

**STATE OF NEW MEXICO  
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED  
AMENDMENT TO THE COMMISSION'S  
RULES TO ADDRESS CHEMICAL DISCLOSURE AND  
THE USE OF PERFLUOROALKYL AND  
POLYFLUOROALKYL SUBSTANCES AND  
IN OIL AND GAS EXTRACTION,  
19.15.2, 19.15.7, 19.15.14, 19.15.16, AND 19.15.25 NMAC**

**Case No. 23580**

**WILDEARTH GUARDIANS,**

**PETITIONER.**

**MAXWELL'S MOTION TO EXCLUDE THE  
TECHNICAL TESTIMONY AND EXHIBITS OF MELISSA TROUTMAN**

Mr. Maxwell hereby moves to exclude the direct technical testimony and exhibits of Melissa Troutman submitted on behalf of the Petitioner, WildEarth Guardians, in the above-captioned matter before the Oil Conservation Commission ("Commission"). In support of this motion, movant states as follows:

**I. INTRODUCTION.**

Melissa Troutman has submitted testimony intended as technical testimony in this rulemaking hearing. However, her testimony does not meet the criteria for technical testimony as governed by Rule 19.15.3.7(B). Ms. Troutman lacks the requisite specialized technical expertise, her testimony reflects advocacy bias, and her analysis of publicly available data lacks the necessary technical rigor. Her professional background emphasizes advocacy, journalism, and filmmaking rather than technical or scientific expertise. While she is a member of the New Mexico Produced Water Research Consortium and participates in its working groups, this

involvement does not demonstrate specialized technical expertise. Furthermore, her testimony is not relevant to the specific purpose of the proposed rule. For these reasons, movant is requesting her technical testimony and exhibits be excluded from the record.

## **II. LEGAL STANDARD.**

Under governing Rule 19.15.3.7(B), technical testimony is defined as:

"Scientific, engineering, economic, or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing."

To qualify as technical testimony, the testimony must be provided by an individual with specialized knowledge, skill, experience, training, or education in a relevant technical field, offering expert insights beyond general observations or publicly accessible information.

### *Analysis*

New Mexico courts have upheld the exclusion of testimony from individuals lacking the requisite expertise in the specific subject matter at issue in an administrative setting. *In re Louisiana Energy*, No. 28,663, mem. op. (N.M. Ct. App. Jan. 11, 2010) (non-precedential), the Court of Appeals affirmed the exclusion of an expert's testimony where the expert did not possess the necessary qualifications directly relevant to the technical issues under consideration.

In that case, the petitioner's expert attempted to provide technical testimony on the geology and hydrology of a site related to a discharge permit application. The court held:

"We cannot say that the hearing officer abused her discretion. [Dr. Phillips was not able to demonstrate that he] was qualified by 'knowledge, skill, experience, training or education' to express an opinion on the particular issues before the Department concerning the discharge permit." (Id. ¶ 19 [21]).

The court emphasized that mere general expertise is insufficient; the expert must have specialized knowledge pertinent to the specific technical matters:

"Although [petitioner] CARD asserts that Dr. Phillips' testimony about the adjacent site was relevant because the regulations for the permit application require a survey of land in a one-mile perimeter, our review of the record persuades us that LES presented substantial evidence that the application was complete and that issuing the permit would not result in the contamination of ground water at the LES site or its adjacent areas. Thus... Dr. Phillips was not able to demonstrate that his investigation of the adjacent site or his study of the WIPP site were relevant to the LES site." (Id. ¶ 21).

Furthermore, the court noted that allowing testimony from unqualified individuals could prejudice the proceedings:

"Accordingly, we are not persuaded that the hearing officer erred in not giving due weight to Dr. Phillips' technical testimony because it was not relevant. 'It is within the sound discretion of the trial judge to determine whether expert testimony is relevant.'" (Id., citing *State v. Blea*, 101 N.M. 323, 326, 681 P.2d 1100, 1103 (1984)).

This case establishes that in administrative proceedings, testimony may be excluded if the witness lacks the necessary specialized expertise relevant to the specific technical issues under consideration.

### **III. ARGUMENT.**

#### *A. Relevance to the Proposed Rule.*

The purpose of the proposed rule is to prohibit the use of PFAS (Per- and polyfluoroalkyl substances) in order to prevent the generation of PFAS-contaminated produced water and nondomestic waste. The proposed rule is also intended to update disclosure and reporting rules to ensure compliance with this prohibition so that the division can protect public health and the environment from produced water and nondomestic waste generated by the oil and gas industry.

