

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 15 ADMINISTRATIVE PROCEEDINGS BEFORE THE COMMISSIONER OF PUBLIC LANDS

19.2.15.1 ISSUING AGENCY: Commissioner of Public Lands, New Mexico State Land Office.
[19.2.15.1 NMAC - Rp, 19.2.15.1 NMAC, 6/30/2004]

19.2.15.2 SCOPE: This part pertains to the conduct of all adjudicatory administrative proceedings before the commissioner of public lands arising from agency determinations and show cause orders, as defined herein. Contested matters arising under Section 19-10-24 NMSA 1978, and Sections 19-7-60 and 61 NMSA 1978, and certain other non-adjudicatory hearings shall not be subject to or governed by this part. This part does not enlarge, diminish or in any way alter the constitutional and statutory jurisdiction of the commissioner of public lands or the substantive rights of any person.
[19.2.15.2 NMAC - N, 6/30/2004]

19.2.15.3 STATUTORY AUTHORITY: The commissioner's authority to manage the trust lands or resources is found in N.M. Const., Art. XIII, 2, and in Section 19-1-1 NMSA 1978. The commissioner's authority relative to contest proceedings is found in Sections 19-7-64 through 68 NMSA 1978 and Section 9-3-1.1 NMSA 1978. The commissioner's authority to promulgate this part is found in Sections 19-1-2 and 19-7-64 NMSA 1978.
[19.2.15.3 NMAC - N, 6/30/2004]

19.2.15.4 DURATION: Permanent.
[19.2.15.4 NMAC - N, 6/30/2004]

19.2.15.5 EFFECTIVE DATE: June 30, 2004, unless a later date is cited at the end of a section.
[19.2.15.5 NMAC - Rp, 19.2.15.5 NMAC, 6/30/2004]

19.2.15.6 OBJECTIVE: The objective of this Part 15 is to provide a clear, mandatory, administrative remedy for persons aggrieved by an agency determination or show cause order, as defined herein, and to provide rules to govern the conduct of the adjudicatory administrative proceedings, all within the scope of this Part 15.
[19.2.15.6 NMAC - N, 6/30/2004]

19.2.15.7 DEFINITIONS:

A. "Agency determination" means a written determination, by the commissioner or the commissioner's designee, regarding a final action or decision taken by the commissioner through a state land office department or division, which action adversely and materially affects a person's right, title, interest or priority of claim in or to trust lands or resources, and which arises from, or in connection with, a lease, contract, easement, right of way, grant, conveyance, or any other instrument executed by the commissioner or the commissioner's designee.

B. "Commissioner" means the commissioner of public lands, or a person fully authorized to act in the commissioner's stead. References to the commissioner as a participant in the contest proceedings shall mean the state land office department or division responsible for the agency determination at issue, or on behalf of which, a show cause order is issued.

C. "Contest" means the administrative hearing at which a decision of the commissioner, as defined herein, is made regarding a show cause notice of the commissioner or a petition contesting an agency determination.

D. "Contest notice" means notification of the occurrence or denial of a contest issued by the commissioner.

E. "Decision of the commissioner" means the final decision rendered by order of the commissioner at the conclusion of a contest pursuant to this Part 15. A decision of the commissioner as such is any "decision" "ruling" or "order" under Chapter 19, NMSA 1978 appealable to a district or higher court, including any such decision of the commissioner so referred to in Sections 19-7-8, 19-7-17, 19-7-67, 19-10-22, and 19-10-23 NMSA 1978. A decision of the commissioner is the "final decision or order of an agency" as used in Rules of Civil Procedure for the District Court, Rule 1-074C NMRA 2004. A decision of the commissioner is a "final decision" as that term is used in Paragraph (2) of Subsection H of 39-3-1.1, NMSA 1978.

F. "Hearing officer" means the person appointed by the commissioner to conduct the contest.

G. “**Petitioner**” means the person initiating a contest by petition; in the case of a show cause proceeding there will be no petitioner.

H. “**Respondent**” means any party to a contest initiated by petition, other than the petitioner or the commissioner; in the case of a show cause proceeding the person(s) to whom the show cause order is directed shall be the respondent(s).

