

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



**NEW MEXICO ENVIRONMENT DEPARTMENT,
GROUND WATER QUALITY BUREAU,**

Complainant

WQCC 17-08 (A)

v.

**ABEL VILLALPANDO D.B.A. ROCKHILL DAIRY,
ROCKHILL DAIRY, L.L.C.**

Respondent.

**NEW MEXICO ENVIRONMENT DEPARTMENT'S MOTION TO STRIKE
RESPONDENTS' PROPOSED FINDINGS AND CLOSING ARGUMENT**

Comes now the Ground Water Quality Bureau ("Bureau") of the New Mexico Environment Department ("Department"), pursuant to 20.1.3.15 NMAC, and hereby moves that the hearing officer in this matter strike Respondents', Abel Villalpando dba Rockhill Dairy and Rockhill Dairy, LLC, Proposed Findings and Closing Arguments filed on June 13, 2018. Respondents' Proposed Findings and Closing Arguments violate the rules governing the inadmissibility of confidential settlement discussions and attempt to submit new evidence after the close of the hearing in violation of 20.1.3.20.C and 20.1.3.21.B NMAC, respectively. Due to the dispositive nature of this motion concerning the post-hearing submittals, the Bureau did not seek or obtain Respondents' concurrence. As grounds for this motion, the Bureau states as follows:

1. The Procedural Regulations, 20.1.3 NMAC, allow post hearing submittals in the form of Proposed Findings of Fact and Conclusions of Law and Closing Arguments. 20.1.3.21.B NMAC.
2. The New Mexico Water Quality Control Commission ("Commission") and the appointed hearing officer directed the parties to submit post-hearing submittals, if desired, by June 15, 2018. TR 125:20-126:25; Notice of Transcript Filing.
3. The Procedural Regulations state:
 - a. Evidence relating to settlement that would be excluded in the courts under SCRA 1986, 11-408 is not admissible. 20.1.3.20.C(1) NMAC.

b. Rule 11-408 NMRA states, in relevant part:

Evidence of the following is not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or contradiction: (1) furnishing, promising, or offering - or accepting, promising to accept, or offering to accept - a valuable consideration in order to compromise the claim; and (2) conduct or a statement made during compromise negotiations about the claim.

c. No new evidence shall be submitted in post-hearing submittals unless otherwise allowed by the hearing officer. 20.1.3.21.B NMAC.

4. In the Proposed Findings and Closing Arguments, Respondents seek to include interpretation of settlement discussions engaged in between the Bureau’s counsel and Mr. Villalpando. Specifically, Respondents seek to offer statements suggesting that the Bureau made a particular offer in order to compromise its claim as well as alleged statements the Bureau made about its claim.

5. Throughout the hearing in this matter, the hearing officer and the Commission chair explicitly and repeatedly stated that settlement discussions are inadmissible. TR 86:8-87:18, 88:2-23, 96:19-97:1, and 98:2-17. Further, any testimony on that point would be limited as necessary to adhere to the Procedural Regulations. TR 86:16-18.

6. Respondents’ action of including an interpretation of settlement discussions after clear direction from the hearing officer and the Commission chair directly and willfully violates 20.1.3.20.C NMAC. Such information is inadmissible in this proceeding, and the Commission has not made such a determination discretionary.

7. Additionally, Respondents, for the first time, allege the existence of an oral contract between the Bureau and Rockhill Dairy. Respondents made no allegation of such a contract at the hearing or in pre-hearing filings or procedural conferences. *See* Record generally.

8. The Procedural Regulations direct that no new evidence be submitted in post-hearing submittals except as allowed by the hearing officer. 20.1.3.21.B NMAC.

9. The hearing officer closed the record in this matter, with the exception of post-hearing submittals, at the close of the hearing on May 8, 2018, stating that no new evidence would be admitted. TR 129:13-18.

10. By including this information in the Proposed Findings and Closing Argument, Respondents attempt to use the alleged existence of an oral contract to impermissibly sway the Commission after the close of the evidentiary record.

11. The bulk of the Proposed Findings and Closing Argument contains inadmissible discussion of settlement negotiations and improperly submitted evidence. *See* Proposed Findings and Closing Argument.

12. Further, Respondents have demonstrated repeated refusal to abide by the rulings, determinations, and directions of the hearing officer.

WHEREFORE, the Bureau respectfully requests that the hearing officer strike the entirety of Respondent's Proposed Findings and Closing Argument from the record and remove it from any consideration by the hearing officer or the Commission pursuant to her powers as outlined in 20.1.3.10 NMAC.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Christopher N. Atencio

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing New Mexico Environment Department's Motion to Strike Respondents' Proposed Findings and Closing Argument was delivered as described below to all parties on June 15, 2018.

Via First-Class U.S. Mail and electronic mail:

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/s/ Christopher N. Atencio
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