warranting disqualification. This is not the law.

Moreover, there is a “presumption of honesty and integrity” by those serving as Commissioners. *Jones*, 100 N.M. at 437, 671 P.2d at 1148; *see also Phelps Dodge*, ¶ 51. Applying this presumption of honesty, the Commission must take Commissioner McWilliams at her word when she stated at the beginning of the proceedings that she has no conflicts of interests, professional or otherwise. Tr. at 28:5-7. There is no evidence offered that overcomes this presumption of honesty and integrity.

By the express terms of the WQA, which prescribes who may serve on the Commission and proscribes certain conduct by Commission members, Commissioner McWilliams is allowed to serve as a Commission member. Having affiliations with the oil and gas industry is not evidence of actual bias, prejudice, or prejudgment.

### **CONCLUSION**

For all the reasons stated above, there is no reason to disqualify Commissioner McWilliams, and the Motion should be denied.

Respectfully submitted,

SPENCER FANE, LLP

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## **CERTIFICATE OF SERVICE**

I certify that on August 2, 2024 a copy of the foregoing pleading was emailed to the following:

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**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*

No. WQCC 23 - 84(R)

**DECLARATION OF MISSI CURRIER  
IN OPPOSITION TO JOINT MOTION TO DISQUALIFY**

I *Missi Currier*, pursuant to Rule 1-011 NMRA state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.
2. I am over 18 years of age and have personal knowledge of the facts stated herein.
3. I am the President and Chief Executive Officer of the New Mexico Oil and Gas Association (“NMOGA”). NMOGA is a coalition of oil and natural gas companies, individuals and stakeholders dedicated to promoting the safe and environmentally responsible development of oil and natural gas resources in New Mexico. Representing over 1,000 members, NMOGA works with elected officials, community leaders, industry experts, and the general public, to advocate for responsible oil and natural gas policies and increase public understanding of industry operations and contributions to the State. As President and CEO, I report to the NMOGA Board of Directors and am responsible for all aspects of the organization.
4. I have reviewed the Joint Motion of New Energy Economy (“NEE”), Daniel Tso, and Samuel Sage (collectively, the “Movants”) to Disqualify Water Quality Control Commissioner Krista McWilliams (“Motion to Disqualify”). I have also reviewed Movants’ Notice to Supplement Joint Motion to Disqualify Water Quality Control Commissioner Krista

McWilliams (“Supplement”). I am submitting this Declaration in opposition to that Motion to Disqualify.

5. One purpose of this Declaration is to correct the false allegations made by Movants so that the Water Quality Control Commission (“WQCC” or “Commission”) can base its discussion on the Motion to Disqualify on accurate information.

6. Paragraph 17 on page 6 of the Motion to Disqualify states that “LOGOS is a member of NMOGA, and is an active participant in NMOGA member advocacy.” That is incorrect. LOGOS has not been a member of NMOGA since 2022 and LOGOS does not participate in NMOGA activities or advocacy. To my knowledge, Commissioner McWilliams has not participated in NMOGA activities since 2022.

7. The Supplement filed by Movants notes that Commissioner McWilliams is shown in a video that was previously found on NMOGA’s website. That video was filmed many years ago before I became President and CEO of NMOGA and before LOGOS ceased to be a member. Although the video should have been removed years ago, it remained on our website until recently. NMOGA did not consult with Commissioner McWilliams about the video, and it is my understanding that Commissioner McWilliams was not aware that the video remained on the NMOGA website. We have since corrected the oversight and removed the video from the NMOGA website.

8. I understand that Movants suggest that Commissioner McWilliams engaged in improper *ex parte* communications. I have never spoken with Commissioner McWilliams about the reuse rules proposed by the New Mexico Environment Department, and I am not aware of any communications from any NMOGA staff about the proposed rules.

9. I am also not aware of any reason why Commissioner McWilliams cannot be impartial in this case.

10. I submit this Declaration, based upon my personal knowledge and upon information and belief.

FURTHER, DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2024.

/s/ Missi Currier

Missi Currier



**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*

No. WQCC 23 - 84(R)

**DECLARATION OF JEFFREY J. WECHSLER  
IN OPPOSITION TO JOINT MOTION TO DISQUALIFY**

I *Jeffrey J. Wechsler*, pursuant to Rule 1-011 NMRA state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.

2. I am over 18 years of age and have personal knowledge of the facts stated herein.

3. I have reviewed the Joint Motion of New Energy Economy (“NEE”), Daniel Tso, and Samuel Sage (collectively, the “Movants”) to Disqualify Water Quality Control Commissioner Krista McWilliams (“Motion to Disqualify”). I am submitting this Declaration in opposition to that Motion to Disqualify.

