

**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 26-18 (R)

Water Access Treatment & Reuse Alliance;  
City of Bloomfield, New Mexico; Lea County,  
New Mexico, by and through its Board of  
County Commissioners,

Petitioners.

**MOTION TO DISMISS PETITION  
DUE TO IMPROPER POLITICAL INFLUENCE**

The Center for Biological Diversity, WildEarth Guardians and New Energy Economy (“Movants”) respectfully move the Water Quality Control Commission (“Commission”) to dismiss the most recent petition filed by Water Access Treatment & Reuse Alliance, the City of Bloomfield, New Mexico, and Lea County, New Mexico (collectively, “Petitioners”) to authorize the treatment and discharge of oil and gas wastewater, also known as “produced water” (“Petition”).<sup>1</sup>

Movants seek dismissal of this Petition because it continues to be tainted by political influence from the Governor’s office, and because the impartiality and fairness of the seven Commissioners that serve at the pleasure of the Governor may still reasonably be questioned. The Water Access Treatment & Reuse Alliance’s (“Industry Alliance”) first attempt to undo the Commission’s science-based produced water reuse rule was dismissed by this Commission in November 2025 because improper political interference from the Governor’s office had tainted

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<sup>1</sup> Pursuant to NMAC 20.1.6.207.C, Movants sought concurrence of the parties regarding this motion and concurrence was denied.

the process beyond redemption. This new Petition carries that same taint and must also be dismissed.

In 2025, one month after the Commission adopted a science-based rule prohibiting the discharge of treated produced water, emails showed that the Governor's office and Secretary James Kenney instructed Commission members and their superiors to vote in support of the first Industry Alliance petition to discharge treated oil and gas waste into our rivers and onto our land. This brazen attempt to rig the rulemaking process violated the Commission's own requirement that the commissioners be fair and impartial and deprived the public of their right to impartial decision-makers. 20.6.1.102 NMAC. The Commission resolved the problem by its November 13, 2025 vote to dismiss the tainted petition.

Now, just a few months later, the Industry Alliance has filed this second Petition to undo the science-based rule. This second Petition involves the same primary petitioner – the Industry Alliance – and the same Commission with seven of its commissioners holding “governor-exempt” positions or subject to the supervision of one of those governor-exempt employees. And, this Petition is filed under the same Governor whose office directed her cabinet secretaries to get Industry Alliance's last petition “over the finish line.”<sup>2</sup>

The taint of political interference clings to this Petition. The taint is not lessened by the passage of three months. The taint is not lessened by the addition of the City of Bloomfield and

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<sup>2</sup> Gilmore, Nicholas, *Lawmakers deal blow to Lujan Grisham's support for fracking water reuse*, Santa Fe New Mexican (February 7, 2026) [https://www.santafenewmexican.com/news/local\\_news/lawmakers-deal-blow-to-lujan-grishams-support-for-fracking-water-reuse/article\\_1bde3359-0fd5-4178-a6b6-cc7eda03621c.html](https://www.santafenewmexican.com/news/local_news/lawmakers-deal-blow-to-lujan-grishams-support-for-fracking-water-reuse/article_1bde3359-0fd5-4178-a6b6-cc7eda03621c.html) (“Lujan Grisham's administration backed a push by the Water Access Treatment and Reuse Alliance — a group with ties to the oil and gas industry — to adopt new rules allowing for the reuse of fracking wastewater, directing agency department heads to replace several commissioners who had voted on the more restrictive rules in an effort to redo the rulemaking process.”).

Lea County as secondary petitioners. And the taint is not lessened by minor changes in the language of the proposed rule, or by the Industry Alliance’s assurances that it will amend the Petition in some unspecified way at some unspecified date.

The Industry Alliance Petition cannot be heard by *this* Commission under *this* Governor without violating the Commission’s strong disqualification rule: a “Commission member shall not participate in any action in which his or her impartiality or fairness may reasonably be questioned.” 20.1.6.102 NMAC. This rule mirrors rules of judicial conduct and is rooted in constitutional requirements of due process and fundamental legal principles of fairness. These are foundational elements of New Mexico and United States law. Movants request that the Commission honor its rule-based commitment to impartiality and dismiss the Industry Alliance’s Petition.

