

January 20, 2026

Pamela Jones

**STATE OF 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 RESPONSE IN OPPOSITION TO WATR'S
MOTION FOR RECONSIDERATION**

The Commissioner of Public Lands and New Mexico State Land Office, Amigos Bravos, Citizens Caring for the Future, Sierra Club, New Energy Economy, and WildEarth Guardians (“Water Protection Advocates”) file this response in opposition to Water Access Treatment and Reuse Alliance’s (“WATR” or “Petitioner”) Motion for Reconsideration of Commission Decision to Deny Petition 25-34 (“Motion for Reconsideration”). Petitioner’s motion is meritless and should be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

After an exhaustive, 18-month rulemaking process, the Water Quality Control Commission (“Commission”) issued a final decision in matter no. WQCC 23-84 on May 24, 2025 rejecting discharges or reuses of treated or untreated produced water into New Mexico’s lands and waters. *See* WQCC 23-84(R), “Order and Statement of Reasons” adopting 20.6.8 NMAC, “Ground and Surface Water Protection – Supplemental Requirement for Water Reuse.” That decision was anchored by the sworn testimony of New Mexico Environment Department scientists and a number of independent expert witnesses, extensive briefing, and over 100 public comments. The Commission concluded that “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.”¹

On June 25, 2025, the New Mexico Oil and Gas Association noticed its appeal of the Commission’s Order and Statement of Reasons and accompanying Final Rule, an appeal that remains pending.

Around the same time, Petitioner – an oil and gas industry-led organization – filed a Petition for Rulemaking on June 20, 2025 (“Petition”). While the Petition proposed wholesale discharge of treated produced water to surface and ground water, Petitioner did not acknowledge (let alone discuss) the recently concluded rulemaking in matter no. WQCC 23-84, but effectively asked the Commission to ignore the prior year and a half of proceedings, reverse its findings and order from just a month before, and promulgate a replacement rule broadly allowing the discharge and use of produced water, including in agriculture. On July 8, 2025, the Commission voted to grant the Petition. See WQCC July 8, 2025 meeting video, 2:01:20 to 2:02:10, *available at* <https://www.youtube.com/watch?v=VFEjIjeMGDo>; July 9, 2025 *Order Designating Hearing Officer* (appointing a hearing officer “to conduct the proceeding” and to “set[] the date, time, and location of the [rulemaking] hearing”); *see also* NMSA 1978, § 74-6-6(B) (“The commission shall determine whether to hold a hearing within ninety days of submission of the petition.”); 20.1.6.200.C NMAC.

Following the Commission’s decision to accept the Petition and engage in the formal rulemaking hearing that Petitioner sought, Water Protection Advocates and New Mexicans as a whole learned of an organized effort by the Governor’s Office and cabinet secretaries (or their designees sitting on the Commission) to prejudge the outcome in favor of Petitioner, and make

¹ WQCC 23-84, Statement of Reasons (filed May 24, 2025) at 5, ¶ 21.

sure the Petition got “over the finish[] line.” July 7, 2025 email correspondence between C. Buerkle, J. Kenney, *et al.*² In light of these new facts showing that the Commission’s initial vote to accept the Petition was tainted, Water Protection Advocates filed three motions specifically asking both for the disqualification of compromised Commission members as well as to vacate the prior decision to hold a hearing, i.e. to not proceed with Petitioner’s do-over rulemaking. *See* Motion to Disqualify Cabinet Secretary Commissioners and Vacate July & August Orders, filed by New Energy Economy and Daniel Tso on September 25, 2025; Motion to Disqualify Commissioner and Vacate Order Setting Hearing on “WATR Alliance” Petition, filed by Center for Biological Diversity and Mario Atencio on September 25, 2025; Amigos Bravos, et al. Motion to Disqualify.

In accordance with the Open Meetings Act and the Commission’s Open Meetings Act Resolution, on November 3, 2025 the Commission placed all three motions on its agenda to be heard during its November 13, 2025 meeting. *See* Nov. 13, 2025 Commission Meeting Agenda (attached as Exhibit 1) (including item No. 6: “WQCC 25-34(R): Consideration of motions to disqualify and/or vacate Commission action.”). At its duly noticed public meeting on November 13, 2025, after hearing extensive argument from Water Protection Advocates, WATR, and other industry parties, the Commission voted to vacate its July 8, 2025 decision granting WATR’s request for hearing on its Petition. *See* November 13, 2025 meeting video, 4:18:50 – 4:19:01 (motion), 4:32:16 – 4:34:32 (vote), available at <https://www.youtube.com/watch?v=T3->

² Attached as Exhibit 1 to Amigos Bravos, Sierra Club, and Western Environmental Law Center’s Motion to Disqualify Seven Commissioners and Their Designees and Vacate Commission Vote Granting WATR’s Request for Hearing(Sept. 29, 2025) (“Amigos Bravos, et al. Motion to Disqualify”).

