

**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 25-34 (R)

Water Access Treatment & Reuse Alliance,
Petitioner.

**MOTION TO DISQUALIFY CABINET SECRETARY COMMISSIONERS AND
VACATE JULY & AUGUST ORDERS**

New Energy Economy and Daniel Tso pursuant to 20.1.6.207(F) NMAC, respectfully move the Water Quality Control Commission (“WQCC” or “Commission”) to disqualify Commissioners Witte, Anderson, DeBlassie, Sloane, Kenney, Kenderdine, and their designees, whose impartiality and fairness in this matter have been compromised and to vacate the July 8th Order and August 12th votes granting a hearing on the Water Access Treatment and Reuse Alliance (“Petitioners” or “WATR Alliance”) petition that relied on their tainted vote. This motion arises from a fundamental breach of due process, public trust, and statutory duty. The Governor of New Mexico and her Environment Secretary, James Kenney, have done more than simply tilt the playing field—they rigged the outcome. Internal communications, now in the record as Exhibit 1, reveal that the Governor’s Office and her Cabinet Secretaries¹ huddled in

¹ Jeff Witte, Secretary of Agriculture
Elizabeth Anderson, Office of the State Engineer
Gina DeBlassie, Secretary of Department of Health
Michael Sloane, Director of the New Mexico Game and Fish Department James Kenney,
Secretary of the Environment
Melanie Kenderdine, Secretary of Energy, Minerals, and Natural Resources

private, issued instructions to Cabinet Secretaries Commissioners, and predetermined the outcome of the WQCC's consideration of the WATR Alliance's produced water discharge and reuse petition. These actions stripped the public and the parties of their right to an impartial tribunal and violated the New Mexico Constitution, the Governmental Conduct Act, and the WQCC's own rules requiring fair and unbiased decision-making.

The WQCC is not a political campaign committee, yet the Governor and Secretary Kenney have treated it as one—valuing oil and gas donors over New Mexico's people, our land, and our water. This is precisely the type of “government by favoritism” our due process clauses and ethics laws are designed to prevent. It is not merely the appearance of impropriety; it is impropriety itself.

The New Mexico Constitution, the Water Quality Act, and 20.1.6 NMAC entitle every party to have its claims heard by a disinterested decision-maker who has not prejudged the matter, who is free of political pressure, and who acts only on the public record. Administrative bodies are bound by “ethical standards comparable to those that govern a court in performing the same function.” *Albuquerque Commons P'ship v. City Council*, 2008-NMSC-025, ¶ 33. This is not aspirational—it is mandatory.

The facts show that Commissioners and high-level staff, acting at the Governor's direction, crossed the bright line between fair process and private coordination with interested parties. By pre-determining the outcome of the pending petition and meeting behind closed doors to push it “over the finish line,” the Governor and Secretary Kenney denied the public and the opposed parties of their constitutional right to due process. *See*, Exhibit 1. No amount of procedural window-dressing can cure this structural bias. The WATR Alliance petition must be

dismissed because the July 8th vote and the subsequent July 9th Order is invalid, prejudicial, and a violation of due process.

Movants therefore respectfully move this Commission to:

1. Disqualify all Commissioners who participated in or were privy to the July 7, 2025 emails and related “huddles” that predetermined the outcome of the WATR Alliance petition;
2. Vacate the order setting the hearing on the petition; and
3. Order such further relief as is necessary to restore the integrity of these proceedings and protect the constitutional rights of the public and the parties.

The law requires no less. As the Supreme Court has made clear, “[a] fair trial in a fair tribunal is a basic requirement of due process.” *Withrow v. Larkin*, 421 U.S. 35, 46 (1975); *Los Chavez Cmty. Ass’n v. Valencia Cty.*, 2012-NMCA-044, 277 P.3d 475, 482–83 (2012). The WQCC’s legitimacy depends on it.

I. BACKGROUND

1. After an 18-month evidentiary process in WQCC 23-84 (R), the Commission adopted 20.6.8 NMAC (“Ground and Surface Water Protection – Supplemental Requirements for Water Reuse”). After hearing exhaustive testimony and public comment during two weeks of hearings, the Commission relied on testimony from five NMED scientists, numerous other experts, and extensive public comment, concluding 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.” Accordingly, the Commission prohibited any discharges of produced water and strictly limited any off-the-oil-field use of produced water. Recognizing that the science may evolve, the Commission established a 2030 sunset date for reassessment.

