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Pamela Jones

By Water Quality Control Commission at 10:09 am, Aug 07, 2025

**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.

**JOINT MOTION FROM CENTER FOR BIOLOGICAL DIVERSITY, NEW ENERGY
ECONOMY, WESTERN ENVIRONMENTAL LAW CENTER, AND WILDEARTH
GUARDIANS' FOR COMMISSION TO COMPLY WITH ADVISORY COMMITTEE
REQUIREMENTS AND TO HOLD HEARING IN SUMMER 2026**

Preliminary Statement

The Center for Biological Diversity (CBD), New Energy Economy (NEE), Western Environmental Law Center (WELC), and WildEarth Guardians' (collectively, E-NGOs) object to a hearing in this matter going forward, as set forth in NEE and CBD's Joint Motion to Dispose of the WATR Petition Outright and in WELC's Motion for Reconsideration. However, if the Water Quality Control Commission (Commission) decides to continue to proceed to hearing in this matter, E-NGOs jointly move the Commission to comply with the mandatory requirements in the Water Quality Act to set a schedule for public input and stakeholder negotiations prior to a hearing in this matter and to hold any hearing in the summer of 2026. E-NGOs object strongly to holding to a hearing in December of this year, a date the Hearing Officer has suggested to the parties that the hearing may be held.

First, the New Mexico Environment Department (NMED) has not convened an advisory committee and the Commission has not developed a schedule for the hearing that incorporates an opportunity for public input and stakeholder negotiations, as required by the Water Quality Act.

NMSA 1978, § 74-6-4(L) (2003). These are mandatory, non-discretionary duties which NMED and the Commission must undertake regardless of whether a third party has petitioned the Commission and regardless of whether NMED is a party in this proceeding.

Second, the Petition in this matter is 55 pages, 46 pages of which represent the proposed rule. The rule proposed by the Water Access Treatment & Reuse Alliance (WATR) is complex and highly technical. In fact, according to WATR counsel, they have been working on the proposed rule with high level experts for **nine months**. Yet, holding a hearing in four months' time, and expecting E-NGOs and their experts who have no familiarity with the proposed rule to meaningfully participate, is being considered.

This needlessly aggressive schedule is fundamentally unfair to E-NGOs. In these rulemaking proceedings, parties are required to put together their **entire direct case** – with experts and exhibits – when they file a Notice of Intent to Present Direct Testimony (Direct NOI). Putting aside the busy schedules of E-NGO counsel, there is no practicable way E-NGOs would be able to find and retain experts, charge their experts with reviewing a rule as complex as that proposed, undertake the necessary research to prepare testimony, and prepare testimony in the **two months or so** before a Direct NOI deadline. This compressed schedule simply does not give E-NGOs adequate time to prepare a direct case, a case WATR has been working on with experts for the better part of a year.

While undersigned counsel have never seen a schedule as aggressive as this for such a complex rulemaking, there is no reason given by the WATR why the hearing should be expedited. There is no emergency. As the Commission is well aware, a rule governing discharge of produced water is in place for the next five years. *See* 20.6.8 NMAC. The new petition is not filed or otherwise sponsored by the executive branch and therefore the end of the current

administration is not a factor in determining a hearing date. Yet, this rule is being bulldozed through at record pace – to the detriment of E-NGOs, against basic principles of fundamental fairness and procedural due process, and more pointedly contrary the Water Quality Act which requires a “reasonable opportunity” for interested parties to participate. NMSA 1978, § NMSA 1978, § 74-6-6(D).

Under the act, the Commission “**shall allow all interested persons reasonable opportunity** to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.” NMSA 1978, § 74-6-6(D) (emphasis added). Commission rules require parties who wish to put on technical evidence to file notices of intent setting forth their testimony and exhibits prior to hearing. 20.1.6.202.A NMAC. Two months’ time to prepare a direct case in this complex matter does not give E-NGOs a “reasonable opportunity” to participate in the hearing. E-NGOs respectfully request a hearing in this matter, if one is to be held, occur in summer 2026.¹

Argument

I. NMED AND THE COMMISSION MUST FOLLOW THE WATER QUALITY ACT’S REQUIREMENTS FOR CONVENING AN ADVISORY COMMITTEE AND SOLICITING PUBLIC PARTICIPATION

