

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

**IN THE APPEAL OF THE DESIGNATION BY THE  
NEW MEXICO ENVIRONMENT DEPARTMENT  
OF THE RIO PUERCO WATERSHED TMDL**

**WQCC 06-06 (A)**

**Ernest Torrez,  
Petitioner**

**PREHEARING PROCEDURAL ORDER**

The Water Quality Control Commission will hold a public hearing following its regular business meeting on Tuesday, September 12, 2006 at 10 a.m. at the Council Chambers in the Cuba Municipal Complex, 16B Cordova Road, in Cuba, New Mexico. The Hearing Officer designated for the hearing will generally follow the Commission's Rulemaking Guidelines and Adjudicatory Regulations in conducting the hearing except as those Guidelines are modified below to assure an efficient and orderly hearing process.

1. Public comment of a non-technical nature: Public comment will be accepted between 11:30-12:00 on September 12 regardless of the progress in the technical case, and at 6 p.m. on that date if necessary. The Hearing Officer will also invite public comment at the end of the technical case and at other times throughout the hearing as necessary.
2. Filing Submittals: Documents submitted for the Commission's review must be filed with the Commission Administrator Joyce Medina; no documents may be sent directly to the Commissioners. Ms. Medina's contact information is set out on the accompanying Certificate of Service, below.

3. Any document filed with the Commission Administrator must be filed as an original plus fourteen copies (one copy for the Hearing Officer, Commission Counsel and each of the twelve Board members). This includes motions, exhibits, notices of intent to present technical testimony, non-technical written comment and all other documents submitted for consideration by the Commission.
4. Service: A person filing a document with the Administrator shall serve a copy on the Surface Water Bureau and all other parties in hard copy unless another party has consented to another format. Courtesy copies may be sent to the Hearing Officer via mail or e-mail.
5. Entries of Appearance: Any person wishing to be treated as an interested participant and cross-examine witnesses at the hearing shall file and serve on all parties an entry of appearance. Parties known at this time include Mr. Torrez and the New Mexico Environment Department, represented by Tannis Fox of the NMED Office of General Counsel. Entries of appearance are not required for those who wish to make public comment. An entry of appearance must identify the person wishing to be treated as an interested participant, any individual who may appear on behalf of that person and the subjects they intend to address. Notices of Intent to present technical evidence or testimony will be considered entries of appearance.
6. Notices of Intent and Exhibits: Anyone who intends to present technical evidence or testimony at the hearing must file a notice of intent to present technical testimony (NOI) by August 18, 2006. Failure to file a timely and

complete NOI will preclude a person from presenting that technical evidence or testimony sought to be offered. Technical evidence or testimony means scientific, engineering, economic or other specialized evidence or testimony. It does not mean legal argument, general comments or statements of policy. NOIs must identify the person filing the statement; identify each witness, including name, affiliation, education and work background; include the testimony of each witness in full narrative fashion, particularly any opinion to be offered by each witness and an explanation of the basis for the opinion; include technical materials relied upon by each witness in forming opinions; estimate the length of each witness' presentation; and attach all exhibits. Exhibits should be clearly numbered or lettered consecutively, and must be entirely legible.

7. Powerpoint and other slide presentations or displays which are demonstrative and based on technical evidence timely submitted may be shown at the hearing regardless of inclusion in the NOI. Copies no larger than 8 ½ by 11 inches shall replace large charts and maps in the record after the hearing.
8. Administrative Record: The Department must file the Administrative Record in this matter with the Commission Administrator, along with an Index, by August 18, 2006.
9. Revised TMDL and public meeting: The Department will send a copy of the revised TMDL to Petitioner and the Commission by July 14, 2006. A public meeting will be held in Cuba, New Mexico on August 10, 2006.

10. Conduct of Hearing: Brief opening and closing statements may be made verbally by the parties. The Department bears the burden of proof and the burden of going forward in establishing the basis for the TMDL being appealed, as it has been revised. Following the Department's presentation, Petitioner may make his presentation, and to the extent Petitioner proposes a different TMDL for the Rio Puerco Watershed, bears the burden of establishing a basis for the alternative TMDL proposed. Following Petitioners' presentation will be the presentations of any other persons or entities timely filing NOIs. All testimony will be taken under oath and is subject to cross-examination.
11. An experienced interpreter will be present to provide interpretation between English and Spanish and Spanish and English.
12. The hearing will be audiotaped by the Commission Administrator, and those tapes will constitute the official record of the hearing. Others present at the hearing may audiotape or videotape the hearing as they wish, so long as the taping process does not interfere with or disrupt an orderly hearing process.
13. The Commission may deliberate at the close of the evidentiary record and make a decision at that point. Its final order will be distributed in writing to all parties.

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Felicia L. Orth, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2006 I mailed this Prehearing Procedural Order to Petitioner Ernest Torrez at P.O. Box 4, La Jara, New Mexico 87027, and to all other persons signing the Petition at the addresses shown on the Petition, and hand-delivered same to Tannis Fox in the NMED Office of General Counsel.

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