### **FACTUAL BACKGROUND**

In May 2025, the Commission concluded its hearing in *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). This hearing primarily concerned the safety – notably, the lack thereof – of the treatment, discharge and reuse of toxic oil and gas waste outside of the oil field. It took place over the course of eighteen months in 2024 and 2025 and included testimony from over fifteen experts, tens of thousands of pages of written testimony and exhibits, over one hundred public commenters, eleven days of evidentiary hearing, and four days of Commission deliberations. One fact above all became apparent over the course of that hearing: the science does not support the reuse and discharge of “treated” oil and gas waste. Expert after expert testified to the fact that oil and gas waste had not been fully characterized, was not fully understood, that testing methodologies for many of its 1,198+ potential contaminants had not

been developed, and that treatment technologies had not been adequately tested, especially not continuously and at scale. From this mountain of evidence, the Commission rightly concluded that discharge and industrial-scale reuse of treated oil and gas waste outside of the oil field were not compatible with its statutory duty to protect human health and the environment. NMSA 1978, § 74-6-4 (D), (E) and (K). The Commission therefore prohibited discharge of treated oil and gas waste to protect public health and the environment and set guidelines to permit pilot projects that would further the science on this issue while protecting the environment.

The oil and gas industry, through its trade group the New Mexico Oil and Gas Association (“NMOGA”), fully participated in the hearing. NMOGA pushed aggressively for a rule that would allow oil and gas companies to discharge treated waste into New Mexico waterways. But even NMOGA’s expert witness – Rick McCurdy, offered in support of NMOGA’s discharge proposal – admitted, repeatedly, that produced water was not fully understood, and that treatment technologies were still in development and not ready for discharge at scale.<sup>3</sup>

Then, less than 30 days after the Commission finalized its rule, the same oil and gas industry, under the newly-formed Water Access Treatment & Reuse Alliance, filed its first petition which sought to undo all the science-based protections that the Commission had just adopted and allow the large-scale discharge of treated oil and gas waste into New Mexico’s rivers and groundwaters. The Industry Alliance is a trade group whose members overlap significantly with members of NMOGA. Essentially, because they had lost the first time, the Industry Alliance’s and NMOGA’s members tried for a second bite at the apple, going back to

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<sup>3</sup> Hearing Transcript, 8-9-24 Tr. 58:20 to 60:9; 8-8-24 Tr. 208:20 to 209:19; 8-9-24 Tr. 50:23 to 51:12, 53:23 to 54:17, 55:19 to 56:13.

the Commission under a different name, pretending to be new applicants, and requesting that the Commission revisit its decision.

In so doing, the Industry Alliance ignored the Commission’s findings, ignored the need for evidence and for science to protect public health and the environment, and ignored the research process the Commission established for that explicit purpose. The Industry Alliance mischaracterized the latest science as supporting its proposal. In fact, the latest science from New Mexico researchers states that research on the health effects of treated oil and gas waste from the Permian Basin is “still lacking,” and that more research is needed to determine if it can be treated and discharged safely.<sup>4</sup>

The Commission considered the Alliance’s first petition on July 8, 2025. Prior to that July 8<sup>th</sup> vote, the Governor’s office instructed numerous appointees to the Commission – and their superiors – to support the Alliance’s petition.<sup>5</sup> On July 7, 2025, Secretary Kenney sent the following email:<sup>6</sup>

Subject: Produced Water Reuse Petition Hearing Tomorrow  
Importance: High

Good morning -  
You (or your designee) or someone who works for you serve on the Water Quality Control Commission (WQCC). As discussed in the Climate, Energy and Natural Resources Huddle, the administration is supportive of the produced water reuse petition which the WQCC will administratively take up tomorrow. The Commissioners will vote to accept or decline the petition and assign a hearing

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<sup>4</sup> Wijukoon et al., *Comprehensive cytotoxicity assessment of treated produced water from thermal distillation using human cell lines*, Ecological and Environmental Safety, Vol. 302 (Sept. 1, 2025).

<sup>5</sup> Nicholas Gilmore, *Governor's Office leaned on Cabinet heads to get fracking waste regulation change 'over the finish line,'* Santa Fe New Mexican (Sept. 15, 2025).

