



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 ON LEGISLATIVE
HISTORY**

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 on Legislative History ("Motion to Strike").

In his pre-filed direct testimony, the Department's witness Mr. Olson testifies in support of the Dairy Rule proposed by the Department. In that testimony, Mr. Olson provides a background to the 2009 Water Quality Act ("WQA") amendments by explaining the discharge permitting history of how the dairy industry was regulated by the Department. Olson pre-filed direct, Pp. 4-6. Mr. Olson then testifies how the amendment to the WQA came about, and what the Department believes its effect will be on its permitting program for dairies. *Id.* at p.7. DIGCE has now inexplicably moved to strike this testimony on the basis that the Department testimony discussing the background and reasons for adopting the Dairy Rule is legislative

history and that the Department should not be allowed to use legislative history "for the purpose of interpreting the Water Quality Control Act..." Motion, p.1.

DIGCE's Motion is inexplicable because the testimony was not offered in argument to support a particular interpretation of the 2009 amendment to the WQA. The testimony was offered to explain "the background and reasons for promulgating Dairy Rules, the overall goals and the necessity of the Department's proposed Dairy Rules..." Olson pre-filed direct, p.3. The Department has every right to explain why it has proposed these rules for promulgation to the Water Quality Control Commission. It has every right to explain why it believes this rule should be adopted, including explaining the history and background of the Department's permitting processes and how the Department believes they will be affected by the 2009 amendment to the Water Quality Act and the proposed rule. The Department has every right to explain what it believes to be the purpose and effect of the 2009 amendment.

DIGCE has confused the issue of whether extrinsic evidence can be used in support of a proposed statutory interpretation with the issue of whether the Department may explain its view of a statute and what should be done to implement it. The Department is not using legislative history to propose an interpretation of the WQA or the 2009 amendment that is not found in the plain language of the WQA or the 2009 amendment to the WQA. DIGCE never explains what interpretation it thinks the Department is proposing, why it thinks that interpretation is incorrect, or how that interpretation is based on legislative history rather than plain meaning. In short, DIGCE's Motion is entirely misplaced and is based on a misunderstanding of the purpose of the testimony and the applicable legal principles.

For the foregoing reasons, the Motion to Strike filed by DIGCE should be denied.

Respectfully Submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

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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 on Legislative History was served by e-mail on the following parties on April 9, 2010:

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