

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 26-18

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

PETITIONERS.

MOTION AND BRIEF
FOR ORDER DIRECTING ATTORNEYS TO SHOW CAUSE
AND FOR OTHER RELIEF

New Energy Economy (“NEE”) and the Center for Biological Diversity (“Center”), through their attorneys, and pursuant to 20.1.6.207(F) NMAC, respectfully move the Water Quality Control Commission (“WQCC” or “Commission”) to grant this *Motion and Brief for Order Directing WATR Alliance to Show Cause Why the WQCC Should Not Find Material Misrepresentations Were Made to the Tribunal and to Dismiss Petition and For Other Relief (“Motion”)* and states the following:

MOTION

1. On March 3, 2026, the Water Access Treatment and Reuse Alliance, the City of Bloomfield, and the Board of County Commissioners of Lea County (“Petitioners” or “WATR”) filed with the Water Quality Control Commission (“WQCC”) a Petition for Rulemaking and Statement of Reasons, requesting the WQCC adopt certain additions and amendments to Part 8 to Title 20, Chapter 6 of the New Mexico Administrative Code (“NMAC”). These proposed amendments pertain to permitting the discharge of treated produced water to New Mexico’s

surface and ground waters.. In the petition, the law firm BRADFUTE SAYER, P.C. represented that it was filing the petition on behalf of WATR, the Lea County Board of County Commissioners, and the City of Bloomfield, and signed the petition as counsel for all three parties.

2. The WATR Petition 26-18 is signed as follows, on pages 11-12 of of the Petition:

Respectfully submitted,

WATR Alliance,
City of Bloomfield,
Board of County Commissioners of Lea County

/s/ Matthias Sayer

Matthias Sayer
BRADFUTE SAYER, P.C.
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3. On April 8, 2026, Corey Needham, County Manager, Lea County wrote the following email to Nick Maxwell, who is a party in this proceeding:

Nick,

Lea County is only a petitioner, is not a funding partner, and is not being represented by any Law Firm in this matter. Let me know if you have any additional concerns.

Corey Needham, PE | County Manager Lea County Government
T: 575.391.2492 | M: 575.605.3497 | F: 575.392.6904
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(highlight emphasis added.) See Attachment A, attached and incorporated herein.

4. Additionally, in response to Mr. Maxwell's Inspection of Records Request for Lea County, the County's public information officer sent the following message (see Attachment B):

Mr. Maxwell:

This responds to your request dated and received by email on March 6, 2026, seeking records specifically authorizing Bradfute Sayer, P.C. to enter an appearance on behalf of the Lea County Board of County Commissioners into docket no. WQCC 26-18 before the Water Quality Control Commission of New Mexico.

There are no responsive documents.

Monica M. Russell
Public Information Officer/Records Custodian
Lea County Government
100 N. Main, Suite 4
Lovington, N.M. 88260
(575) 396-9110 office
mrussell@leacounty.net

5. If it is true, as the County Manager states, that the Board of County Commissioners of Lea County is not represented by any law firm in this matter, and thus that BRADFUTE SAYER, P.C., is not authorized to represent the Board of County Commissioners of Lea County here, the attorneys who stated otherwise (Jennifer Bradfute, Matthias Sayer, and David Kirmse) have made a material misrepresentation to the WQCC.

6. If BRADFUTE SAYER, P.C., through Jennifer Bradfute, Matthias Sayer, and David Kirmse actually does not in fact represent the Board of County Commissioners of Lea County, and has materially misrepresented this to the WQCC, it constitutes a serious ethical violation..

7. WHEREFORE, New Energy Economy and the Center for Biological Diversity respectfully request that the WQCC issue an Order directing BRADFUTE SAYER, P.C., - specifically Jennifer Bradfute, Matthias Sayer, and David Kirmse - to provide evidence that they have been authorized to represent the Board of County Commissioners of Lea County.

BRIEF

I. Material Misrepresentation to the WQCC

The Lea County Manager has explicitly denied that any law firm represents Lea County in this matter and the Public Information Officer/Records Custodian for Lea County has no evidence of an attorney-client relationship between BRADFUTE SAYER, P.C. and the Board of County Commissioners of Lea County. Thus, there is reason for the WQCC to question the existence of an attorney-client relationship and for the attorneys who represented that they represent the Board of County Commissioners of Lea County to provide evidence that they have been authorized to do so.

The signature of BRADFUTE SAYER, P.C., Jennifer Bradfute, Matthias Sayer, and David Kirmse on the Petition *for* the Board of County Commissioners of Lea County on the Petition before the WQCC would be a material misrepresentation to the WQCC if the firm is not actually authorized to represent the Board of County Commissioners of Lea County. False statements are material if they have the capacity or tendency to influence the decision of the tribunal. *Azar v. Prudential Ins. Co. of America*, 2003-NMCA-062, ¶72. (The Restatement explains that a fact is material if "a reasonable man would attach importance to its existence or nonexistence in determining his choice of action" or "the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important." Restatement (Second) of Torts § 538(2)(a)(b).).

In New Mexico, a lawyer generally cannot file court papers on behalf of a person without an established attorney-client relationship, as this violates ethical duties regarding authority and representation. Rules require client consent for actions, and filing on behalf of an entity without

authorization or retainer is improper. *Sun Country Sav. Bank of N.M., F.S.B. v. McDowell*, 108 N.M. 528, 775 P.2d 730, 734 (1989) (“The authority of an attorney to enter an appearance, receive notice, and to act on behalf of the client at hearings may be inferred by the court from the actions of the attorney” but “may be dispelled by evidence that the acts of the attorney were not in fact authorized by the client. ...”) *See also* New Rules of Professional Conduct, NMRA §§ 16-100 et. seq..

II. WQCC Determinations Pursuant to this Show Cause Motion

Movants request that the Commission issue an order to determine:

- 1) Whether the BRADFUTE SAYER, P.C. attorneys made material misrepresentations to the WQCC concerning their representation of the Board of County Commissioners or Lea County;
- 2) Whether BRADFUTE SAYER, P.C.’s misrepresentations constitute a violation of the duty of candor owed to this tribunal;
- 3) Whether the WQCC should deny the Petition outright given these material misrepresentations; and
- 4) Any other relief necessary to impose consequences for these material misrepresentations and to deter any future material misrepresentations.

III. POSITION OF THE PARTIES

New Energy Economy sought the position of the parties on its Motion to Show Cause and Reports as Follows: Nick Maxwell opposes. No other party provided their respective position before the filing of the motion. The positions of the Lea County Board of County

Commissioners and the City of Bloomfield are unknown. These parties appear to be unrepresented in this proceeding.

VI. CONCLUSION

For the foregoing reasons, New Energy Economy and the Center for Biological Diversity request that the WQCC inquire as to whether BRADFUTE SAYER, P.C. has an attorney-client relationship with – and is authorized to represent in this proceeding – the Board of County Commissioners of Lea County.

Respectfully submitted this 9th day of April, 2026,

NEW ENERGY ECONOMY

By: /s/ Mariel Nanasi

Mariel Nanasi

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/s/ Gail Evans

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CERTIFICATE OF SERVICE

I certify a copy of the foregoing pleading was emailed to the following on April 9, 2026:

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