

**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.

WELC OPPOSITION TO WATR REQUEST FOR HEARING

Preliminary Statement

On June 20, 2025, Petitioner Water Access Treatment & Reuse Alliance (“WATR”) petitioned the Water Quality Control Commission (“Commission”) for a two-week rulemaking to be held in October of this year in Jal, New Mexico. Pet. for Rulemaking and Statement of Reasons (“Petition”) at 1. WATR proposes new rules at 20.6.8 NMAC to allow discharge of treated produced water to New Mexico ground and surface waters. Only weeks before WATR’s filing -- after an 18-month rulemaking process -- the Commission determined that there is insufficient scientific evidence to allow discharge of treated produced water to the State’s water resources and voted unanimously to adopt the New Mexico Environment Department’s (“NMED”) proposed prohibition against discharge. *See* Order and Statement of Reasons (“SOR”) (No. WQCC 23-84 (“Prior Produced Water Rulemaking”), ¶¶ 11, 16-21, 73, 75, 76, 81, 82, 90-97.

WATR’s request for a rulemaking hearing, coming on the heels of one of the most complex and contentious rulemakings ever to come before the Commission, should not be granted. WATR principals and members chose to sit out of the Prior Produced Water Rulemaking. At that rulemaking, experts for all parties presented volumes of evidence on the

safety or lack thereof of discharging treated produced water. Based on thousands of pages of testimony and exhibits over two weeks of hearing and four days of deliberations, the Commission made a considered and balanced decision to prohibit discharge at this time, to allow the study of treatment of produced water to move forward, and to require further rulemaking as the science progresses within five years -- not five months -- of its decision.

The Commission has complete discretion whether to hold a hearing on a rulemaking petition. *See* NMSA 1978, § 74-6-6(B) (Commission “denial of [a rulemaking] petition shall not be subject to judicial review.”). The Commission should exercise its discretion and deny a hearing on WATR’s Petition at this time.

Argument

I. THE COMMISSION SPENT THE LAST YEAR AND A HALF CONSIDERING WHETHER TO ALLOW DISCHARGE OF TREATED PRODUCED WATER: WATR’S PETITION SHOULD BE DENIED

NMED filed its petition for rulemaking in No. WQCC 23-84(R) on December 27, 2023. The central issue in that proceeding was whether to allow discharge of treated produced water to New Mexico’s ground and surface waters. Parties filed direct and rebuttal testimony and the hearing was held May 13-17, August 5-9, and August 13, 2024. The parties filed post-hearing briefs. The Hearing Officer prepared her report summarizing the evidence and the parties’ positions. And the Commission deliberated April 8-9 and May 13-14, 2025. SOR at 1-2. The Commission voted **unanimously**:

- To prohibit discharge of treated produced water to surface and ground water;
- To allow non-discharging pilot projects to proceed through a permit;
- Not to allow industrial projects to proceed; and
- To sunset the rule in five years, recognizing that the science on the efficacy and safety of discharging treated produced water is evolving.

Id. ¶¶ 11-25. The Commission’s final rule was filed with the New Mexico State Records Center

and Archives, was published in the New Mexico Register on June 24, 2025, and becomes effective July 12, 2025.¹

In its SOR, the Commission issued extensive findings in support of its decision to prohibit discharge of treated produced water to surface and ground water, *see, e.g.*, SOR, ¶¶ 11, 16-21, 73, 75, 76, 81, 82, 90-97, determining that, “Insufficient evidence exists at this time to ensure that discharges of untreated or treated produced water are protective of human health or the environment.” SOR, ¶ 19.

Before the final rule in Prior Produced Water Rulemaking was even published, WATR petitioned the Commission seeking to discharge treated produced water to surface and ground water. WATR’s Petition – and its factual predicate that it is safe to discharge treated produced water -- is completely at odds with the findings and decision of the Commission and a rule that becomes effective in a few days.

The parties – including the State and non-governmental organization parties with limited resources, the Commission, and its Hearing Officer and counsel all have spent substantial time, effort, and resources on a rule in which the efficacy and safety of discharge of produced water was center stage. WATR’s principals and members² chose not to participate in that proceeding,

¹ See <https://www.srca.nm.gov/wp-content/uploads/2025/06/20.6.8.pdf>.

