

*Pamela Jones*

**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 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.**

**COMMISSIONER OF PUBLIC LANDS, NEW MEXICO STATE LAND OFFICE,  
AMIGOS BRAVOS, CITIZENS CARING FOR THE FUTURE, SIERRA CLUB, NEW  
ENERGY ECONOMY, WILDEARTH GUARDIANS, AND CENTER FOR  
BIOLOGICAL DIVERSITY'S JOINT MOTION TO DISMISS RULEMAKING  
PETITION AS INCOMPLETE**

Stephanie Garcia Richard, Commissioner of Public Lands of the State of New Mexico, the New Mexico State Land Office, Amigos Bravos, Citizens Caring for the Future, Sierra Club, New Energy Economy, WildEarth Guardians, and the Center for Biological Diversity (“Water Protection Advocates”) file this *Motion to Dismiss Petition No. WQCC 26-18(R)* (“Second Petition”), pursuant to 20.1.6.200(C) and 20.1.6.207 NMAC, through undersigned counsel. Petitioners in this matter have filed a woefully incomplete petition filled with gaps and placeholders that is unripe for review. Among other significant flaws, Petitioners’ proposed rule leaves blank “effluent limits” for nearly 400 potential contaminants in treated produced water, asks the Water Quality Control Commission (“WQCC” or “Commission”) to set effluent limits for pollutants that have no corresponding water quality standard, and leaves blank the fees for permit applicants and the “control limit/reference range” for monitoring indicators. The Commission should not waste its or the parties’ time and resources hearing an administratively and

substantively incomplete Second Petition. Water Protection Advocates respectfully request that the WQCC dismiss the Second Petition.

## **I. Background**

As this Commission is well aware, in No. WQCC 23-84 the Commission considered and adopted a proposed rule to regulate the reuse of treated produced water off the oilfield and entered a final order on May 24, 2025. *See* No. WQCC 23-84(R), “Order and Statement of Reasons” adopting 20.6.8 NMAC, “Ground and Surface Water Protection – Supplemental Requirement for Water Reuse.” (May 24, 2025). That rulemaking proceeding took place over a period of 18 months and included extensive technical testimony and party briefing. *See* docket for No. WQCC 23-84 (R) on the WQCC “Docketed Matters” webpage, available at: <https://www.env.nm.gov/opf/docketed-matters/> The proposed rule in that matter was just over six pages long. *See* No. WQCC 23-84(R), *Petition for Rulemaking and Statement of Reasons* (Dec. 27, 2023).

Now, less than one year since this 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[,]”, and less than 5 months since this Commission voted not to hear Petitioners’ prior produced water reuse petition in No. WQCC 25-34 (R), Petitioners ask this Commission again to consider a proposed rule to discharge treated produced water. *See* No. WQCC 23-84(R), “Order and Statement of Reasons” at 5 ¶ 21 (May 24, 2025); No. WQCC 25-34 (R) *Order Granting Motion to Vacate* (Nov. 19, 2025). However, Petitioners’ 57-page proposed rule is sorely incomplete and contains over 20 pages of blank material. No. WQCC 26-18, *Petition for Rulemaking*, Att. 1 at 35-57 (Mar. 3, 2026) (“Second Petition”).

## II. Argument

The Commission should not hold a hearing on the proposed rule because it is not complete. This Commission's rules governing rulemaking procedures require petitioners for a rule change to include with their petition, "[a] copy of the entire rule, including the proposed regulatory change, indicating any language proposed to be added or deleted." 20.1.6.200.B NMAC. "The entire rule and its proposed changes shall be submitted to the commission in redline fashion . . . ." *Id.* If a petition does not include the required material, including the proposed regulatory change, "the petitioner will be asked to resubmit their petition in the form required by [the Commission's rules governing rulemaking proceedings]." *Id.* However, the Commission is not only bound to reject incomplete petitions and require resubmission; it can also reject the petition by deciding "at a public meeting occurring no later than 90 days after receipt of the petition, [] not to hold a public hearing on the proposal." 20.1.6.200.C NMAC; *see also* NMSA 1978, § 74-6-6(B). Denial of a petition is not subject to judicial review. *Id.*

Declining to hold a hearing is necessary in this instance. Because the proposed rule is incomplete and Petitioners ask this Commission to set effluent limits for pollutants that have no corresponding water quality standard, a hearing will only waste the time and limited resources of the Commission, its counsel, and the parties. Petitioners cannot cure this issue by resubmitting a petition that fills in the blanks of the nearly 400 pollutants listed. Doing so would not change the fact that there will still be no water quality standards for many of the pollutants listed in the effluent limits table of the proposed rule. Therefore, the Commission should exercise its discretion to reject the Second Petition and decline to hold a hearing on the proposed rule.