2. Dissatisfied with that outcome, oil and gas interests appealed (A-1-CA-42732) and reorganized as the Water Access Treatment and Reuse Alliance (“WATR Alliance”),² filing a new Petition for Rulemaking raising substantially the same issues already decided in WQCC 23-84 (R). The WATR Alliance Petition did not claim that the previous Commission decision in WQCC 23-84 (R) contained an error of law or a manifest error of fact, and it did not provide any scientific proof that treated produced water can be discharged and reused without endangering human health or harming our environment.

3. In contrast to the prior proceeding, the Governor’s office and Secretary Kenney directed Cabinet Secretaries to occupy their own Commission seats (rather than send their designees), expressed support for the Petition, urged them to “get it over the finish line” and conspired to set the hearings in Lea or Eddy County³ for October or November. These directives demonstrate an alignment with a predetermined outcome, compromising the appearance of neutrality.⁴

² See, *Joint Motion to Dispose of the WATR Alliance Petition Outright*, filed on July 24, 2025, rejected by a tainted Commission on August 12, 2025.

³ See Exhibit 2, in response to the Hearing Officer’s email, “Water Reuse Part Deux,” regarding timing and location of the hearing on the WATR Alliance petition, noting “the Commission has never moved a lengthy, complex rulemaking out of Santa Fe (but I only go back to 1987)” Secretary Kenney’s recommended the Hearing Officer hold the “entire hearing [] in one or more counties mentioned in the petition.”

⁴ See Exhibit 3, “Produced water? Stick to earlier decision,” Santa Fe New Mexican, Sep. 24, 2025, official opinion of the paper evidencing public belief of impropriety, for instance: “the Governor’s Office and her Cabinet secretary, James Kenney of the Environment Department, have been working to influence commission members. ... The Water Quality Control Commission did its job in May. Stop the meddling.”

II. LEGAL STANDARDS

A. Due Process Requires a Fair and Impartial Tribunal

Both the Fourteenth Amendment and Article II, Section 18 of the New Mexico Constitution guarantee that no person will be deprived of liberty or property without due process of law. “Procedural due process requires a fair and impartial hearing before a trier of fact who is disinterested and free from any form of bias or predisposition regarding the outcome of the case.” *N.M. Bd. Of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 27, 142 N.M. 248; *Mills v. State Bd. of Psychologist Exam’rs*, 1997-NMSC-028, ¶ 14, 123 N.M. 421.

New Mexico courts hold that administrative boards and commissions must meet the same impartiality standards as courts. *Los Chavez Community Ass’n v. Valencia County*, 2012-NMCA-044, 277 P.3d 475 (“Procedural due process requires a fair and impartial hearing before a trier of fact who is disinterested and free from any form of bias or predisposition regarding the outcome of the case. These principles of fairness are basic to our justice system.” (citations omitted)); *Reid v. N.M. Bd. of Exam’rs in Optometry*, 1979-NMSC-005, ¶¶ 7-8, 92 N.M. 414, (1979) (“At a minimum, a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case. In addition, our system of justice requires that the appearance of complete fairness be present. The inquiry is not whether the Board members are actually biased or prejudiced, but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him. These principles apply to administrative proceedings as well as to trials.” (citations omitted)).

B. *WQCC Rules Require Fair and Equitable Hearings*

- **20.1.6.6 NMAC:** Objective to “assure that commission hearings are conducted in a fair and equitable manner.”
- **20.1.6.100 NMAC:** Commission and hearing officer must conduct a “fair and equitable proceeding.”
- **20.1.6.102 NMAC:** “No commission member shall participate in any action in which his or her impartiality or fairness may reasonably be questioned, and the member shall recuse himself or herself ... by announcing this recusal on the record.”

These provisions track the Governmental Conduct Act (NMSA 1978, §§ 10-16-1 to -18) and mirror 28 U.S.C. § 455(a) and NMRA 21-400(A), which disqualify judges whose impartiality might reasonably be questioned. See *City of Albuquerque v. Chavez*, 1997-NMCA-054, ¶ 16, 123 N.M. 428.

