

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.

PROCEDURAL ORDER & HEARING GUIDELINES

In conducting the Hearing for this Petition, the Hearing Officer will follow, in addition to the specific procedures set forth below, those provisions of the New Mexico Water Quality Control Commission Rulemaking Procedures, 20.1.6 NMAC (2018), not specifically modified below. The Hearing in this matter will be complex and the modifications below are necessary to protect an orderly hearing process.

A. HEARING DATE & LOCATION

- a. The Public Hearing will be held on April 13, 2021 via the WebEx Virtual Meeting system. The Commission will begin its regular monthly meeting at 9:00 a.m., and the public hearing will begin at the conclusion of its regular business. The Hearing may run until 5:30 p.m. In the event more time is needed, the Hearing will continue on April 14–16, 2021, beginning at 9:00 a.m. and ending by 5:30 p.m., as determined necessary by the Hearing Officer.
- b. All deadlines set forth below are designed to provide the Hearing Officer with the legal argument and pre-filed technical testimony necessary to begin the hearing on April 13, 2020, and to proceed efficiently until the conclusion of the Hearing.

B. FILING & SERVICE OF DOCUMENTS

- a. The filing of any document as required by this Order shall be accomplished by delivering the document to the Commission Administrator (“Administrator”), Ms. Pamela Jones, electronically via email at: Public.Facilitation@state.nm.us. Any person filing any document shall:

- i. Serve a copy thereof on all persons filing an entry of appearance or other pleading (collectively “Parties”), not including those who submit only written public comment.
 - ii. The original document filed with the Administrator shall be sent in hard-copy format, printed single-sided, only upon request of the Administrator.
- b. Wherever these guidelines require service of a document, service shall be made by delivering a copy of the document to the person to be served electronically via email. If a person is represented by an attorney, service of the document shall be made on the attorney. Service on a Party is complete upon emailing the document. Service on the Administrator shall be deemed to be accomplished upon receipt of the document by the Administrator.

C. NOTICE OF HEARING

- a. Public notice of the Hearing shall be given at least 60 days prior to the Hearing, pursuant to 20.1.6.201 NMAC.

D. PARTICIPATION BY GENERAL PUBLIC

- a. Any member of the general public may present non-technical testimony and exhibits at the Hearing. No prior notification shall be required.
- b. A member of the general public may submit to the Administrator a written non-technical statement for the record in lieu of oral testimony at any time prior to the close of the Hearing.

E. TECHNICAL TESTIMONY

- a. In order to present technical testimony at the Hearing, a person must file a notice of intent to present technical testimony no later than 5:00 p.m. on **Wednesday, March 10, 2021** to assure Commissioners sufficient time before the Hearing to review the material. The notice shall:
 - i. Identify the person or entity for whom the witness(es) will testify;
 - ii. 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;
 - iii. Attach the full direct testimony of each technical witness, which shall include an express basis for all expert opinions offered, and shall clearly delineate which of the ONRW petition elements, 20.6.4.9.A(1)–(6) NMAC, or criteria, 20.6.4.9.B(1)–(3) NMAC, is addressed;
 - iv. Include the text of any recommended modifications to the proposed regulatory change; and
 - v. Identify and attach all exhibits to be offered by the person at the Hearing.
- b. In order to present technical testimony rebutting the testimony of another Party at the Hearing, a person must file a notice of intent to present rebuttal testimony no later than 5:00 p.m. on **Wednesday, March 24, 2021**. The notice shall comply with the requirements set out above in Section E (a). In addition, if a Party takes a position on proposed changes to the Petition by other Parties, i.e., either supports or opposes changes to the Petition, the notice shall also include the basis for that support or opposition.

- c. The Hearing Officer shall enforce Section E (a) through the exclusion of technical testimony or exhibits, as applicable.
- d. At the hearing, persons presenting technical testimony shall not read their full, pre-filed testimony, but shall adopt it under oath and may present a brief summary, not to exceed 30 minutes, prior to standing for cross-examination.

