

Pamela Jones

**STATE OF NEW MEXICO
BEFORE THE 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.

**PETITIONER’S MOTION FOR RECONSIDERATION OF COMMISSION DECISION
TO DENY PETITION 25-34**

The Water Access Treatment & Reuse Alliance (“WATR”) respectfully moves for reconsideration of that portion of the Commission’s November 19, 2025, “Order Granting Motion to Vacate” that purports to deny WATR’s June 20, 2025, Petition for Rulemaking (Petition) and requests that the Commission take a vote on whether to set the Petition for hearing.¹

The Commission never noticed, considered, or voted on any motion to deny the Petition or otherwise determine that the Petition should not be set for hearing. At its November 13, 2025, meeting, the Commission voted only to vacate its July 8, 2025, decision setting the Petition for hearing. Vacatur in this context means that the July 8 decision was undone and no longer has legal effect. It does not, however, operate as a vote not to set the Petition for hearing, nor does it substitute for a new Commission vote deciding whether the Petition should proceed.

Vacatur of a prior procedural decision simply restores the matter to its prior posture—it does not resolve the Petition on the merits or constitute a denial. If the Commission wished to deny

¹ Concurrence with this Motion, under 20.1.6.207(C) NMAC was not sought because the parties’ various positions on the motion are known via their positions in earlier motions seeking to dismiss, vacate, etc.

the Petition, it was required to take a separate, noticed public vote not to set the Petition for hearing, with the concurrence required by statute. No such vote occurred.

Nevertheless, the Commission’s November 19, 2025, Order states that the Petition is “Denied.” That action was not on the November 13 agenda, was not the subject of any motion, and was never voted on by the Commission. The Commission may not deny a rulemaking petition (determine not to set a petition for hearing) by written order alone. By statute, no action of the Commission is valid unless concurred in by six or more members present at a meeting. Because the denial of the Petition was never voted on and never received the required concurrence, that portion of the Order is not supported by a Commission vote and must be vacated.

FACTUAL BACKGROUND

WATR filed its Petition for Rulemaking on June 20, 2025.² The Commission’s July 8, 2025, meeting agenda included WATR’s request that the Petition be set for hearing, and the Commission voted unanimously to do so.³ At that time, the Commission did not schedule a hearing date.

Following the July 8 vote, multiple motions were filed seeking to disqualify certain commissioners and to vacate prior Commission actions.⁴ WATR opposed those motions. In response, the Commission noticed a meeting for November 13, 2025. The relevant agenda item stated:

² Petition for Rulemaking and Statement of Reasons, *available at* <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/06/2025-06-20-WQCC-25-34-Petition-for-Rulemaking-and-Statement-of-Reasons-pj.pdf>

³ July 8, 2025 WQCC Meeting Agenda, *available at* <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/07/2025-07-08-WQCC-Meeting-Agenda.pdf>

⁴ WQCC 25-34 Motion to Disqualify, *available at* <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/09/2025-09-25-WQCC-25-34-Motion-to-Disqualify-CBD-and-Atencio-w-attach-pj.pdf>

WQCC 25-34(R): Consideration of motions to disqualify and/or vacate Commission action. . . . All parties are encouraged to focus their oral briefs on the substance of their motion or response and not the merits of the underlying matter.⁵

At the November 13 meeting, the Commission heard argument limited to the noticed motions and responded to commissioner questions.⁶ After deliberation, Commissioner Brancard moved to vacate the Commission’s July 8, 2025, decision setting the Petition for hearing, stating:

“I move that the Water Quality Control Commission vacate its decision of July 8th, setting this case for hearing. . . .”

Immediately before the vote, the Chair and Commissioner Sloane clarified the scope of the motion:

Chair: The motion is to vacate the action we took on July 8th.

Sloane: Mr. Chair, for clarity, a yes vote then would be to not hold a hearing and a no vote would be to go forward with a hearing. Correct?

Chair: Yes.⁷

The Commission then voted 7–4 to vacate the July 8, 2025, action setting the Petition for hearing.

On November 19, 2025, the Commission issued an “Order Granting Motion to Vacate.” The Order identified the pending motions as motions to disqualify commissioners and to vacate the July 8 decision setting the Petition for hearing. Consistent with the November 13 vote, the Order states that the matter set for hearing is vacated.