<sup>6</sup> E-mail from Secretary James Kenney to Jeff Witte, Secretary of Agriculture, Elizabeth Anderson, State Engineer, Gina DeBlassie, Secretary of Department of Health, Micheal Sloane, Secretary of Game and Fish, Melanie Kenderdine, Rob Black, Stephanie Rodriguez, Caroline Buerkle, Daniel Schlegel, Holly Agajanian, and Rebecca Roose, *Subject: Produced Water Reuse Petition Hearing Tomorrow* (July 7, 2025).

officer. Following the petition acceptance, a hearing officer will be assigned. Currently, NMED has one hearing officer, Felicia Orth. Once the hearing officer is assigned, that person will reach out to WQCC members about scheduling the in-person hearing. The preferred location for the hearing is Lea or Eddy County for two weeks in late October or early November. Per the GO, the statutorily named person to the WQCC will need to participate vs your designee. Please discuss this petition your designee or those who work for you. Any concerns about the petition can be addressed during the fall hearing. Please reach out to me if your staff have concerns about the petition or if you are asked to meet with industry or NGOs about it.

The agenda for the WQCC hearing is attached for your reference. There is a public comment portion of the agenda tomorrow where I would expect pro/con members of the public to speak. In addition, state legislators are already weighing in support of the petition and holding the hearing in Jal.

Thank you,  
Secretary Kenney (he/him)  
New Mexico Environment Department

That same morning, Caroline Buerkle, Deputy Chief Operating Officer, Office of the Governor, replied to all recipients: “Thank you, Secretary. As per our huddle discussion, we need everyone’s commitment to get this over the finished [sic] line.”<sup>7</sup> Recipients of Ms. Buerkle’s email chain were five members of the Commission, as well as Energy, Minerals and Natural Resources Department Secretary Melanie Kenderdine, the superior of two statutorily designated members who are also governor-exempt employees.<sup>8</sup> These secretaries were instructed to support the Alliance’s petition and “discuss this petition your designee or those who work for you.”

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<sup>7</sup> E-mail from Caroline Buerkle to James Kenney, Jeff Witte, Elizabeth Anderson, Gina DeBlasie, Micheal Sloane, Melanie Kenderdine, Rob Black, Stephanie Rodriguez, Daniel Schlegel, Holly Agajanian, Rebecca Roose, *Subject: RE: Produced Water Reuse Petition Hearing Tomorrow* (July 7, 2025).

<sup>8</sup> These members are, per the Water Quality Act, the secretary of environment, the secretary of health, the director of the department of game and fish, the state engineer, the chair of the oil conservation commission, the director of the state parks division of the energy, minerals and natural resources department, and the director of the department of agriculture. NMSA 1978, § 74-6-3(A).

These emails show that the Governor’s office and Secretary Kenney undermined the fairness of the hearing process: mandating that the Governor’s cabinet secretaries and by implication their designees vote to advance the Alliance’s petition.

Following the publication of these emails in the *Santa Fe New Mexican*, in September 2025, Movants and other parties filed motions to dismiss the first Industry Alliance petition based on the simple fact that the overt political interference from Secretary Kenney and the Governor’s office to get the Industry Alliance petition “over the finish line” created the appearance of impropriety, and meant that the fairness and impartiality of a majority of voting commissioners could reasonably be questioned. Thus, their disqualification – as well as the dismissal of the first Industry Alliance petition – was both warranted and necessary.

On November 13, 2025, the Commission considered the motions and, without reaching the issue of disqualification, voted 7 to 4 to vacate its July 7, 2025 vote and July 8, 2025 order setting the first petition for a hearing, and thus to dismiss the first Industry Alliance petition.

In offering the motion to dismiss the first Industry Alliance petition at the Commission’s November 13<sup>th</sup> meeting, Commissioner Brancard stated: “I think we have created – we, the governor, the administration, and the executive branch – has created a taint in this rulemaking. And it would be best to simply stop it and start all over again with somebody else proposing a new rule.”<sup>9</sup>

On December 29, 2025, the Industry Alliance filed a motion for reconsideration of the dismissal of their first petition. On March 5, 2026, the Industry Alliance withdrew its motion for reconsideration.

