



STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

)
)
In the Matter of:)
)
PROPOSED AMENDMENT)
TO 20.6.2 NMAC (Dairy Rules))
)
_____)

No.: WQCC 09-13 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
RESPONSE TO DIGCE'S MOTION TO STRIKE TESTIMONY FOR A
VIOLATION OF PROTOCOLS FOR STAKEHOLDER NEGOTIATIONS**

The New Mexico Environment Department ("Department" or "NMED") hereby responds to the Dairy Industry Group for a Clean Environment's ("DIGCE") Motion to Strike Testimony for a Violation of Protocols for Stakeholder Negotiations ("Motion to Strike").

DIGCE correctly points out that Subsection K of NMSA 1978, § 74-6-4 (2009) of the Water Quality Act required "an opportunity for public input and stakeholder negotiations." Pursuant to the schedule approved on July 14, 2009 by the Water Quality Control Commission ("Commission"), the Department convened stakeholder negotiations from October 15 through November 30, 2009. The Department and stakeholders continued discussions into January 2010.

DIGCE also correctly points out that the stakeholders agreed to abide by the protocol attached to DIGCE's Motion to Strike as Exhibit 1. The purpose of the protocol was to create a framework for the open and frank exploration of possible agreement on regulatory language

during the stakeholder negotiations. As noted by DIGCE, the protocol included the following safeguard:

With the exception of agreed upon provisions included in the Dairy Industry Regulation Stakeholder Stipulation described below, NMED, stakeholders and their advisors agree that offers, proposals, or statements made during the stakeholder negotiations and any notes taken that refer to offers, proposals, or statements made *shall not be used as evidence for or against any party in any future hearing.* (emphasis added).

The purpose of this provision of the protocol was to allow the Department and the stakeholders to propose or entertain certain regulatory language or concepts without being held to those positions at the formal hearing.

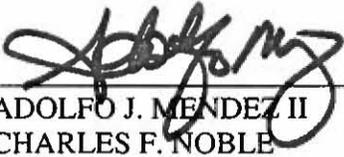
Portions of the fifth paragraph of Mr. Brian Shields's testimony filed on behalf of Amigos Bravos, Caballo Concerned Citizens Group, Food and Water Watch and the Sierra Club Rio Grande Chapter (collectively referred to as "the Coalition") refers to statements made by DIGCE and the Department during the stakeholder negotiations and offers as an exhibit (Coalition Exhibit C7) a document prepared by NMED sole for the purpose of stakeholder negotiations.

Similarly, the third and fifth paragraphs of Dr. Brent Auvermann's testimony filed on behalf of DIGCE and DIGCE Exhibit 64 discuss the substance of the November 30, 2009 stakeholder negotiation meeting and the Department's response to proposals made during the stakeholder negotiations. Thus, Dr. Auvermann's testimony in Paragraphs 3 and 5 and DIGCE Exhibit 64 also violate the same provision of the protocol for the stakeholder negotiations. As an old proverb teaches, "how can you say to your brother, 'Let me take the speck out of your eye,' when all the time there is a plank in your own eye?" DIGCE in good faith should have volunteered to strike these portions of Dr. Auvermann testimony with its motion to strike Mr. Shields's testimony.

Both Mr. Shields and Mr. Auvermann violated the protocol. Consequently, in the interest of fairness and to preserve the integrity of the stakeholder process, the Department does not object to striking the portions of Paragraph 5 of Mr. Shields's testimony that relate to discussions of stakeholder negotiations and Coalition Exhibit C7 so long as the Hearing Officer also strikes the third and fifth paragraphs of Dr. Brent Auvermann's testimony filed in DIGCE Exhibit 4 and DIGCE Exhibit 64 which relate to the stakeholder negotiation meetings.

Respectfully Submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



ADOLFO J. MENDEZ II
CHARLES F. NOBLE
Assistant General Counsel
New Mexico Environment Department
Post Office Box 5469
Santa Fe, New Mexico 87505-5469
(505) 827-1031
adolfo.mendez@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this the New Mexico Environment Department's Response to DIGCE's Motion to Strike Testimony for a Violation of Protocols for Stakeholder Negotiations was served by e-mail on the following parties on April 9, 2010:

Joyce Medina
Board Administrator
NMED Boards and Commissions
1190 St. Francis Dr., N2153
Santa Fe, NM 87502

Sharon Lombardi
Dairy Producers of NM
P.O. Box 6299
Roswell, NM 88202
dpm1@juno.com

Michael Jensen
Amigos Bravos
P.O. Box 238
Taos, NM 87571
mjensen@amigosbravos.org

Jerry Nivens
Caballo Concerned Citizens
P.O. Box 131
Caballo, NM 87931
jerry@caballonm.com

Alva Carter Jr.
DIGCE
214 W. 2nd Street
Portales, NM 88130
alva@yucca.net

Dan Lorimer
Sierra Club, Rio Grande Chapter
142 Truman NE
Albuquerque, NM 87108
daniel.lorimer@sierraclub.org

T.J. Trujillo
Gallagher & Kennedy P.A.
1233 Paseo de Peralta
Santa Fe, NM 87501
ajt@gknet.com

Kathy Martin
3122 Tall Oaks Circle
Norman, OK 73072
kjm2@aol.com

Dalva Moellenberg
Gallagher & Kennedy P.A.
2575 E. Camelback Rd.
Phoenix, AZ 85016
dlm@gknet.com

Daniele Diamond
ddiamond@icaw.org

Walter Bradley
Dairy Farmers of America
3500 William D. Tate Ave., Suite 100
Grapevine, TX 76051
wbradley@dfamilk.com

Jana Hughes
Citizens for Dairy Reform
302 Stiles Road
Hobbs, NM 88242
hjuna48@yahoo.com

Deb Turner
13101 N. Calle Bonita
Hobbs, NM 88242
turnerdj1980@hotmail.com

Jo Ann King
13100 N. Calle Bonita
Hobbs, NM 88242
joannking10@leaco.net

Lonny Ashcraft
Ashcraft Consulting, Inc.
P.O. Box 623
Roswell, NM 88202
loneyashcraft@cableone.net

Bruce Frederick
NM Environmental Law Center
1405 Luisa St., Suite 5
Santa Fe, NM 87505
bfrederick@nmelc.org

Jay Lazarus
Glorieta Geoscience, Inc.
P.O. Box 5727
Santa Fe, NM 87502
lazarus@glorietageo.com



Charles F. Noble