



March 29, 2024

Submitted via electronic mail to: Janet.Carpenter@erg.com

Dear Ms. Carpenter,

New Mexico Wild, Western Resource Advocates, and the Sierra Club Rio Grande Chapter respectfully submit these comments to the New Mexico Environment Department concerning its request for information related to the Strategic Water Supply proposal.

New Mexico Wild is a nonprofit 501(c)(3) grassroots organization dedicated to the protection, restoration, and continued enjoyment of New Mexico's waters, wildlands, and wilderness areas. We represent thousands of individual members from all corners of New Mexico and across the nation. New Mexico Wild has engaged in a variety of avenues working to protect and restore New Mexico's waterways, ensure equitable access and management over our water resources, and engage in advocacy to promote species and habitat protection and ensure water availability for all uses, including recreation. The primary contact for New Mexico Wild is Tricia Snyder, Rivers and Waters Program Director, tricia@nmwild.org, 505-843-8696.

Western Resource Advocates is a regional nonprofit advocacy organization fighting climate change and its impacts to sustain the environment, economy, and people of the West. From our deep and scientific policy analysis to our highly effective legal teams, we're using every tool we have to drive state action and create a healthier and more equitable future for all our communities. As the region's go-to experts for more than three decades, our on-the-ground work advances clean energy, protects air, land, water, and wildlife. The primary contact for Western Resource Advocates is Anjali Bean, Healthy Rivers Senior Policy Advisor, anjali.bean@westernresources.org, 505-226-2806.

The Rio Grande Chapter of the Sierra Club is a volunteer-led organization representing more than 35,000 members and supporters in New Mexico and West Texas. Our mission is to explore, enjoy and protect the planet, and we prioritize protecting our climate, air, water, wildlife and public lands in New Mexico and West Texas. The Rio Grande Chapter has worked as an advocate for the protection of New Mexico's ground and surface water resources including strengthening water quality protection programs, reforming oil and gas wastewater rules, developing a state surface water permitting program, promoting environmental flows and state and regional water planning. The primary contact for the Rio Grande Chapter of the Sierra Club is Dale Doremus, Water Committee, doremuswater@gmail.com, 505-795-5987.

The primary contact on behalf of all our organizations is Tricia Snyder, tricia@nmwild.org, 505-843-8696.

We are very appreciative of the opportunity to respond to this request for information. In general, we are excited New Mexico's leaders are thinking boldly about solutions to the water crisis we are already facing, and that we know will become only more challenging in the years to come. In recent years much data gathering and synthesis and planning has occurred or is underway to prepare the state to take bold action and address these challenges. Efforts like the Leap Ahead Analysis, the 50-year Water Action Plan, the Water Security Planning Act, and the New Mexico Water Policy and Infrastructure Task Force, are critical to securing New Mexico's water future. But there is still more we need to understand.

We offer the below thoughts, questions, and comments to consider as the New Mexico Environment Department (NMED) develops the Strategic Water Supply (SWS) proposal. We have worked to fit this response into those broad categories, laid out in the request for information, which are most relevant. We look forward to working with the agency, the Governor's office, and the legislature to move forward the best solutions to ensure the economy, cultures, and quality of life for communities across the Land of Enchantment are protected for generations to come.

Category B: Technical and Feasibility Information

As referenced above, significant work has been undertaken to better understand New Mexico's water resources. However, we are concerned we do not yet have appropriate characterization of our aquifers to undertake a proposal of this magnitude, as it relates to brackish water. A 1962 State Engineer's report identified more than 75% of New Mexico's groundwater resources as brackish or saline.¹ However, much of the state's groundwater resources have not been sufficiently quantified and there is still more we need to understand about the geologic complexity of our aquifers.

A 2016 report² on fresh and brackish water quality identified the following key findings, "The water quality data available from existing water supply wells are insufficient to provide a thorough understanding of the distribution of groundwater salinity. Over most of New Mexico, existing records do not have a consistent trend of increasing salinity, or increasing total dissolved solids, with depth in the aquifer. A detailed and quantitative understanding of brackish water resources in most regions of New Mexico is lacking."³ Sufficient funding for the Aquifer Mapping Program, as well as increased monitoring of our groundwater resources, is a key recommendation of the Water Policy and Infrastructure Task Force and one which we believe

¹Reynolds, S.E., 1962, Twenty-fifth biennial report of the State Engineer of New Mexico: The Valliant Company, Albuquerque, New Mexico, 193 p.

²Lewis, L. 2016. Overview of Fresh and Brackish Water Quality in New Mexico. New Mexico Bureau of Geology and Mineral Resources, Open File Report 583. <https://doi.org/10.58799/OFR-583>

³Land, L. and Timmons, S. 2016. New Mexico: A Brackish Water Data Assessment. https://geoinfo.nmt.edu/resources/water/amp/brochures/BWA/BWDA_fact_sheet.pdf

must be considered in tandem with this proposal. It is critical that we understand any potential impacts from pumping of our groundwater, especially whether the proposed deep groundwater pumping will affect shallow potable aquifers, surface waters, or the agricultural producers who may currently utilize brackish water above 2,500 feet in their production.

We understand that the SWS may incentivize private sector investment in this kind of characterization. However, we believe NMED must set clear requirements for this work that incorporates a thorough analysis of aquifers, the sustainability of proposed pumping, and an investigation into possible unintended impacts. We request that NMED require any information obtained through private sector investment also be made available for use by the state, outside of the SWS proposal, and made publicly available in order to move forward with a contract. These expectations should be set in advance of the legislature approving funding for this work and include the opportunity for public input.