4. The Motion to Disqualify is based on several factual allegations. Unfortunately, however, it does not appear that Movants made any effort to determine whether their factual allegations were correct before their Motion. I say that because many of the factual allegations in the Motion to Disqualify are inaccurate or incorrect.

5. One purpose of this Declaration is to correct the false allegations made by Movants so that the Water Quality Control Commission (“WQCC” or “Commission”) can base its discussion on the Motion to Disqualify on accurate information.

6. Paragraph 20 on page 6 of the Motion to Disqualify states as follows:

“Montgomery & Andrews, P.A. has represented LOGOS, the firm owned and operated by Jay Paul McWilliams and Krista McWilliams, and is the

same legal firm that represents NMOGA in Case No. WQCC 23-84(R). Both Montgomery & Andrews, P.A. and NMOGA also actively engage in lobbying on oil and gas and energy issues before the New Mexico Legislature.”

7. This statement is misleading and inaccurate. I inquired with our accounting department at Montgomery & Andrews (“M&A”) regarding our previous work for LOGOS. While M&A performed work for LOGOS in the past, the most recent invoice was dated May 6, 2022. That is to say that M&A has not represented LOGOS in over two years.

8. Even more to the point, none of the lawyers who are actively representing NMOGA in this matter have ever spoken to or discussed Case No. WQCC 23-84(R) or produced water generally with Commissioner McWilliams.

9. On the issue of lobbying, it is difficult to understand why Movants think it is relevant that NMOGA and M&A have lobbied on oil and gas energy issues in the past. Setting the question of relevance to one side for the moment, however, M&A has never lobbied on behalf of LOGOS.

10. Paragraph 33 on page 11 of the Motion to Disqualify states as follows:

“Remarkably, Attorney Jeffrey Wechsler, with Montgomery & Andrews, P.A., represents IPANM, the Board on which Commissioner McWilliams sits, in a pending NM lawsuit D-101-CV-202301038. As stated above Attorney Jeffrey Wechsler, with Montgomery & Andrews, P.A. represents NMOGA in *this* case before the Water Quality Control Commission. ‘The IPANM Board unanimously voted to move to intervene in *Atencio v. State of New Mexico*, No. D-101-CV-2023-010308 to protect the interests of IPANM members.’ So, Mr. Wechsler’s client is IPANM in a pending case and Mr. Wechsler is appearing before his client, Commissioner McWilliams in *this* case. The issue of produced water is also an issue in Case No. D-101-CV-2023-01038.” (Emphasis in original.)

11. Once again, this statement is false and misleading. While it is true that I represent IPANM in the *Atencio* case, there is nothing unusual or improper about my representation of either client.

- a. First, NMOGA, LOGOS, and Commissioner McWilliams are not parties to the *Atencio* case.
- b. Second, the two cases are fundamentally different. The claims in *Atencio* are that the State of New Mexico's regulation of the oil and gas industry violates Article XX, Section 21 of the New Mexico Constitution in multiple ways. In contrast, the current matter before the Commission is a rulemaking that tests whether discharge permits for produced water should be allowed given that produced water can be treated to satisfy existing water quality standards. The issues in the two cases do not match, and the outcome in the current rulemaking will have no bearing on the outcome in the *Atencio* case.
- c. Third, in the *Atencio* case, I report to Jim Winchester, the Executive Director of IPANM, and the President of the Board. I do not report directly to Commissioner McWilliams. In fact, I do not know Commissioner McWilliams personally, and I have never spoken directly to Commissioner McWilliams about produced water or the proposed Reuse Rules.
- d. Fourth, far from acting improperly, Commissioner McWilliams has acted with integrity and consistent with her responsibilities as a WQCC Commissioner. I say that because on more than one occasion, I was present when the IPANM Board discussed the proposed Reuse Rules. Each time, Commissioner McWilliams recused herself, left the room (or disconnected if the meeting was virtual), and did not participate. To my knowledge, Commissioner McWilliams has never participated in any discussions or decisions on behalf of IPANM regarding produced water or the proposed Reuse Rules.

e. Fifth, as a lawyer, I take my obligations under the Rules of Professional Conduct very seriously. I am not aware of any rule that would prevent my representation of IPANM in *Atencio* and of NMOGA in the present case. More specifically, contrary to Movants' suggestion, I am not "appearing before [my] client" in the current case before the Commission.

12. On page 18 of the Motion to Disqualify, Movants argue that "the attorneys representing NMOGA and Commissioner McWilliams' business, LOGOS, at least indirectly represent Commissioner McWilliams' financial interests in the rulemaking." This is incorrect. As I explained above, M&A does not represent LOGOS or Commissioner McWilliams in the current rulemaking either directly or indirectly.

