

San Juan Water Commission

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MEMBERS:
City of Aztec
City of Bloomfield
City of Farmington
San Juan County
S.J. County Rural Water Users
Association

November 30, 2023

New Mexico Environment Department
Groundwater Quality Bureau
Attn: Water Reuse Regulation
P.O. Box 5469
Santa Fe, NM 87502

Submitted via Email to:
pw.environment@env.nm.gov

Re: SJWC's Comments on the November 1, 2023, Proposed Water Reuse Regulations

To Whom It May Concern at the Groundwater Quality Bureau:

Thank you for providing an opportunity to comment on the draft of your Proposed Water Reuse Regulations, Ground and Surface Water Protection-Supplemental Requirements for Water Reuse (20.6.8 NMAC) ("Draft Water Reuse Regulations"). This letter describes the San Juan Water Commission's ("SJWC") initial comments about, and recommendations for, the Draft Water Reuse Regulations and the regulatory hearing timeline.

The SJWC is a political subdivision of the State of New Mexico formed in 1986 under the New Mexico Joint Powers Agreements Act. The SJWC is comprised of twelve other political subdivisions of the State of New Mexico: (i) the cities of Aztec, Bloomfield and Farmington; (ii) San Juan County; and (iii) the San Juan Rural Water Users Association, which itself is comprised of eight non-profit mutual domestic community water associations organized under the Sanitary Projects Act. The SJWC's purpose is to acquire and protect raw water supplies for municipal, industrial and domestic use for most water users in San Juan County living outside of tribal lands. To fulfill its mission, the SJWC is a participant in the Animas-La Plata Project ("ALP Project"), which is an off-stream reservoir (Lake Nighthorse) in Colorado. The SJWC holds water diversion permits totaling more than 31,000 acre feet from the San Juan River Basin. These water rights are separate from, and in addition to, the water rights of the SJWC's individual member entities.

The water quality regulations directly impact the operations of the SJWC's member entities, the health of San Juan County's citizens, and the economy of the region. For that reason, the SJWC has participated in various water quality issues since the 1990s, always with a two-fold purpose: (i) to assist the New Mexico Environment Department ("Department") and the New Mexico Water Quality Control Commission ("WQCC") in ensuring that water quality standards and regulations are based on credible scientific data and other appropriate evidence; and (ii) to promote procedures that ensure fair and adequate notice of, and opportunity for public participation in, the development and adoption of those standards and regulations.

Given the current water emergency in the Colorado River Basin (which includes the San Juan River Basin), the SJWC is very concerned about increasing and protecting sustainable and safe water supplies for all types of water reuse. Proper water reuse regulations will assist in the research and development of water treatment and recycling technologies that will both extend the lifecycle of water and ensure that public health and the environment are sufficiently protected. As the SJWC always advises when regulatory proposals are presented to the WQCC, the Draft Water Reuse Regulations must be scientifically sound, comprehensive, and thoroughly evaluated by all interested stakeholders. The SJWC is concerned that the Draft Water Reuse Regulations are premature and believes they should be more thoroughly vetted with stakeholders before being presented to the WQCC.

The Partial Draft Water Reuse Regulations Proposed by the Groundwater Quality Bureau Are Not Yet Necessary

The Draft Water Reuse Regulations currently proposed by the Groundwater Quality Bureau (“Bureau”) appear to be directed solely at the reuse of produced water because no regulations are offered for the reuse of other types of wastewater, such as domestic wastewater or industrial wastewater. With respect to produced water, Section 70-13-4(D) of the Produced Water Act requires a permit from the Department for use outside of the oil and gas industry. However, the proposed regulations do not establish rules for permits authorizing the use of produced water. Rather, they simply prohibit (at Section 20.6.8.400) the discharge of treated or untreated produced water “for activities unrelated to the exploration, drilling, production, treatment, or refinement of oil or gas.” The Draft Water Reuse Regulations, therefore, are premature at this time because they do not provide a permitting path for uses outside of the oil and gas industry.

The fact that the proposed regulations also address the authorization of some treated produced water demonstration projects does not mean that the regulations are required now. First, the draft regulations indicate that demonstration projects can only be authorized if they do not discharge to groundwater or surface water. Therefore, no Department permit is required under the Produced Water Act.

Second, the Bureau already regulates such demonstration projects in conjunction with the New Mexico Produced Water Research Consortium, which was established through a Memorandum of Understanding (“MOU”) between the Department and New Mexico State University. In fact, in January, the Bureau issued its Treated Produced Water Pilot Project Guidance (“Guidance”) “to ensure that pilot projects researching the potential use of treated produced water outside of the oil and gas sector . . . operate in a manner that is protective of ground and surface water quality, human health, and the environment.” The Guidance “provide[s] direction for any person or entity seeking a ‘No Discharge Permit Required’ determination associated with treated produced water pilot projects” and requires submission of a “Produced Water Pilot Project Notice of Intent to Discharge” (“NOI”).