[kL56nPdQ&list=PLLfCTo6X01rwQoIk7wgx4kBeP8JNnt48M&index=46](https://www.legis.state.nm.us/Committees/Committee%20on%20Public%20Regulation/Meetings/2025/11/19/111901). On November 19, 2025, the Commission issued its corresponding Order Granting Motion to Vacate (“Order”).

Almost six weeks later, on December 29-30, 2025,³ Petitioner filed its Motion for Reconsideration, falsely claiming that dismissal of the Petition “was not on the November 13 agenda, was not the subject of any motion, and was never voted on by the Commission.” Petitioner’s Motion for Reconsideration at 2. In attempting to invalidate the Commission’s Order, Petitioner invents a set of new procedural requirements that exist nowhere in Commission rules, the Open Meetings Act, or any other source of New Mexico law.

II. ARGUMENT

A. Petitioner’s Motion is Untimely.

The Commission’s rules for rulemakings do not explicitly provide for motions for reconsideration. *See generally* 20.1.6 NMAC. In other administrative forums in New Mexico that provide for motions for reconsideration, and in our district courts, such motions are generally required to be filed within 15 to 30 days after entry of a final order, at most. *See, e.g.*, 13.1.5.24.A NMAC (requiring motions for reconsideration in administrative hearings before the New Mexico Superintendent of Insurance to be filed within 15 days “after the date of the final order”); 22.600.3.29.A NMAC (motions for reconsideration in tax protests must be filed within seven calendar days after the final order); 1.4.1.89.B NMAC (motions for reconsideration in state procurement protest proceedings must be filed within seven days after receipt of final decision); NMSA 1978, § 62-10-16 (requiring motions for rehearing in proceedings before the New Mexico Public Regulation Commission to be filed within 30 days of the “entry of the order or decision”);

³ On December 29, 2025, after 5:00 pm, Petitioner filed its Motion for Reconsideration. The Commission Administrator marked the motion as “RECEIVED” on December 30, 2025.

NMSA 1978, § 52-5-8(A) (appeal from final order of Worker’s Compensation Judge must be filed within 30 days of order); Rule 1-059(E) NMRA (motions to reconsider a final judgment must be filed within 30 days). There is no administrative tribunal of any kind in New Mexico whose rules permit motions for reconsideration to be filed more than 30 days after final action.

Petitioner, however, did not seek reconsideration within 30 days of the Commission’s Order. Instead, Petitioner waited until just before New Year’s Eve – almost six weeks after the Commission issued its Order – to file its motion. The procedural arguments raised in its motion are based entirely on occurrences at or before the November 13 hearing and which were self-evidently known to Petitioner at that time, not on any newly discovered facts or new law. Petitioner offers no explanation for not filing a timely motion but instead ambushing the other parties in the middle of the winter holidays, and no explanation for why its late-filed motion should be considered at all.

B. Petitioner Fails to Identify Any Appropriate Basis for Reconsideration.

“Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citations omitted) (analyzing motion under federal rule analogous to Rule 1-059). Petitioner meets none of these criteria; its motion is merely an attempt to obtain a third or fourth bite at the apple to repeal through implication the rule the Commission adopted just months ago in WQCC 23-84.

i. Water Protection Advocates Explicitly Moved to Vacate the Commission’s Tainted Prior Decision, and to Dismiss the Petition.