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<sup>9</sup> Commissioner Brancard, WQCC Meeting, Nov. 13, 2025, <https://www.youtube.com/watch?v=T3-kL56nPdQ>.

On March 3, 2026, the Industry Alliance filed its second Petition to allow discharge of treated oil and gas waste to New Mexico surface and ground waters. This new Petition is the oil and gas industry's third attempt to strong-arm its discharge rule through the Commission despite the glaring lack of scientific support for its proposal.

## **ARGUMENT**

### **I. This Petition Is Indelibly Tainted by Political Interference.**

#### **a. Commission rules require disqualification of implicated commissioners.**

This Petition must be dismissed because it involves the same parties and the same political-influence scandal that required dismissal of the first Industry Petition. Absent dismissal, the seven implicated commissioners and their designees would need to be disqualified from this proceeding because their impartiality and fairness can reasonably be questioned. A few months' time does not cure the taint. The Governor's office has not changed its position, and the seven statutorily designated commissioners still serve at the pleasure of the Governor. That would leave the Commission without a quorum and unable to act on the Petition. Instead of facing that untenable situation, the Commission must dismiss this Petition.

The Commission's regulations on disqualification are unambiguous: "A Commission member shall not participate in any action in which his or her *impartiality or fairness may reasonably be questioned*, and the member shall recuse himself or herself in any such action by giving notice to the commission and the general public by announcing this recusal on the record." 20.1.6.102 NMAC (emphasis added). The objectives of the Commission's hearing regulations are "to assure that commission hearings are conducted in a fair and equitable manner." 20.1.6.6.E NMAC.

While the Commission standard concerning when “impartiality or fairness may reasonably be questioned” has not been interpreted by a court, the language closely tracks the requirements for state judges in New Mexico’s Code of Judicial Conduct: “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned....” 21-211(A) NMRA.<sup>10</sup> Impartiality is reasonably questioned when an “objective, disinterested observer, fully informed of the underlying facts, would entertain significant doubt that justice would be done absent recusal.” *State v. Gage*, 2023 N.M. LEXIS 108, ¶ 13 (quoting *State v. Riordan*, 2009-NMSC-022, ¶ 11, 146 N.M. 281).

This standard is based on the *appearance* of impropriety. The question is not whether commissioners can or will act fairly and impartially – something only a given commissioner will ever truly know – but whether an objective person could reasonably question that impartiality.

Here, the seven commissioners – and their designees – meet this standard because emails show that following a “huddle” on Industry Alliance’s first petition, Secretary Kenney and the Governor’s office required the commissioners’ “commitment” to “get this over the finish[] line.” These emails are evidence that commissioners were instructed to support the first petition by their employer.

This is several steps beyond whether the commissioners’ fairness and impartiality “may reasonably be questioned.” The appearance of impropriety regarding the Industry Alliance’s petition cannot be denied. And this second Petition is as flawed as the first – it involves the same players and the same end goal: discharge of treated oil and gas waste to our waterways. It therefore carries the same indelible taint.

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<sup>10</sup> Committee Comment 1 states that “the terms “recusal” and “disqualification” are often used interchangeably.” 21-211(A) NMRA.

The addition of new, secondary petitioners does not cure the taint that clings to this third bite at the apple by the Industry Alliance. Nor, for that matter, does the passage of three months between the dismissal of the first Industry Alliance petition and the filing of this second Petition seeking the same outcome. Importantly, the Governor’s office has denied any wrongdoing in directing commissioner votes and replacing commissioners to get the Industry Alliance petition “over the finish line.”<sup>11</sup> The Governor even backed a bill at the 2026 legislative session that would have forced the Commission to allow discharge of treated oil and gas waste, regardless of whether there was sufficient scientific evidence to support such a proposal.<sup>12</sup> Nothing has changed, and the taint of political interference is as strong as ever.