III. ARGUMENT

A. The Governor’s Directives Create a Reasonable Appearance of Bias

By directing Cabinet Secretaries to personally take their seats, to support the Petition, and to hold hearings in counties favorable to oil and gas, the executive branch has created at least an appearance of bias that triggers mandatory recusal under 20.1.6.102 NMAC. The inquiry “is not whether the Board members are actually biased or prejudiced, but whether ... there is an indication of a possible temptation ... to try the case with bias.” *Reid*, 1979-NMSC-005, ¶¶ 7-8.

B. Exhibit 1 Demonstrates Undue Political Influence and the Governor's Office Instructions Deprived the Public of Due Process

Administrative agencies are bound to apply the statutory factors entrusted to them—not to yield to political pressure or the demands of powerful industries. Exhibit 1 reveals that the Governor's staff—including her Chief Counsel—convened a “huddle” of Secretary Kenney and other cabinet secretaries to strategize how to secure approval of the WATR Alliance petition. This “huddle” did not evaluate science, public health, or environmental impacts; instead, it instructed Secretaries to get the petition “over the finish line” — thereby predisposing the outcome regardless of the facts or the law. The Governor's direction was to have the cabinet secretaries sit themselves, not their designees, thereby replacing independent Water Quality Control Commissioners with political loyalists. This, in combination with Secretary Kenney's refusal to make Environment Department scientists available for the proceedings further demonstrate that political loyalty—not science—is dictating the process and the outcome.⁵ Such improper considerations violate the requirement of impartial, reasoned, and science-based rulemaking.

Article II, Section 18 of the New Mexico Constitution guarantees that “[n]o person shall be deprived of life, liberty or property without due process of law.” The New Mexico Supreme Court has repeatedly held that due process requires “reasonable notice and opportunity to be heard and present any claim or defense.” *Rayellen Resources, Inc. v. N.M. Cultural Properties Review Committee*, 2014-NMSC-006, ¶ 20, 319 P.3d 639, citing *TW Telecom of N.M., L.L.C. v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-029, ¶ 17, 150 N.M. 12, 256 P.3d 24. When a decision has been prejudged behind closed doors, and the outcome dictated from the top, the

⁵ See, *Motion to Require Petitioner to Provide Science that Undergirds Its New Rule*, filed August 4, 2025.

“public” hearing becomes a sham and the public loses the ability to influence the process—striking at the heart of due process protections. See also *Uhden v. N.M. Oil Conservation Comm’n*, 1991-NMSC-089, ¶ 10, 112 N.M. 528; *Portland Audubon Soc. V. Endangered Species Committee*, 984 F.2d 1534, 1549 (9th Cir. 1993) (“The public’s right to attend all Committee meetings, participate in all Committee hearings, and have access to all Committee records would be effectively nullified if the Committee were permitted to base its decisions on the private conversations and secret talking points and arguments to which the public and the participating parties have no access.”)

Here, by meeting in secret to choreograph the WQCC’s approval of a hearing on the defective petition, without any science that proves that treated produced water can be discharged and reused safely contradicts science and the rule of law; the Governor’s administration converted what should be a neutral rulemaking into a predetermined outcome. This “huddle” effectively told Commission members that political loyalty to the Governor’s agenda was paramount, rendering public input and scientific evidence irrelevant. Political pressure, as demonstrated in Exhibit 1, cannot lawfully substitute for science, public participation, and impartial decision-making, and the agency action must be voided as arbitrary, capricious, and violative of due process.

C. The Commission Must Maintain Ethical Standards

New Mexico case law is clear that administrative tribunals must follow “procedures traditionally associated with the judicial process.” *Reid*, 1979-NMSC-005, ¶ 8. Because many court safeguards do not exist in administrative settings, the impartiality requirement applies more strictly. *Ohio Bell Tel. Co. v. Pub. Utils. Comm’n*, 301 U.S. 292, 304 (1937). The Governmental Conduct Act, Section 10-16-3, and our courts recognize that agency decision makers are held to

ethical standards that require commissioners to advance the public interest and “conduct themselves in a manner that justifies the confidence placed in them by the people”; they are to “avoid undue influence” because their position in government is a matter of “public trust.” NMSA 1978, Section 10-16-3; *see also, In re Comm’n Investigation*, 1999-NMSC-016, ¶ 42, 127 N.M. 254 (describing objective standard where the impartiality of a judge might reasonably be questioned); *High Ridge Hinkle Joint Venture*, 119 N.M. at 40 (holding where a court defers to an agency's interpretation of an enactment, a decision maker should be disqualified where an objective observer would entertain reasonable questions about the decision maker's impartiality).