² In its Petition, WATR states it is “a diverse coalition of water stakeholders, including municipalities, global and local engineering organizations and professionals, ranchers and other agricultural stakeholders, global and local water treatment organizations, water resource professionals, hydrogeologists, landowners, technology organizations, water infrastructure organizations, energy producers, water recycling organizations and others.” WATR Pet. at ¶ 4.

WATR has a one-page website at <https://watralliance.org/> that provides no information as to its members, board of directors, staff, or funding and as such offers no transparency into its operations. According to the New Mexico Secretary of State’s Office, WATR incorporated September 25, 2024 and its officers are Jennifer Bradfute, President, and Matthais Sayer, Vice President, both counsel to WATR in this proceeding. Its Directors are [Debbie Hughes](#), Director of New Mexico Association of Conservation Districts, [Deanna Archuleta](#), a principal at the [Vogel](#)

but instead have chosen to file their petition at the tail end of those proceedings. Given the enormity and complexity of the undertaking, it makes no sense – and is unfair to the parties who participated in the recent rulemaking -- to grant a petition for rulemaking on the same subject matter before the Commission’s new rule at 20.6.8 NMAC even becomes effective. This is true especially because WATR seeks to reverse a Commission decision made just weeks before WATR filed its petition.

Furthermore, it makes no sense to conduct a “re-do” of the two-week hearing in **three months**, even if that were enough time to prepare for such a hearing, which it is not. What makes sense at this point is to allow time for the science to progress; for NMED, industry, and other stakeholders to evaluate the science as it moves forward; and for a new petition to come forward prior to the end of the five year sunset period established in 20.6.8 NMAC. It is not a good use of limited resources to have another “knockdown, drag out” hearing before the Commission just as the Prior Produced Water Rulemaking comes to a close.

II. THE COMMISSION CANNOT HOLD A RULEMAKING HEARING PRIOR TO NMED CONVENING AN ADVISORY COMMITTEE

A 2003 amendment to the Water Quality Act requires constituent agencies to convene an advisory committee prior to adopting any rules that affect particular industries. The act provides that:

. . . The commission may adopt rules for particular industries. . . . **The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate rules to be proposed for adoption by the commission.** The rules shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations; . . .

[Group](https://enterprise.sos.nm.gov/search/business), and [Michael Dyson](#), Chief Executive Officer of [Infinity Water Solutions](#). See <https://enterprise.sos.nm.gov/search/business>.

NMSA 1978, § 74-6-4(L) (2003) (emphasis added).

To fulfill this statutory obligation for the Prior Produced Water Rulemaking, NMED initiated convening the Produced Water Advisory Committee (“PWAC”) in 2022, convened the 32-member PWAC in fall 2023, solicited input from PWAC members on a draft of 20.6.8 NMAC, and incorporated that input into a draft rule that NMED distributed for public comment in November 2023. NMED Ex. 2 at 14; NMED Exs. 47, 48, 49 (No. WQCC 23-84(R)).³

In its Petition, WATR proposes rules for particular industries, that is, the oil and gas industry and water treatment industry. Convening an advisory committee prior to the rulemaking proposed by WATR is **mandatory** under the Water Quality Act whether or not the rulemaking petition is filed by a third party or NMED. The act does not exempt petitions for rulemakings filed third parties; third party filings have been authorized under act prior to the 2003 adoption of the advisory committee requirement. *See* NMSA 1978, § 74-6-6(B). The clear intent of that provision – to gather stakeholders together to advise the constituent agency on a future rulemaking – is furthered by convening an advisory committee whether or not the constituent agency is the petitioner.

Although WATR’s principals are well aware of the requirement to convene an advisory committee, but it appears they have taken no action to ensure compliance with the requirement. A rulemaking hearing however cannot be held absent convening an advisory committee.

³ Both attorneys representing WATR in this proceeding were members of the PWAC and Infinity Water Solutions had two representatives on the PWAC. NMED Ex. 47 (No. WQCC 23-84(R)). NMED’s public outreach for the prior rulemaking included a September 2023 email to a broad array of potential stakeholders. From that email, the New Mexico Association of Conservation Districts self-identified as a stakeholder and then received various emails from NMED how to participate in the rulemaking. NMED Ex. 2 at 17; NMED Ex. 58 (No. WQCC 23-84). At least four of the five principals at WATR had **actual notice** of the prior rulemaking and, to reiterate, chose not to participate.