E-NGOs renew their request that the requirements of the Water Quality Act be followed and that NMED convene an advisory committee and that the Commission develop a schedule for public input and stakeholder negotiations. A 2003 amendment to the Water Quality Act requires

¹ Movants did not seek concurrence in this request pursuant to Commission rules because WATR has already made its position clear in writing that it opposes the convening of an advisory committee and supports a December 2025 hearing in the southeast part of the state and opposes any later hearing in Santa Fe. 20.1.6.207(B) NMAC.

constituent agencies to convene an advisory committee prior to adopting any rules that affect particular industries. The act provides that the Commission:

. . . shall specify in rules the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt rules for particular industries. The commission shall adopt rules for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection F of this section, the best available scientific information. The rules may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. **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;**

NMSA 1978, § 74-6-4(L) (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)).

In its Petition, WATR proposes rules for particular industries, that is, the oil and gas industry and water treatment industry. Convening an advisory committee, holding stakeholder negotiations, and gathering public prior to the rulemaking proposed by WATR is a **mandatory and non-discretionary duty** under the Water Quality Act -- whether or not the rulemaking petition is filed by a third party or NMED and whether or not NMED is party to the rulemaking. The act mandates that the “constituent agency **shall** establish an advisory committee” (Emphasis added.) The act mandates that the “rules **shall** be developed” in accordance with a schedule approved by the Commission that “**shall** incorporate an opportunity for public input

and stakeholder negotiations.” (Emphasis added.) The language is plain and unambiguous.

But these mandatory provisions under law are being ignored. The act does not exempt petitions for rulemakings filed third parties. Indeed, third party petitions were authorized under act long before the 2003 adoption of the advisory committee requirement. *See* NMSA 1978, § 74-6-6(B) (1993). Nor does the act exempt petitions if NMED is not a party to the rulemaking.

If an advisory committee is not convened and an opportunity for “public input and stakeholder negotiations” is not provided, the public policies behind Section 74-6-4(L) are disregarded. The Legislature amended the Water Quality Act specifically to strengthen the public participation requirements that would occur **prior** to a formal rulemaking hearing that would affect specific industries. This is sound public policy that promotes early involvement in the rulemaking process of the public and the impacted industry and requires stakeholder negotiations that may help narrow disagreements that come before the Commission. The public policies underlying Section 74-6-4(L) are furthered whether or not NMED is a participant in the rulemaking. And, even if NMED is not a party, the agency may well benefit from the stakeholder and public input process on a rule, if passed, NMED would implement. Moreover, given the fact that this Commission just held a rulemaking in which parties’ views so substantially diverged, there is all the more reason to call the parties and other stakeholders together to try to narrow differences and reach common ground.

In scheduling the hearing in this matter, the Commission must take these directives under the Water Quality Act into account. Establishing an advisory committee 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 months to organize and complete. Meeting these statutory requirements is one reason any hearing should not be held in

December of this year.

II. A HEARING IN THIS MATTER SHOULD NOT BE HELD UNTIL SUMMER 2026

A. A December 2025 Hearing Date Does Not Give E-NGOs a “Reasonable Opportunity” to Participate

The Commission may not appreciate the time, effort, and expense that it takes to prepare direct and rebuttal cases in a complex, highly technical rulemaking. At hearing, Commissioners see the end product, but the work that goes into preparing for hearing – identifying experts, working with experts, developing a case, preparing and responding to motions, prepping for hearing, preparing cross-examination -- is immense. E-NGOs operate with limited resources, yet we do our best to present credible experts and evidence. Even putting aside undersigned counsel’s schedules set forth in attached declarations, there is no possible way to adequately develop an entire direct case in two months’ time for a rule as technical and complex as that proposed by WATR. The Water Quality Act requires parties like E-NGOs be given a “reasonable opportunity” to participate in a rulemaking before the Commission. NMSA 1978, § 74-6-6(D). Two months is not reasonable.

In correspondence with the Hearing Officer and counsel, counsel for the WATR, Mr. Sayer, argued that two rulemaking cases are precedent for the fast-paced schedule they propose: WQCC No. 23-84, the produced water rulemaking the Commission just finished, and OCC No. 24683, a rulemaking before the Oil Conservation Commission (OCC) in which Western Environmental Law Center (WELC) filed the application for rulemaking and in which a number of counsel in this proceeding, including counsel for WATR, are participating. M. Sayer email to Hearing Officer and Counsel (July 24, 2025).

