

**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 Reuse of Treated Produced Water*

No. WQCC 25-34 (R)

Water Access Treatment & Reuse Alliance,
Petitioner.

JOINT RESPONSE IN OPPOSITION TO RULEMAKING PETITION

The Center for Biological Diversity, New Energy Economy, WildEarth Guardians, Mario Atencio and Daniel Tso (“Movants”) respectfully submit the following response urging the Water Quality Control Commission (“Commission”) to summarily reject the Petition for Rulemaking and Statement of Reasons (“Petition”) submitted by Water Access Treatment and Reuse Alliance (“Petitioners”). Petitioners seek a rule that would allow, among other uses, the discharge of treated oil and gas wastewater to New Mexico soil, just 30 days on the heels of the Commission’s decision that the best available science was not sufficient to ensure that treated wastewater could be safely discharged or reused outside of the oilfield.¹ The Commission made the right decision at that proceeding – it adopted a prohibition on discharge and reuse to protect human health and the environment while providing guidelines for future research into the characterization and treatment of oil and gas wastewater in pilot projects.

While the ink on this rule has hardly had time to dry, Petitioners are asking the Commission to authorize the unproven and dangerous discharge and reuse of oil and gas

¹ Order and Statement of Reasons, *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) (May 24, 2025), (hereinafter “WQCC Order”), Attachment 1.

wastewater – the very activity that the Commission explicitly prohibited just over one month ago. The Petition raises no new issues and presents no new facts that merit revisiting the Commission’s May 24 decision, and it must be summarily denied before further time and resources are spent on this baseless petition.

ARGUMENT

I. The Petition must be denied because this issue was just settled by the Commission.

The Petition must be denied because the Commission just concluded a lengthy and exhaustive rulemaking hearing on the reuse and treatment of oil and gas wastewater. This hearing, *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), took place over the course of the past fifteen months, included testimony from over one dozen experts, tens of thousands of pages of written testimony and exhibits, over one hundred public commenters, eleven days of evidentiary hearing, and three days of Commission deliberations. The hearing concluded on May 24, 2025, just over one month ago, when the Commission determined that the evidence did not support the discharge or reuse of oil and gas wastewater. To protect public health from the many known and unknown dangers inherent in the highly toxic and radioactive oil and gas byproduct known as “produced water,” the Commission finalized a rule prohibiting its discharge and reuse.² The Commission also provided regulations designed to guide future study and science on this topic to determine if reuse could ever be safe.³

a. The Commission concluded that the science is not there yet.

One fact above all became apparent over the course of the Commission’s recent hearing: the science is just not there yet when it comes to the characterization, treatment, and potential

² NMAC § 20.6.8.400(A).

³ NMAC § 20.6.8.400(B)-(C).

reuse of oil and gas wastewater. Expert after expert testified to the fact that oil and gas wastewater had not been fully characterized, was not fully understood, that testing methodologies for many of its 1,400+ potential contaminants had not been developed, and that treatment technologies had not been adequately tested, especially not at scale. From this mountain of evidence, the Commission rightly concluded that discharge or industrial-scale reuse were not compatible with its duty to protect human health and the environment.⁴ The Commission's order, which again is only one month old, included these findings of fact:

Insufficient evidence exists at this time to ensure that discharges of untreated or treated produced water are protective of human health or the environment.⁵

At the present time, there is insufficient scientific support for the proposition that any discharges of treated or untreated produced water would be protective of ground or surface water.⁶

An industrial application of treated produced water would not be approvable under the Rule because the evidence for protection of ground and surface water has not been demonstrated in the evidence presented to the Commission.⁷

Additional research is necessary to determine which treatments and applications, if any, can demonstrate a reliable treatment to allow for the discharge and reuse of produced water that is sufficiently protective of human health and the environment.⁸

Due to the complexity of produced water and remaining unknowns, at this time there is no scenario where a person could discharge treated produced water in a protective, predictable, and reliably safe manner that meets the requirements of the [Water Quality Act] and the [Produced Water Act].⁹

Because there is no scientific evidence that demonstrates that discharge or reuse of oil and gas wastewater can be done safely, the Commission rightly prohibited discharge to protect public health and the environment, as explained in its Statement of Reasons:

⁴ NMSA § 74-6-4.

⁵ WQCC Order, Finding 19, citing Fullam Direct Testimony, NMED Ex. 2, p. 14 (Ins. 1-2).

⁶ WQCC Order, Finding 21, citing Lucas Kamat Direct Testimony, Ex. 6, p. 10 (Ins. 5-8).

⁷ WQCC Order, Finding 22, citing Lucas Kamat Direct Testimony, Ex. 6, p. 10 (Ins. 21-23), Ex. 176, p. 16 (ln 1).

⁸ WQCC Order, Finding 20, citing Fullam Direct Testimony, NMED Ex. 2, p. 14 (Ins. 3-4).

⁹ WQCC Order, Finding 81, citing Herman Direct Testimony, NMED Ex. 3, p. 25 (Ins. 9 – 13).

The prohibition on discharges of untreated or treated produced water to ground or surface water in the Department's revised proposed supplemental reuse rule (NMED Exhibit 175) are crucial to the protection of human health and the environment under the state's [Water Quality Act], which must be read as part of a harmonious whole with the [Produced Water Act].¹⁰

If the Rule were adopted without explicit prohibitions on discharge of treated or untreated produced water, or if no rule were adopted, this would endanger New Mexico's ground and surface waters.¹¹

Because more evidence and information are needed to know if oil and gas wastewater can ever be reused outside of the oilfield safely, the Commission forbid such reuse and set guidelines on how that science should be developed.

b. Further in-depth study is necessary prior to any reuse.

