

OCC Hearing Exhibit 28

From: [Davidson, Florene, EMNRD](#)
To: [Salvidrez, Marlene, EMNRD](#)
Subject: FW: [EXT] re: OCD "produced water" rules
Date: Wednesday, July 29, 2020 10:24:26 AM
Attachments: [2020-7-29 letter OCD Produced Water.pdf](#)
[ATT00001.htm](#)

Case 21281. The attachment needs to be scanned, also.

From: Rebecca Sobel <rsobel@wildearthguardians.org>
Sent: Wednesday, July 29, 2020 9:59 AM
To: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>; Sandoval, Adrienne, EMNRD <Adrienne.Sandoval@state.nm.us>; jkessler@slo.state.nm.us; thomas.engler@nmt.edu
Subject: [EXT] re: OCD "produced water" rules

Dear Division Director Sandoval, Commissioner Kessler, Commissioner Engler,

I hope this email finds you well.

Please find attached a letter signed by a coalition of 42 tribal government representatives, groups, and businesses representing Indigenous and minority voices across New Mexico, Texas, Colorado and Arizona, who represent more than two million members that are deeply concerned with the Oil Conservation Commissions' upcoming "produced water" rule promulgation. Groups are concerned these rules fail to put peoples' health first and are requesting the Commission put the brakes on plans to adopt new rules governing the use of toxic radioactive oil and gas waste, known as "produced water."

Absent thorough and independent scientific analysis proving "produced water" is safe, we are requesting the Commission halt any rulemaking related to "produced water." If the July 30 rulemaking continues as planned, we request the Oil Conservation Commission protect public health, the environment, and fresh water resources by promulgating rules that prohibit the use of fresh water for fracking; expressly forbid the discharge or dumping of "produced water;" and require that as "produced water" is transported or used, it is regulated as a toxic and hazardous waste that is inherently dangerous and handled and disposed of accordingly.

We look forward to your response and supporting robust engagement on the management of oil and gas waste.

Thank you,

Rebecca Sobel

Navajo Nation Council Delegate Daniel E. Tso
Asian American Association of New Mexico · Big Bend Defense Coalition · Black Mesa Water Coalition
Colorado Latino Forum · Continental Network of Indigenous Women of the Americas · Diné C.A.R.E.
Green Latinos Colorado · Honor the Earth · Southwest Native Cultures · Tewa Women United
Torreon Community Alliance · YUCCA Action
Arroyo Hondo Land Trust · Center for Biological Diversity · Chaco Alliance · Clean Energy Now Texas
Common Ground Rising · Delaware Riverkeeper Network · Earth Care · Food and Water Action
Frack Off Greater Chaco · Frack Free Four Corners · Frack Free New Mexico · Global Voice
Green Amendments For The Generations · JB Consulting
Multicultural Alliance for a Safe Environment · NastyWomenNM · New Energy Economy
Oil Change International · PNM Shareholders for a Responsible Future · ProgressNow New Mexico
Retake Our Democracy · Roadrunner LLC · Rio Arriba Concerned Citizens · San Juan Citizens Alliance · Save RGV
SEED (Securing Economic and Energy Democracy for SW NM) · VitaleTherapeutics, Inc. · We Are One River
WildEarth Guardians

July 29, 2020

Secretary Sarah Cottrell Probst
Department of Energy, Minerals, and
Natural Resources
1220 South St. Francis Drive
Santa Fe, NM 87505

Commissioners Sandoval, Kessler,
and Engler
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Regulating Toxic Oil and Gas Industry Waste - Put New Mexico's Clean Water, Health, and Environment First

Dear Secretary Probst and Oil Conservation Commissioners,

We are writing to urge you to pause your plans to adopt proposed regulations regarding the use of “produced water.” [As oil and gas extraction has boomed in New Mexico, the oil and gas industry has faced rising costs and difficulties in disposing its waste.](#) In the midst of a global health pandemic and crashing oil prices, rather than slow or even stop production, industry continues to call on the Trump Administration and the Michelle Lujan Grisham Administration to simply reclassify their waste as “not toxic.” The industry’s strategy is to re-label their waste so they can more cheaply dispose of it, dumping it into rivers, onto crops, and into drinking water supplies.

At the end of June, the New Mexico Oil Conservation Division announced its intention to amend regulations [with proposed rules focused on making it easier for the oil and gas industry to transport and use its toxic waste while drilling and fracking.](#) The Division’s de-regulatory approach assumes that “produced water” is a relatively benign byproduct of oil and gas production. To the contrary, as reports across the U.S. have found, this “water” is [actually a toxic cocktail of radioactive materials, heavy metals, proprietary fracking chemicals, and other contaminants](#) that are a clear threat to public health, the environment, and fresh water resources.

