

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

**IN THE MATTER OF PETITION FOR
REQUEST FOR VARIANCE FROM
REGULATIONS AT 20.6.6 NMAC,
IRONHORSE PERMIAN BASIN,
LLC, DISCHARGE PERMIT
RENEWAL FOR CLOSURE DP-796,**

**Ironhorse Permian Basin, LLC,
Petitioner.**

WQCC No. 20-72 (V)

FIRST AMENDED SCHEDULING ORDER

In response to Petitioner's variance petition (filed in compliance with 20.6.2.1210 NMAC), and the timely review and recommended approval by the department, the New Mexico Water Quality Control Commission ("Commission"), through its duly appointed Hearing Officer, and following the March 3, 2021 teleconference attended by all the parties, and being fully advised in the Governor's Executive Orders and applicable public health orders, and the Stipulated Motion to Amend Scheduling Order filed March 8, 2021;

hereby orders that:

1. Pursuant to the timely filed waiver of the 90-day deadline, the Commission shall review the variance petition on June 8, 2021 (via the WebEx Virtual Platform) at the end of the Agenda beginning at 9:00 a.m. The parties estimate the length of the variance hearing to be between one and two hours.
2. Public Notice: The Petitioner assumes the financial responsibility, and the Bureau will prepare and publish the necessary public notice (English and Spanish) by stipulation of the parties on or before March 29, 2021 as provided

by 20.1.3.16(C) NMAC. The Commission's Administrator will provide support as needed.

3. The adjudicatory proceedings will be governed by 20.1.3.18 NMAC.

4. Statement of Intent ("SOI") to Present Technical Evidence:

- a. While it remains the policy of the Office of Public Facilitation to require Bates-stamped exhibits in complex matters, the parties have represented that this matter is relatively simple and uncontested. See 20.1.3.20(C)(3) NMAC, "All exhibits offered in evidence shall be marked with a designation identifying the person by whom the exhibit is offered, and numbered serially in the sequence in which offered."
- b. Therefore, any person or entity that intends to present technical evidence at the hearing shall pre-file full-written testimony accompanied by any exhibits with the Commission's Administrator on or before April 28, 2021, by 5:00 p.m. and serve an electronic copy of the foregoing on all other parties. Technical evidence is hereby defined as scientific, engineering, economic or other specialized evidence or testimony. It does not mean legal argument, general comments or statements of policy.
- c. Content: The SOI to present technical evidence shall include:
 - i. the name of the person filing the statement;
 - ii. indication of whether the person filing the statement supports or opposes the petition at issue;
 - iii. the name of each witness;

- iv. an estimate of the length of the direct testimony of each witness;
 - v. a list of exhibits, if any, to be offered into evidence at the hearing; and
 - vi. a summary or outline of the anticipated direct testimony of each witness.
 - d. Failure to file a timely and complete SOI will preclude a person or entity from presenting that technical evidence or testimony sought to be offered.
- 5. Public comment: The Hearing Officer will accept non-technical public comment at various and convenient times between and at the end of the technical presentations. Non-technical public commenters are strongly encouraged to submit their comments in writing to the Commission Administrator (Pamela Jones, Pamela.Jones@state.nm.us) either before the hearing or during the hearing. Depending on how many members of the public offer oral comment, the time for each commenter may be limited to as little as 3 minutes. Commenters may offer verbal comment once; written comment is unlimited.
- 6. Accommodations: The Bureau shall provide a way for those who wish to participate in the hearing in Spanish to do so, and for those who are hearing-impaired and wish to participate in the hearing to do so.
- 7. Transcription of hearing: The petitioner shall, at its own expense, have the hearing stenographically recorded and transcribed by a certified court reporter unless, after a showing of substantial financial hardship, the hearing officer orders the department to hire a certified court reporter. The petitioner shall,

no later than 30 days prior to the hearing date, file with the hearing clerk a certification that the petitioner has hired a certified court reporter and will deliver 16 copies of the hearing transcript to the hearing clerk or a request that the department hire a certified court reporter.

8. Burden of persuasion: at the hearing, the petitioner has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to justify the relief sought in the petition. Following the establishment of a prima facie case by the petitioner, any person opposed to the relief sought in the petition has the burden of going forward with any adverse evidence and showing why the relief should not be granted.

**Gregory
Chakalian** Digitally signed by
Gregory Chakalian
Date: 2021.03.09
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Gregory Chakalian, Hearing Officer

Certificate of Service


I hereby certify that on March 9, 2021 a copy of the foregoing **First Amended Scheduling Order** 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
Date: 2021.03.09 16:18:04 -07'00'

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