I. “**Schedule of fees**” means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

J. “**Scheduling order**” means an order issued by the hearing officer that sets the date, time and place of the contest; establishes the order and timing of all pre-hearing matters, such as discovery and briefing; may establish whether procedures in addition to those provided for in this Part 15 shall be provided; and may provide for such other related matters as the hearing officer deems necessary. Under appropriate circumstances, the scheduling order may be amended by the hearing officer within a reasonable time after issuance.

K. “**Show cause order**” means an order issued by the commissioner, pursuant to Section 19-7-8 NMSA 1978 or otherwise as may be permitted, directing a party or parties to show cause, if any, why a particular agency action should not be taken or made final. The show cause order will state the place and time of the contest hearing. A show cause order is an agency determination.

L. “**Trust lands or resources**” means those lands, their natural products or water rights, and other assets derived from them, which are under the care, custody, and control of the commissioner.

[19.2.15.7 NMAC - N, 6/30/2004; A, 6/30/2016; A, 6/11/2019]

19.2.15.8 AGENCY DETERMINATION:

A. A contest will not be initiated by petition without the petitioner first having received an agency determination. In the case of a contest initiated by the commissioner’s show cause order, the order itself is the agency determination, and no petition is necessary.

B. An agency determination may be rendered at any time deemed appropriate by the commissioner or the commissioner’s designee, or may be rendered, if deemed appropriate by the commissioner, upon request of an interested party.

C. An agency determination will be rendered in writing, shall be dated, and will be provided to the affected party or parties, or to their agent, representative, or successor, in written or electronic format by such means as can reasonably provide verification of receipt. It shall be sufficient if an agency determination is provided to the physical or electronic address most recently shown in the public records of the commissioner.

D. An agency determination will state that it will become non-appealable unless the party to whom it is directed initiates a contest proceeding or responds to the show cause order pursuant to this Part 15 within 30 days of the date of the agency determination, or within such other longer time as fairness and circumstances may, in the commissioner’s discretion, require.

E. A demand, offer, or any other agency decision or act, which is still open to negotiation or change by the commissioner, is not an agency determination.

[19.2.15.8 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.9 CONTEST:

A. Right to contest. Subject to Subsection B of 19.2.15.9 NMAC below, any persons or entities aggrieved by an agency determination shall have the right to a contest pursuant to this Part 15. Such proceedings are a mandatory administrative remedy and must be completed before recourse to any court is available.

B. Limitation of right. Unless the commissioner in the commissioner’s discretion determines otherwise, a contest shall not involve matters which would not require the presence of the commissioner as a necessary party in a district court proceeding. The right of a party to initiate a contest proceeding is not a waiver of any defense or claim by the commissioner or any other party regarding threshold matters such as jurisdiction, sovereign immunity, standing, ripeness, mootness, failure to state a claim, and the like.

C. Contest participants. In the case of a contest initiated by a show cause order, the participants shall be the commissioner and the respondent. In the case of a contest initiated by petition, the contest participants shall be the commissioner, the petitioner, and any respondents. The hearing officer may, in the hearing officer’s discretion, permit third parties to intervene or to participate as amicus curiae. All pleadings shall contain a certificate indicating that all other participants have been served with a copy of the pleading by first-class mail or by such other means as the hearing officer may allow.

D. Representation. Contest participants may represent themselves, or may be represented by counsel to the same extent allowed in the district courts of New Mexico. Parties who represent themselves will be held to the same standards of conduct and pleading as if they were represented by counsel.

E. Location. All contests shall, at the sole discretion of the commissioner, be held either at the offices of the New Mexico state land office in Santa Fe, New Mexico, or at any other location deemed most expedient by the commissioner.

[19.2.15.9 NMAC - Rp, 19.2.15.9 NMAC, 6/30/2004; A, 6/11/2019]

19.2.15.10 INITIATING A CONTEST:

A. By written petition. Subject to the hearing officer's ability to allow amendment of the petition for failure to comply with the requirements of form set out below when it appears to the hearing officer that the petition sets out a good faith claim, a contest shall be initiated by written petition, sent by certified or registered mail to the commissioner, which shall contain the following:

(1) As set out in the example (2) below, the caption shall designate the subject matter in reference to the lease, contract, easement, right of way, grant, conveyance, or other instrument which forms the basis of the petitioner's claims.