### 1. The Second Petition is not amenable to consideration because it is incomplete.

Petitioners' proposed rule is riddled with blanks and Petitioners have therefore failed to

meet the Commission’s standard for advancing a “proposed regulatory change.” 20.1.6.200.B NMAC; Second Petition, Att. 1 at 35-57. Among the objectives of the WQCC’s rules governing rulemaking petitions is “to make possible the effective presentation of the evidence and points of view of parties and members of the general public” and “to assure that commission hearings are conducted in a fair and equitable manner.” 20.1.6.6.C and E NMAC. Both objectives are thwarted by a petition that either hides, or defers to an unspecified future time, key provisions that would be required for the proposed rule to be understood and considered.

Parties cannot effectively begin to develop let alone present evidence or points of view when significant portions of a proposed rule are left blank, rendering the process unfair and inequitable in violation of the Commission’s own rules governing rulemaking proceedings. Additionally, pursuant to the State Rules Act, a “proposed rule” is “a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule[.]” NMSA 1978, §14-4-2(D). Here, there is not a complete proposed rule for the public to review because the effluent limits and fee provisions are blank.<sup>1</sup>

Beginning on page 36 through page 57, the Petitioners ostensibly list effluent limits for approximately 400 pollutants; however, the two columns for effluent limits and the column for reference values are all blank. Second Petition, Att. 1 at 35-57. Petitioners’ proposed 20.6.8.451 NMAC would establish application and permit fees, but the table of fees on page 35-36 of the

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<sup>1</sup> Note that the Commission’s rules governing rulemaking proceedings require public notice of the “full text of the proposed rule” to be posted. 20.1.6.201.C(1)-(7) NMAC. Public notice of an incomplete rule similarly violates the objectives of the Commission’s rulemaking regulations “to make possible the effective presentation of the evidence and points of view of parties and members of the general public” and “to assure that commission hearings are conducted in a fair and equitable manner.” 20.1.6.6.C and E NMAC.

proposed rule is blank. *Id.* The “control limit/reference range” for monitoring indicators are also blank. *Id.* 27-28. Like the incomplete effluent limits, these blank provisions violate the Commission’s rules ensuring “the effective presentation of the evidence and points of view of parties and members of the general public” and a “fair and equitable” hearing. 20.1.6.6.C and E NMAC.

**2. It is not possible to set effluent limits for pollutants that do not have a corresponding water quality standard.**

The proposed rule is also incomplete and unripe because there are no water quality standards for many of the pollutants for which the proposed rule seeks to set effluent limits.<sup>2</sup> Under the Water Quality Act, a water quality standard “defines the amount of contaminant in the ambient water and [] a regulation defines the conduct necessary for an entity that discharges pollutants to comply with the standard.” *Univ. of Cal. v. N.M. Water Quality Control Comm’n*, 2004-NMCA-073, ¶ 25, 136 N.M. 45. An effluent is “[a] discharge of liquid waste[,]” and effluent limits are set to attain the water quality standards. *Id.* ¶¶ 26, 27 (internal quotes and citation omitted). Therefore, “there is quite a distinction between setting water quality standards and setting effluent limits.” *Id.* ¶ 27.

It is hard to understand how effluent limits can be developed consistent with the Commission’s duty to “adopt water quality standards for surface and ground waters of the state

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<sup>2</sup> The numeric standards for surface water in 20.6.4.900.J NMAC and groundwater in 20.6.2.3103 NMAC do not contain water quality standards for many pollutants listed in the effluent limits table in the proposed rule. *See* Second Petition, Att. 1 at 26 (proposed rule incorporates surface water quality standards contained in existing 20.6.4.900 NMAC and groundwater quality standards in existing 20.6.2.3103 NMAC). Examples where there are no numeric surface water quality standards in 20.6.4.900.J NMAC include per- and polyfluoroalkyl substances like PFOA, PFOS, PFNA, and PFHxS. *Compare* Second Petition, Att. 1 at 39, 54 *with* 20.6.4.900.J NMAC.

based on credible scientific data and other evidence appropriate under the Water Quality Act” when there are no water quality standards to guide the development of these effluent limits. NMSA 1978, § 74-6-4(D). It is also unclear how the Commission can “adopt rules to prevent or abate water pollution” by setting an effluent limit for a pollutant that has no water quality standard. NMSA 1978, § 74-6-4(E). Put simply, the proposed rule puts the proverbial cart before the horse.