III. ALTERNATIVELY, IF THE COMMISSION DECIDES TO HOLD A HEARING, AN ADVISORY COMMITTEE SHOULD BE CONVENED AND THE HEARING SHOULD BE HELD IN SUMMER 2026 IN SANTA FE

If the Commission decides to hold a hearing on the WATR's petition, the estimated two-week hearing should not be held in a mere three months' time, in October of this year, in Jal.

First, prior to any hearing, NMED must convene an advisory committee. This is not a perfunctory exercise. NMED must identify the stakeholders to the process, develop materials for meeting, and hold meetings. A meaningful, robust stakeholder process can take up to a year to organize and complete. In this case, given the proximity in time to the Prior Produced Water Rulemaking, the enormous resources expended by the parties who participated in the prior hearing, and the unlikelihood that the science will progress dramatically over the next few months, it would behoove NMED and all stakeholders to participate in good faith in a process designed to make actual progress on reaching common ground. Such a process takes time and effort.

Second, holding a hearing in only three months does not give parties like Western Environmental Law Center, a nonprofit organization, sufficient time to identify experts, develop direct and rebuttal testimony and exhibits, and prepare for hearing. WATR's Petition – that appears to have been in the works for many, many months -- blindsides nonprofit organizations. A three-month window to prepare is patently unfair. A hearing of this magnitude and complexity, in which an advisory committee is required, should not be held before summer 2026.

Third, holding the hearing in Jal would represent a tremendous inconvenience and expenditure of resources for the Commission and the organizations that participate. A hearing in Jal would be especially burdensome on nonprofit organizations like Western Environmental Law Center and other nonprofits. WATR argues the hearing should be held in Jal because its

proposed rules apply only to 13 oil and gas producing counties. However, those counties are located in the Northwest, Northeast, and Southeast parts of the State and their reach is far and wide. And because WATR proposes to allow discharge to surface and ground water, the impact of its proposed rules could extend beyond the counties where discharge is allowed. WATR's proposed rules have "statewide application" and, under the Water Quality Act, the hearing must be held in Santa Fe. NMSA 1978, § 74-6-6-(C). Even if the proposed rules do not have statewide application, the act allows hearings such hearings to be held in Santa Fe. *Id.* For the convenience of the Commission, the Hearing Officer, and the parties, any hearing on WATR's Petition should be held in Santa Fe.

Conclusion

For the foregoing reasons, the Commission should deny WATR's request for hearing in its Petition.

Respectfully submitted,

/s/ Tannis Fox

Tannis Fox
Western Environmental Law Center
409 East Palace Avenue, Suite 2
Santa Fe, New Mexico 87501
505.629.0732
fox@westernlaw.org

Attorney for Western Environmental Law
Center

Certificate of Service

I certify a copy of the foregoing pleading was emailed to the following on July 2, 2025:

Pamela Jones
Commission Administrator
1190 Saint Francis Drive, Suite S2102
Santa Fe, New Mexico 87505
Pamela.jones@state.nm.us

Jennifer Bradfute
Matthias Sayer
Bradfute Consulting & Legal Services d/b/a
Bradfute Sayer P.C.

P.O. Box 90233
Albuquerque, New Mexico 87199
jennifer@bradfutelaw.com
matthias@bradfutelaw.com

Colin Cox
Gail Evans
The Center for Biological Diversity
1025 ½ Lomas NW
Albuquerque, New Mexico 87102
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org

Mariel Nanasi
Senior Attorney and Executive Director
New Energy Economy
422 Old Santa Fe Trail, Santa Fe, NM 87501
MNanasi@NewEnergyEconomy.org

Tim Davis
WildEarth Guardians
301 North Guadalupe Street, Suite 201
Santa Fe, New Mexico 87501
tdavis@wildearthguardians.org

Mario Atencio
mpatencio@gmail.com

Daniel Tso
detso49@gmail.com

Nick Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
inspector@sunshineaudit.com

Andrew Knight
Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87505
Andrew.Knight@env.nm.gov

Eduardo Ugarte, II
Assistant Attorney General
New Mexico Department of Justice
P.O. Box 1508
Santa Fe, New Mexico 87504
eugarte@nmdoj.gov

/s/ Tannis Fox
Tannis Fox