Ms. Troutman's testimony does not address PFAS, its use in oil and gas operations, or the generation of PFAS-contaminated waste. Her testimony centers on general data regarding oil and gas fluid spills in New Mexico over a period from January 1, 2010, to October 15, 2024, without any specific reference to PFAS-related incidents. Therefore, her testimony is not relevant to the specific issues the Commission is considering in this rulemaking proceeding.

Under Rule 11-402 NMRA, irrelevant evidence is inadmissible. Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence (Rule 11-401 NMRA). In administrative proceedings, the New Mexico Rules of Evidence may be used for guidance. *See In re Louisiana Energy Services*, No. 28,663, mem. op. ¶ 18 (N.M. Ct. App. Jan. 11, 2010) (“The New Mexico Rules of Evidence may be used for guidance.”). Accordingly, when applying these evidentiary standards, Ms. Troutman's testimony fails to make any fact of consequence regarding the prohibition of PFAS use more or less probable and is therefore inadmissible as irrelevant.

*B. Lack of Technical Expertise and Methodological Rigor.*

Ms. Troutman's testimony should be excluded because the analysis she presents does not meet the standard of technical expertise required for technical testimony. Her methodology involves basic data retrieval and rudimentary filtering techniques that do not require specialized knowledge or skills in environmental science, data analytics, or engineering.

In her testimony, Ms. Troutman describes accessing publicly available data from the New Mexico Oil Conservation Division's (OCD) Incident and Spill Databases. She plainly explains how she conducted searches and applied simple filters to exclude certain categories of data. For example, she states:

"An October 16, 2024 search of OCD's Incident Database for all spill 'releases - not vents/flares' that companies reported to the state between January 1, 2010 and October 15, 2024 produced 18,991 results. However, these initial results still included several gaseous releases despite pre-filtering for non-vent/flare incidents.

Filtering these 18,991 results again to remove gaseous categories —'natural gas vented'/'other', 'natural gas flared'/'other', 'carbon dioxide', 'hydrogen sulfide' and 'methane' categories in the 'Materials' column (R)—left 16,618 fluid spill incidents remaining..." *see* Direct Technical Testimony of Melissa Troutman, pp. 2–3.

This process involves straightforward data filtering using basic spreadsheet functions or database queries to exclude certain entries based on specified criteria. Her conclusions are straightforward summaries that could be replicated by any individual with basic proficiency in spreadsheet software:

"16,618 oil and gas fluid-related spill incidents (Incident Database)"  
"10,657 oil and gas produced water spill incidents"  
"19,812 spills of separate oil and gas fluids (Spill Database)"  
"4,789,952 barrels (Bbls) of spilled fluids, losing (not recovering) 1,768,867 Bbls"  
"187 spills that reached a watercourse"  
"99 spills that affected groundwater"

These figures are direct counts and sums obtained from the databases after applying basic filters. There is no indication of advanced statistical analysis, modeling, or interpretation that would provide deeper insights into patterns, causes, or impacts of the spill data. For instance, she does not perform trend analysis over time, spatial analysis using geographic information systems (GIS), or risk assessment based on spill characteristics.

Ms. Troutman does not provide any methodological details that would demonstrate technical rigor. She does not explain the criteria for data inclusion beyond basic filtering, nor does she address potential data limitations, such as reporting inconsistencies, data accuracy, or

the representativeness of the data. These considerations are crucial for technical analysis and would typically be addressed by a qualified expert.

She incorporates other publicly available information, such as statistics from the New Mexico Environment Department regarding groundwater dependence: "Approximately 78% of New Mexicans depend on ground water for drinking water..." Including such general information does not transform her testimony into technical expertise but rather indicates reliance on common knowledge to support advocacy positions.

*C. Lack of Specialized Technical Expertise.*

Ms. Troutman lacks the requisite technical expertise in fields relevant to the matters at issue. Her educational background is in English Literature and Education, holding a Bachelor of Arts from Indiana University of Pennsylvania (2002) and a teaching license in Secondary English and Language Arts from Virginia Wesleyan College (2006). Additionally, she has earned graduate certificates in Systems Thinking (2021) and Plant Medicine (2022) from Cornell University. While notable, none of these qualifications demonstrate specialized training in environmental science, engineering, hydrology, data analytics, or any technical discipline pertinent to oil and gas spill analysis.