(2) The caption will also designate the petitioner by full name as such, then the respondent, if any, shall be designated by full name as such. A place should be provided for the proceeding to be numbered. The title shall be bolded and underlined. In the case of a contest over a grazing lease, for example, the caption should appear as follows:

Before the Commissioner of Public Lands

In Re State Land Office Grazing Lease No. GX-0000

Mr. And Mrs. A.B., petitioner

v

X. Corp., respondent

Contest No. _____

Petition for Contest

(3) the name, mailing and e-mail addresses, telephone and fax numbers of the petitioner and of each respondent in the contest proceeding;

(4) a legible copy of the instrument or instruments which form the basis of the claim in issue;

(5) the aliquot description, by subdivision, section, township and range, of the land or lands in issue;

(6) a concise, complete statement of the claim or claims of the petitioner;

(7) a concise, complete statement of the facts giving rise to the claim or claims in issue;

(8) a statement of the relief being requested as to each claim; and

(9) a sworn statement that a copy of the "foregoing petition" has been sent to the commissioner and to all respondents by registered or certified mail, and the date when sent.

B. By show cause order. A contest may be initiated by the commissioner's show cause order sent by certified or registered mail. The show cause order shall contain the following:

(1) As set out in the example (2) below, the caption shall designate the subject matter in reference to the lease, contract, easement, right of way, grant, conveyance, or other instrument which forms the basis of the commissioner's claims.

(2) The caption will also designate the respondent by full name as such. The title shall be bolded and underlined. A place should be provided for the proceeding to be numbered. In the case of a show cause order issued in connection with a business lease for example, the caption should appear as follows:

Before the Commissioner of Public Lands

In Re State Land Office Business lease No. BL-0000

X Corp., respondent

Contest No. _____

Show Cause Order

To Mr. A.B., for X Corporation, respondent;

- (3) the name, mailing and e-mail addresses, telephone and fax numbers of the respondent;
- (4) a legible copy of the instrument or instruments which form the basis of the show cause order;
- (5) the aliquot description, by section, township and range, of the land or lands in issue;
- (6) a concise, complete statement of the basis of the show cause order;
- (7) a concise, complete statement of the facts giving rise to the show cause order;
- (8) a statement of the final decision proposed by the commissioner; and
- (9) a statement that a copy of the show cause order has been sent to the respondent by registered or certified mail, and the date when sent.

C. In the case of a contest initiated by a petition, within 10 days of the receipt of a contest petition, the commissioner will give, to the petitioner and any identified respondents, a contest notice stating whether the petition sets out sufficient cause for contest within the scope of this Part 15. The commissioner may reject a contest petition because the requisite agency determination has not been obtained, because the petition states a clearly spurious claim, because the petition is filed as an abuse of process, or because the matters alleged are too complex for an administrative determination or involve too many or unrelated parties. An adverse contest notice, one denying the petition, is an appealable decision of the commissioner. In the case of a contest initiated by show cause order, the show cause order itself shall be the contest notice.

D. Within 30 days of the date of the written notice in Subsection C of 19.2.15.10 NMAC above, each respondent shall submit to the commissioner, also by certified mail, a response, in the form provided for in Paragraph (2) of Subsection A or Paragraph (2) of Subsection B of 19.2.15.10 NMAC above, which shall set forth:

- (1) the name, mailing and e-mail addresses, and telephone and fax numbers of each person or entity whom it is believed should be included in the contest, if not already named, and a statement of the basis for such belief;
- (2) legible copies of any other instruments that are thought to be relevant to the contest;
- (3) a concise, complete statement of the defenses to the claim, of what it is believed should be the disposition of the petitioner’s claim, and of any additional cross-claim or counter-claim to be made in connection with the same issues and the relief being requested;
- (4) a concise, complete statement of any relevant, additional facts not offered by the petitioner(s) in their petition or not offered by the commissioner in the show cause order; and
- (5) a summary of the arguments and authorities supporting the defenses or claims.

