

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF THE PETITION FOR
PROPOSED AMENDMENTS TO 20.6.4.9 NMAC,
DESIGNATION OF WATERS OF THE UPPER PECOS No. WQCC 20-18 (R)
WATERSHED AS OUTSTANDING NATIONAL
RESOURCE WATERS,**

**San Miguel County, the Village of Pecos,
the New Mexico Acequia Association,
Molino de la Isla Organics LLC, and
the Upper Pecos Watershed Association,**

Petitioners.

**ORDER DENYING JOINT MOTION TO POSTPONE HEARING ON AMENDED
PETITION**

This order comes on the joint motion from Petitioners San Miguel County, the Village of Pecos, the New Mexico Acequia Association, Molino de la Isla Organics LLC, and the Upper Pecos Watershed Association (“Petitioners”) and the New Mexico Environment Department (“Department”) to postpone the hearing in this matter, now scheduled to commence after the Water Quality Control Commission’s (“Commission”) regularly scheduled meeting on April 13, 2021. The Motion is hereby DENIED based on the following findings:

1. Petitioners filed a Petition for Proposed Amendments to 20.6.4.9 NMAC, Designation of the Upper Pecos Watershed as Outstanding National Resource Waters on April 20, 2020.
2. The Commission filed an Order granted a public hearing and appointed a hearing officer on June 3, 2020.
3. Petitioners filed a request for a new hearing date on September 23, 2020 based on insufficient public notice, and furthermore, provided notice of filing an Amended Petition after discussions with NMED’s counsel and officials on July 15, 2020. Based

on this discussion, the Amended Petition “adds further support for demonstrating that the Waters of the Upper Pecos Watershed meet the criteria for designation as an ONRW...”

4. On November 3, 2020 an Order was entered continuing the public hearing until April 13, 2021 and placing the burden of costs and expenses of publishing public notice on Petitioners.
5. On November 20, 2020 the Hearing Officer filed Procedural Order and Hearing Guidelines reaffirming the public hearing would begin April 13, 2021 and ordered the parties to submit technical testimony no later than March 10, 2021, and rebuttal technical testimony no later than March 24, 2021.
6. Seven (7) days before the public hearing, the parties filed the joint motion to “narrow the issues.” Upon the Hearing Officer’s inquiry, the parties elaborated in an email dated April 6, 2021 5:41 pm:

While the Department supports the designation as Outstanding National Resource Waters (ONRWs) of the 16 named perennial waterbodies in the Petition, there is still disagreement over the designation of ephemeral streams and wetlands as nominated by Petitioners. These waters represent 96 identified streams, consisting of over 100 miles of waters, and 24 identified wetlands, consisting of almost 50 acres, and are a critical part of the nomination for which Petitioners — who are local governmental, statewide, and small business organizations — seek protection. From the beginning of this nomination, Petitioners’ goal has been to protect the whole of the watershed.

Pursuant to 20.6.1.100 NMAC, the Hearing Officer has the power to conduct a fair and equitable proceeding, assure that the facts are fully elicited, and avoid delay. The rule further provides the Hearing Officer the authority to rule on motions and procedural requests that do not seek final resolution of the proceeding, and issue necessary orders thereon.

IT IS THEREFORE ORDERED that the joint motion is hereby denied, and that as a preliminary matter, the parties may narrow the issues when called upon by the Hearing Officer to focus the Commission's attention and avoid a waste of judicial resources and time.

Gregory Chakalian
Hearing Officer

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing order was emailed to the following persons on April __, 2021. A copy will be mailed first-class upon request.

John Verheul
Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
121 Tijeras, NE, Suite 1000
Albuquerque, New Mexico 87102
John.verheul@state.nm.us

Kelly Nokes
Western Environmental Law Center
P.O. Box 218
Buena Vista, Colorado 81211
nokes@westernlaw.org

Tannis Fox
Western Environmental Law Center
208 Paseo del Pueblo Sur, #602
Taos, New Mexico 87571
fox@westernlaw.org

Robert F. Sanchez
Assistant Attorney General
Office of the Attorney General
P.O. Box 1508
Santa Fe, New Mexico 87504-1508
rfsanchez@nmag.gov

Pamela Jones
Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, New Mexico 87502
Phone: (505) 827-2428
Email: Pamela.Jones@state.nm.us