Aided by the absence of a pre-hearing stakeholder engagement process, the proposed rules fall dramatically short of the Division's mandate to "regulate" the use of produced water within the oil and gas fields "in a manner that protects public health, the environment and fresh water sources." 70-2-12.B(12) NMSA 1978. Alarming, the proposed rules actually endorse the dumping and discharge of this waste outside of oil and gas producing regions.

The Oil Conservation Division's proposed regulations would allow oil and gas companies to use and transport "produced water" when drilling and fracking, provided that public health, the environment, and fresh water are protected. Unfortunately, there exists no standards or safeguards to actually protect public health, the environment, and fresh water from "produced water." In fact, this [waste is considered too toxic to treat](#). Absent clear standards and information, there is no way for the Commission to ensure that the use and transport of the oil and gas industry's toxic waste will protect workers, adjacent communities, groundwater, surface waters, and otherwise ensure the environment is not contaminated.

Furthermore, the proposed rules would allow the oil and gas industry to discharge or otherwise dump its toxic waste outside of oil and gas producing areas. Although the rules would allow this only where approved by the New Mexico Water Quality Control Commission, they explicitly imply that the Commission will at some point adopt rules that will actually allow the dumping of "produced water" onto lands and in streams. This is a scary proposition considering that there are no known methods to safely treat this waste. The Oil Conservation Division's rules appear to set the stage for a more insidious plan to allow companies to dump their toxic waste into our environment.

Overall, these rules would set a dangerous precedent. Rather than help New Mexico transition away from reliance on oil and gas, they would further entrench and enshrine the industry, jeopardizing the state's public health and financial well-being, our environment, and our ability to meet climate objectives.

New Mexico's communities and clean water deserve to be protected. If the Oil Conservation Commission moves forward in adopting new regulations, we urge you to adopt rules that:

- Prohibit the use of fresh water during drilling and hydraulic fracturing;
- Expressly forbid the discharge or dumping of "produced water;" and
- Require that as "produced water" is created, transported, or used, it is regulated as a toxic and hazardous waste that is inherently dangerous and handled and disposed of accordingly.

We urge the Oil Conservation Division to course correct and focus on developing

and implementing meaningful rules for oil and gas waste management, including water conservation and watershed resilience strategies to protect communities and meet our state's climate goals. Please put the brakes on your proposal to amend your regulations and instead put New Mexico's clean water, health, and environment first. Thank you.

Signed,

Jeremy Nichols, Climate and Energy Program Director

WildEarth Guardians

301 Guadalupe St., Suite 201

Santa Fe, NM 87501

jnichols@wildearthguardians.org

Evalyn Bemis, President

Arroyo Hondo Land Trust

21 Leaping Powder Road

Santa Fe NM 87508

evalyn@newmexico.com

Robert Nelson, Co-President

Asian American Association of New Mexico

P.O. Box 8994

Albuquerque, NM 87104

info@aaanm.us

Richard Mark Glover, Board Member

Big Bend Defense Coalition

PO Box 812

Alpine, TX 79843

rmglover98@gmail.com

Hope Alvarado, Native Movement
Builder

Black Mesa Water Coalition

10300 Range Rd SW

Albuquerque, NM 87121

Movementbuilding@blackmesawatercoalition.org

Taylor McKinnon, Senior Public Lands
Campaigner

Center for Biological Diversity

P.O. Box 1178

Flagstaff, AZ 86002-1178

tmckinnon@biologicaldiversity.org

Anson Wright, Coordinator

Chaco Alliance

4990 SW Hewett Blvd.

Portland, Oregon, 97221

ansonw@comcast.net

Purly Rae Gates, Chief Investigator
Clean Energy Now Texas
598 Lame Hoss Ln
Driftwood, TX 78619
purly@cleanenergynowtexas.org

Ean Thomas Tafoya and Xochi Gaytan,
Co-Chairs
Colorado Latino Forum
3455 Ringsby Court Unit #111
Denver, CO 80216

Elaine Cimino, Director
Common Ground Rising
907 Nyasa Rd SE
Rio Rancho, NM 87124
ecimino10@gmail.com

Rosalee Gonzalez, Co-Coordinator,
North America Region
**Continental Network of Indigenous
Women of the Americas**
7113 W Linda Ln
Chandler, AZ 85226
Rosalee.Gonzalez@gmail.com

Maya van Rossum, the Delaware
Riverkeeper
Delaware Riverkeeper Network
925 Canal St, Suite 3701
Bristol, PA 19007
keepermaya@delawareriverkeeper.org

Carol Davis, Executive Director
Diné C.A.R.E.
HCR 63 Box 272
Winslow, AZ, 86047
carol.davis@dine-care.org

Miguel Acosta, Co-Director
Earth Care
6600 Valentine Way, Building A
Santa Fe, NM 87507
info@earthcarenm.org

