



July 24, 2020

New Mexico Oil Conservation Commission
Wendell Chino Building
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Santa Fe, NM 87505

via E-mail florene.davidson@state.nm.us

RE: 2020 Amendments to the Commission's Rules on Produced Water

Commission Chair Adrienne Sandoval,

Environmental Defense Fund and Audubon New Mexico ("the Commenters") respectfully submit these written comments on the proposed amendments of New Mexico produced water rules located in New Mexico Admin. Code 19.15.2, 19.15.16 and 19.15.34. EDF is a national organization representing over two million members and activists nationwide and tens of thousands in New Mexico, many of whom care deeply about the environmental impacts associated with oil and gas development, public health and clean water. Audubon New Mexico is the statewide office of the National Audubon Society with over 1.7 million members nationwide and more than 13,000 in New Mexico who are dedicated to protecting birds and the places they need, now and in the future, throughout the Americas, using science, advocacy, education, and on-the-ground conservation.

The Commenters commend The Oil Conservation Division (OCD) for endeavoring to collect water source and quality data for hydraulic fracturing makeup water. As far as the Commenters are aware, New Mexico would be the first state in the nation to require reporting of the source and quality of hydraulic fracturing makeup water.

The proposed rules would make clear who is recycling produced water within the oilfield and how much, and inform important public policy decisions about oil and gas-related water use, management and disposition in the state – and as such, New Mexico should ensure that data collected from this proposed regulation be made available to the public in a way that is easy to understand. This proposal to bring clarity to produced water reuse inside the oilfield and to the use of alternative water sources for hydraulic fracturing is consistent with broader efforts in the

oil and gas regulatory community to better understand the lifecycle of water related to oil and gas development, and other states should take note of this critical first step.

The remainder of these comments address three issues: how the water categories are defined; the scope of the rule; and future substantive rulemakings on produced water management that this rulemaking prompts.

First, the Commenters support the intent of the proposed rules but strongly suggest that the Oil Conservation Commission (OCC) not use the words “potable” and “non-potable,” as commonly understood definitions of those words do not necessarily align with the way in which the words are being used here. The proposed classifications in this rulemaking are produced water, potable water above 1,000 TDS, and non-potable water below 1,000 TDS.¹ Even though the proposed rule uses the terms “potable” and “non-potable” in a manner consistent with other state rules, in order to eliminate misunderstanding, the Commenters suggest simply defining the latter two classifications as non-produced water above or below 1,000 TDS. There are many other constituents that determine whether water is potable (i.e. drinkable), and in changing the language in the rulemaking, the OCC can reduce the possibility of any confusion among operators and residents of the state by hewing to this objective language about quality.

Second, New Mexico is in the midst of conducting collaborative research projected to extend a number of years around the issue of produced water designed to inform future decision-making about produced water disposition in the state. In the meantime, the Commenters understand that nothing in this proposed rule would allow for the OCC or OCD to permit the use of produced water outside of the oil field. The Commenters further understand OCD’s references to produced water use outside the oilfield to merely be a strict incorporation of the Produced Water Act² rather than a reflection of OCC or OCD policy on such use. In particular, the Commenters understand that under current and proposed rules, the OCD may not permit the use of produced water outside the oilfield. Moreover, nor do the Water Quality Control Commission or the New Mexico Environment Department intend to permit such outside-the-oilfield reuse prior to the collection of additional scientific evidence relevant to health, safety and environmental impacts of reuse outside the oilfield and a potential future rulemaking on this topic.

Finally, this rulemaking opens the door for a more substantive rulemaking at OCD on the environmental, health, and safety aspects of produced water reuse inside the oilfield, particularly with respect to leaks and spills from produced water storage and transport. The information gathered in this rulemaking will help the OCC and OCD understand the magnitude and locations of produced water reuse inside the oilfield and will provide invaluable inputs for

¹ Proposed amendment to 19.15.16 NMAC, adding Section 21: definitions for non-potable and potable water

² Produced Water Act, 2019 N.M. HB 546(5)

such a larger rulemaking, which is consistent with OCC's remit "to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources."³ This is especially important as the proposed rulemaking may have the effect of increasing the reuse of produced water within the oilfield in the state, and thus the risks associated with this activity. The Commenters look forward to working with OCD on developing these substantive rules in the near future.

Respectfully submitted,

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³ N.M. Stat. Ann. § 70-2-12(B)(15)