There can be no dispute that Petitioner was aware as far back as September 2025 that Water Protection Advocates sought not only the disqualification of specific Commission members whose

impartiality was reasonably subject to question, but also the vacatur of the Commission’s July 8 vote and July 9 order accepting the Petition – and dismissal of the Petition. New Energy Economy’s and Daniel Tso’s Motion to Disqualify Cabinet Secretary Commissioners and Vacate July & August Orders (filed September 25, 2025) not only asked the Commission to “vacate its July 8 and August 12 votes in this matter as void and of no legal effect,” but also established that “[the] WATR Alliance petition must be dismissed because the July 8th vote and the subsequent July 9th Order is invalid, prejudicial, and a violation of due process” (at 11, 2-3) (emphasis added). Similarly, Center for Biological Diversity’s and Mario Atencio’s Motion to Disqualify Commissioner and Vacate Order Setting Hearing on “WATR Alliance” Petition (filed September 25, 2025) made clear that “[i]n order to rectify the improper and politically influenced July 8th vote and corresponding July 9th order, Movants further request that the Commission dismiss [WATR’s] petition” and that the Petition be dismissed “in its entirety” (at 2, 11).

Petitioner thus had ample notice that the logical conclusion of vacatur would be dismissal of its Petition, and that several of the Water Protection Advocates specifically and repeatedly requested the Commission grant such relief.

ii. The Commission’s Deliberations and Actions Were Properly Noticed.

The published agenda for the November 13, 2025 Commission meeting states that at the meeting, the Commission would engage in “[c]onsideration of motions to disqualify and/or vacate Commission action” in this matter. *See* Ex. 1 . The Commission clearly provided all parties and the public with reasonable notice about the “[i]tems for WQCC discussion and possible formal action.” *Id.* (capitalization omitted). Petitioner and every other participant thus was aware in advance of the meeting that the Commission would hear argument on, and might take final action on, motions filed by Water Protection Advocates, several of which expressly sought 1) the

disqualification of specific Commissioners, 2) vacatur of the July 8 vote and corresponding July 9 order, and 3) the dismissal of the Petition.

Petitioner now asserts that because the Commission’s agenda for the November 13 meeting did not perfectly track the headers of the motions, which explicitly refer to dismissal of the Petition, the Commission was then rendered powerless to consider dismissal. Petitioner does not identify any provision of the Commission’s rules that mandates the kind of hyper-technical treatment Petitioner now favors, and the undersigned have located none. Nor does Petitioner reference or address the application of the Open Meetings Act in its motion, but to the extent it intends to make an implied argument about compliance with that statute, the Act requires reasonable, not perfect, notice: “The requirement for a list of specific items of business [to be included in a public meeting agenda] ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting.” Office of the Attorney General of New Mexico, *Open Meetings Act Compliance Guide*, p. 20 (8th ed. 2015), available at <https://www.nmag.gov/wp-content/uploads/Open-Meetings-Act-Compliance-Guide.pdf>; *see also id.* at 46 (a public “meeting agenda should ... [i]nclude a list of specific items the public body intends to discuss or transact,” and “[c]learly describe agenda items that the public body intends to discuss or act on during the meeting in order to give adequate public notice.”

The intent of the Open Meetings Act is to “open the conduct of the business of government to the scrutiny of the public” and to provide New Mexicans with “the greatest possible information regarding the affairs of government.” *Benavidez v. Bernalillo Cnty. Bd. of Cnty. Comm’rs*, 2021-NMCA-029, ¶ 49, 493 P.3d 1024 (citations omitted). This important practical purpose explains why New Mexico law requires “substantial, not strict, compliance with the [Act].” *Parkview Cmty. Ditch Ass’n v. Peper*, 2014-NMCA-049, ¶ 12, 323 P.3d 939. Here, where numerous members of

the public gave comment at the November 13 meeting in support not only of disqualification but also of dismissal of the Petition,⁴ there can be no reasonable dispute that the meeting agenda gave the parties and the public adequate notice of the issues to be considered at the meeting, and therefore that the Open Meetings Act's core purpose has been fulfilled.

iii. The Commission Was Not Required to Bifurcate Its Vote in Order to Effectively and Lawfully Dispose of the Petition.

Petitioner also claims that the Commission was required to hold separate votes on vacatur and on dismissal of the Petition. As with its strained arguments about notice, Petitioner fails to identify any source of law (Commission rules, Open Meetings Act, or otherwise) in support of its position – and therefore the Commission should assume there is none. *Curry v. Great Northwest Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party cites no authority to support an argument, we may assume no such authority exists.”).