D. Participation by Biased Members Violates Due Process and Voids Commission Action

“[B]asic safeguards established by standards set out in the federal and state constitutions, as well as in New Mexico statutes and rules, all have one goal—to ensure that the decision-maker is not biased.” *Los Chavez*, 2012-NMCA-044, ¶ 24. Allowing the newly seated Cabinet Secretaries to participate despite their stated allegiance to the Governor’s directive deprives Petitioners of a fair and impartial hearing and undermines the legitimacy of the Commission’s action. 20.1.6.102 NMAC explicitly forbids participation “in any action in which his or her impartiality or fairness may reasonably be questioned.” This is not discretionary. When recusal is required but ignored, any vote taken is unlawful because it violates a binding procedural rule. *Gila Res. Info. Project v. N.M. WQCC*, 2005-NMCA-139 (procedural safeguards are integral to Commission’s legitimacy).

Under the Water Quality Act, only a properly constituted Commission may exercise regulatory authority. If members who were required to recuse themselves participate anyway, the Commission’s quorum is unlawfully constituted, and any vote fails for lack of legal authority.

See, In re Comm'n Investigation, 1999-NMSC-016, ¶ 40, 127 N.M. 254 (prejudgment may constitutionally taint any subsequent hearing so as to invalidate the ensuing order of the Commission). Because the participation of biased Commissioners violated mandatory recusal rules and Petitioners' constitutional right to a fair tribunal, their votes cannot lawfully be counted, and any resulting orders are void. The Commission must vacate any decision made with those tainted votes.

IV. SPECIAL MEETING

Pursuant to WQCC's 2024 Open Meetings Act Resolution, adopted on January 9, 2024,⁶ Movants request that a regular, special or emergency meeting, pursuant Section 10-5-1(F), be held in October 2025, to address the matters herein.

V. POSITIONS OF OTHER PARTIES

Movants sought the position of the parties and state: NMOGA, IPANM, PBPA, OXY, Select and WATR Alliance oppose the motion. The Commissioner of Public Lands and WildEarth Guardians support the motion. No objection from CBD, Mario Atencio and Bruce Wetherbee. No other party responded.

VI. CONCLUSION

The statutes, rules, and legal precedents cited above exist to safeguard the public's right to an impartial, science-based decision and to prevent undue influence, bias, or even the appearance of bias in Commission proceedings. Yet the record in this case shows that the

⁶ <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2024/02/WQCC-2024-OMA-Resolution-Signed.pdf>

Governor's office and Cabinet Secretary Commissioners deliberately circumvented these safeguards, subordinating science and law to political influence. By directing Cabinet Secretaries to get the petition "over the finish line," the executive branch tainted the integrity of this proceeding and violated the fundamental guarantee of a fair and impartial tribunal.

Because 20.1.6.102 NMAC and well-settled due process law impose a mandatory duty to recuse when impartiality is reasonably questioned, the participation and votes of the Cabinet Secretary Commissioners are ultra vires and void. A Commission unlawfully constituted cannot validly exercise regulatory authority, and its decisions are per se invalid. Accordingly, Movants respectfully request that this Commission (1) disqualify from this proceeding the Secretary of Environment, the Secretary of Health, the Secretary of the Department of Game and Fish, the State Engineer, Secretary of Agriculture, the Secretary of Energy, Minerals, and Natural Resources Department, and their designees; and (2) vacate its July 8 and August 12 votes in this matter as void and of no legal effect.

Respectfully submitted this 25th day of September, 2025,

NEW ENERGY ECONOMY

By: /s/ Mariel Nanasi

Mariel Nanasi

Attorney for New Energy Economy

422 Old Santa Fe Trail

Santa Fe, NM 87501

MNanasi@NewEnergyEconomy.org

505.469.4060.

