

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



**IN THE MATTER OF PROPOSED
AMENDMENTS TO GROUND
AND SURFACE WATER
PROTECTION REGULATIONS,
20.2.2. NMAC**

WQCC 17-03 (R)

New Mexico Environment Department,

Petitioner.

**REVISED PROCEDURAL ORDER AND ORDER
DENYING THE WITHDRAWAL OF THE HEARING OFFICER REPORT**

The WQCC designated Erin Anderson to serve as Hearing Officer for WQCC 17-03 (R) on May 5, 2017. The Hearing Officer Report was filed on April 6, 2018.

1. A post hearing Order was issued on April 6, 2018 which set out deadlines for submission of comments. This was also stated on the record at the conclusion of the Hearing but memorialized in writing for the benefit of the parties.
2. The previous Order indicated that comments/exceptions to the Hearing Officer's Report would be due by May 7, 2018. Ideally, the parties were to have submitted their redlined drafts by the 27th of April, 2018 but as of May 3, 2018 none of the parties have submitted their comments in redlined format pending the teleconference.
3. A teleconference was scheduled on Thursday, April 26, 2018 but not all parties were available so the teleconference was rescheduled until Thursday, May 3, 2018.
4. NMED filed a motion to withdraw the hearing officer report on April 23, 2018 or in the alternative to allow more time for Commission to deliberate. Since under the new Rules the submission of the Hearing Officer Report triggered a 60 day clock. Parties

in opposition had 15 days to file objections to the motion. Airforce indicated they objected and there was no reply filed.

5. The Hearing Officer scheduled a conference call to discuss the request for additional time to file exceptions to the Hearing Officer Report.
6. The conference call was held on May 3, 2018. All parties were able to attend the conference call except for Laun-Dry and City of Roswell. The attorney Laun Dry and City of Roswell notified the board administrator well in advance of their unavailability.
7. The parties to the rule making proceeding wish to work collaboratively to submit a revised report in a more concise format. NMED has taken the lead in circulating a proposed form of report. The parties would like to have a June 15, 2018 deadline to submit their collaborative comments to the Hearing Officer Report. This would also accommodate the needs of one of the attorneys who will be unavailable due to medical needs. All the parties to the conference call agreed to the extension of the deadline until June 15, 2018 and allowing additional time due to the unavailability of one of the parties.
8. The Hearing Officer welcomes this suggestion and respectfully requests that, contingent upon WQCC's allowance of a time waiver, or withdrawal of the Hearing Officer Report, that the submission of their revised comments/exceptions to the Hearing Officer Report be submitted by June 15, 2018. This would allow enough time to make revisions to the report and allow ample time for the Commissioners to review the Amended Report prior to deliberations.
9. On May 4, 2018 NMED and Rio Grande Resources Corp filed motions for the WQCC to address. Pending a final ruling by the WQCC on those two motions, the Hearing

Officer is waiving the deadline of May 7, 2018 to submit exceptions, pending the WQCC's decision. The parties want to preserve their ability to file exceptions and the Hearing Officer agrees that current deadline is onerous and would not be adequate to address their needs and to allow for their comments to be adequately addressed. The Hearing Officer does not wish to muddy the waters, in the event the WQCC chooses to deliberate, or wishes to set a different date for the exceptions or comments on the current Hearing Officer Report, but want to make clear the initial deadline of May 7, 2018 has been vacated.

10. If the WQCC is amenable to a time waiver or another solution the Hearing Officer will extend the time until June 15, 2018 or another date determined at the hearing, which will accommodate medical leave of one the parties. A revised order will issue subsequent to WQCC's decision whether to allow the time waiver or withdrawal of the Report with deadlines at the May WQCC meeting.
11. The Hearing Officer is denying NMED's motion to withdraw the Hearing Officer Report, at this time. WQCC may wish to allow the withdrawal of the report or some other solution pending their review of the motions filed.
12. The goal of the later deadline would be to submit a report in top shape for the Hearing Officer to review and subsequently forward directly to the Commission. This amended Hearing Officer Report, would likely mean deliberations would take place in July but the Hearing Officer lacks statutory authority to extend the deadline and does not wish to impede the WQCC's ability to deliberate or give instructions that are confusing or contradictory.

13. The request to streamline and improve the Hearing Officer report is well taken and will ultimately benefit the Commission in their deliberations if they choose to follow that path. The Hearing Officer recommends that the Commission extend the deadlines but will defer to their preference subsequent to the pending motions filed.

S/Electronically
Erin Anderson, ALJ
Hearing Officer for WQCC 17-03 (R)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Revised Procedural Order and Oder Denying the Withdrawal of the Hearing Officer Report** was sent via the stated methods below to the following parties on May 4, 2018:

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