Applying the standard from *Riordan*, we ask, would an objective, disinterested observer, fully informed of the underlying facts, entertain significant doubt that justice would be done in this situation, where a majority of voting commissioners have been instructed by their boss to vote a particular way regardless of any concerns they might have? Where their boss has backed legislation that would tie their hands? The answer can only be “yes.” The appearance of

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<sup>11</sup> See Gilmore, Nicholas, *Governor's Office leaned on Cabinet heads to get fracking waste regulation change 'over the finish line'*, Santa Fe New Mexican (September 15, 2025, updated December 19, 2025), available at [https://www.santafenewmexican.com/news/local\\_news/governors-office-leaned-on-cabinet-heads-to-get-fracking-waste-regulation-change-over-the-finish/article\\_74c64d36-035b-4699-9719-1de1e882571d.html](https://www.santafenewmexican.com/news/local_news/governors-office-leaned-on-cabinet-heads-to-get-fracking-waste-regulation-change-over-the-finish/article_74c64d36-035b-4699-9719-1de1e882571d.html); Gilmore, Nicholas, *Lawmakers deal blow to Lujan Grisham's support for fracking water reuse*, Santa Fe New Mexican (February 7, 2026), available at [https://www.santafenewmexican.com/news/local\\_news/lawmakers-deal-blow-to-lujan-grishams-support-for-fracking-water-reuse/article\\_1bde3359-0fd5-4178-a6b6-cc7eda03621c.html](https://www.santafenewmexican.com/news/local_news/lawmakers-deal-blow-to-lujan-grishams-support-for-fracking-water-reuse/article_1bde3359-0fd5-4178-a6b6-cc7eda03621c.html).

<sup>12</sup> Gilmore, Nicholas, *Lawmakers deal blow to Lujan Grisham's support for fracking water reuse*, Santa Fe New Mexican (February 7, 2026), available at [https://www.santafenewmexican.com/news/local\\_news/lawmakers-deal-blow-to-lujan-grishams-support-for-fracking-water-reuse/article\\_1bde3359-0fd5-4178-a6b6-cc7eda03621c.html](https://www.santafenewmexican.com/news/local_news/lawmakers-deal-blow-to-lujan-grishams-support-for-fracking-water-reuse/article_1bde3359-0fd5-4178-a6b6-cc7eda03621c.html) (Discussing House Bill 207).

impropriety hangs over this Petition. Commissioners were given their marching orders, and there is no evidence those orders have changed.

Setting this Petition for a hearing would betray the public trust. The Commission's integrity is still on the line. Moving the same Petition forward will erode public confidence in the Commission, a commission that has protected New Mexico's scarce and precious water resources for decades.

**b. The taint of political interference cannot be cured by substitution.**

As explained above, the appearance of impropriety hangs over this Petition. The tainted commissioners cannot designate subordinates to fill their roles because those subordinates can reasonably be expected to receive the same improper pressure from the Governor's office to get the Industry Alliance's second Petition over the finish line. Any designee would necessarily serve under the shadow of a Governor's office that has shown its willingness to subvert the Commission's fairness and impartiality in favor of the Industry Alliance. Any vote to proceed with the new Petition by a designated subordinate carries the same appearance of impropriety and would be subject to the same reasonable questions regarding their impartiality and fairness as their superiors. Any designated subordinates would therefore be required to recuse themselves. 20.1.6.102 NMAC.

**c. Setting the Petition for a hearing would be reversible error.**

If the Commission votes to set the Industry Alliance's Petition for a hearing, seven of the voting commissioners – a majority – will have received orders from the Governor's office, which will expect their "commitment" to get the Industry Alliance petition "over the finish line." This political interference poisons the Petition beyond any cure except for complete dismissal, and failure to dismiss the Petition would be reversible error.

In *Gila Res. Info. Project v. N.M. Water Quality Control Comm'n*, the New Mexico Court of Appeals questioned a commissioner's vote in favor of affirming a permit “because it was based on matters outside of the record, rendering the Commission's determination invalid.” *Gila Res. Info. Project v. N.M. Water Quality Control Comm'n*, 2005-NMCA-139, 138 N.M. 625, 629. In part due to this vote, the Court of Appeals found that the Commission's dismissal of an administrative appeal was arbitrary, an abuse of discretion, and not supported by substantial evidence, stating “this commissioner's explanation for his vote for dismissal creates a serious enough concern about the validity of the outcome of the vote to add support to our view that the Commission's dismissal was arbitrary and an abuse of discretion.” *Id.* at 635. Notably, the court in *Gila Resources Information Project* also recognized that “concepts of fairness and transparency” apply to “administrative proceedings.” *Id.* at 634.