E. Subject to the hearing officer’s ability to allow amendment of the response for failure to comply with the requirements of form set out above when it appears to the hearing officer that the response is made in good faith, failure to respond, within the time and in the form required in Subsection D of 19.2.15.10 NMAC above, without having first obtained an extension of time to do so by written request directed to and granted by the commissioner, will be deemed a default, and will result in the issuance of a decision of the commissioner.

F. Upon concurrence of the parties, or upon the commissioner’s own determination that circumstances require it, the commissioner may shorten or lengthen the times allowed.
[19.2.15.10 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.11 HEARING OFFICER:

A. Following receipt of the acceptable contest petition, the commissioner shall, by order, appoint a hearing officer to preside over the administrative hearing. As soon as practicable, the hearing officer shall issue a scheduling order. In the commissioner’s discretion, the commissioner may appoint a designated person from within the state land office who has not participated in the agency determination.

B. The commissioner’s appointment of a hearing officer shall constitute a delegation of the commissioner’s statutory powers under Section 19-7-65 NMSA 1978 and of the commissioner’s constitutional and inherent power to control the conduct of administrative proceedings under the commissioner’s jurisdiction.

C. *Ex parte* communication with the hearing officer is strictly prohibited.
[19.2.15.11 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.12 PRE-HEARING DISCOVERY, CONFERENCES, AND MOTION PRACTICE:

A. Pursuant to the scheduling order, the parties to the contest and the commissioner shall provide one another and the hearing officer with a written summary of their arguments and authorities, as well as complete lists

of all witnesses (including a summary of their testimony) and all exhibits (including a brief summary of what each exhibit will be offered to prove, and a summary of its contents). Such lists shall be promptly updated as evidence and witnesses are added or deleted. Each party and the commissioner shall within 45 days after the receipt of the petition by the commissioner, or upon such longer period as the hearing officer may allow, produce to all parties and the commissioner all documents related to the matters in controversy, or that are reasonably calculated to lead to the discovery of relevant and material evidence, or that the party intends to offer at the hearing. All parties and the commissioner shall supplement their production within 10 days of discovering documents that meet the foregoing criteria. The scheduling order or other order of the hearing officer may provide such additional discovery as the hearing officer deems fair and appropriate. It is expected that all such discovery shall proceed without the necessity of any request being made to the hearing officer. The hearing officer shall have the right to preclude any testimony or other evidence which, in the hearing officer's opinion, has not been fairly and reasonably disclosed before the hearing.

(1) Any party or the commissioner, if dissatisfied with discovery, may request, in writing, that the hearing officer order another party to provide better or additional discovery. The opposing party shall respond within such time as the hearing officer establishes. The hearing officer may, in the hearing officer's discretion, allow oral argument on discovery disputes.

(2) Discovery orders of the hearing officer are not appealable, but may form the basis of an appeal of the decision of the commissioner in the matter.

B. Upon the hearing officer's own initiative, or at the request of the commissioner, or a petitioner or respondent, the hearing officer may, in the hearing officer's discretion, require scheduling, settlement, or such other conferences at the principal offices of the state land office, or at any other location deemed best by the hearing officer.

C. Pursuant to the scheduling order, the hearing officer may permit or limit such motions, responses, and replies as are normally permitted in the state district courts of New Mexico. Except as set out herein, any procedures regarding such motion practice shall be established by the hearing officer on the hearing officer's own or at the request of the commissioner or the parties. As to motions which dispose of all or part of the merits of any claim at issue, the hearing officer shall make a recommendation by written report to the commissioner who shall make a final determination. Except in rare cases and for good cause shown, the disposition of any motion is not subject to interlocutory appeal; the disposition of any motion is appealable only when the contest is concluded by a decision of the commissioner.

[19.2.15.12 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.13 WITNESSES:

A. Within such time as the hearing officer establishes in the scheduling order, each party may obtain from the hearing officer a subpoena for the attendance of all material witnesses at depositions or hearings. Consistent with applicable law or court rules, the hearing officer may charge a fee for the issuance of each such subpoena, and may establish fees for the attendance of witnesses.