However, the Order also states: “*IT IS FURTHER ORDERED that the petition submitted by Water Access Treatment and Reuse Alliance for consideration for rulemaking on June 20, 2025,*

⁵ November 13, 2025 WQCC Meeting Agenda *available at* <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/11/2025-11-13-WQCC-Meeting-Agenda-draft-GCA-11-07-2025.pdf>

⁶ November 13, 2025 WQCC Meeting, *available at* <https://www.youtube.com/watch?v=T3-kL56nPdQ>

⁷ *Id.*

is DENIED.”⁸ This portion of the Order was not the subject of any noticed agenda item, motion, or Commission vote at the November 13 meeting.

This understanding was later confirmed at the Commission’s December 9, 2025, meeting, when Commissioner Brancard clarified that his November 13 motion was limited to vacating the July 8 action setting the Petition for hearing.⁹

In short, while the Commission voted on November 13 to vacate its prior decision to set the Petition for hearing, it never considered or voted on whether to deny the Petition. The portion of the November 19 Order stating that it denies the Petition does not correspond to any Commission vote.

ARGUMENT

I. THE COMMISSION’S ACTIONS ARE ONLY VALID IF TAKEN AT A PUBLIC MEETING AND ADOPTED BY VOTE.

The record reflects a disconnect between the scope of the Commission’s November 13, 2025, vote and the language of the November 19 Order. On November 13, the Commission voted to vacate its July 8 decision setting the Petition for hearing. The Commission did not vote on whether to deny the Petition or whether the Petition should or should not be set for hearing. The Order, however, states that the Petition is “Denied.”

This motion does not challenge the Commission’s authority to vacate its prior procedural action. Rather, it seeks to clarify the legal effect of that vacatur and to align the November 19 Order with the action the Commission took on November 13. While vacating the July 8 decision

⁸ 2025-11-19-WQCC-25-34-Order-Granting-Motion-to-Vacate.pdf.

⁹ Commissioner Brancard stated: *The motion on item six says, I move to vacate the July 8th hearing. We didn't have a July 8th hearing. I think I move to vacate the July 8th action to hold the hearing.* December 9 hearing recording available at: <https://www.youtube.com/watch?v=WsowLbvK64U&list=PLLfCTo6X01rwWoIk7wgx4kBeP8JNnt48M&inex=47>.

removed that decision from effect; it did not resolve the Petition itself or substitute for a vote on whether the Petition should proceed.

The Commission acts through votes taken at noticed public meetings, and its written orders are intended to reflect those votes. For rulemaking petitions, the procedural sequence contemplates a Commission vote on whether to set the petition for hearing. A decision not to set a petition for hearing functions as a denial, but only if that decision is made by vote. Under its rules, no Commission action is valid unless concurred in by six or more members present at a meeting and the Commission may not eliminate procedural requirements of the Water Quality Act.¹⁰ The Commission's written decisions are intended to reflect its actions taken by vote; they cannot substitute for a vote that has not occurred.¹¹

The November 13 agenda noticed consideration of motions to disqualify commissioners and to vacate prior Commission action.¹² Consistent with that agenda, the motion before the Commission was limited to vacating the July 8 decision. The Chair and Commissioner Sloane confirmed on the record that the vote concerned only whether the July 8 action would remain in place.

That clarification underscores the limited scope of the November 13 vote—whether the July 8 decision should remain in effect. The November 13 vote did not constitute a determination that the Petition should not be set for hearing. Once the July 8 decision was vacated, the Petition returned to the procedural posture that existed before July 8—noticed and pending, but without a

¹⁰ 20.1.6.100(A)(1) NMAC; NMSA 1978, § 74-6-3(D).

¹¹ 20.1.6.306(F) NMAC.

¹² November 13, 2025 WQCC Meeting Agenda *available at* <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/11/2025-11-13-WQCC-Meeting-Agenda-draft-GCA-11-07-2025.pdf>

determination on whether it should be set for hearing. No subsequent vote was taken to resolve that question.