The Draft Water Reuse Regulations establishing the requirements for pilot project applications and notices of intent (Sections 20.6.8.400(B) and (C)) basically require the submission of the same information already required by the Bureau's Guidance and NOI. Further, under the Guidance, NMED will not consider any pilot projects that propose to discharge *untreated* produced water. Projects proposing to discharge *treated* produced water will not be considered until produced water regulations are promulgated. The Draft Water Reuse Regulations mirror the Guidance by prohibiting all discharges of untreated produced water, prohibiting discharges of treated produced water to surface waters, and stating (at Section 20.6.8.400(A)(3)) that the discharge of treated produced water to groundwater will not be authorized until the WQCC adopts "water quality criteria based on scientifically defensible information about the composition, toxicity, fate and transport of treated produced water" Because the Draft Water Reuse Regulations contain no such water quality criteria, they should not yet be submitted to the WQCC because they are premature before discharge permits are contemplated.

The WQCC Should Not Consider "Preliminary" Regulations

The SJWC believes the time and financial resources of all involved stakeholders would be better utilized after a complete set of water reuse regulations has been developed. Further, the Bureau itself recognizes that the Draft Water Reuse Regulations are "preliminary." As the Bureau's own public comment notice states, the Draft Water Reuse Regulations are in "the *preliminary stages* of drafting" In fact, most of the Bureau's proposal involves definitions for terms that are never used.¹ The Bureau should not petition the WQCC until it is ready to propose water quality criteria that would support the issuance of discharge permits for the reuse of produced water, as well as regulations governing the reuse of domestic and industrial wastewater.

The Bureau Has Neither Sought Nor Received Sufficient Input from Stakeholders

In addition to the fact that the proposed regulations are premature, the SJWC also is concerned that the Bureau has neglected to invite and encourage involvement by stakeholders who could assist the Bureau and the WQCC. Unlike the Department's common practice in advance of other significant regulatory hearings like the Triennial Review, the Bureau in this instance has not held public meetings to share either the technical and practical knowledge it has gained through the work of the Consortium over the past four years or the reasoning behind its Draft Water Reuse Regulations. It simply is not possible to submit comprehensive public comment, or to adequately

¹ As the SJWC has argued in other proceedings before the WQCC, it is improper to adopt a definition for a term that is not used in a regulation. It is not possible to adequately review and comment on (or for the WQCC to knowledgeably adopt) a definition without knowing the context in which it will be applied. No definition should be adopted before another regulation using the term is adopted.

prepare for a public hearing, at this time without knowing the basis for the Bureau's proposals, which presumably have been informed by the work of the Consortium.

Adequate stakeholder engagement could assist the Bureau in crafting a more comprehensive set of water reuse regulations. It also could help to limit future opposition to such regulations. The Bureau's failure to involve stakeholders conflicts with its prior recognition of the importance and efficacy of input from industry and others in the creation of water reuse regulations. As the Bureau's Produced Water Factsheet states: "NMED will rely on public input and research findings . . . to develop science-based standards for treating produced water for use outside the oil field" and will "actively solicit[] input from a diverse group of voices in all phases of Produced Water Act implementation to ensure future regulations meet" the goal of "creat[ing] regulations that: [p]rotect human health and the environment, [r]educe reliance on limited fresh water, and [l]everage science-based innovative solutions." Unfortunately, to the SJWC's knowledge, the Bureau has not actively engaged stakeholders since its initial public presentations in 2019.

The input the Bureau will receive from the current 30-day public comment period will necessarily be nominal. Given the significance of the water reuse issue, and the technical nature of water treatment and recycling technologies, the Bureau should convene working groups with interested parties, who can assist the Bureau in developing a much more comprehensive set of water reuse regulations before those regulations are presented to the WQCC for adoption.

The Bureau Should Not Seek to Rush the Draft Water Reuse Regulations to Hearing

Despite the obviously preliminary nature of the Draft Water Reuse Regulations, the Bureau apparently intends to attempt to quickly move to hearing on them. The Public Involvement Plan states that the Bureau will submit a petition for a rulemaking in December. However, the WQCC's December 12 meeting will take place less than two weeks after the close of the public comment period. The SJWC does not believe that such a short timeframe gives the Bureau sufficient time to analyze the public comments and "to further develop the proposed regulations prior to petitioning for a public rulemaking hearing," as the public comment notice states the Bureau will do.

Conclusion

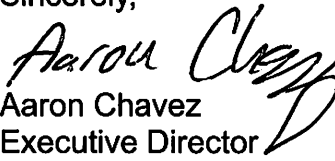
For all of these reasons, the SJWC is concerned that the Bureau has improperly limited stakeholder and public participation in this process when such participation could assist the Bureau in developing a more comprehensive and useful set of water reuse regulations. The SJWC requests that the Bureau initiate stakeholder meetings and delay the filing of a petition until a complete set of water reuse regulations is finalized. That process will help to resolve issues and lead to a less contentious hearing before the WQCC. If the Bureau rejects this suggestion, it should not request a WQCC hearing within the next six months. It is unreasonable to seek a quicker hearing

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schedule given the complexity of the regulatory issues and the need to find technical witnesses, not to mention the upcoming holidays and legislative session.

Please do not hesitate to call me if you have any questions about these comments.

Sincerely,


Aaron Chavez
Executive Director