B. The hearing officer may, on the hearing officer's own or at the request of any party or the commissioner, exclude witnesses for the hearing during the testimony of other witnesses or at any other time deemed proper or expedient.

C. All witnesses shall testify under oath.

D. The hearing shall proceed as scheduled without the attendance of a witness or a party if no prior notification of absence and request for an extension of time was received.

E. The testimony of a witness or party unable to attend may be preserved by deposition. The hearing officer may, if the hearing officer deems it helpful, accept affidavits of witnesses unable to attend, but will weigh their probative value as such.

[19.2.15.13 NMAC - Rp, 19.2.15.14 NMAC, 6/30/2004; A, 6/11/2019]

19.2.15.14 HEARING PROCEDURE:

A. In conducting the hearing, the hearing officer shall refer to, but shall not be bound by, the then current district court rules regarding procedure and evidence. Evidence not admissible under those rules may be admitted by the hearing officer if the hearing officer reasonably believes such admission will help in providing or clarifying relevant facts without substantially prejudicing the rights of any party. In particular, hearsay evidence may be admitted by the hearing officer, but shall not form the sole basis for the hearing officer's recommendations. The hearing officer may require any evidence to be submitted in writing. Decisions of the hearing officer regarding

matters of evidence or procedure are not, in themselves, final or appealable decisions, but may form the basis for appealing a decision of the commissioner.

B. There shall be a formal written record of a contest. The commissioner shall, at the time of appointment of a hearing officer, appoint a state land office employee to act as the hearing officer's clerk, who shall receive and file all elements of the record. The hearing officer shall designate a court reporter to record the hearing.

C. Unless otherwise indicated by the hearing officer, the order of proceedings shall be as follows:

(1) In a case initiated by a show cause order, the commissioner shall present the commissioner's case first: opening statements by the commissioner, the respondent(s), and any intervenors, in that order; presentation of evidence by the commissioner in support of the validity of the proposed action or actions forming the basis of the show cause order; presentation of evidence by the respondent(s) in support of the status quo; and presentation of evidence by any intervenors in support of their position, in that order; and closing arguments by the commissioner, the respondent, and any intervenors, in that order.

(2) In a contest initiated by petition, the petitioner shall present the petitioner's case first: opening statements by the petitioner, the respondent, any intervenors, and the commissioner, in that order; presentation of evidence in support of any defense, claim, or counterclaim and any rebuttal evidence by the petitioner, the respondent, any intervenors, and the commissioner, in that order; and closing arguments by the petitioner, respondent, any intervenors, and the commissioner, in that order.

D. At any point in the contest hearing, the hearing officer may initiate questions, may request that the commissioner, petitioner(s) or respondent(s) provide briefing on an issue or take any other action deemed necessary to expedite the proceeding and to obtain a full understanding of the facts and the issues.

E. In a contest initiated by a show cause order, there shall be no initial burden of proof, and the recommendation of the hearing officer shall be based on a preponderance of the evidence supporting either the action or actions proposed to be taken by the commissioner, or supporting the status quo prior to the issues raised in the show cause order. In a contest initiated by petition, the burden of proof shall be upon any party asserting a claim, cross claim, or counterclaim, and the recommendation of the hearing officer shall be based upon a preponderance of the evidence offered in support or rebuttal of any such claim, cross claim, or counterclaim.
[19.2.15.14 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.15 COSTS AND FEES:

A. Each participant in a contest proceeding, excluding the commissioner, shall be required, upon their first filing, to pay a non-refundable filing and processing fee as set forth in the schedule of fees.

B. At the earliest practicable date, the hearing officer shall obtain from each participant in the contest an estimate of time needed to present their part of the proceeding. Based on such estimates, the hearing officer will determine the cost of producing a record of the proceedings, and, if applicable, the fee or salary for the hearing officer's time to conduct the proceeding. At any time prior to or following the hearing, the hearing officer may determine that additional costs are necessary if it becomes evident that more time has been, or will be required to conclude the proceeding. Each party except the state land office will be required to pay, as a deposit, the amount of all costs assessed by the hearing officer in order to attend the proceeding and to have their arguments and evidence considered.