Professionally, Ms. Troutman's experience focuses on advocacy, journalism, and filmmaking. She currently serves as the Climate & Energy Advocate at WildEarth Guardians (2022–present), promoting policies on oil and gas waste management, water protection, and environmental justice. Previously, she co-founded Public Herald (2011–2021), an investigative news nonprofit and film production company, where she led reporting on environmental issues related to shale gas extraction. From 2011 to 2017, she led investigative teams examining water

contamination due to oil and gas operations in Pennsylvania, guided by an advisory board of scientists specializing in water quality assessment and oil and gas engineering. Her work includes co-writing, directing, and editing documentaries such as *Triple Divide* (2013), *Triple Divide [Redacted]* (2017), and *INVISIBLE HAND* (2020), all addressing environmental concerns and influencing public opinion and policy. These films have earned awards like the 2021 Gold Telly Award and the 2020 Best Documentary Feature Award from Hollywood Verge Film Awards. Her roles highlight skills in communication, storytelling, and advocacy. However, there is no evidence that she has performed independent technical or scientific analyses directly related to oil and gas spill data, such as environmental impact assessments, data modeling, or specialized engineering evaluations.

Though Ms. Troutman is currently a member of the New Mexico Produced Water Research Consortium and has served on several working groups since 2020, this involvement alone does not demonstrate that she possesses specialized technical expertise. Participation in working groups does not equate to having the specialized knowledge or skills required to conduct independent technical analyses or to provide expert testimony on environmental science or engineering matters.

While Ms. Troutman mentions collaborations with scientists and participation in research and reporting teams, there is again no evidence that she personally conducted technical analyses or developed specialized expertise in environmental science or engineering disciplines. Her involvement appears to be managerial and journalistic, relying on the expertise of others rather than engaging in independent technical evaluation.

*D. Testimony Reflects Advocacy Bias.*

Further, her testimony reflects advocacy bias that compromises the objectivity necessary for technical testimony. Her professional background suggests a strong orientation toward environmental advocacy. As a Climate & Energy Advocate and through her work with Public Herald, she has actively promoted policies aligned with specific environmental objectives. Her films and reports have been used to campaign for policy changes and have influenced public and governmental actions, such as prompting an investigation by the Pennsylvania Attorney General into the Department of Environmental Protection<sup>1</sup>. This extensive involvement in advocacy indicates that her testimony is intended to further policy objectives rather than to offer impartial technical expertise. Her appearances on national media platforms, such as *The Daily Show with Jon Stewart*<sup>2</sup>, to discuss environmental issues underscore her role as an advocate rather than a technical expert. Given her advocacy roles and public campaigns *against* oil and gas operations, there is a reasonable concern that her testimony is influenced by predetermined policy objectives rather than by impartial technical evaluation.

**IV. CONCLUSION.**

Ms. Melissa Troutman does not possess the specialized technical expertise necessary to provide technical testimony in this proceeding. Her educational background and professional experience are concentrated in advocacy, journalism, and filmmaking, not in scientific or

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1 ‘In 2017, Melissa released two groundbreaking complaint reports that reshaped the history of water contamination cases associated with fracking and the conduct of regulatory agencies...’ from *Melissa Troutman About Me page*, Public Herald, <https://publicherald.org/about/team/melissa-troutman/> (archived at *Internet Archive*, <https://web.archive.org/web/20241001073237/https://publicherald.org/about/team/melissa-troutman/>) (last accessed Oct. 25, 2024). (attached as **Exhibit A**)

2 ‘Melissa appeared with Public Herald in 2014 on *The Daily Show with Jon Stewart*’s first episode on fracking, titled “The Benefits of Fracking,” alongside sources impacted by unconventional natural gas drilling and hydraulic fracturing in the Marcellus Shale region of Pennsylvania.’ See Exhibit A.



technical disciplines relevant to oil and gas spill analysis. Additionally, her testimony is not relevant to the specific purpose of the proposed rule, which aims to prohibit the use of PFAS to prevent PFAS-contaminated produced water and nondomestic waste. Her testimony relies on publicly available data without applying specialized analytical techniques and serves to advance policy positions consistent with her advocacy roles.