The Commission determined that the evidence does not support the discharge or reuse of oil and gas wastewater, and that more information was necessary to determine if that wastewater could ever be rendered safe. To that end, the Commission promulgated regulations for treatment and reuse research projects, also called "demonstration" or "pilot" projects. Those regulations allow research to progress around this issue while protecting human health and the environment.

Again, we point to the Statement of Reasons published just over one month ago:

The evidence gained from pilot projects and feasibility studies is critical to determine whether wastewater reuse will be a viable option for New Mexico communities, and what constraints, protections, and applications are appropriate.¹²

The Rule will allow for the development of a regulatory mechanism protective of ground and surface waters that promotes continued produced water characterization and treatment technologies.¹³

The Rule provides a very narrow path for the safe use of produced water in limited, highly controlled situations for research purposes in subsection 20.6.8.400(B).¹⁴

¹⁰ WQCC Order, Finding 28.

¹¹ WQCC Order, Finding 106.

¹² WQCC Order, Finding 16, citing Fullam Direct Testimony, NMED Ex. 2, p. 13 (Ins. 14-17).

¹³ WQCC Order, Finding 17, citing Fullam Direct Testimony, NMED Ex. 2, p. 13 (Ins. 19-20).

¹⁴ WQCC Order, Finding 96, citing Lucas Kamat Rebuttal Testimony, NMED Ex. 180, p. 13 (Ins. 12-27).

The Commission found that more information is needed to assess the feasibility and safety of oil and gas wastewater discharge and reuse outside of the oilfield. It created a process to authorize projects designed to deliver that data – a process significantly more rigorous and science-oriented than the haphazard approach the New Mexico Produced Water Research Consortium, NMED, and OCD had previously taken to this research. Petitioners prematurely ask the Commission to allow discharge and reuse before a single research project has even begun under this program.

c. The Commission set a sunset date of 2030.

The Commission understood that new science could potentially require updated regulations in the future. For this reason, it set a 2030 sunset date for the rule, finding five years to be a reasonable deadline to reassess the safety and feasibility of reuse of oil and gas wastewater.¹⁵ This five-year timeline was based on industry representations and the New Mexico Environment Department’s estimate of the time needed to develop “appropriate and relevant standards.”¹⁶ This Petition follows that decision by less than *five weeks*.

Rather than allow time for public and private researchers to conduct the necessary research, or even to conduct research of its own, Petitioners ask the Commission to abandon its recent conclusions and embrace an undefined and unsafe approach to this hazardous waste. The Commission must exercise its authority under 20.1.6.200(c) and reject Petitioners’ unsupported and wildly premature proposal.¹⁷

¹⁵ WQCC Order, Finding 25.

¹⁶ *Id.*

¹⁷ “The commission shall determine, at a public meeting occurring no later than 90 days after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.” NMAC § 20.1.6.200(c).

d. NMOGA has appealed WQCC 23-84 (R), and it is prudent to await the resolution of that matter before contemplating a new rule.

On June 23, 2025, New Mexico Oil and Gas Association filed its notice of appeal regarding *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). The Commission should not begin a new rulemaking on the very same issue while the existing rule is being litigated.

II. The reuse of oil and gas wastewater is of statewide application and any hearing must be held in Santa Fe pursuant to NMSA § 74-6-6(C).

As stated above, the Petition should be denied in its entirety. However, should the Commission decide to hold a hearing, Petitioners' request that the hearing be held in Jal, New Mexico must be denied. The issue of oil and gas wastewater reuse is clearly of statewide application. The 13 counties that Petitioners identify as sources of oil and gas wastewater include 3 of the 4 corners of the state, 47% of New Mexico's landmass and 42% of its population. The expansive geographic area contemplated by Petitioners is evidence enough that the issue is of statewide application. Even more importantly, contamination from toxic oil and gas wastewater can and will travel through ground water and surface water without regard for county boundaries. Even if these 13 counties are the only places where oil and gas wastewater is currently being generated or researched, they are certainly not the only counties that are at risk of contamination from that activity.

Finally, Petitioners' request for a hearing in Jal appears to be nothing less than an attempt to evade public participation. The Commission witnessed unprecedented public participation in its recently concluded rulemaking on this issue, including over one hundred comments from the

public on zoom and in person, at the hearing alone. The overwhelming majority of public comments were opposed to the reckless and unsupported reuse of oil and gas wastewater outside of the oilfield. Petitioners' attempt to silence the public by holding the hearing in the furthest corners of the state should be denied.

Because New Mexico's freshwater resources are of fundamental importance to the entire state, and because the discharge and reuse of oil wastewater threatens those resources, this matter is of statewide application and any hearing should be held in Santa Fe.¹⁸

CONCLUSION

For the foregoing reasons, WATR's Petition for Rulemaking should be denied in its entirety. The science is still not there yet, which should surprise no one, given that the hearing on this issue concluded only a few weeks ago. Petitioners ignore the Commission's findings, ignore the need for evidence and for science to protect public health and the environment, and ignore the research process the Commission established for that explicit purpose. The Commission got it right with its May 24 rule protecting human health and the environment and encouraging responsible research. We urge you to reject Petitioners' attempt to undo that rule.

Respectfully submitted this 1st day of July, 2025,

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¹⁸ "Hearings on regulations or water quality standards of statewide application shall be held in Santa Fe." NMSA § 74-6-6(C).

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Certificate of Service

I hereby certify that on July 1, 2025, a copy of the foregoing Joint Response in Opposition to Rulemaking Petition was emailed to the persons listed below.

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