/s/Daniel Tso

Daniel Tso

49detso@gmail.com

Certificate of Service

I hereby certify that on September 25, 2025 a copy of the foregoing Motion and Exhibits 1-3 was emailed to the persons listed below.

Pamela Jones
Commission Administrator
Water Quality Control Commission
1190 Saint Francis Drive, Suite S2102
Santa Fe, New Mexico 87505
Pamela.jones@state.nm.us

Felicia Orth
Hearing Officer
Water Quality Control Commission
1190 Saint Francis Drive, Suite S2102
Santa Fe, New Mexico 87505
Felicia.l.orth@gmail.com

Eduardo Ugarte, II
Assistant Attorney General
NEW MEXICO DEPARTMENT OF
JUSTICE
P.O. Box 1508
Santa Fe, NM 87504
eugarte@nmdoj.gov

Jennifer Bradfute
Matthias Sayer
BRADFUTE CONSULTING & LEGAL
SERVICES d/b/a BRADFUTE SAYER
P.C.
P.O. Box 90233
Albuquerque, NM 87199
jennifer@bradfutelaw.com
matthias@bradfutelaw.com

Bruce Wetherbee
60 Thoreau Street, Unit 103
Concord, MA 01742
editor@thecandlepublishing.com

Nicolas Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
inspector@sunshineaudit.com

Adam Rankin
Chris Mulcahy
Lila C. Jones
HOLLAND AND HART, LLP
110 North Guadalupe, Suite 1
Santa Fe, NM 87501
AGRankin@hollandhart.com
CAMulcahy@hollandhart.com
LCJones@hollandhart.com

Tim Davis
WildEarth Guardians
301 N. Guadalupe Street
Suite 201
Santa Fe, New Mexico 87501
tdavis@wildearthguardians.org

Jeffrey J. Wechsler
Louis W. Rose
Kari E. Olson
Sharon T. Shaheen
P.O. Box 2307
Santa Fe, New Mexico 87504
(505) 982-3873
jwechsler@montand.com
lrose@montand.com
kolson@montand.com
sshaheen@montand.com
Attorneys for New Mexico Oil and Gas
Association

Tannis Fox
Western Environmental Law Center
409 East Palace Avenue, #2
Santa Fe, New Mexico 87501
505.629.0732
fox@westernlaw.org
Attorney for Amigos Bravos and Sierra Club

Ari Biernoff
General Counsel
NEW MEXICO STATE LAND OFFICE
P.O. Box 1148
Santa Fe, NM 87504-1148
(505) 699-1519
abiernoff@nmslo.gov
Counsel for Stephanie Garcia Richard,
Commissioner of Public Lands of the State
of New Mexico, and New Mexico State
Land Office

Jolene L. McCaleb
Elizabeth Newlin Taylor
Taylor and McCaleb, P.A.
P.O. Box 2540
Corrales, NM 87048-2540
(505) 888-6600
(505) 888-6640 (facsimile)
jmccaleb@taylormccaleb.com
etaylor@taylormccaleb.com
Attorneys for Select Water Solutions, Inc.

Colin Cox
Gail Evans
Center for Biological Diversity
1025 ½ Lomas NW
Albuquerque, NM 87102
Phone: (832) 316-0580
Email: ccox@biologicaldiversity.org
Email: gevans@biologicaldiversity.org

From: [Buerkle, Caroline, GOV](#)
To: [Kenney, James, ENV](#); [Witte, Jeff](#); [Anderson, Elizabeth, OSE](#); [DeBlassie, Gina, DOH](#); [Sloane, Michael B., DGF](#); [Kenderdine, Melanie, EMNRD](#)
Cc: [Black, Rob, EDD](#); [Rodriguez, Stephanie, HED](#); [Schlegel, Daniel, GOV](#); [Agajanian, Holly, GOV](#); [Roose, Rebecca, GOV](#)
Subject: RE: Produced Water Reuse Petition Hearing Tomorrow
Date: Monday, July 7, 2025 8:25:52 AM

Thank you, Secretary. As per our huddle discussion, we need everyone's commitment to get this over the finished line.