Margaret Wadsworth, Senior Organizer
Food and Water Action
1616 P Street, NW
Washington, DC 20036
mwadsworth@fwwatch.org
(505) 750-2980

Jenni Siri, Coordinator
Frack Off Greater Chaco
133 Damon St
Belen, NM 87002
info@frackoffchaco.org

Marguerita Hibbs, Coordinator
Frack Free Four Corners
Post Office Box 646
Estancia, NM 87016
info@frackfreefourcorners.org

Rebecca Sobel, Coordinator
Frack Free New Mexico
903 West Alameda, #324
Santa Fe, NM 87501
sobel.rebecca@gmail.com

Earl James
Global Voice
1 Puerto Way
Santa Fe, NM 87508

Maya van Rossum, Founder
Green Amendments For The Generations

925 Canal St, Suite 3701
Bristol, PA 19007
maya@forthegenerations.org

Ean Thomas Tafoya, Colorado Organizer
Green Latinos Colorado

1213 K St NW Suite 355
Washington, D.C., 20004
eantafoya@greenlatinos.org

Winona LaDuke, Executive Director
Honor the Earth

607 Main Ave
Callaway, MN 56521
info@honorearth.org

Joyce Bogosian, Eco-sustainable
Development Consultant

JB Consulting
6 Shiprock Peak
Santa Fe NM 87508
joycebogosian@gmail.com

Susan Gordon, Coordinator
Multicultural Alliance for a Safe Environment

P.O. Box 4524
Albuquerque, NM 87196
sgordon@swuraniumimpacts.org

Wendy Parker-Wood, Steering
Committee Member
NastyWomenNM
17 Garden Park Circle NW
Albuquerque, NM 87107
nastywomennm@gmail.com

Navajo Nation Council Delegate Daniel E. Tso, Chair of Health, Education and Human Services

Representing Littlewater, Pueblo
Pintado, Torreon, Whitehorse Lake,
Baca/Brewitt, Casamero Lake, Ojo
Encino, Counselor
danieltso@navajo-nsn.gov

Mariel Nanasi, Executive Director
New Energy Economy
600 Los Altos Norte St.
Santa Fe, NM 87501
mariel@seedsbeneaththesnow.com

Collin Rees, Senior Analyst
Oil Change International
714 G St. SE, Suite 202
Washington, DC 20003
collin@priceofoil.org

Wendy Volkmann, Co-Director
PNM Shareholders for a Responsible Future
P.O. Box 6516
Santa Fe, NM 87502

Lucas Herndon, Deputy Director
ProgressNow New Mexico
625 Silver Ave. SW
Albuquerque, NM 87102
Lucas@progressnownm.org

Paul Gibson, Co-Founder
Retake Our Democracy
P.O. Box 32464
Santa Fe, NM 87594
paul@retakeourdemocracy.org

Dr. Susan Selbin, Owner
Roadrunner LLC
505 San Carlos Ct. SW
Albuquerque, NM 87104
ssselbin@hotmail.com

Peggy Baker, Founder
Rio Arriba Concerned Citizens
P.O. Box 12
Abiquiu, New Mexico 87510
leigh633@earthlink.com

Mike Eisenfeld, Energy and Climate
Program Manager
San Juan Citizens Alliance
665 West Main St.
Farmington, NM 87401
mike@sanjuancitizens.org

Bill Berg, Associate Director
Save RGV
613 W. Saint Charles St.
Brownsville, TX, 78520
billberg42@gmail.com

Debaura James, Representative
**SEED (Securing Economic and Energy
Democracy for SW NM)**
413 Ohio St.
Silver City, NM 88061
debauraperu@gmail.com

Terry Sloan, Director
Southwest Native Cultures
5704 Bartonwood PI NE
Albuquerque, NM 87111
tas@sloancompany.net

Beata Tsosie and Kathy Sanchez,
Environmental Health and Justice
Program
Tewa Women United
P.O. Box 397
Santa Cruz, NM 87567
beata@tewawomenunited.org

Mario Atencio, Executive Director
Torreon Community Alliance
P.O. Box 1054
Cuba, NM 87013
torreon.community.alliance@gmail.com

Galen Knight, President
VitaleTherapeutics, Inc.
P.O. Box 619
Canjilon, NM 87515-0619
galenvtp@highfiber.com

Theresa Carmody, Director
**Wagon Mound Development
Association**
P.O. Box 354
Wagon Mound, NM 87752
tcarmody51@yahoo.com

Mark LeClaire, Organizer
We Are One River
705 Granite NW
Albuquerque, NM 87102
mescladero@hotmail.com

Artemisio Romero y Carver, Steering
Committee
YUCCA Action
6600 Valentine Way, Building A
Santa Fe, NM 87507
yucca@earthcarenm.org

CC: Governor Michelle Lujan Grisham; Secretary James Kenney, Environment
Department