In WQCC No. 23-84, NMED filed its petition in December 2023 and the hearing began in May 2024. While that timeline was overly aggressive, the rule now proposed by WATR is orders of magnitude more complex than proposed by NMED in the prior rulemaking. In WQCC No. 23-84, the principal dispute – which took two weeks of hearing and thousands of pages of evidence – was essentially over **one subsection of a six page rule** – section 20.6.8.400.A NMAC, the prohibition against discharge of produced water. WATR’s proposed 46 page rule trumps NMED’s proposed rule by complexity many times over. WQCC No. 23-84(R) is not an apt comparison.

In OCC No. 24683, which is a complex rulemaking related to preventing orphan wells in New Mexico, Applicants represented by WELC **filed their application for rulemaking in June 2024 and the hearing is being held in October 2025, fifteen months from filing.** E-NGOs agree with WATR counsel that the OCC rulemaking represents a good model for the Commission to adopt for this proceeding. WATR counsel, who represents an oil and gas company in the OCC proceeding, noted in his email correspondence that in the initial rulemaking application, Applicants requested a hearing in October 2024. While that is accurate, immediately after the application was filed, WELC counsel reached out to industry parties and the Oil Conservation Division (OCD) requesting to enter into discussions over their proposed rules to see if the parties could narrow differences and reach common ground. As a result, **all counsel** in that proceeding agreed to postpone the hearing until April 2025. 9/23/24 OCC Mtg. Tr. 5:23 to 6:8 (OCC No. 24683). During discussions among the parties held in October 2024, OCD stated that it had alternate proposals to propose by the end of the year. OCD’s proposals were delayed due to workload and submitted to the parties in February 2025, at which time OCD and WELC offered to negotiate with all parties. As a result, **all counsel, including Mr. Sayer,** agreed to a hearing

date of October 2025. 3/20/25 OCC Mtg. Tr. 17:18 to 22:18. At all times during the OCC rulemaking, WELC has endeavored to try to find common ground with industry parties and OCD on the substance of the proposed rules, and has worked to ensure agreement among all counsel on all scheduling matters. No dispute over scheduling was ever brought to the OCC, and there has never been an attempt to bulldoze through the rulemaking process to the detriment of other parties. E-NGOs commend the process in OCC No. 24683 to the Commission as an appropriate and fair way to proceed, and which is more consistent with Commission practice setting hearing dates.

B. The Commission Should Take Account of the Schedules of E-NGO Counsel

Counsel for E-NGOs have set forth their schedules in declarations attached.² As is evident from these busy schedules, it is not humanly possible for E-NGOs' counsel to prepare a direct case in two months' time and go to hearing in four months' time. The Commission should take counsel's schedules into account, as it has in the past, especially because there is no reason to rush or prioritize this rulemaking. Given counsel's schedules, the substantial time required to develop direct and rebuttal cases, and E-NGOs' limited resources, E-NGOs can adequately prepare Direct NOIs by late winter 2026 and Rebuttal NOIs by late spring 2026, and be prepared for hearing by the summer of 2026.

III. ANY HEARING SHOULD BE HELD IN SANTA FE; THE VIRTUAL PLATFORM ALLOWS PERSONS FROM AROUND THE STATE TO PARTICIPATE, INCLUDING THOSE IN IMPACTED COMMUNITIES

The WATR argues the hearing should be held in Jal or the southeast part of the state because its proposed rules apply to 13 oil and gas producing counties. However, those counties

² See Decl. of C. Cox [Ex. 1], Decl. of M. Nanasi [Ex. 2], Decl. of T. Fox [Ex. 3], and Decl. of T. Davis [Ex. 4], attached.

are located in the northwest, northeast, and southeast parts of the state and their reach is far and wide. The hearing can't be held in all these places.