Contrary to Petitioner's suggestion, there is no requirement in Commission rules (or anywhere else in New Mexico law) that the Commission separate out a vote on whether to vacate its prior ruling from a vote on dismissal of the Petition, because vacatur is the equivalent of denial of the Petition. Commission rules do not speak in terms of “dismissal” or “denial” of rulemaking petitions, but rather provide only that the Commission must “determine ... whether or not to hold a public hearing on the proposal” at a public meeting and within 90 days of receipt of the petition. 20.1.6.200(C) NMAC. On July 8, 2025, the Commission “determine[d] ... to hold a public hearing on the proposal,” i.e. set the Petition for hearing. *See* July 9 Order Designating Hearing Officer

⁴ *See* November 13, 2025 meeting video, at 00:52:20, 01:03:16, 01:27:29, 01:40:21, 02:30:16, 02:32:02, 02:34:34, 02:34:55, 02:35:23, 02:35:38, *available at* <https://www.youtube.com/watch?v=T3-kL56nPdQ&list=PLLfCTo6X01rwQoIk7wgx4kBeP8JNnt48M&index=46>

(indicating the Commission decided to “conduct [a rulemaking] proceeding” and appointing a hearing officer to “issue a scheduling order setting the date, time, and location of the hearing”). In vacating that prior ruling, the Commission clearly and necessarily determined not to hold a public hearing on the Petition, thus effectively disposing of the Petition. There is no requirement in law that Petitioner be given yet another opportunity to convince the Commission to proceed with the Petition.

iv. Petitioner Fails to Identify Any “New Evidence” Supporting Reconsideration.

Perhaps recognizing that its procedural nit-picking provides an inadequate basis for reconsideration, Petitioner also returns to its old standby, the conclusory (and so far totally unsubstantiated) claim that “recent work by the New Mexico Produced Water Research Consortium ... illustrates that advances in treatment methods can address potential environmental and health concerns associated with reuse [of produced water]...” Motion at 6 & n.13. The “exhibit” Petitioner attaches ostensibly to support this statement is nothing more than a cover page and a single basic PowerPoint slide that illustrates what produced water is, and how it can be tested – it does not even claim, much less “illustrate,” any “new” scientific research demonstrating the safety of discharging oil and gas wastewater.

Petitioner does not remotely meet the standards for reconsideration. Its motion should be summarily denied.

Respectfully submitted,

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Certificate of Service

I certify I served a copy of the foregoing pleading via email to the following on January 19, 2026:

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CONSTITUENT AGENCIES

**Environment Department
Department of Game and Fish
Department of Agriculture
State Parks Division
Bureau of Geology and Mineral Resources**

**State Engineer & Interstate Stream Commission
EMNRD Oil Conservation Division
Department of Health
Soil and Water Conservation Commission
(At-Large) Public Members**

MEETING AGENDA

**New Mexico Water Quality Control Commission
In-Person and Hybrid Meeting¹ via Cisco WebEx Platform²
November 13, 2025, 9:00 A.M.**

Items for WQCC Discussion and Possible Formal Action

1. Roll call of Water Quality Control Commission (“WQCC” or “Commission”) Members.
2. Approval of November 13, 2025, WQCC Meeting Agenda.
3. Approval of October 14, 2025, regular meeting minutes.
4. Public Comment.
5. **WQCC 25-67: *Protect Tesuque, Inc.’s Petition for Review of Discharge Permit Renewal (DP-75)***. Thomas Hnasko, Christal Weatherly.
6. **WQCC 25-34(R): *Consideration of motions to disqualify and/or vacate Commission action***. Tannis Fox, Mariel Nanasi, Jeffrey Wechsler, Kari Olson, Lilah Jones, Colin Cox, Mario Atencio, Tim Davis. The Commission will hear oral briefs as follows: (1) the parties that filed motions shall have no more than a total of thirty minutes to deliver oral briefs and (2) the parties that filed responses to the motions shall have no more than a total of thirty minutes to deliver oral briefs. 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.
7. Next WQCC meeting date, old and/or upcoming Commission matters.
8. Adjournment.

¹ New Mexico State Capitol, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico.

² To join the meeting via video or telephone see information on next page. If you are having difficulty joining the meeting virtually, please contact WQCC Administrator Pamela Jones (505-660-4305) pamela.jones@env.nm.gov

To connect to the meeting virtually, please click link below:

<https://www.env.nm.gov/events-calendar/>

Find the date of this meeting and click on the WebEx link listed.

If you are an individual with a disability or other need requiring a reader, amplifier, interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing Pamela Jones at pamela.jones@env.nm.gov or calling 505-660-4305. **If you are having difficulties logging on to the meeting or during it, please contact Pam Jones at (505) 660-4305.**