

June 16, 2026

Pamela Jones, WQCC Administrator
New Mexico Environment Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

RE: Public Comment by Marcy Leavitt in the Matter of NMED Proposed Surface Water Quality State Permitting Program, Docketed Matter WQCC 25-74R

To Chairman Brancard and members of the commission:

I am submitting the following comments as a member of the public who strongly supports a comprehensive and scientifically based surface water quality protection program for New Mexico.

I have a B.S. in Geology from the University of Cincinnati and a M.S. in Hydrology from the New Mexico Institute of Mining and Technology. For more than 30 years I worked professionally on water quality issues, including 23 years with the New Mexico Environment Department (NMED) where for 17 years I was the chief of the Ground Water and Surface Water Quality bureaus and the director of the Water and Waste Management Division. I also worked for 6 years for the U.S. Army Corps of Engineers Albuquerque District as the New Mexico and West Texas Regulatory Branch Chief, responsible for implementation of the Clean Water Act Section 404 dredge and fill permitting program.

Although I am now retired, I believe my experience is unique, and useful to this proceeding :

- I have extensive experience as Ground Water Bureau Chief, overseeing all aspects of New Mexico's ground water quality protection program, including developing regulations that were adopted by the WQCC.
- I have significant experience as Surface Water Quality Bureau Chief where I saw firsthand the limitations of the state's authority to protect its surface water quality without having NPDES primacy or a stand-alone state surface water quality permitting program. I also led NMED's previous effort in 2005 and 2006 to develop a state surface water quality protection program to address those limitations.
- I have professional experience implementing the Clean Water Act Section 404 dredge and fill program, in New Mexico and west Texas. I led the U.S. Army Corps of Engineers Albuquerque District's development of individual and general permits under the Clean Water Act Section 404 program. Additionally, in 2015 I worked on detail assignment in Washington DC in the Office of the Assistant Secretary of the Army for Civil Works on the Waters of the U.S. (WOTUS) rules. That 2015 federal rulemaking clarified the definition of protected tributaries and wetlands, including intermittent and ephemeral streams, based on their ecological and hydrological connection to navigable waters.

In addition to strongly supporting NMED's efforts to develop a surface water quality protection program, I want to make a few points that are relevant to the proposed rule that is being considered by the WQCC.

- 1) New Mexico absolutely needs a comprehensive surface water quality protection program, now more than ever. I do not intend to restate the detailed testimony by NMED scientists and others about why we need to protect all surface waters of the state. However, I do want to point out that since 2015, the scope of federal water quality protections has been handled like a political seesaw, and this political seesaw has made it imperative that New Mexico take full responsibility for its own water quality. We have had strong protections for ground water quality since 1977 - nearly 50 years - and now it's time to do the same for surface water.
- 2) The disparity between the way New Mexico regulates ground water quality vs. surface water quality needs to be addressed. It is inexplicable that the state has not been able to promulgate rules that treat surface water as the same critical resource as ground water, ensuring a comprehensive water quality permitting program for ALL discharges from ALL sources of pollutants for ALL waters. This rulemaking is the way to finally fix this disparity.

As an aside, the existing Copper Rule is clearly a ground water quality protection rule and was never intended to systematically protect surface water quality. The title of the rule as recorded in the New Mexico Administrative Code is clear – 'Ground Water Protection - Supplemental Permitting Requirements for Copper Mine Facilities'. The Copper Rule requires incidental characterizations of surface water, but does not include any of the nuts and bolts that would protect surface water quality as required in this current rulemaking. If you accede to the mining industry's request for exemption from this rulemaking you will be creating a huge loophole for the singular benefit of a significant source of surface water pollution in New Mexico.

- 3) In 2003, the WQCC delinked the definition of 'Surface Waters of the State' from the federal definition of 'Waters of the U.S.'. This was an intentional decision after a long and arduous hearing. Since 2003 the state's surface water definition has stood the test of time, through republican and democrat-led administrations. I urge you not to succumb to political maneuvering and undermine or undo that 2003 decision.

This rulemaking is the culmination of years of effort to fully protect New Mexico's unique, limited, and precious water resources. This is NMED's third attempt to promulgate rules that would create a state surface water quality protection program. I urge all commissioners to do the right thing and fill this huge gap in ensuring a successful water future for New Mexico.

Sincerely,

Marcy Leavitt