

## 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](#)

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

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**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

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