Furthermore, because WATR proposes to allow discharge to surface and ground water, the impact of its proposed rules could well extend beyond the counties where discharge is allowed. WATR's proposed rules therefore 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 did not have statewide application, the act allows this hearing to be held in Santa Fe. *Id.* E-NGOs strongly support providing meaningful opportunities for the public to provide comment at the hearing. However, given the logistical challenges of finding an appropriate venue in Jal or the southeast part of the state, the additional expense to resource-limited E-NGOs, and the additional expenses to the State, the in-person hearing should be held in Santa Fe. During the July 29, 2025 prehearing conference with the Hearing Officer, it became evident that it is a challenge to find a venue that can accommodate a hearing of his magnitude, which requires appropriate seating for the Commission and counsel, electronic charging stations for the Commission and counsel, seating for the public, technology for virtual participation, and hotel and restaurant accommodations for 75 participants. Moreover, for resource-strapped E-NGOs, who will need to attend the hearing in-person, the additional expense of a hearing in the southeast part of the state is burdensome.

Fortunately, it has become the Commission's practice for rulemaking hearings to allow for both in-person and virtual participation. As such, it has become much easier for interested persons outside of Santa Fe to attend hearings for as much time as they are able and to give comment at their convenience. Hybrid hearings have completely changed the accessibility of these proceedings to the public, and interested persons from the 13 counties in which the rule

applies will be able to view the proceedings in real time. Given the breadth of the rule, the expense for parties with limited resources, and the added costs to the state, on balance, it makes more sense to hold the hearing in Santa Fe, where the facilities can accommodate a hearing of this size and resource-strapped E-NGOs aren't disadvantaged.

Conclusion

For the foregoing reasons, E-NGOs respectfully request the Commission develop a schedule to provide for public input and stakeholder negotiations, not schedule this matter for hearing until summer 2026, and hold any hearing in Santa Fe.

Respectfully submitted,

/s/ Tannis Fox

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

*Attorney for Western Environmental Law
Center*

/s/ Colin Cox

Colin Cox
Gail Evans
Center for Biological Diversity
1025 ½ Lomas NW
Albuquerque, New Mexico 87102
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org
832.316.0580

Attorneys for Center for Biological Diversity

/s/ Mariel Nanasi

Mariel Nanasi
New Energy Economy
422 Old Santa Fe Trail
Santa Fe, New Mexico 87501

MNanasi@NewEnergyEconomy.org
505.469.4060.

Attorney for New Energy Economy

/s/ Tim Davis

Tim Davis
WildEarth Guardians
301 North Guadalupe Street, Suite 201
Santa Fe, New Mexico 87501
tdavis@wildearthguardians.org
205.913.6425

Attorney for WildEarth Guardians

Certificate of Service

I certify a copy of the foregoing pleading was emailed to the following on August 7, 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

Mario Atencio
mpatencio@gmail.com

Daniel Tso
detso49@gmail.com

Bruce Wetherbee
60 Thoreau Street, Unit 103
Concord, Massachusetts 01742
editor@thecandlepublishing.com

Nick Maxwell

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

Adam Rankin
Chris Mulcahy
Lila C. Jones
Holland and Hart, LLP
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87501
AGRankin@hollandhart.com
CAMulcahy@hollandhart.com
LCJones@hollandhart.com

Jeffrey J. Wechsler
Kari E. Olson
Sharon T. Shaheen
Spencer Fane, LLP
P.O. Box 2307
Santa Fe, New Mexico, 87504
jwechsler@spencerfane.com
kaolson@spencerfane.com
sshaheen@spencerfane.com

Jolene L. McCaleb
Elizabeth Newlin Taylor

TAYLOR & McCaleb, P.A.
P.O. Box 2540
Corrales, New Mexico 87048-2540
jmccaleb@taylormccaleb.com
etaylor@taylormccaleb.com
sherbst@taylormccaleb.com

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

1 And one additional month is not enough time to adequately prepare a rebuttal case.

2 10. The Center is a nonprofit organization and does not have experts on retainer for
3 this matter. The Center for Biological Diversity will need to secure funding for experts, identify
4 and retain experts, work with the experts to review the Petition and proposed rule, work with the
5 experts on direct technical testimony and identifying exhibits, work with the experts to review
6 direct technical testimony and exhibits provided by other parties, and work with the experts on
7 preparing rebuttal technical testimony and related exhibits.

8 11. The Center for Biological Diversity cannot retain experts and properly develop
9 the necessary technical testimony in a rulemaking of this complexity in two months' time. A
10 December 2025 hearing date would disadvantage the Center and effectively preclude the Center
11 from full participation in this matter.