(1) A party who prevails upon all issues shall be entitled to the return of their full deposit. If they prevail in part, their deposit shall be returned in proportion to the number of claims, counterclaims, and cross claims upon which they prevailed.

(2) The deposit amount remaining after a return of funds to the prevailing party, or parties, shall be first applied to all applicable costs, with the balance of each deposit returned to each losing party in proportion to the number of claims, counterclaims or cross claims upon which they did not prevail.

(3) The determination of the proportions set out in paragraphs one (1) and two (2) above shall be discretionary with the hearing officer.

C. The hearing officer may, upon a satisfactory showing of inability to pay on the record, permit that party to proceed with reduced or no costs, and absorb those unpaid costs, to the extent not covered by a retained deposit, as an administrative expense.

D. Each party shall bear their own costs and fees in bringing or defending a contest.
[19.2.15.15 NMAC - N, 6/30/2004; A, 6/30/2016]

19.2.15.16 ALTERNATIVE DISPUTE RESOLUTION: At any time during the pendency of a contest proceeding, the parties or the commissioner may, by agreement, and upon providing written notice of the agreement to the hearing officer, elect to use any form of alternative dispute resolution. Upon receipt of such notice, the

hearing officer will, as required by the agreement of the parties, terminate or stay any further actions or proceedings. Any final result achieved through alternative dispute resolution shall, if agreed to by the parties and the commissioner, be made binding on all by a decision of the commissioner and shall be non-appealable except as otherwise provided by law.

[19.2.15.16 NMAC - N, 6/30/2004]

19.2.15.17 DECISION OF THE COMMISSIONER:

A. At the conclusion of the hearing, all parties and the commissioner shall leave with the hearing officer such items of evidence as the hearing officer requires.

B. At the conclusion of the hearing, the hearing officer may require such post-hearing pleadings and submissions as the hearing officer deems appropriate.

C. At the conclusion of the hearing, the hearing officer shall indicate the time within which a final report shall be made.

D. The hearing officer's final report shall be provided to all parties and to the commissioner.

E. Upon receipt of the hearing officer's final report, the commissioner shall, within a reasonable time, issue an order adopting, modifying, or rejecting that report. This order shall be the decision of the commissioner, and as such, it shall contain a grant or denial of the relief requested and a statement of the legal and factual basis for the order.

F. The decision of the commissioner will be filed in the lease file or other pertinent official record of the New Mexico state land office.

G. Each party, and each other person who has requested a copy, shall, after the decision of the commissioner is filed, be provided with a copy of the decision of the commissioner along with a statement of the requirements for appealing the order.

[19.2.15.17 NMAC - Rp, 19.2.15.15 NMAC, 6/30/2004; A, 6/11/2019]

19.2.15.18 APPEAL:

A. Appeal of the commissioner's decision in a contest shall be as provided in Section 39-3-1.1 NMSA 1978. In such an appeal, the appealing party shall be named as appellant, and the commissioner and other parties shall be named as appellees. The style of such appeal shall be, for example in the case of a contest over a grazing lease, *In Re State Land Office Grazing Lease GX-0000*.

B. Failure to perfect an appeal of a decision of the commissioner within the time allowed by and pursuant to Section 39-3-1.1 NMSA 1978 results in that decision becoming final, binding and non-appealable.

[19.2.15.18 NMAC - Rp, 19.2.15.16 NMAC, 6/30/2004]

HISTORY OF 19.2.15 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the New Mexico State Records Center and Archives under:

CPL 69-5, Rules and Regulations Concerning the Sale, Lease, and Other Disposition of State Trust Lands, filed 9/02/1969;

CPL 71-2, filed 12/16/1971;

CPL 77-1, filed 1/7/1977;

Rule 15, Relating to Contest Procedures Before the Commissioner of Public Lands, filed 3/11/1981.

SLO Rule 15, Relating to Contest Procedures Before the Commissioner of Public Lands, filed 1/20/1984.

History of Repealed Material:

19.2.15 NMAC Relating to Contest Procedure Before the Commissioner of Public Lands filed 12/2/2002, repealed effective 6/30/2004 and replaced with 19.2.15 NMAC Administrative Proceedings Before the Commissioner of Public Lands, effective 6/30/2004.