Caroline Buerkle

Deputy Chief Operating Officer | Office of the Governor
Governor Michelle Lujan Grisham

P: (505) 476-2221
C: (505) 690-4804
E: caroline.buerkle@exec.nm.gov

x: [@GovMLG](#)
f: [GovMLG](#)
w: governor.state.nm.us

From: Kenney, James, ENV <James.Kenney@env.nm.gov>
Sent: Monday, July 7, 2025 8:01 AM
To: Witte, Jeff <jjwitte@nmda.nmsu.edu>; Kenney, James, ENV <James.Kenney@env.nm.gov>; Anderson, Elizabeth, OSE <elizabeth.anderson@ose.nm.gov>; DeBlassie, Gina, DOH <Gina.DeBlassie@doh.nm.gov>; Sloane, Michael B., DGF <michael.sloane@dgf.nm.gov>; Kenderdine, Melanie, EMNRD <Melanie.Kenderdine@emnrd.nm.gov>
Cc: Buerkle, Caroline, GOV <Caroline.Buerkle@exec.nm.gov>; Black, Rob, EDD <rob.black@edd.nm.gov>; Rodriguez, Stephanie, HED <Stephanie.Rodriguez@hed.nm.gov>; Schlegel, Daniel, GOV <Daniel.Schlegel@exec.nm.gov>; Agajanian, Holly, GOV <Holly.Agajanian@exec.nm.gov>; Roose, Rebecca, GOV <rebecca.roose@exec.nm.gov>
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 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 Jan.

Thank you,
Secretary Kenney (he/him)
New Mexico Environment Department
Mobile: (505) 470-6161

-

To request a meeting, please fill out this [form](#). For our organizational listing, please use this [link](#).

Exhibit 2

From: [Kenney, James, ENV](#)
To: [Felicia Orth](#)
Cc: [Jones, Pamela, ENV](#); [Eduardo Ugarte II](#); [Thomson, Bruce](#)
Subject: RE: [EXTERNAL] Two Questions for WQCC 25-34, Water Reuse Part Deux
Date: Friday, July 11, 2025 8:16:09 AM

Good morning –
In response to your questions:

1. The first two weeks of December work for me. I can revisit later dates if necessary but likely the second half of April.
2. I recommend the entire hearing take place in one or more counties mentioned in the petition. I am not in favor of holding any of the hearing in Santa Fe given remote options.

Pam and Eduardo –

Can you get to work on identifying meeting spaces (irrespective of date) in Lea or Eddy Counties and San Juan County that could allow for in-person and remote participation? Colleges and Universities, convention centers, etc. Since we don't have the dates of the hearing or the location, just identifying options is all I am asking. We can look at dates for venues later. Happy to discuss offline if that would be helpful.

Thank you –
Secretary Kenney (he/him)
New Mexico Environment Department
Mobile: (505) 470-6161

-

To request a meeting, please fill out this [form](#). Use this [link](#) to reach our organizational listing, including names, titles, email addresses, and mobile numbers.

From: Felicia Orth <felicia.l.orth@gmail.com>
Sent: Thursday, July 10, 2025 2:54 PM
To: Thomson, Bruce <bthomson@unm.edu>
Cc: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; Eduardo Ugarte II <EUgarte@nm DOJ.gov>
Subject: [EXTERNAL] Two Questions for WQCC 25-34, Water Reuse Part Deux

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Commissioners:

The Chair has appointed me Hearing Officer in this matter, and I look forward to working with all of you again. Before I set a prehearing conference with the parties, I would like your input on two questions:

1. What is your availability for a 2-week hearing between December 1, 2025, and May 31, 2026? (My hearing calendar is fully booked before December 1 with the OCC, EIB, and ISC.)

Please identify either the weeks you are available, or the weeks you are not. You can assume that no setting would interfere with winter holidays (December 22-January 2) or the New Mexico legislative session (January 20-February 19). I will compile all responses and select those possible dates when we would have the greatest attendance.

2. Do you have any comment on a trip to Jal for this hearing? I would note that the Commission has never moved a lengthy, complex rulemaking out of Santa Fe (but I only go back to 1987). The hybrid nature of all our hearings these days means that folks don't have to travel to participate in real time, although I understand it is more comfortable to be in the room where it happens.

