

New Mexico Chamber of Commerce (Leslie Hielema)

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VIA: <https://nmed.commentinput.com/comment/search> & pamela.jones@env.nm.gov

Water Quality Control Commission
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RE: WQCC 25-74(R)

Chair Brancard and Members of the Commission:

The New Mexico Chamber of Commerce appreciates the opportunity to provide comments regarding the proposed surface water permitting rules. The Chamber represents businesses of all sizes and sectors across New Mexico, including manufacturers, agricultural interests, energy producers, construction companies, infrastructure developers, retailers, service providers, and local employers who collectively drive investment, job creation, and economic growth throughout our state.

The Chamber strongly supports clean water, responsible environmental stewardship, and a permitting system that protects New Mexico's water resources. Economic growth and environmental protection are not competing goals. Businesses depend upon clean and reliable water just as communities, landowners, and families do.

However, as this proceeding has demonstrated, the question before the Commission is not whether New Mexico should protect water resources. The question is whether the Commission should adopt a permitting program that provides regulated entities, landowners, local governments, and the public with clear standards, objective criteria, and meaningful certainty regarding how the program will operate. After reviewing the testimony and evidence presented during this proceeding, the Chamber believes that many of the concerns raised by the New Mexico Natural Resources Partnership ("NRP") are well-founded and deserve serious consideration and adoption by the Commission.

A PERMITTING PROGRAM SHOULD BE BUILT BEFORE IT IS IMPLEMENTED

One theme has emerged repeatedly throughout the hearing. The Department has described the proposed rules as a framework, while acknowledging that many important implementation details will be developed later through guidance documents, mapping efforts, technical manuals, permit conditions, and future administrative decisions.

Businesses throughout New Mexico are accustomed to complying with environmental regulations. They do so every day. But compliance becomes exceedingly difficult when the rules do not clearly answer fundamental questions. The hearing record demonstrates that significant uncertainty remains regarding: how jurisdictional waters will be identified; how applicants will determine whether a permit is required; how functional assessments will be conducted; how compensatory mitigation obligations will be calculated; how permit conditions will be imposed; how permitting decisions will be made; and how key provisions of the rules will be implemented in practice.

The Chamber respectfully submits that a statewide permitting program should not rely upon future guidance to answer questions that are essential to understanding the obligations imposed by the rule itself. Businesses making investment decisions need certainty before committing capital, purchasing property, designing projects, or hiring employees. A regulatory program should not require regulated entities to wait for future guidance documents before they can understand the rules.

REGULATORY CERTAINTY IS ESSENTIAL TO ECONOMIC DEVELOPMENT

New Mexico faces significant economic challenges and opportunities. The state continues to work toward attracting investment, encouraging business expansion, improving infrastructure, and creating high-quality jobs. Businesses considering investments in New Mexico need confidence that permitting requirements are understandable, predictable, and consistently applied.

The Chamber is concerned that several aspects of the proposed rules remain uncertain. Testimony throughout the hearing highlighted unresolved questions regarding jurisdictional boundaries, compensatory mitigation, permit requirements, permit modifications, and future implementation decisions. Additionally, the dredged and fill permit requirements create uncertainty for residential development, including affordable housing.

A business seeking to construct a facility, expand operations, improve infrastructure, stabilize streambanks, maintain drainage features, or undertake other lawful activities should be able to determine in advance: whether a permit is required; what information must be submitted; what standards apply; what mitigation obligations may be imposed; and how long the permitting process is expected to take.

Those are not extraordinary requests. They are basic elements of a functioning regulatory system. The Chamber believes NRP has correctly emphasized that clear standards benefit everyone involved in the process, including regulators, permit applicants, and members of the public.

PERMITS SHOULD PROVIDE MEANINGFUL CERTAINTY

Another concern that emerged during the hearing is whether permits issued under the new program will provide meaningful certainty to permit holders. Businesses routinely make substantial investments based upon permits and regulatory approvals. Financing decisions,

project schedules, contracts, and employment decisions often depend upon those approvals. A permit system works best when permit holders can reasonably rely upon the permits they receive.

The Chamber is concerned that broad provisions related to permit modification, permit reopening, evolving guidance, and future implementation decisions could undermine the certainty that permits are intended to provide. Once an applicant has complied with the applicable requirements, obtained a permit, and followed the rules, that permit should provide meaningful regulatory certainty. Businesses cannot effectively plan investments if the standards governing permit compliance continue to shift after approval has been granted.

NEW MEXICO SHOULD LEARN FROM ESTABLISHED PROGRAMS

Several witnesses discussed federal permitting programs and Colorado's Rule 87. While reasonable people may disagree regarding the details of those programs, they demonstrate an important principle: successful permitting programs are built upon clearly articulated standards, guidance, and implementation procedures.

The Chamber is concerned that New Mexico is being asked to adopt a program while many of the details necessary to administer that program remain unresolved. Rather than creating uncertainty, New Mexico should strive to develop a permitting framework that incorporates objective standards and lessons learned from decades of permitting experience elsewhere. Businesses are more likely to invest when they understand the rules. Regulatory certainty encourages compliance, reduces disputes, and promotes efficient permitting.

THE COMMISSION SHOULD ADOPT A WORKABLE AND PREDICTABLE PROGRAM

The Chamber respectfully urges the Commission to carefully consider the concerns raised by NRP throughout this proceeding. NRP's positions have consistently emphasized:

- Clear permitting standards;
- Objective decision-making criteria;
- Reasonable limits on agency discretion;
- Regulatory certainty;
- Predictable implementation;
- Alignment with proven permitting practices; and
- A permitting program that regulated entities can realistically understand and follow.

Those principles are not anti-environmental. To the contrary, clear and workable regulations are more likely to achieve compliance and long-term environmental protection than regulations that leave critical questions unanswered.

The Chamber, therefore, respectfully urges the Commission to reject proposals that expand regulatory uncertainty, rely excessively on future guidance, or leave fundamental implementation questions unresolved. Instead, the Commission should adopt only those provisions that provide

clear standards, objective criteria, and meaningful certainty for businesses, property owners, local governments, and the public.

New Mexico deserves a permitting program that protects water quality while also supporting economic growth, investment, infrastructure development, and regulatory predictability. The positions advanced by NRP move the proposed rules significantly closer to achieving those goals.

Respectfully submitted,

New Mexico Chamber of Commerce
Silver City Grant County Chamber of Commerce