Waste disposal resulting from the treatment of this brackish water is another concern and we hope that this important consideration will be integrated early into the proposal, rather than left up to private industry to decide. Disposing of this waste has been a major factor in the prevalence of inland desalination efforts due to the high cost and complex environmental hazards associated with disposal.⁴ We are also concerned with how treated water will be transported from its place of treatment to its place of use. On the February 27, 2024 webinar related to this proposal, it was stated that these questions could be handled within individual contracts between NMED and the individual private industry entity conducting the treatment. We would like to highlight that incorporating transportation and waste disposal plans in this way would remove any ability for public input. Because this proposal requires a significant investment of public funds to achieve its goals, we request that NMED set requirements or sideboards for all contracts related to transportation and storage of treated water with opportunities for public comment to highlight concerns related to public health and the environment.

Category C: Economic Information

We have some concern over the use of severance tax bonds as a source of funding for this initiative, as proposed in the 2024 legislative session. Projects funded in the severance tax bill are more regularly shovel-ready capital projects that have already gone through thorough review at the local level. Such an open-ended bond project would be unusual, and the level of legislative oversight is likely to be less than through the more traditional special appropriations process. We request that this proposal is funded through the standard HB2 process or through stand-alone legislation, so that the Legislative Finance, House Appropriations and Finance, and Senate Finance Committees have ample time to review, as well as to provide more transparency of that review for the public.

⁴Alley, W. 2014. Desalination of Groundwater: Earth Science Perspectives.
<https://pubs.usgs.gov/fs/fs075-03/>

At the February 27th and March 1st webinars, it was clarified that the state does not intend to purchase water for more than it could be sold for, and intends to merely serve as a facilitator and financial guarantee between treatment provider and end user. We question how likely this alignment will be if treatment and end user contracts are not negotiated simultaneously. We are also concerned that this would remove legislative and public input on what, if any, cost ceiling there should be. The private sector may choose to buy and sell water at any price they wish, but when public funds are involved, we must consider the opportunity cost of not spending that money on other proven and ready programs that need support, especially if the ultimate price per gallon of this water is high.

We look forward to hearing more details from the agency, as the proposal is refined, on how the price of water will be determined. We are cautious about the idea of commodifying our most precious resource in this manner but look forward to additional discussions on the details.

Category D: Regulatory and Policy Information

Of particular concern for our organizations are the regulatory and policy implications of this proposal, as currently envisioned. In various committee hearings during the 2024 legislative session, NMED and the Office of the State Engineer (OSE) clarified that the Strategic Water Supply would pump deep groundwater, below 2,500 ft. OSE does not currently regulate non-potable water below 2,500 ft, except for declared groundwater basins⁵. However, there are exceptions even in declared groundwater basins for oil and gas exploration and production, prospecting, mining, road construction, agriculture, generation of electricity, use in an industrial process or geothermal use. In other words, there would be no water rights permitting requirements for the pumping of this water, all while simultaneously giving great economic incentive to use this water statewide for the first time. We question whether that is the correct approach, given what we know about the water crisis New Mexico is facing, and whether OSE should have some role in issuing water right permits.

Brackish water in this request for information is defined as between 1,000 and 10,000 TDS. We are concerned that this definition conflicts with New Mexico state regulation, which defines water with 10,000 TDS or less as freshwater⁶. Water with 1,000 TDS or less is generally considered safe for human consumption but many other uses depend on water with less than 10,000 TDS, including significant agricultural, livestock, and commercial use. We are concerned, even if the definition does nothing to change statutory or regulatory definitions, that this effort could functionally create a new category of water between 1,000 TDS and 10,000 TDS that is considered less valuable than water less than 1,000 TDS. New Mexico's WQCC regulations and water quality standards, protect all groundwater with 10,000 TDS or less equally⁷. Waters characterized in the proposal as "brackish" should not be differentiated from

⁵Declaration of Basin; non potable deep aquifers. § 72-12-25 (NMSA, 1978.)

⁶Natural Resources and Wildlife, Oil and Gas, General Provisions for Oil and Gas Operations, Oil Conservation Commission, 19.15.2 NMAC (12/01/08).

⁷Environmental Protection, Water Quality, Ground and Surface Water Protection, Water Quality Control Commission, 20.6.2 NMAC (12/1/1995).

other water resources from a regulatory perspective and should have full protection. We request that as the agency refines the proposal, existing state regulation around fresh and brackish water definitions are applied.

Finally, we are concerned how this proposal will impact other already identified recommendations with broad consensus. In 2022, the Water Policy and Infrastructure Task Force was convened by the State Engineer with permission from Governor Lujan Grisham and composed of representatives from a wide variety of water sectors with different perspectives and expertise. They developed a list of 17 recommendations, with over 100 associated actionable items⁸. We believe it is imperative these recommendations are funded and implemented in the short-term. We are concerned that the robust discussion that is required to move forward such an innovative and bold approach as the Strategic Water Supply could slow down achieving these many other recommendations that have already been thoroughly vetted and have achieved broad consensus.

In closing, this proposal gives rise to many questions, including how it will impact New Mexico's communities and environment. We look forward to continued discussion, as NMED develops the proposal further and appreciate the work that has been done thus far. New Mexico is facing a water crisis and it will take bold thinking, combined with robust public debate and careful analysis, to identify which solutions will make the most meaningful strides towards building a more secure and resilient water future.

Sincerely,

Tricia Snyder, Rivers and Waters Program Director
New Mexico Wild

Dale Doremus, Water Committee
Sierra Club Rio Grande Chapter

Anjali Bean, Healthy Rivers Senior Policy Advisor
Western Resource Advocates

⁸New Mexico Water Policy and Infrastructure Task Force. 2022. Facing New Mexico's 21st Century Water Challenges.
<https://uttoncenter.unm.edu/resources/state-water-task-force/new-mexico-water-policy-and-infrastructure-task-force-final-report-2022.pdf>.