12 12. Counsel for the Petitioner in this matter has informed the Commission that they
13 have spent over nine months working on the Petition and proposed rule. The Center and other
14 parties to this rulemaking should be given at least this much time to analyze and respond to the
15 Petition.

16 13. Additionally, I have pre-existing commitments that prevent me from dropping
17 everything and devoting my entire attention to this matter for the next four months. I am counsel
18 in other cases in state and federal courts that require significant time and attention. I also have
19 numerous other responsibilities in my position at the Center beyond these litigation
20 commitments.

21 14. Given the complexity of the proposed rule and given the harm to the Center and
22 other parties that would result from scheduling a hearing in four months' time with major
23 deadlines in approximately two months, I ask the Commission to schedule a hearing in this
24

1 matter in the summer of 2026, approximately ten months from now.

2 15. I believe scheduling a hearing in this matter in summer 2026 is reasonable and
3 fair and would afford the Center and other parties the necessary time to exercise their legal rights
4 to participate in matters of such great importance to the health and welfare of New Mexicans.

5 This declaration is accurate to the best of my knowledge.

6 /s/ Colin Cox
Name

August 6, 2025
Date

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DECLARATION OF MARIEL NANASI

1. My name is Mariel Nanasi.
2. I am Senior Counsel for New Energy Economy and have been for 13 years.
3. The WQCC 23-84 final rule adopted by in May 2025 was in accordance with fact and law and was science-based. The potential rule making hearing *in this matter* is precluded by the doctrines of res judicata and collateral estoppel; the WATR Alliance Petition appears to be a collusive attempt to relitigate the produced water discharge and reuse. To the extent the WATR Alliance is not the identical party as New Mexico Oil and Gas Association (“NMOGA”) or New Mexico Produced Water Research Consortium (“NMPWRC”) their interests are aligned. The former litigants held out to the world that they were taking care to protect nonparty’s interests, like the WATR Alliance. Additionally, nonparty preclusion should apply more broadly in public law litigation, “because the number of plaintiffs in public-law cases is potentially limitless, it is theoretically possible for several persons to coordinate a series of vexatious repetitive lawsuits.” All these points were at issue in a unanimous US Supreme Justice Ginsberg authored opinion in 2008, *Taylor v. Sturgell*. The WATR Alliance is precluded from engaging in successive litigation of the very same claim, especially when they had a full and fair opportunity to litigate. By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, we prevent the expense of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.
4. Troubling, is the clear appearance of political interference in what is supposed to

1 be an independent regulatory process. Environment Secretary James Kenney,
2 stated publicly that his department lacks the staffing and resources for this new
3 rulemaking, nevertheless he sanctioned its advancement. All New Mexico
4 Environment Department (“NMED”) staff experts acknowledged the scientific
5 and practical limitations of permitting discharge under oath during cross
6 examination during the evidentiary hearing last year, yet the Department’s
7 political head, Secretary Kenney, (who was present as a Commissioner for the
8 first time) did not object to re-opening rulemaking just days before the more
9 protective rule was set to take effect; Secretary Kenney refused to take an official
10 position regarding the WATR Alliance’s patently defective proposed new rule.

11 5. This contradiction—sanctioning a massive, high-stakes rulemaking with no newly
12 disclosed peer reviewed scientific evidence and no capacity to oversee it and on
13 an unnecessarily expedient track for hearing —suggests a directive from the
14 Governor’s office, coordinated with industry operatives seeking to reverse hard-
15 won public and environmental protections.

16 6. Under the Water Quality Act, the Commission “shall allow all interested persons
17 reasonable opportunity to submit data, views or arguments orally or in writing and
18 to examine witnesses testifying at the hearing.” NMSA 1978, § 74-6-6(D).

19 7. Failing to take into consideration the schedule of interested persons is contrary to
20 the Water Quality Act and prejudices the parties who just recently successfully
21 litigated the WQCC 23-84.

