

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



IN THE MATTER OF:)
)
PROPOSED AMENDMENT TO)
PART 20.6.2 NMAC - COPPER RULE)
_____)

No. WQCC 12-01(R)

AMIGOS BRAVOS' MOTION TO POSTPONE THE HEARING

On January 8, 2013, the Hearing Officer announced at the Water Quality Control Commission ("the Commission") meeting that the Chair, Butch Tongate, Deputy Secretary of the New Mexico Environment Department ("NMED"), decided unilaterally to hear dispositive motions on NMED's draft Copper Rule at the beginning of the hearing on April 9, 2013. Because of this decision, Amigos Bravos respectfully request that the hearing currently scheduled for April 9, 2013 be postponed until June 11, 2013.

I. THE COMMISSION SHOULD HEAR AND DECIDE DISPOSITIVE MOTIONS BEFORE THE PARTIES ARE FORCED TO PREPARE FOR HEARING

By their nature, dispositive motions have the potential to dispose of an entire case. Therefore, to promote efficiency and conserve the parties' resources, the Procedural Order requires dispositive motions to be submitted and decided before the parties have to expend extensive resources preparing for hearing. Procedural Order, §102 - Prehearing Briefing. However, the Chair's decision to postpone the decision on dispositive motions until the hearing undermines the efficiency of deciding dispositive motions upfront by forcing the parties to prepare for hearing regardless of whether the Citizens' and Attorney General's motions are granted and this matter is remanded back to NMED. Though we are sure it is not intended, the Chair's decision implies a predetermined outcome of the motions and that the Commission will not seriously consider the motions filed. FMI itself requested that the Hearing Officer set up "a

process and timeframe for the filing of motions and responses, and to consider motions and responses in the first instance, and then to make a recommendation *to the Commission for action on any motions.*” FMI’s Written Response to Petition for Rulemaking, November 9, 2012, pages 1-2, emphasis added. A postponement of the hearing would also be consistent with FMI’s request.

At its November 9, 2012 meeting, the Commission discussed when it would hear dispositive motions. Since the Commission generally does not meet during the legislative session, it was decided that the Hearing Officer would set up a briefing schedule and perhaps the Commission would decide these motions on the second Tuesday in February, the Commission’s regular monthly meeting day. The Hearing Officer’s Procedural Order states “[t]he Hearing Officer and Commission Administrator will seek the concurrence of the Commission Chair in setting a Commission meeting on February 12, 2013, for the purpose of obtaining rulings on the motions presented.” Procedural Order, §102.E. The Commission Chair has now decided not to allow the Commission to resolve these motions in advance of the April 9, 2013 hearing. This delay in deciding dispositive motions greatly prejudices Amigos Bravos and forces the potentially unnecessary expenditure of its limited resources.

The Procedural Order requires that technical testimony, including the full direct testimony of all the witnesses, be filed by February 22, 2013 and rebuttal testimony be filed by March 15, 2013. Procedural Order, §§301 & 302. The expenditure of resources to prepare its full case prior to deciding dispositive motions is highly prejudicial to Amigos Bravos. Amigos Bravos has limited funds available to participate in this rulemaking and does not have the funds to prepare for a complex hearing unless they are certain such a hearing is going to proceed. Amigos Bravos is harmed by the Chair’s decision to delay a decision on dispositive motions until after all the work of preparing for hearing is done.

Using the same timeframe in Procedural Order, Amigos Bravos suggests that if the dispositive motions are decided at the Commission's April 9, 2013 meeting, then technical testimony could be filed by April 26, 2013 and rebuttal testimony be filed by May 24, 2013 and the hearing held on June 11, 2013.

II. NO TIME LIMIT TO PROMULGATE COPPER REGULATIONS, FMI IS NOT PREJUDICED BY POSTPONEMENT

NMSA 1978, §74-6-4.K requires the Commission to adopt specific regulations for the dairy industry and the copper industry. NMSA 1978, §74-6-4.K. There is no timeframe in the statute for the Commission to promulgate copper rules. Instead the Act requires the Commission to "allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing." NMSA 1978, §74-6-6.D. To allow Amigos Bravos the opportunity to fully participate in the proceeding, it is necessary to postpone the hearing to permit the Commission to decide dispositive motions. The Commission does not have a deadline in which to hold the hearing.

The Commission has regulated FMI for the past forty years without rules specific to the copper industry. FMI will continue to be regulated under the rules that are currently in place. FMI is not prejudiced by a postponement of the hearing and will continue with the status quo for compliance with the Water Quality Act. The Act was changed in 2009 to direct that copper specific regulations be promulgated. Four years have now passed. FMI will not be prejudiced by a two month postponement.

Turner Ranch and the Gila Resources Information Project concur in this motion.

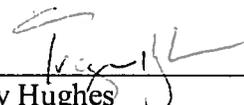
CONCLUSION

Amigos Bravos is harmed if the Commission delays deciding dispositive motions. The Commission does not have a time limit on how long it takes to promulgate the proposed Copper Rule. NMSA 1978, §74-6-4.K. FMI is not prejudiced by delaying the start of the hearing until

after dispositive motions are decided. Amigos Bravos respectfully request that the hearing currently scheduled for April 9, 2013 be postponed until June 11, 2013.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2013 I sent Amigos Bravos Motion to Postpone the Hearing by first-class mail or hand delivery to the following:

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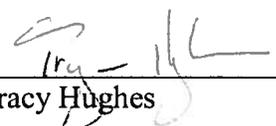
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