Despite the limited scope of the November 13 motion and vote, the November 19 Order treats the November 13 vacatur as having resolved the Petition itself. To the extent the Order does so, it goes beyond the action the Commission took by vote. The appropriate remedy is not to revisit the merits of the Petition, but to clarify the procedural posture and allow the Commission to take the step that has not yet occurred: a public vote on whether the Petition should be set for hearing.

Reconsideration would allow the Commission to align its written Order with its actual vote and to complete the contemplated rulemaking process by taking a public vote on whether to set the Petition for hearing.

To that end, recent work by the New Mexico Produced Water Research Consortium and affiliated researchers illustrates that advances in treatment methods can address potential environmental and health concerns associated with reuse, underscoring the value of evaluating the Petition on a current scientific record developed through a hearing.¹³

Setting the Petition for hearing would not prejudge its merits or commit the Commission to any particular outcome. Rather, it would allow the Commission to develop a complete, transparent, and up-to-date record before determining whether regulatory changes are warranted.

Absent a public vote, the Petition has not been evaluated through the Commission's rulemaking process. Setting the Petition for hearing would provide a transparent, on-the-record forum to consider issues related to the reuse of treated produced water—an issue of significant

¹³ See New Mexico Produced Water Research Consortium, Produced Water Overview, attached as Exhibit 1, highlighting recent body of scientific peer-reviewed research demonstrating that purified produced water is safe for use on crops and comparable to fresh water; that human cells exposed to untreated produced water is harmful, but purified water is safe; and that thermal distillation with GAC and zeolite has no adverse effects on aquatic species.

public importance—and would promote confidence in the Commission’s adherence to its statutory procedures.

CONCLUSION

For the foregoing reasons, WATR respectfully requests that the Commission:

- (1) Reconsider and vacate that portion of the November 19, 2025, Order purporting to deny the Petition;
- (2) Take a public vote, at its January 13, 2026, meeting, on whether the Petition should be set for hearing; and
- (3) Set the Petition for hearing to allow the Commission to evaluate the Petition in light of current scientific information and through the rulemaking process contemplated by its rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, a true and correct copy of the foregoing Motion to Reconsider was sent by electronic mail to the following:

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College of Engineering
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Produced Water Overview

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College of Engineering
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What is Produced Water (PW)?

Produced water is salty water that comes up during oil and gas extraction—a blend of ancient seawater, groundwater, and small amounts of process water from production activities. As New Mexico's largest oil-and-gas waste stream, it is generated mostly in the Permian Basin, producing more than **260 million gallons per day**, roughly equal to all residential water use in the state. Because of its volume, produced water is being evaluated for treatment and reuse in non-potable applications such as cooling, manufacturing, hydrogen production, irrigation, rangeland restoration, and instream-flow augmentation, with treatment needs depending on water quality and intended uses.

Usage Impact: How much is one million gallons?

Submerges a football field with 8-feet of water



Equal to 60,000 showers



Provides water to 100 homes for one month



Why it Matters

New Mexico's drought, low rainfall, and required water deliveries worsen scarcity, driving interest in safely treating produced water to help protect limited freshwater supplies.

Testing Steps:

- 1** Agree on what to test
The Consortium created an "NPDES+ List" of 400+ chemicals, with standardized sampling ensuring consistent, thorough, reproducible testing across labs.
- 2** Map the "where and when"
A 2022 case study mapped produced water reuse timing, locations, purposes, and logistics in the Permian Basin.
- 3** Statewide survey assessed PW reuse
In 2022-23, public survey of 657 individuals showed 61% support for PW reuse and up to 81% support for industrial uses of purified PW.
- 4** Use state-of-the-science testing and analytics
In 2024, researchers analyzed advanced treatment, showing contaminant removal and identifying unknown organics for follow-up studies.
- 5** Confirm aquatic toxicity removal
A 2024 pilot combined thermal distillation with GAC and zeolite; post-treatment toxicity tests showed no adverse effects.
- 6** Prioritize human health evaluation
In 2025, human cells exposed to untreated produced water was harmful, but purified water was safe.
- 7** Assess soil and plant impacts
In 2025, greenhouse irrigation tests found purified PW was safe for use on crops and comparable to fresh water.

Working Example