22 8. I will be unable to adequately prepare for a December hearing as I have
23 previously scheduled legal matters that precede the scheduling in this case:
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- NM PRC Case No. 24-00266-UT (proposed acquisition by Bernhard Capital Partners of New Mexico Gas Co. before the Public Regulation Commission): direct testimony due by September 26, 2025; rebuttal testimony due by October 10, 2025; a public hearing will be held begin on November 3-14, 2025.
- S-1-SC-34906 (Public Service Company rate case appeal pending in the NM Supreme Court): case briefed, oral argument date unknown, expected fall 2025.
- OCC No. 24683 (financial assurance rulemaking before the Oil Conservation Commission (OCC): direct case is due by August 9, 2025; rebuttal is due by September 19, 2025; a public hearing will be held begin on October 20, 2025.
- NM PRC Case (proposed \$11B acquisition by Blackstone of New Mexico Gas Co. before the Public Regulation Commission): case filed mid August 2025.
- There are a number of other cases that I am also involved in, like defending the WQCC 23-84 rulemaking on appeal, A-1-CA-42732.

9. 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.¹ 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.”²

10. Regarding the location of the hearing, the usual practice for the New Mexico Public Regulation Commission that may be instructive here, is that the Commission makes a serious effort to hear from the public – especially to accommodate an “impacted” community, and will have a block of hours or a day’s worth of public comments in Farmington or Albuquerque or some other part of the state (which is also accessible electronically), but holds the actual public

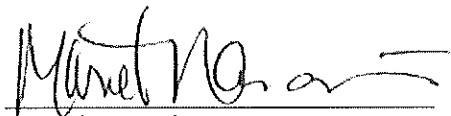
¹ WQCC 23-84, Finding 25.

² Id.

1 hearing on the merits in Santa Fe, whether the dates are consecutive or not. This
2 administrative procedure allows for the greatest public input and balances
3 administrative and parties' resources. Holding an entire public hearing in Jal is
4 unreasonable. Holding a day of public comment in Jal, even if it is not
5 consecutive with a hearing on the merits is reasonable. I will note that the mayor
6 of Jal did provide public comment via the electronic platform at the WCQQ 23-84
7 hearing. The Hearing Officer and the Commission accommodated all public
8 commenters, even those Spanish speakers during the WCQQ 23-84 hearing.

- 9 11. Should a hearing proceed in this matter, it should be set for the summer of 2026
10 for the following reasons: 1) there is no urgency to this Petition; 2) counsel has
11 other previously-scheduled legal commitments; and 3) the Water Quality Act
12 rules require a reasonable opportunity to participate in the rule making, including
13 adequate time to engage with and procure experts.³

14
15 This concludes my declaration, which is accurate to the best of my knowledge.

16 
17 _____
18 Mariel Nanasi

19 _____
20 8/4/2025

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23 _____
24 ³ In WQCC 23-84 New Energy Economy had three expert witnesses, and provided direct, rebuttal, and sur-rebuttal testimony.

DECLARATION OF TANNIS FOX

1
2 1. My name is Tannis Fox, and I am a Senior Attorney with Western Environmental
3 Law Center (“WELC”). I am counsel for WELC in WQCC No. 25-34 (R), and anticipate
4 representing other nonprofit organizations in this matter.

5 2. I have practiced law for over 40 years, and I am very familiar with rulemaking
6 proceedings before the Water Quality Control Commission (“Commission”) (as well as the
7 Environmental Improvement Board), having participated in such rulemakings since the late
8 1990’s, first, as counsel to the Commission when I served in the New Mexico Attorney
9 General’s Office, and then serving as counsel appearing before the Commission as Deputy
10 General Counsel at the New Mexico Environment Department (1999-2011), as Assistant
11 Attorney General with the New Mexico Attorney General’s Office (2011-2016), and as an
12 attorney with WELC (2020-present).

13 3. Over the last two decades, I have participated in many environmental rulemakings
14 in New Mexico, and I have observed that over time the rulemakings have become more and
15 more complex, technical, resource intensive, and time consuming. This includes the rulemaking
16 in this matter.

17 4. It is my understanding from the Hearing Officer in this matter that the
18 Commission is considering holding the rulemaking in this matter in December of this year, in
19 approximately four months’ time.

20 5. I can say without reservation that four months’ time is an insufficient amount of
21 time to adequately prepare for a hearing in this matter.

22 6. The Petition here is 55 pages, 46 of which represent the proposed rule, which is
23 highly technical and complex.

1 7. In accordance with Commission rules and practice, in a proceeding as complex as
2 this one, parties will be required to file notices of intent (“NOI”) to file direct technical testimony
3 and exhibits and rebuttal technical testimony and exhibits. Based on past experience, parties’
4 direct cases would be due in about two months’ time and rebuttal cases in about three months’
5 time. Parties’ direct and rebuttal cases must be set forth in full in the NOIs.