Petitioners attempt to compensate for this problem by allowing permittees to propose their own effluent limits when there is no corresponding water quality standard on a permit-by-permit basis. Second Petition, Att. 1 at 26. The Commission should reject this piecemeal approach by declining to hold a hearing on the proposed rule-in-progress. The Water Quality Act requires this Commission – not NMED or dischargers – to adopt water quality standards based on “credible scientific data” pursuant to NMSA 1978, Section 74-6-4(D), and a permittee’s proposal of a “scientifically defensible criterion and related effluent limit” is no substitute for the rigorous rulemaking procedures this Commission engages in when setting water quality standards and effluent limits designed to achieve those standards. Second Petition, Att. 1 at 26.

**3. Even if the Commission determines to hear the Petition, it should decline to do so on an expedited basis or in an improper venue.**

Astonishingly in light of the deficiencies outlined above, Petitioners seek fast-track approval of their incomplete rule proposal, asking this Commission to “move swiftly to schedule this petition for hearing in August or September, 2026, and that the hearing be set in those communities most impacted by the underlying issue.” Second Petition at 2. This request for an expedited hearing is presumably also a request to hold the hearing away from Santa Fe where the Commission has hearing facilities – possibly in multiple locations away from Santa Fe. As demonstrated above, because this proposed rule is not ready for any hearing, it is certainly not ready for an expedited hearing in a distant venue.

Putting aside the fact that this proposed rule is of statewide impact, and therefore, the hearing should be held in Santa Fe under 20.1.6.206 NMAC,<sup>3</sup> holding the hearing outside of Santa Fe will undoubtedly increase the time and resources necessary to conduct the hearing. Hearing facilities will have to be obtained, most parties and witnesses will have to travel extensively (perhaps multiple times), and the Commission will have to ensure that the public can participate virtually. Therefore, it seems unlikely that “[a] hearing for the proposed amendments and additions to Part 8 will take approximately 10-15 business days” as requested by Petitioners. Second Petition at 2. Note that the proceedings in No. WQCC 23-84 (R) took place over 10-15 business days for a six-page proposed rule, and the proposed rule in this matter – even in its unfinished state – is 57 pages long. *See* No. WQCC 23-84(R), *Hearing Officer’s Report*, at 1 (March 24, 2025).

The Commission should therefore exercise its discretion to not hold a hearing on a half-baked rule that even the Petitioners admit will need to be fixed later. Second Petition at 2 (“Petitioners anticipate filing an amended petition to include additional changes that incorporate additional feedback from the New Mexico Environment Department and other stakeholders, as well as the addition of additional petitioners.”) To do so would waste this Commission’s, and the parties’, time and resources, inject additional uncertainty into the regulatory environment, and reward Petitioners for submitting an unfinished proposal that is incompatible with the Commission’s rules.

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<sup>3</sup> 20.1.6.205 NMAC (“Unless otherwise provided by governing law, the commission shall hold hearings on proposed regulatory changes of statewide application in Santa Fe, and at other places the commission may prescribe. The commission may hold hearings on proposed regulatory changes that are not of statewide application within the area substantially affected by the proposal.”)

### III. Statement of Party Concurrence or Opposition

Pursuant to 2.1.6.207.B NMAC Water Protection Advocates sought the positions of the other parties to this proceeding on this motion. They responded as follows:

- Nicholas Maxwell opposes the motion.
- No other party responded by the time of filing.

### IV. Conclusion

For the foregoing reasons, Water Protection Advocates respectfully request that this Commission exercise its discretion to deny Petitioners' request to hold a hearing on the proposed rule.

Respectfully submitted,

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I certify a copy of the foregoing pleading was emailed to the following on April 8, 2026:

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