F. CONDUCT OF HEARINGS

- a. The rules of civil procedure and the rules of evidence shall not apply, but may be looked to for guidance.
- b. 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:
 - i. The Hearing shall begin with an opening statement from the Hearing Officer. The statement shall identify the nature and subject matter of the Hearing and explain the procedures to be followed.
 - ii. Beginning with Petitioners, Parties filing a notice of intent to present technical testimony may make an opening statement.
 - iii. Beginning with Petitioners, each Party will present its case; Cross-examination by panel is allowed.
 - iv. The Parties shall present any rebuttal testimony in the same order.
 - v. The Parties may present sur-rebuttal testimony in the discretion of the Hearing Officer.
 - vi. The Hearing Officer shall provide an opportunity for non-technical testimony from members of the general public. Specifically, the Hearing Officer will provide an opportunity for public comment on April 13, 2021 from 12:00 p.m. – 1:00 p.m. and from 4:00 p.m.-5:00 p.m., and from 12:00 p.m.-1:00 p.m. and from 4:00 p.m.-5:00 p.m. on April 14–16, 2021, as needed, if the Hearing is extended accordingly. The public may also comment during appropriate breaks in testimony, as determined by the Hearing Officer.
 - vii. At the close of the Hearing, the Hearing Officer shall announce that the record is closed.

G. TESTIMONY & CROSS EXAMINATION

- a. All testimony will be taken under oath or affirmation.
- b. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious.
- c. 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's 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.

H. EXHIBITS

- a. All exhibits shall be marked with a designation identifying the person offering the exhibit and shall be numbered or lettered sequentially.
- b. 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., PowerPoint presentations) are used, legible copies shall be submitted for the record. If demonstrative exhibits, including PowerPoint presentations, are based on technical testimony, said exhibits must be timely filed pursuant to above Sections E (a) and E (b).

I. TRANSCRIPT OF PROCEEDING

- a. The Petitioners will pay for the preparation of the transcript that is the official record of the proceeding, and pay for copies for the Commissioners or the Department upon request.
- b. Any person desiring a copy of the transcript may obtain a copy at his or her own cost, or may review the copy of the transcript maintained by the Administrator.

J. CLOSING ARGUMENT

- a. The Petitioners and all other persons desiring to make closing argument should be prepared to offer oral closing argument at the conclusion of the Hearing.

K. POST HEARING SUBMISSIONS

- a. The Hearing Officer may allow the record to remain open for a reasonable period of time following the conclusion of the Hearing for written submission of additional evidence, comments and arguments, revised proposed rule language, and proposed statements of reasons. The Hearing Officer's determination regarding post-hearing submissions shall be announced at the conclusion of the Hearing. In considering whether the record will remain open, the Hearing Officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision. 20.1.6.304 NMAC.

L. HEARING OFFICER'S REPORT

- a. If the Commission directs, the Hearing Officer shall file a report of the Hearing. The report shall identify the issues addressed at the Hearing, identify the parties' final proposals, and the evidence supporting or opposing these proposals, including discussion or recommendations as requested by the Commission, and shall be filed with the Commission Administrator within the time specified by the Commission. The Commission Administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comment on that report. 20.1.6.305 NMAC.

M. DELIBERATION & DECISION

- a. If a quorum of the Commission attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the Commission may immediately deliberate and make a decision on the proposed regulatory change.
- b. If the Commission does not reach a decision at the conclusion of the hearing, the Commission Administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each Commission member that did not attend the hearing, and if necessary, to other Commission members, Commission counsel and the Hearing Officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.
- c. The Commission shall reach its decision on the proposed regulatory change within 60 days following the close of the record or the date the Hearing Officer's report is filed, whichever is later.
- d. If, during the course of its deliberations, the Commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the Commission may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.
- e. The Commission shall issue its decision on the proposed regulatory change in a suitable format which shall include its reasons for the action taken.
- f. The Commission's written decision is the official version of the Commission's action, and the reason for that action. Other written or oral statements Commission members are not recognized as part of the Commission's official decision or reasons. 20.1.6.306 NMAC.

N. NOTICE OF COMMISSION ACTION

- a. The Administrator shall provide notice of the Commission's action to each of the Parties, and to all other persons who made a written request for notification of such action. The Commission's action will also be posted on the New Mexico Environment Department's website.



FELICIA L. ORTH
HEARING OFFICER

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2020 a copy of the foregoing Procedural Order and Hearing Guidelines was emailed to the persons listed below. A copy will be mailed first class upon request.

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Pamela Jones

 Digitally signed by Pamela Jones
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