6 8. In order to effectively participate in a rulemaking such as this one, a party must
7 provide expert testimony. WELC is a nonprofit organization, and does not have an expert or
8 experts on retainer for this matter and, to effectively participate in this matter, will need to
9 identify funding for experts, identify and retain an expert/s, work with the expert/s to review the
10 proposed rule, develop questions for the expert/s, and work with the expert/s on testimony and
11 identifying exhibits.

12 9. Based on my two decades of experience, it is impracticable to think that WELC
13 can prepare an adequate direct case in two months’ time given the scope and complexity of the
14 rule proposed in this matter. This is without even taking my own work schedule into account
15 which prohibits me from preparing a direct case in this matter in two months’ time.

16 10. Counsel for the Petitioner in this matter has informed the Commission that they
17 have spent the last **nine months** working on the Petition.

18 11. In my two decades of experience, I have never seen the Commission or other
19 administrative body set a rulemaking hearing of this complexity on such an expedited schedule.
20 In my experience, administrative bodies take account of the complexity of the rulemaking, the
21 schedules of parties’ counsel, and the urgency – or not – of promulgating a rule in determining
22 when to schedule a hearing.

23 12. A December 2025 hearing does not take into account any of the considerations
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1 that are usually taken into account by the administrative agency trying to conduct a fair hearing.
2 And an overly aggressive hearing schedule in this matter would particularly disadvantage
3 nonprofit organizations like WELC and the other nonprofits I anticipate representing.

4 13. My work schedule also prevents me from providing effective counsel to prepare
5 for a hearing in December 2025. Currently, I am lead counsel in a complex and highly technical
6 rulemaking before the Oil Conservation Commission (OCC) in OCC No. 24683, in which
7 WELC represents nine nonprofit organizations that filed the application for rulemaking. The
8 application proposes rules to amend five OCC rules in order to prevent low producing and
9 inactive wells from becoming “orphaned.” The proposed amendments relate to increasing
10 financial assurance for at risk wells, timely plugging and abandonment of inactive wells, and
11 establishing for against risky well transfers, all in an effort to prevent “orphan wells” that
12 become the financial responsibility of the State and can negatively impact human health and the
13 environment. Orphan wells are a state and national problem. Applicants’ direct case is due for
14 filing August 9, 2025, the rebuttal case is due September 19, 2025, and the two to three week
15 hearing begins October 20, 2025. I am working almost fulltime on this matter and anticipate
16 continuing to do until the hearing concludes around November 7 to 14, 2025.

17 14. Among my other work is serving as lead counsel for WELC and other
18 organizations in an upcoming rulemaking to be filed by the New Mexico Environment
19 Department (NMED) before this Commission to implement SB 21, passed this legislative
20 session. The rulemaking will establish state permitting programs (1) for NMED to take over
21 “primacy” from the U.S. Environmental Protection Agency for point source discharge permits
22 for waters protected under the federal Clean Water Act and (2) to permit point source discharges
23 and dredge and fill activities for New Mexico waters that are no longer protected under the Clean
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1 Water Act as a result of *Sackett v. EPA*, 598 U.S. 651 (2023). I have been heavily involved with
2 this work for at least two years, and NMED intends to issue a second draft of the two sets of
3 rules to implement SB 21 in August 2025, petition the Commission in fall 2025, and request a
4 hearing in spring 2026. I am working on that matter now and anticipate that effort will continue
5 to take at least one-third of a full time equivalent employee.

6 15. Given my schedule, which makes it essentially impossible for me to work on this
7 matter until sometime in November 2025; the fact that I am the only WELC lawyer assigned to
8 water protection work in New Mexico; the complexity of the proposed rule; the substantial
9 amount of work required to prepare for such a hearing (as outline above); and the lack of
10 urgency in the need to promulgate a rule, a schedule providing for filing Direct NOIs by late
11 winter 2026 and Rebuttal NOIs by late spring 2026, and holding a hearing in the summer 2026 is
12 reasonable and fair.

