

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

IN THE MATTER OF PROPOSED
AMENDMENTS to 20.6.8 NMAC –
*Ground and Surface Water Protection –
Supplemental Requirements for
Reuse of Treated Produced Water,*

No. WQCC 25-34(R)

Water Access Treatment & Reuse Alliance,
Petitioner.

**WILDEARTH GUARDIANS' RESPONSE TO NEW ENERGY ECONOMY, CENTER
FOR BIOLOGICAL DIVERSITY AND AMIGOS BRAVOS/SIERRA CLUB'S MOTIONS
TO DISQUALIFY**

I. Introduction

WildEarth Guardians (“Guardians”) responds in support of the following motions to disqualify commissioners and vacate the vote accepting the petition in this matter (“Motions to Disqualify”) described below:

1. New Energy Economy’s motion filed on September 25, 2025;
2. Center for Biological Diversity and Mario Atencio’s motion filed on September 25, 2025; and
3. WELC’s motion filed on behalf of Amigos Bravos and the Sierra Club on September 29, 2025.

Guardians files this response to provide this Commission with further authority that supports the Motions to Disqualify.

II. Argument

As explained by the Motions to Disqualify, July 7, 2025 emails show that the Governor directed the five cabinet secretaries with statutorily-designated seats on this Commission, as well as the EMNRD secretary who appoints two members to this Commission, to vote in favor of

accepting the Water Access Treatment and Reuse Alliance’s (“Petitioner”) petition at the July 8, 2025 Water Quality Control Commission meeting. Because the Governor predetermined that vote, it violated Commission regulations that require commissioners to be impartial and fair in Commission rulemaking proceedings. *See* § 20.1.6.102 NMAC (“A Commission member shall not participate in any action in which his or her impartiality or fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the commission and the general public by announcing this recusal on the record.”)

It is well settled law in New Mexico that administrative agencies must follow their own rules, and courts invalidate agency decisions that are contrary to an agency’s own regulations. *See Navarez v. N.M. Dep’t of Workforce Solutions*, 2013-NMCA-079, ¶ 15 (recognizing that “[a]n administrative agency is bound by its own regulations”) *See also City of Albuquerque v. State Labor & Indus. Comm’n*, 81 N.M. 288, 290, 466 P.2d 565, 567 (1970) (“The Labor Commissioner, as any other administrative agency, is bound by its own rules and regulations.”) *See also Law v. New Mexico Human Services Department*, 2019-NMCA-066, ¶ 23, (“This Court has upheld the longstanding principle that administrative agencies are bound by their own regulations.”) (internal quotation marks and citations omitted).

Courts invalidate decisions that violate agency regulations, because those decisions are contrary to law. *See* NMSA 1978 §74-6-7(B) (providing that regulations that are “not otherwise in accordance with law” “shall be set aside.”); *Taylor v Department of Human Services*, 1982-NMCA-107, ¶¶ 5-6, 98 N.M. 314, (Invalidating agency decision because, “The Department must follow its own regulations.”).

Here, the Governor required members of this Commission to vote a certain way, violating the Commission’s duty to be impartial and fair. A vote made in violation of the Commission’s

own rules is not valid. *See Hillman v. Health and Social Services Dept.*, 1979-NMCA-007, ¶¶ 5-8, 92 N.M. 480, (“appellee [state agency] is bound by its own regulations” and agency decision that violated those regulations was not in accordance with law.)

III. Conclusion

Guardians’ interest in this proceeding is to ensure that rulemaking on oil and gas waste is conducted in a fair, transparent, and lawful manner consistent with the Commission’s duty to protect New Mexico’s waters. For the foregoing reasons, Guardians supports the Motions to Disqualify filed in this matter. Because Commission decisions made in violation of Commission regulations are contrary to law, Guardians respectfully requests that the Commission vacate its July 8, 2025 vote to accept Petitioner’s petition and the Commission’s July 9 Order accepting the petition.

Respectfully submitted on October 9, 2025,

/s/ Tim Davis

Tim Davis

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