If you agree that the hearing should remain in Santa Fe, how would you feel about something I've done in the past for the WQCC and the EIB--travel to Jal and potentially other communities (Farmington?) where public comment would be significant, and take comment that would be video-recorded and transcribed for your later reference. All Commissioners would be welcome to join me and staff there, of course, but it would not be a requirement, and no part of the technical case would be heard there.

Please, to avoid any compromise of the Open Meetings Act, just reply to me, and I will compile all answers and let you know the result.

Thank you all for your attention, and we will push on.

Felicia

PS. Jal appears to be the only community in the country named for a cattle brand. When the residents requested a post office, they needed a name, and the most prominent word visible around there was "JAL" on the flanks of thousands of cattle, the brand of John A. Lyons. :)

https://www.santafenewmexican.com/opinion/editorials/produced-water-stick-to-earlier-decision/article_7e93d52f-83dc-468b-822a-0887a67e0a93.html

OUR VIEW

Produced water? Stick to earlier decision

The New Mexican
Sep 24, 2025

Exhibit 3

Staffers at the state Environment Department and members of the Water Quality Control Commission together have done incredible work in recent months working on a rule determining how water waste from the oil and gas industry might be reused. Or not.

The process took 18 months, included expert testimony, arguments from lawyers for and against, and plenty of debate. In May, the Water Quality Control Commission prohibited the reuse or discharge of produced water from oil and gas fields. The prohibition was to sunset in about five years, giving the pilot projects a chance to prove or disprove more thoroughly the idea that water contaminated with chemicals used in fracking can be made safe for reuse.

That was the right call. And it remains the right decision, despite the oil and gas industry's refusal to accept the vote — with the support, apparently, of Gov. Michelle Lujan Grisham.

Here's what has happened since May. An organization named the Water Access Treatment and Reuse Alliance filed a new petition with the commission requesting another rulemaking proceeding. WATR Alliance members, many with ties to the oil and gas industry, say they have new research supporting their claim that produced water can be reused and discharged safely.

There's no harm to human health and the environment to see here, folks.

But what of the Water Quality Control Commission? Its members took a tough vote in May. From May to when the new petition was refiled in July, what really changed? Some of the commission members, for one thing.

This is where the governor made her move. As reporter Nicholas Gilmore found, behind the scenes, the Governor's Office and her Cabinet secretary, James Kenney of the Environment Department, have been working to influence commission members.

Gilmore made a public records request to obtain copies of emails among top administration officials on the subject; thanks to the Game and Fish Department and the Office of the State Engineer for following the law. The Environment Department, by the way, still has not replied to the request as required by state law.

Kenney now is on the commission; he has filled a seat since May. Messages Gilmore obtained show the Environment Department secretary was sending emails in June and July to the heads of state departments urging them to participate in the new hearing. Customarily, those department heads assign a staff member to sit in their place. This wasn't only Kenney's idea. Emails make clear he was acting at the behest of the Governor's Office, writing in July that, "Per the [Governor's Office], the statutorily named person to the WQCC will need to participate vs your designee."

He's not just helping stack the commission with individuals who work directly for the governor — as opposed to staff members who cannot be fired summarily and are protected from political pressure. Yes, under statute, Cabinet secretaries can attend these meetings instead of staff.

It's clear the administration is in an all-out effort to get the petition "over the finish" line, as one staffer wrote in an email. That included "huddles" behind closed doors with commission members. Most unseemly, and potentially violations of how the Water Quality Control Commission should be run under state law.

Kenney also wants the hearing moved to Eastern New Mexico. Again, the request is in line with industry desires.

The WATR Alliance is asking for Jal. Such a move — holding a lengthy and complex hearing away from Santa Fe — hasn't occurred since 1987.

This is another indication that the administration, unhappy with the first vote, is stacking the deck for a different outcome.

Oil and gas, make no mistake, are fueling New Mexico's record revenues. These industries also are making record profits. That means oil and gas companies have the dollars to clean up the pollution left behind.

Science someday might be able to treat produced water — defined in state statute as “fluid that is an incidental byproduct from drilling for or the production of oil and gas” — so it can be reused without risk. In a state where freshwater is in short supply, finding additional water sources is crucial. But that day is not here. The Water Quality Control Commission did its job in May. Stop the meddling.