Allowing Ms. Troutman's testimony as technical evidence would be prejudicial to Mr. Maxwell by introducing irrelevant and potentially misleading information into the proceeding, which would create a disadvantage for him. Specifically, it would compel Mr. Maxwell to address and rebut non-expert testimony that lacks proper technical foundation, thereby diverting resources and focus from the substantive issues pertinent to the proposed rule. This unfairly burdens Mr. Maxwell with the task of disproving assertions that are not grounded in specialized expertise, potentially influencing the Commission based on advocacy rather than factual, technical analysis. Admitting her testimony could mislead the Commission by presenting policy arguments under the guise of technical expertise, which may unjustly affect the outcome of the proceeding. Therefore, to prevent prejudice against Mr. Maxwell and to maintain the fairness and integrity of the hearing, her direct technical testimony and exhibits should be excluded from the technical record.

#### **V. POSITION OF FELLOW PARTIES.**

Mr. Maxwell contacted counsel for the parties, seeking their position on the motion: the Petitioner and New Energy Economy both oppose; EOG Resources, Inc. and EMNRD take no stance; and NMOGA concurs.

## VI. MOTION.

**WHEREFORE**, movant wishes for the exclusion of the direct technical testimony and exhibits of Ms. Troutman on behalf of WildEarth Guardians from the record of this proceeding.

By: -s- *Nicholas Maxwell*  
Mr. Nicholas R. Maxwell  
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### CERTIFICATE OF SERVICE

I certify that a true and correct copy of my motion to exclude the technical testimony and exhibits of Melissa Troutman was served by email on October 25, 2024 to the persons listed below, with a hard copy mailed first class upon request:

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-s- Nicholas Maxwell  
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**EXHIBIT A:  
SUPPORTING DOCUMENT FOR  
MAXWELL'S MOTION IN LIMINE**

I, Nicholas R. Maxwell, hereby certify under penalty of perjury that Exhibit A consists of five pages of true and correct copies of a printed webpage, submitted to accompany and support my motion in limine. This exhibit includes the following:

1. **"About Me" page for Melissa Troutman**

Source: Public Herald

(URL: <https://publicherald.org/about/team/melissa-troutman/>) (Last accessed October 25, 2024)

Archived version available at Internet Archive with snapshot from October 1, 2024:

<https://web.archive.org/web/20241001073237/https://publicherald.org/about/team/melissa-troutman/>

Exhibit A is relevant to my motion in limine as it provides a detailed account of Melissa Troutman's professional background, focusing on her work in investigative journalism, documentary filmmaking, and environmental advocacy. These qualifications underscore her role as an advocate and communicator rather than a technical expert with specialized knowledge pertinent to the Oil Conservation Commission's rulemaking proceeding. Exhibit A also illustrates her advocacy bias, as evidenced by her films and media appearances, which align with policy positions that may affect her impartiality. This exhibit supports my argument that Troutman's testimony lacks the technical foundation and objectivity required for admissible technical testimony in this context.

By -s- Nicholas R. Maxwell  
Nicholas R. Maxwell

DATED: October 25, 2024

## Melissa Troutman



Melissa Troutman is a journalist, writer, editor and vocal artist. She began investigating shale gas extraction in 2010 as a newspaper reporter in her hometown of Coudersport, Pennsylvania before co-founding the investigative news nonprofit Public Herald, where she served as Executive Director from 2011-2018. Melissa co-wrote, -directed and -edited the documentary [Triple Divide](#) (2013), which she also narrated with award-winning actor Mark Ruffalo. Follow her on twitter [@melissat22](#).

[See a complete list of Troutman's 70+ appearances in the press »](#)

Melissa's works at Public Herald have had widespread coverage in environmental journalism, editorials and major news media, including NPR Marketplace, Rolling Stone, The Washington Post, The New York Times and Forbes. Her work has also been referenced in the books "Amity and Prosperity: One Family and the Fracturing of America" by Eliza Griswald, "Legal Rights for Rivers: Competition, Collaboration and Water Governance" by Erin O'Donnell and "Sustainability and the Rights of Nature: An Introduction" by Cameron La Follette and Chris Maser.

Melissa has produced three award-winning documentary films on fracking, *Triple Divide* (c. 2013) and *Triple Divide [Redacted]* (c. 2017), and *INVISIBLE HAND* (c. 2019). All three films have collaborated with actor Mark Ruffalo.

