

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



**NEW MEXICO ENVIRONMENT
DEPARTMENT, GROUNDWATER
QUALITY BUREAU,**

Complainant,

v.

No. WQCC 17-07(A)

**ABEL VILLALPANDO D.B.A. CREEKSIDE DAIRY
CREEKSIDE DAIRY, LLC,**

Respondent.

**MOTION FOR STAY OF COLLECTION
OF CIVIL PENALTIES PENDING APPEAL**

Respondents Abel Villalpando and Creekside Dairy, LLC (collectively “Respondents”), by and through their attorneys of record, Miller Stratvert P.A. (Richard L. Alvidrez and Elizabeth M. Reitzel), hereby move the New Mexico Water Quality Control Commission (“Commission”) to stay collection of all civil penalties in Case No. WQCC 17-07(A) until the final disposition of the appeal of this matter pending before the New Mexico Court of Appeals as Case No. A-1-CA-37623. The Complainant, New Mexico Environment Department, Groundwater Quality Bureau (“Complainant”), does not oppose this motion. As grounds for this Unopposed Motion, Respondents state as follows:

INTRODUCTION

1. On August 17, 2018 the Commission issued its *Final Order* in case WQCC 17-07(A), requiring Respondents to pay \$226,800.

2. On September 14, 2018, pursuant to NMSA 1978, Section 74-6-7 (1993), 20.1.3.21(F) NMAC and Rule 12-601 NMRA, Respondents filed an appeal of this matter with the New Mexico Court of Appeals.

3. Pursuant to 20.1.3.21(F) NMAC and NMSA 1978, Section 74-6-7(C), the Commission has the authority to order the stay of a Final Order on appeal pending the outcome of the judicial review. NMSA 1978 §74-6-7 (1993).

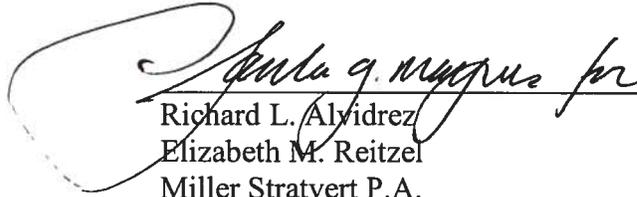
4. A stay of collection of the civil penalties under the Final Order is necessary to enable Respondents to appeal the *Final Order*. Additionally, at this time payment of the civil penalties is excessively burdensome for the Respondents.

5. The Complainant does not oppose this Motion and notes that in the event of a successful appeal by Respondents that it would be burdensome to requisition a refund of any payment of the civil penalties from the New Mexico General Fund. However, by agreeing to this Motion, Complainants do not concede the merits of the Respondents' appeal of the *Final Order*.

WHEREFORE Respondents Abel Villalpando and Creekside Dairy, LLC, respectfully request that the Commission grant this Motion in Case No. WQCC 17-07(A) pending the final disposition of the appeal of this matter in Case No. A-1-CA-37623.

Respectfully submitted this 11th day of October, 2018

MILLER STRATVERT PA

A handwritten signature in cursive script, appearing to read "Richard L. Alvidrez", is written over a horizontal line.

Richard L. Alvidrez
Elizabeth M. Reitzel
Miller Stratvert P.A.
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*Attorneys for Respondents Abel Villalpando and, Creekside Dairy,
LLC*

CERTIFICATE OF SERVICE

Pursuant to Rules 12-601(B) NMRA and 12-307 NMRA, the undersigned certifies that a true and correct copy of the foregoing *Motion for Stay of Collection of Civil Penalties Pending Appeal* was served by U.S. Postal Service, postage prepaid, on this 11th day of October 2018 to the following:

Pam Castaneda
Administrator for Boards & Commissions
P.O. Box 5469
Santa Fe, New Mexico 87502

(Also served by hand-delivery)

Pam Castaneda
Administrator for Boards & Commissions
Harold Runnels Building, Suite 2100 South
1190 St. Francis Drive
Santa Fe, New Mexico 87505

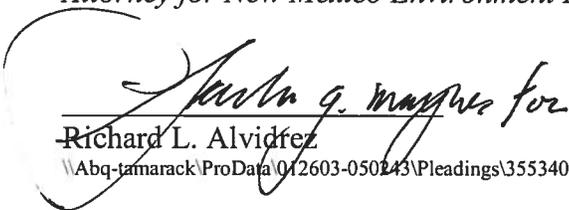
*Administrator for New Mexico
Water Quality Control Commission*

Stephen A. Vigil
Commission Counsel
c/o Office of New Mexico Attorney General
P.O. Box 1508
Santa Fe, New Mexico 87504-1508

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Water Quality Control Commission*

Christopher N. Atencio
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New Mexico Environment Department
121 Tijeras Ave, NE Suite 1000
Albuquerque, New Mexico 87102-3400

Attorney for New Mexico Environment Department


Richard L. Alvidrez

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WATER QUALITY CONTROL COMMISSION**

**NEW MEXICO ENVIRONMENT
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No. WQCC 17-07(A)

**ABEL VILLALPANDO D.B.A. CREEKSIDE DAIRY
CREEKSIDE DAIRY, LLC,**

Respondent.

**STIPULATED ORDER GRANTING
MOTION FOR STAY OF COLLECTION OF CIVIL PENALTIES**

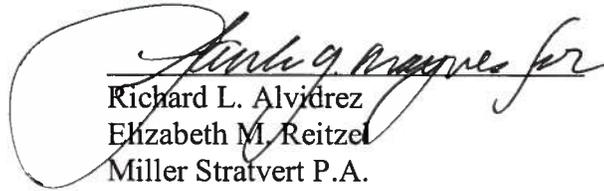
This Matter, having come before the New Mexico Water Quality Control Commission (“Commission”) on the Unopposed Motion of Respondents Abel Villalpando and Creekside Dairy, LLC’s (collectively “Respondents”) for Stay of Collection of Civil Penalties Pending Appeal, the Commission having reviewed the Motion, and otherwise being fully apprised in the premise, FINDS the Unopposed Motion is well-taken and should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that pursuant to NMSA 1978, Section 74-6-7 and 20.1.3.21(F) NMAC, the collection of civil penalties in the amount of \$226,800, as assessed against Respondents in the Commission’s Final Order of August 17, 2018, in this proceeding, is hereby stayed pending the final disposition of the appeal of this matter pending before the New Mexico Court of Appeals as Case No. A-1-CA-37623.

Larry Dominguez, Chair
New Mexico Water Quality Commission

Submitted:

Respectfully submitted this 11th day of October, 2018
MILLER STRATVERT PA



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Attorneys for Respondents Abel Villalpando and Creekside Dairy, Creekside Dairy, LLC

Approved as to form:

New Mexico Environment Department

/s/ Christopher N. Atencio

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Assistant General Counsel
Office of General Counsel
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Attorney for New Mexico Environment Department