



December 1, 2023

NMED-GWQB
Attn: Water Reuse Regulation
P.O. Box 5469
Santa Fe, NM 87502

*Submitted Via Email to:
pw.environment@env.nm.gov*

Re: Comments of Select Water Solutions, Inc. on the November 1, 2023, Public Comment Draft of the GWQB's Proposed Water Reuse Regulations

Dear NMED Ground Water Quality Bureau:

Through this letter, I am submitting Select Water Solutions, Inc.'s ("Select") comments on the Ground Water Quality Bureau's ("GWQB") public comment draft of its proposed water reuse regulations, Ground and Surface Water Protection-Supplemental Requirements for Water Reuse (20.6.8 NMAC) ("Draft Water Reuse Regulations"). Select appreciates the opportunity provided by the GWQB to comment on the Draft Water Reuse Regulations.

Select's Interest in the Draft Water Reuse Regulations

Select is a leading provider of sustainable water and chemical solutions to the energy industry. These solutions are supported by Select's water infrastructure assets, chemical manufacturing, and water treatment and recycling capabilities. Select's supply of treated or recycled water to the energy industry exceeds 17 billion gallons annually. Water treatment and recycling currently has the ability to sustain and expand water sources for the energy industry, and it also shows promise for supporting industrial, agricultural, and domestic uses. Creating such new water supplies through reuse is a critical mission for states like New Mexico that are facing water shortages.

As a leader in sustainable water and chemical solutions, Select places the utmost importance on the safe, environmentally responsible management of water. The adoption of appropriate water reuse regulations is a critical step in the move toward extending the lifecycle of water through treatment and recycling while protecting public health and the environment. However, such regulations must be comprehensive and scientifically sound, and they should be thoroughly vetted by all interested stakeholders before being submitted to the Water Quality Control Commission ("WQCC") for adoption. As discussed below, Select is concerned that the Draft Water Reuse Regulations are premature and insufficiently vetted, and they may impede the development of innovative technologies.



The Draft Water Reuse Regulations Are Unnecessary

To begin, there is no current need for the Draft Water Reuse Regulations proposed by the GWQB. No regulations are proposed for the reuse of domestic wastewater or industrial wastewater. With respect to the reuse of produced water, the Produced Water Act requires a permit from NMED before produced water or treated produced water can be used (discharged) for activities unrelated to the production of oil and gas. Section 70-13-4(D), NMSA 1978. Because the Draft Water Reuse Regulations simply prohibit the discharge of treated or untreated produced water “for activities unrelated to the exploration, drilling, production, treatment, or refinement of oil or gas,” they are unnecessary. 20.6.8.400 NMAC (proposed).

The proposed regulations do authorize treated produced water demonstration projects, but only if they do not discharge to ground or surface water. Thus, they also are unnecessary because NMED already regulates such projects. In 2019, NMED entered into a Memorandum of Understanding with New Mexico State University (“MOU”) that established the New Mexico Produced Water Research Consortium (“Consortium”). The MOU was renewed and updated in 2022. As part of the Consortium, NMED has authorized produced water demonstration projects. NMED also has issued Treated Produced Water Pilot Project Guidance (January 30, 2023) (“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.” In addition, the Draft Water Reuse Regulations concerning “authorized applications” (proposed 20.6.8.400(B) NMAC) and a “notice of intent” (proposed 20.6.8.400(C) NMAC) for demonstration projects require essentially the same information already required by the GWQB’s “Produced Water Pilot Project Notice of Intent to Discharge.”¹

According to the Guidance, “NMED will not consider any pilot projects that propose to discharge untreated produced water to ground and surface water. Until produced water

¹ Select has an additional concern about the requirement that “[p]ersons implementing demonstration projects shall submit to the department all research results, including lab analyses of all water contaminants in the untreated produced water and treated produced water, to assist the [WQCC] in developing standards and regulations that may allow for the broader use of treated produced water in a manner that prevents water pollution and protects human health and the environment.” No company should be required to submit “all research results” because of the need to protect trade secrets and technology investment. The GWQB should work with industry to appropriately limit the information required and to establish requirements for non-disclosure agreements. Such non-disclosure agreements are common in the utility regulation arena. The agreements give assurances to companies that their proprietary information will be protected and allow the regulators to understand and build on industry innovations.



specific regulations are promulgated, NMED will not consider any pilot projects that propose to discharge treated produced water to ground or surface water.” Significantly, the Draft Water Reuse Regulations mimic the Guidance and do not authorize the discharge of treated produced water until some future date *after* the WQCC adopts “water quality criteria based on scientifically defensible information about the composition, toxicity, fate and transport of treated produced water . . .” 20.6.8.400(A)(3) NMAC (proposed). Such water quality criteria should be included in the Draft Water Reuse Regulations before they are submitted to the WQCC.