13. On page 19 of the Motion to Disqualify, Movants admit that "they don't have evidence of unlawful *ex parte* communications." That should end the inquiry. Nonetheless, despite a lack of evidence, Movants suggest that "it strains credulity" that Commissioner McWilliams did not engage in improper *ex parte* communications. To be clear, I am not aware of any *ex parte* communications involving Commissioner McWilliams.

14. I am also not aware of any reason why Commissioner McWilliams cannot be impartial in this case or any evidence that suggests that she should recuse herself or be disqualified. It is disappointing that the Movants have raised these unfounded allegations without investigation or evidence.

15. I submit this Declaration, based upon my personal knowledge and upon information and belief.

FURTHER, DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2024.

/s/ Jeffrey J. Wechsler

Jeffrey J. Wechsler

**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*

No. WQCC 23 - 84(R)

**DECLARATION OF JIM WINCHESTER  
IN OPPOSITION TO JOINT MOTION TO DISQUALIFY**

I ***Jim Winchester***, pursuant to Rule 1-011 NMRA state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.
2. I am over 18 years of age and have personal knowledge of the facts stated herein.
3. I hold a Bachelor of Science degree in Mechanical Engineering from the University of Notre Dame.
4. I previously served as the Communications Director for both the New Mexico Energy, Minerals & Natural Resources Department (“EMNRD”) and the New Mexico Environment Department (“NMED”).
5. I am currently employed as the Executive Director of the Independent Petroleum Association of New Mexico (“IPANM”).
6. Formed in 1978, IPANM advances and preserves the interests of independent oil and gas producers across New Mexico while educating the public to the importance of oil and gas to the state. IPANM has over 350 members representing over 120 distinct member companies working in all aspects of the oil and gas industry. IPANM is governed by an elected Board of Directors comprised of 17 members from across the State of New Mexico. As

Executive Director, I am responsible for overseeing IPANM's functions and for carrying out the direction of the Board of Directors.

7. I have reviewed the Joint Motion of New Energy Economy ("NEE"), Daniel Tso, and Samuel Sage (collectively, the "Movants") to Disqualify Water Quality Control Commissioner Krista McWilliams ("Motion to Disqualify").

8. One purpose of this Declaration is to correct false or misleading information in the Motion to Disqualify.

9. Paragraph 30 on page 10 of the Motion to Disqualify states as follows:

"Commissioner McWilliams is on the board of Independent Petroleum Association of New Mexico ('IPA NM'). Among the issues of concern to IPA NM is 'produced water,' and when one goes to that website page the instruction is that it is only accessible via 'MEMBER ONLY CONTENT'. The same applies to the 'spill rule.' Does Ms. McWilliams' IPA NM board participation violate the WQCC rules against *ex parte* communication?"

10. Similarly, Paragraph 31 on page 10 and 11 states as follows:

"The IPA NM booklet also shows Krista McWilliams' name on pg. 10 under 2023 Board Members. It states on p. 3, 'we advance and preserve the interests of independent oil and gas producers.' And, under the heading, 'Rulemaking Hearings – IPA NM insists on specific representation during rulemaking. We push hard to ensure new rules will not impact the bottom-line of our members.'"

11. In Paragraph 48 on page 19, Movants go on to suggest that "given her fiduciary duties as a Board member of IPA NM," it "strains credulity" that Commissioner McWilliams has not discussed the proposed Reuse Rule with IPANM and IPANM members.

12. These allegations of improper conduct by Commissioner McWilliams are false and unfair.

13. While it is accurate that Commissioner McWilliams serves as a Board member of IPANM, she has not participated in any discussions regarding the Reuse Rules or produced water.

14. IPANM publishes an agenda for its Board meetings. Every time that produced water, the proposed Reuse Rules, or any related subject has been a subject of IPANM discussion, Commissioner McWilliams has recused herself. That means that she has announced that she cannot participate in the discussion and has left the room or virtual meeting. To my knowledge, Commissioner McWilliams has never participated or listened to any discussion of the Reuse Rules or produced water with the IPANM Board or IPANM members. In short, I am not aware of any *ex parte* communications involving Commissioner McWilliams.

15. In Paragraph 33 of the Motion to Disqualify, Movants note that Jeff Wechsler represents IPANM in the lawsuit styled *Atencio v. New Mexico*, No. D-101-CV-2023-01038. That is correct. However, the *Atencio* case raises broad claims under the New Mexico Constitution regarding the general rules governing oil and gas production in the State. It is not related to the current proceeding before the Water Quality Control Commission on the proposed Reuse Rules.

16. As I am sure the Commission is aware, IPANM is not a party in the Reuse Rules proceeding.

17. I submit this Declaration, based upon my personal knowledge and upon information and belief.

FURTHER, DECLARANT SAYETH NAUGHT.



I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2024.

/s/ Jim Winchester

Jim Winchester