

STATE OF NEW MEXICO  
BEFORE THE  
WATER QUALITY CONTROL COMMISSION



PETITION FOR REVIEW OF THE NEW MEXICO  
SECRETARY OF THE ENVIRONMENT'S DECISION  
GRANTING GROUNDWATER DISCHARGE  
PERMIT DP-1132 IN PROCEEDING GWB17-20(P)

WQCC No. 18-05(A)

**ORDER TO VACATE AGENCY DECISION AND REMAND  
THE PETITION FOR REVIEW OF DP-1132**

**THIS MATTER** came before the New Mexico Water Quality Control Commission (“Commission”), on April 9, 2019 and on May 14, 2019, at the New Mexico State Capitol Building, Room 307, located at 490 Old Santa Fe Trail, in Santa Fe, Santa Fe County, New Mexico, for a ruling on Petitioner’s *Motion to Vacate Agency Decision and Remand the Petition for Review of DP-1132* (“Motion”), filed on February 4, 2019, by and through Petitioner’s counsel, the New Mexico Environmental Law Center (Lindsay A. Lovejoy, Jr. and Jonathan M. Block, Esquires). On June 18, 2019, the Commission, by a unanimous vote in the affirmative, hereby renders this *Order to Vacate Agency Decision and Remand the Petition for Review of DP-1132*.

The Commission, being sufficiently advised, finds as follows:

1. Petitioner filed its Motion on February 4, 2019.
2. The New Mexico Environment Department filed a Response to the Motion on February 18, 2019.
3. The United States Department of Energy and Triad National Security, LLC as joint permittees under Discharge Permit No. 1132 filed a Response to the Motion on February 19, 2019.
4. The Commission set the Motion for hearing on April 9, 2019.

5. After hearing argument from attorneys for all the parties, on April 9, 2019 the Commission denied the Motion.
6. At the Commission's May 14, 2019 meeting, the Commission discussed whether to reconsider the April 9 decision, but a motion was approved that the Commission not reconsider the April 9 decision, leaving intact the April 9 denial of the motion to vacate and remand.
7. On June 11, 2019, at the regularly scheduled meeting for the Commission, the Commission voted to vacate the Agency Decision and remand the matter for a new hearing with a newly appointed Hearing Officer.
8. According to *Reid v. New Mexico Board of Examiners in Optometry*, 1979-NMSC-005, ¶ 7, 92 N.M. 414, 589 P.2d 198 (internal Citations omitted), "At a minimum, a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case. In addition, our system of justice requires that the appearance of complete fairness be present."
9. The Commission believes that the Hearing Officer's job application and subsequent hiring by one of the parties created an improper appearance of bias potentially affecting the Secretary's deliberation and issuance of DP-1132.
10. On June 18, 2019 at a special meeting called by the Commission, the Commission ratified the decision to vacate the Agency Decision and remand the matter for a new hearing with a newly appointed Hearing Officer.
11. At the June 18, 2019 special meeting, John Verheul, Assistant General Counsel for the New Mexico Environment Department made an oral motion to limit the scope of the remand to the Department.
12. The Commission denied Mr. Verheul's Motion.

**IT IS THEREFORE ORDERED** that pursuant to NMSA 1978, Section 74-6-5(Q), 20.1.3.16(A)(3) NMAC, and 20.1.3.16(F)(3) NMAC the Secretary's Order is vacated and this matter is remanded to the New Mexico Environment Department for a new hearing with a newly appointed Hearing Officer.

**IT IS SO ORDERED.**

June 18, 2019  
DATE

**NEW MEXICO WATER  
QUALITY COMMISSION**

  
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Jennifer J. Pruett,  
Commission Chair

Certificate of Service

I hereby certify that a true and correct copy of the foregoing **Order to Vacate Agency Decision and Remand the Petition for Review of DP-1132** was emailed to all parties on June 18, 2019. The above mentioned document can be served via first class mail upon request.

Jennifer Pruett, Esq., Deputy Secretary  
and Commission Chair  
New Mexico Environment Department  
1190 St. Francis Drive, Suite N4050  
Santa Fe, NM 87505  
jennifer.pruett@state.nm.us

John Grubestic  
Commission Counsel and  
Assistant Attorney General  
Open Government Division  
NM Office of the Attorney General  
PO Drawer 1508  
Santa Fe, New Mexico 87504  
jgrubestic@nmag.gov

Mr. Stuart R. Butzier and Ms. Christina C. Sheehan  
Modrall Sperling Roehl Harris & Sisk, PA  
123 E. Marcy Street, Ste. 201  
Santa Fe, New Mexico 87501  
sbutzier@modrall.com  
ccs@modrall.com

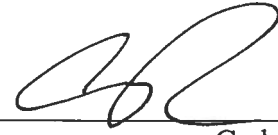
Silas R. DeRoma, Site Counsel,  
U.S. Department of Energy/NNSA  
3734 West Jemez Road/MS-A316  
Los Alamos, New Mexico 87544  
silas.deroma@nnsa.doe.gov

Ms. Susan L. McMichael  
Office of Laboratory Counsel/MS A187  
Los Alamos National Laboratory  
P.O. Box 1663  
Los Alamos, New Mexico 87545-0001  
smcmichael@lanl.gov

*Counsel for Triad National Security, LLC, and  
U.S. Department of Energy/NNSA*

Mr. John Verheul, Assistant General Counsel,

New Mexico Environment Department  
121 Tijeras Avenue, NE, Suite 1000  
Harold Runnels Building, Suite N-4050  
Albuquerque, New Mexico 87102  
john.verheul@state.nm.us  
*Counsel for the New Mexico Environment Department*



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Cody Barnes  
Commission Administrator  
(505) 827-2428  
cody.barnes@state.nm.us