



STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

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

No.: WQCC 09-13 (R)

**JOINT MOTION TO RESCHEDULE HEARING AND FOR A PROCEDURAL
ORDER
REGARDING THE PRESENTATION OF HEARING TESTIMONY**

The New Mexico Environment Department ("Department"), Caballo Concerned Citizens, Dairy Industry Group for a Clean Environment ("DIGCE"), and the Sierra Club, Rio Grande Chapter (collectively "the Signatories"), file this stipulated motion for an order to reschedule the hearing in this matter from March 9, 2010 until April 13, 2010, and for a Procedural Order clarifying that (1) participants who intend to present technical testimony must pre-file that testimony with a Notice of Intent to Present Technical Testimony on or before March 8, 2010, (2) rebuttal testimony must be pre-filed on or before March 29, 2010, (3) oral presentation of pre-filed direct and rebuttal testimony will be limited to a fifteen minute summary per witness, and (4) at the hearing, the Parties may orally present testimony responding to the rebuttal testimony filed on March 29, 2010 and redirect testimony following the cross-examination of witnesses, and may

conduct cross-examination of any witness presenting oral or pre-filed testimony for another Party. As grounds for this motion, the Signatories state as follows:

I. MOTION FOR PROCEDURAL ORDER

1. The Water Quality Control Commission ("WQCC") guidelines require only a summary of direct testimony to be filed with Notices of Intent to present technical testimony. Such summaries may be very limited, which makes preparation for hearing difficult, can put some parties at a disadvantage, and can lead to extended hearing times. Pre-filed written testimony allows for better hearing preparation by the parties and Commission. In the recent Triennial Review, WQCC No. 08-13, the Hearing Officer issued a procedural order that required prefiled direct and rebuttal testimony, and clarified that the testimony would not be orally presented at hearing. This procedure focused the issues prior to hearing, significantly reduced hearing time and made for more efficient preparation. The signatories to this motion seek a similar Procedural Order from the Commission or its Hearing Officer in this proceeding requiring that: (1) participants who intend to present technical testimony must pre-file their testimony with their Notice of Intent to Present Technical Testimony, (2) rebuttal testimony must be pre-filed, (3) pre-filed direct and rebuttal testimony will not be orally presented at the hearing, except for a summary limited to fifteen minutes per witness and (4) at the hearing, the Parties may orally present testimony responding to the rebuttal testimony filed on March 29, 2010 and redirect testimony following the cross-examination of witnesses, and may conduct cross-examination of any witness presenting oral or pre-filed testimony for another Party. The requested Procedural Order also sets forth clarifications of the WQCC Rulemaking Hearing Guidelines.

2. The Signatories request a decision on this matter before January 19, 2010 because that is the date notice must be submitted to the New Mexico Register for the currently scheduled hearing.

3. A proposed Procedural Order is attached.

II. MOTION FOR SCHEDULING ORDER

4. The Hearing in this matter is currently scheduled to begin on March 9, 2010. Notices of Intent are currently due to be filed on February 16, 2010. Though the Department filed its Petition in this matter with a proposed rule on December 22, 2009, it has agreed to accept further comments on that rule from the participants of the stakeholder process, including the dairy industry and environmental and citizen groups, on January 19, 2010. In order to allow the Department to consider the final comments of the stakeholders and make modifications to its proposed rule, and to accommodate the procedures requested, the signatories seek to reschedule the hearing date to begin on April 13, 2010. A final proposed rule would be filed on January 29, 2010, Notices of Intent to present technical testimony, along with the prefiled direct testimony would be filed on March 8, 2010 and Rebuttal testimony would be filed on March 29, 2010.

5. The Signatories also request that the Notices of Intent to present technical testimony and all prefiled testimony and pleadings be filed with electronic copies, and be placed upon the WQCC website.

6. This motion shall not be construed to waive any party's right to object to any testimony as exceeding the permissible scope.

7. The Signatories request a decision on this matter before January 19, 2010 because that is the date notice must be submitted to the New Mexico Register for the currently scheduled hearing.

8. A proposed Scheduling Order is attached.

III. CONSULTATION

9. The Department contacted the counsel or representative for participants in the stakeholder process for the Dairy Rules. Caballo Concerned Citizens, DIGCE and Sierra Club, Rio Grande Chapter, join in this motion. The Department contacted a representative of Amigos Bravos and the representative expressed general approval of this motion. The Department was unable to contact the representative for final approval from Amigos Bravos by the time of this filing.

WHEREFORE, the Signatories respectfully request that the Hearing Officer enter an order clarifying that:

(1) participants who intend to present technical testimony must pre-file that testimony with a Notice of Intent to Present Technical Testimony on March 8, 2010, (2) rebuttal testimony must be pre-filed on March 29, 2010, (3) pre-filed direct and rebuttal testimony will not be orally presented at the hearing scheduled to begin on April 13, 2009, except for a summary limited to no more than fifteen minutes per witness, and (4) at the hearing, the Parties may orally present testimony responding to the rebuttal testimony filed on March 29, 2010 and redirect testimony following the cross-

examination of witnesses, and may conduct cross-examination of any witness presenting oral or pre-filed testimony for another Party.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
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CERTIFICATE OF SERVICE

I certify that on January 14, 2010, I served this **JOINT MOTION TO RESCHEDULE HEARING AND FOR A PROCEDURAL ORDER**, by electronic mail, to:

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