While *Gila Resources Information Project* concerned a permit and not a rulemaking, the situation is otherwise extremely similar. Seven commissioners here have been instructed to support the Industry Alliance Petition not based on the evidence before them, but on politically motivated instructions from their superiors. This is the very definition of arbitrary. It is certainly not fair and impartial. If the implicated commissioners vote to advance this Petition – in violation of their duty to recuse themselves because their fairness and impartiality can reasonably be questioned – that will be reversible error.

## CONCLUSION

The Governor’s office and Secretary Kenney compromised the fairness, impartiality and integrity of the Commission by directing votes in favor of the first Industry Alliance petition to undo the science-based rule. Now, the same Industry Alliance brings the same proposal in front of the same Commission with seven of its members serving at the pleasure of the same Governor

– yet gain seeking to undo the science-based rule. Just as the Commission dismissed WATR’s first petition based on the taint and the appearance of impropriety, the Commission should dismiss the second Petition for the same reason. Movants respectfully request that this Commission dismiss the Industry Alliance Petition.

Respectfully submitted this 9<sup>th</sup> day of April, 2026,

THE CENTER FOR BIOLOGICAL DIVERSITY

By: /s/ Colin Cox

Colin Cox

Gail Evans

Center for Biological Diversity

1025 ½ Lomas NW

Albuquerque, NM 87102

Phone: (832) 316-0580

Email: [ccox@biologicaldiversity.org](mailto:ccox@biologicaldiversity.org)

Email: [gevans@biologicaldiversity.org](mailto:gevans@biologicaldiversity.org)

WILDEARTH GUARDIANS

By: /s/ Samantha Ruscavage-Barz

Samantha Ruscavage-Barz

Senior Attorney, Climate & Health

WildEarth Guardians

301 Guadalupe Street, Suite 201

Santa Fe, New Mexico 87501

Email: [sruscavagebarz@wildearthguardians.org](mailto:sruscavagebarz@wildearthguardians.org)

NEW ENERGY ECONOMY

By: /s/ Mariel Nanasi

Mariel Nanasi

New Energy Economy

422 Old Santa Fe Trail, Santa Fe, NM 87501

Email: [MNanasi@NewEnergyEconomy.org](mailto:MNanasi@NewEnergyEconomy.org)

## Certificate of Service

I hereby certify that on April 9, 2026 a copy of the foregoing Motion was emailed to the persons listed below.

Jennifer Bradfute  
Matthias Sayer  
David Kirmse  
P.O. Box 90233  
Albuquerque, New Mexico 87199  
[matthias@bradfutelaw.com](mailto:matthias@bradfutelaw.com)  
[jennifer@bradfutelaw.com](mailto:jennifer@bradfutelaw.com)  
[david@bradfutelaw.com](mailto:david@bradfutelaw.com)

Bruce Wetherbee  
60 Thoreau Street #103  
Concord, Massachusetts 01742  
[editor@thecandlepublishing.com](mailto:editor@thecandlepublishing.com)

Nick Maxwell  
P.O. Box 1064  
Hobbs, New Mexico 88241  
[inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)

Tannis Fox  
Western Environmental Law Center  
409 East Palace Avenue, Unit 2  
Santa Fe, New Mexico 87501  
505.629.0732  
[fox@westernlaw.org](mailto:fox@westernlaw.org)

Andrew P. Knight  
Assistant General Counsel  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502-5469  
[Andrew.knight@env.nm.gov](mailto:Andrew.knight@env.nm.gov)

Pamela Jones  
Office of Public Facilitation  
New Mexico Environment Department  
1190 Saint Francis Drive, Suite S2102  
Santa Fe, New Mexico 87505  
[Pamela.jones@env.nm.gov](mailto:Pamela.jones@env.nm.gov)

Tim Davis  
Associate Counsel  
Ari Biernoff  
General Counsel  
New Mexico State Land Office  
P.O. Box 1148  
Santa Fe, New Mexico 87504-1148  
[tdavis@nmslo.gov](mailto:tdavis@nmslo.gov)  
[abiernoff@nmslo.gov](mailto:abiernoff@nmslo.gov)

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

/s/ Colin Cox