

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF THE PETITION TO AMEND USE
FOR LOWER DRY CIMMARON RIVER AND TO
ESTABLISH WATER QUALITY STANDARDS
FOR LAKES, 20.6.4 NMAC

WQCC No. 11-05 (R)

PROCEDURAL AND SCHEDULING ORDER

In conducting the hearing for this matter, the Hearing Officer will follow, in addition to the specific procedures set out below, Part I (General Provisions), Part V (Appeals and Stays), and Part VI (Miscellaneous Provisions) of the Guidelines for New Mexico Water Quality Commission Regulation Hearings, unless later modified.

PART I

DOCUMENT FILING

101. FILING AND SERVICE OF DOCUMENTS.

101A. The filing of any document required by this Order shall be accomplished by delivering the document to the Commission's Administrator, Carmella Casados, 1190 St. Francis Drive, Suite N-2150, Santa Fe, New Mexico 87502. Telephone: 505.827.2425.

101B. Any person filing any document shall:

1. provide the Administrator with an original and fourteen copies of the document; and
2. serve a copy thereof on the Surface Water Quality Bureau of the New Mexico Environment Department and on all persons filing an entry of appearance, proposed changes to the standards, or notice of intent to present technical testimony (collectively "Parties"). The Service List will be available in the office of the Administrator.

101C. Whenever these guidelines require service of a document, service shall be made by delivering a copy of the document to the person to be served or by mailing it to that person. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. "Mail" may include electronic transmission if a party has provided an e-mail address for that purpose. Service on the Administrator shall be deemed to be accomplished upon receipt of the document by the Administrator. The Administrator's receipt by e-mail will be shown by an e-mail reply.

PART II

PREHEARING PROCEDURES

201. TECHNICAL TESTIMONY.

201A. In order to present technical testimony at the hearing, a person must file a notice of intent to present technical testimony no later than March 19, 2012. The notice shall:

1. identify the person for whom the witness(es) will testify and whether the person supports or opposes the nomination before the WQCC;
2. identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
3. attach the full direct testimony of each technical witness;
4. state the anticipated duration of the direct testimony of each technical witness;
5. include the text of any recommended modifications to the proposed regulatory change and a statement of basis; and
6. identify and attach all exhibits to be offered by the person at the hearing.

201B. The Hearing Officer shall enforce Section 301A through the exclusion of technical testimony or exhibits, as applicable.

202. PARTICIPATION BY GENERAL PUBLIC.

202A. Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification shall be required.

202B. A member of the general public may submit a written non-technical statement for the record, in lieu of oral testimony at the hearing at any time prior to the close of the hearing.

PART III

HEARING PROCEDURES

301. CONDUCT OF HEARINGS.

301A. The rules of civil procedure and the rules of evidence shall not apply.

301B. The Hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition. The hearing shall proceed as follows:

1. the hearing shall begin with an opening statement from the Hearing Officer. The statement shall identify the nature and subject matter of hearing and explain the procedures to be followed;

2. A Party who files a notice of intent to present technical testimony may make an opening statement at the beginning of its case-in-chief;
3. the Department shall present its case first;
4. The other Parties who have filed a notice of intent to present technical testimony will present their cases next; the Hearing Officer shall establish an order for the presentation of their cases-in-chief in the pre-hearing conference;
5. The Parties shall be entitled to cross-examination in the same order as their presentation of cases-in-chief, followed by persons who filed Entries of Appearance;
6. The Parties shall present rebuttal testimony in reverse order from the presentation of their cases-in-chief;
7. if the hearing continues for more than one day, the Hearing Officer shall provide an opportunity each day for testimony from members of the general public, some of which will be outside normal working hours. Members of the general public who wish to present testimony shall indicate their intent on a sign-in sheet; and
8. at the close of the hearing, the Hearing Officer shall announce that the record is closed except for the submittal of proposed statements of reasons and written closing argument by the Parties, and shall identify the deadline for filing the submittals.

302. TESTIMONY AND CROSS EXAMINATION.

302A. All testimony will be taken under oath or affirmation.

302B. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious.

302C. Any person who testifies at the hearing shall be subject to cross-examination on the subject matter of the direct testimony and any matter affecting the witness' credibility. Any person at the hearing may conduct cross-examination as may be required for a full and true disclosure of matters at the hearing. The Hearing Officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

303. EXHIBITS.

303A. Any person offering an exhibit pursuant to Section 303A shall provide at least one copy for review by persons attending the hearing.

303B. All exhibits shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

303C. Exhibits consisting of large charts, diagrams, models or other bulky objects are discouraged, but persons may use such demonstrative aids and may submit smaller versions as exhibits for the record. If visual aids (e.g., overhead projections and power point presentations) are used, legible copies shall be submitted for the record.

304. TRANSCRIPT OF PROCEEDING.

304A. The NMED will pay for the preparation of the transcript that is the official record of the proceeding.

304B. Any person desiring a copy of the transcript of proceeding may obtain a copy directly from the court reporter at his or her own cost, or may review the copy of the transcript maintained by the Administrator.

305. POST HEARING SUBMISSIONS.

305A. If requested by the Commission, the Hearing Officer shall hold the record open for a reasonable period of time following the hearing to allow the Parties to submit proposed statements of reasons and written closing argument.

306. DELIBERATION AND DECISION.

306A. Commissioners may attend any part or all of the hearing. The Hearing Officer will instruct them on how they may participate.

306B. The Hearing Officer shall provide Commissioners with a report and recommendation, if requested, and the record proper, within the time specified by the Commission.

306C. The Commission shall issue its decision on the proposed regulatory change(s) in a suitable format, which shall include its statement of reasons for the action taken.

306D. The Commission's written decision and statement of reasons shall be the official version of the Commission's action. Other written or oral statements by Commissioners shall not be recognized as part of the official version of the Commission's action.

307. NOTICE OF COMMISSION ACTION.

307A. The Administrator shall provide notice of the Commission's action to the Parties and to all other persons requesting such notice. The Commission's action will be posted on the Department's web site.



Felicia L. Orth, Hearing Officer