The GWQB Should Not Submit “Preliminary” Regulations to the WQCC for Adoption

The GWQB’s public comment notice indicates that the Draft Water Reuse Regulations are in “the *preliminary stages* of drafting.” The preliminary nature of the draft regulations is obvious from the fact that the bulk of the proposal consists of definitions for terms that are not used anywhere else in the draft regulations outside of the definition section, 20.6.8.7 NMAC (proposed). The GWQB should not propose, and the WQCC should not adopt, definitions for unused terms because they are not yet needed. It is impossible to know whether a proposed definition is appropriate without knowing the context in which it is used. In fact, the definition may never be used in future water reuse regulations, so its existence will only create confusion. The appropriate time to adopt a definition is when another regulation using the term is adopted. With respect to a specific definition, Select objects to any definition of “produced water” different from that adopted by the Legislature in the Produced Water Act, Section 70-13-2(B), NMSA 1978.

Further, the GWQB’s piecemeal approach to water reuse regulations is confusing and likely to cause future difficulties when proposing regulations for reuse of wastewater other than produced water. A comprehensive regulatory approach for all water reuse should be presented to the WQCC in one package in order to avoid future conflicts among regulations and the need to re-write the currently proposed regulations to fit within, and not conflict with, the final water reuse framework. Further, a comprehensive set of regulations for all types of water reuse will assist stakeholders, the public, and the State with decision making concerning research projects, infrastructure projects, tax incentives, and other issues surrounding water reuse.

The Draft Water Reuse Regulations Should Not Be Rushed to Hearing Before the WQCC Without Sufficient Input from Stakeholders

Select also is concerned that the GWQB is rushing the Draft Water Reuse Regulations to hearing before the WQCC without seeking sufficient input from stakeholders and without giving due consideration to the limited input it will receive during the short 30-day public comment period. The Public Involvement Plan (“PIP”) for the Draft Water Reuse Regulations indicates that the GWQB will provide, “at a minimum,” a 30-day public comment period for the proposed regulations. Given the importance and complexity of water reuse issues, Select



does not believe the “minimum” public comment period actually allotted by the GWQB is sufficient for adequate public input.

NMED’s Produced Water Factsheet indicates it has “actively solicit[ed] 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]educ[e] reliance on limited fresh water, and [l]everage science-based innovative solutions.” This statement indicates that the GWQB recognizes the importance and efficacy of input from industry and other stakeholders in the creation of water reuse regulations. Indeed, the Produced Water Factsheet goes on to state that “NMED will rely on public input and research findings . . . to develop science-based standards for treating produced water for use outside the oil field.” However, Select is unaware of any concerted effort by the GWQB to actively engage stakeholders since an initial round of meetings in 2019.

Significantly, the GWQB failed to release and hold stakeholder meetings explaining its Draft Water Reuse Regulations before initiating the public comment period on November 1. NMED routinely holds stakeholder meetings on significant regulatory proposals before petitioning the WQCC, such as the Triennial Review process for surface water quality standards. The GWQB should follow that practice here before petitioning the WQCC. It is impossible to submit comprehensive public comment at this time, not to mention the impossibility of adequately preparing for a public hearing, without knowing the reasoning behind the GWQB’s proposals, including the knowledge the GWQB has obtained from its work with the Consortium. Adequate stakeholder engagement could assist the GWQB with crafting a better and more comprehensive set of water reuse regulations and could also limit future opposition to such regulations.

Moreover, the GWQB’s public comment notice states that “NMED will consider comments submitted to the Department through this public comment period *to further develop the proposed regulations prior to petitioning for a public rulemaking hearing.*” (Emphasis added.) However, the PIP indicates that the GWQB intends to petition the WQCC in December for a public rulemaking hearing. Any such petition would be presented at the WQCC’s December 12th meeting, which is less than two weeks after the close of the public comment period. Such a short timeline between the receipt of public comment and the submission of a final petition contradicts the GWQB’s statement that it intends to fully consider the public comments and “to further develop the proposed regulations” based on public input before petitioning the WQCC.

For all of these reasons, it is evident that the GWQB has chosen a path designed to limit stakeholder and public participation in this process. Select urges the GWQB to schedule stakeholder meetings to explain its Draft Water Reuse Regulations and to open a dialogue that will result in a more comprehensive and appropriate set of regulations that stakeholders can support. At the very least, the GWQB should not petition the WQCC for a hearing on the Draft Water Reuse Regulations to be held within the next six months. Select believes many



issues can be resolved if there is time for stakeholder meetings and agreed-upon regulatory modifications. Further, given the complexity of water reuse issues, the need to retain expert witnesses, the upcoming holidays, and the 2024 legislative session, it is unreasonable to require stakeholders to proceed to hearing on these critical regulations within the next six months.

CONCLUSION

For these reasons, Select encourages the GWQB to postpone submission of its Draft Water Reuse Regulations to the WQCC. If you have any questions about Select's positions, or you would like to discuss these issues in more detail, please do not hesitate to call me. I look forward both to receiving the GWQB's responses to these comments and to an opportunity to work with the GWQB and other stakeholders to expand and fine tune the Draft Water Reuse Regulations before they are submitted to the WQCC.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Deal", written in a cursive style.

Kristin P. Deal
VP Business Strategy