13 This concludes my declaration, which is accurate to the best of my knowledge.

14 /s/ Tannis Fox
15 Name

August 6, 2025
Date

DECLARATION OF TIM DAVIS

1
2 1. My name is Tim Davis, and I am the staff attorney for WildEarth Guardians
3 (“Guardians”) Climate and Health Program. I am the only attorney for the program, and I am the
4 only attorney representing Guardians in WQCC No. 25-34 (R).

5 2. Over the last few years, I represented Guardians before this Commission in
6 WQCC 23-84 (R), and I also represented Guardians before the Oil Conservation Commission
7 (“OCC”), as the petitioner, in OCC 23580.

8 3. Each of these rulemakings was complex and the subject matter and evidence was
9 scientific and highly technical. WQCC 23-84 (R) involved a 6-page proposed rule and OCC
10 23580 involved a 16-page proposed rule that was later shortened to 9 pages in an amended
11 petition for rulemaking. Both were much shorter and involved fewer issues than the current 46-
12 page proposed rule in this matter.

13 4. As this Commission is aware, in WQCC 23-84 (R) the New Mexico Environment
14 Department filed its petition for rulemaking on December 27, 2023. The Commission held the
15 rulemaking hearing on the 6-page proposed rule over two-plus weeks in May and August 2024,
16 and completed the evidentiary record more than 8 months after the filing of the petition.

17 5. In OCC 23480, Guardians filed its application for rulemaking on May 25, 2023.
18 The OCC initially set the rulemaking hearing on the 16-page proposed rule for March 1, 2024,
19 nearly 10 months after Guardians filed the initial petition. However, because the Oil
20 Conservation Division was not able to secure expert witnesses in that timeline, all parties agreed
21 to vacate those hearing dates and reset the hearing for November 12-15, 2025. In that case, the
22 OCC held a hearing on the amended 9-page proposed rule and closed the evidentiary record
23 roughly 18 months after Guardians filed the rulemaking petition. Significant delay was caused by
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1 OCD's difficulty in securing expert witnesses.

2 6. It is my understanding, that the Commission is considering holding the
3 rulemaking hearing in this matter starting on December 2 of this year, and completing the
4 evidentiary record roughly six months from the date of the petition. The proposed rule in this
5 matter is 46 pages long. It is highly technical and complex, and it is much longer than the
6 proposed rules in WQCC 23-84 (R) and OCC 23580. In both of those hearings, the time from the
7 filing of the petition to close of evidence was longer than in this matter, and the proposed rules in
8 OCC 23580 and WQCC 23-84 (R) were at least 30 pages shorter than the current proposed rule.

9 7. This is an insufficient amount of time to adequately prepare for a hearing.
10 Guardians does not have a technical expert(s) on staff or retainer to provide testimony in this
11 matter. It will take more than four months to locate technical witnesses(es), identify funding for
12 their services, work with the witness(es) to review the proposed rule, develop direct testimony,
13 and put together exhibits and a prehearing statement.

14 8. In addition to the issues outlined above, my work schedule also prevents me from
15 adequately preparing for a hearing in December 2025 as demonstrated by the following:

- 16 a. I will represent Guardians in the appeal of the OCC's order in OCC 23580,
17 The notice of appeal is due on August 15, 2025.
- 18 b. I will represent Guardians as it moves to intervene in the appeal of this
19 Commission's Order in WQCC 2384 (R)/A-1-CA-42732.
- 20 c. I represent Guardians in a case before the Interior Board of Land Appeals,
21 IBLA 2019-002.
- 22 d. In addition to this administrative docket, I represent Guardians in ongoing
23 federal litigation including 23-cv-00060MLG-KRS and 22-cv-00174-RB-

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GBW. The latter case is currently stayed until February 26, 2026 when a status report is due.

e. I represent Guardians in state court in No. D-101-CV-2023-01038/No. A-1-CA-42006/No. S-1-SC-40980.

f. I am the only attorney at Guardians who will analyze bills and provide analysis during the 2026 regular legislative session of the New Mexico Legislature. The session ends on February 19, 2026.

9. Given my schedule, I will not be able to devote sufficient time to this matter until after the conclusion of the 2026 regular legislative session.

10. I believe scheduling a hearing on the Petition in this matter in summer 2026 is reasonable and fair.

This concludes my declaration, which is accurate to the best of my knowledge.

/s/ Tim Davis
Name

August 6, 2025
Date