

COMMITTEE REPORTS

WATER COMMITTEE

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The PBPA Water Committee met on June 3rd for its first meeting since the COVID-19 shut down. The goal of this meeting was to update the committee on several current topics in the water industry and discuss future meeting topics.

The first topic of interest was the New Mexico OCD's proposed amendments to the current NM oil and gas rules. This proposal consisted of three amendments: 1) amend 19.15.2.7 NMAC (New Mexico Administrative Code) to conform the definition of "produced water" with the definition found in the Oil and Gas Act (New Mexico Statutes 1978, §70-2-33K 2019); 2) amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable, or recycled produced water; and 3) amend 19.15.34 NMAC to conform the language in 19.15.34 NMAC to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water.

Amendments 1 and 3 are primarily rule language adjustments for consistency. Amendment 2 is the primary amendment of concern. This amendment will require an operator to report the percentages of water used to hydraulically frac a well (potable, non-potable, and recycled produced water). The concern would be accuracy of reporting, primarily when using a third-party water source. For example, there are multiple water midstream companies that have pipeline systems spanning large portions of the state with a multitude of water sources tying into these systems. The water could be a combination of potable and non-potable freshwater, and potentially even recycled produced water. It may be difficult for these companies to report to the end user the exact percentage of each type of water. The public hearing of this amendment is set for July 30th at 9 AM MST. The committee will discuss the result of the hearing and proposed amendments after this date.

The second topic of interest was the Navigable Waters Protection Rule (Replacement for WOTUS, previously passed by the Obama administration). This rule was passed on April 21st of this year by the current administration and narrows the scope of federal water jurisdiction. It restricts jurisdiction to the following main categories: territorial seas and traditional navigable waters; perennial and intermittent tributaries to those waters; certain lakes, ponds, and impoundments; and wetlands adjacent to jurisdictional waters. This rule also consists of twelve jurisdictional exclusions, of which most notable are ephemeral streams (flow in response to rainfall and snowmelt), groundwater, many ditches, prior converted cropland, and water treatment systems.

Several environmental groups as well as 17 states had filed lawsuits stating that the rule was too narrow. Meanwhile, other suits had been filed stating that the rule was still too broad. However, these suits were unable to block the ruling as of the effective date which was June 22nd, 2020. The rule is now in effect in all states except for Colorado – where a federal judge block its implementation.

In addition to these primary topics of interest, an update on the New Mexico Produced Water research consortium was given by an active member. In his observations, the consortium has been a good opportunity for academia to learn more about the oil and gas water space. This consortium was discussed as an additional opportunity for members to get more involved in the produced water industry.

This month, the water committee is planning to host Neal Blandford who is a principal hydrologist and senior vice president with Daniel B. Stephens & Associates. Neal will be giving a presentation on ground water in the Permian. Next month, Rob Bruant from B3 Insights will be giving a presentation Permian disposal wells and findings from their recent study.