Melissa's films have screened in more than 30 countries, are licensed to more than 50 colleges, and continue to have an important role in the narrative surrounding fracking and democracy.

Melissa appeared with Public Herald in 2014 on The Daily Show with Jon Stewart's first episode on fracking called "The Benefits of Fracking" alongside sources impacted by unconventional natural gas drilling and hydraulic fracturing in the Marcellus Shale region of Pennsylvania.

In 2017, Melissa released two groundbreaking complaint reports that reshaped the history of water contamination cases associated with fracking and the conduct of regulatory agencies. The report uncovered 9,442 complaint investigations by the Pennsylvania Department of Environmental Protection (PA DEP) that were previously unreleased, with over 4,000 drinking water cases being directly related to oil and natural gas fracking development, and [178 cases](#) of criminal misconduct. The data in the report suggests that the industry's impact on drinking water supplies was in fact widespread and systemic, contrary to the national study released by the Environmental Protection Agency (EPA) "Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources" that failed to include the complaint data.

The Public Herald complaint reports were a key subject in Public Herald's second documentary *Triple Divide [Redacted]*, released in 2017 as a 52-minute feature covering the drinking water complaint investigations and Public Herald's call for a criminal investigation of the PA DEP.

In the months after the complaint reports and the release of *Triple Divide [Redacted]*, hundreds of residents across the state flooded Pennsylvania Attorney General's office with phone calls for months demanding an investigation of PA DEP — citing Public Herald's reporting. The effort forced Pennsylvania Attorney General Josh Shapiro to launch a probe into DEP misconduct regarding its handling of oil and gas complaints. As of 2019, sources reveal that DEP officials have been forced to testify before grand juries convened by Attorney General Shapiro.

In 2018, Melissa's reporting on an untested fracking wastewater treatment facility proposal inspired the Seneca Nation of Indians to intervene and eventually shut down the project.

As Executive Director of Public Herald, Melissa earned support from: James L. Knight Foundation, 11th Hour Project, Heinz Endowments, Investigative News Network (now Institute for Nonprofit News), Mountain Watershed Association, Foundation for Pennsylvania Watersheds, and Tesla Motors.

## Film Festivals & Awards

[Triple Divide, Triple Divide \[Redacted\] Awards and Festivals](#)

[People's Choice Award, Real to Reel Film Festival](#)

[Award of Merit, Accolade Global Film Competition](#)

[Humanitarian Award, Accolade Global Film Competition](#)

[Runner Up, Audience Award, ReadingFilmFest](#)

[New York Film & TV Festival](#)

[Maryland International Film Festival](#)

[Erie International Film Festival](#)

[Colorado Environmental Film Festival](#)

[Harrisburg-Hershey Film Festival](#)

[\*INVISIBLE HAND\* Awards & Festivals:](#)

Adirondack Film Festival

Glens Falls, NY

United States

October 19, 2019

Official Selection

Duquesne University Human Rights Film Series

Pittsburgh, PA

United States

February 28, 2020

Official Selection of 4

Columbus International Film Festival

Columbus, OH

United States

April 15, 2020

Official Selection

Princeton Environmental Film Festival

Princeton, NJ

United States

October 12, 2020

Official Selection

Around International Film Festival

Paris

France

November 1, 2020

Official Selection & Competitor

Accolade Global Film Competition

California

United States

December 9, 2020

Award Winner: Award of Excellence for Documentary Feature, Nature/Wildlife, Women Filmmakers

Common Good International Film Festival

Salem

United States

February 13, 2021

Official Selection

Water Docs Film Festival

Official Selection

Spotlight Documentary Film Awards

Award Winner: Best Documentary Feature

Transitions Film Festival

Australia

February 25, 2021

Australian Premiere

Official Selection

Hollywood Verge Film Awards

Los Angeles

United States

Award Winner: Best Documentary Film

Wildlife Conservation Film Festival

United States

Official Selection



Blackbird Film Festival

Cortland

United States

Finalist

### **Filmography**

*As Director, Writer, Editor and Producer*

Triple Divide (2013)

Triple Divide [Redacted] (2017)

INVISIBLE HAND (2020)

### **External Links**

[FilmFreeway](#)

[IMDB](#)

[Bullfrog Films](#)