

COPY

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



In the Matter of:)
)
PROPOSED AMENDMENT)
TO 20.6.2 NMAC (Dairy Rule))
_____)

No. WQCC 09-13(R)

NOTICE OF SETTLEMENT, AMENDED MOTION FOR STAY OF DAIRY RULE,
AND STIPULATION

The parties to negotiations regarding settlement of the appealed Dairy Rule hereby notify the Commission of a settlement and a stipulation regarding a stay of the Dairy Rule pending the Commission's consideration of agreed-upon amendments. On January 21, 2011 the Dairy Industry Group for a Clean Environment ("DIGCE") filed a Notice of Appeal of the Dairy Rule, and on January 28, 2011, DIGCE filed a Motion for Stay and Request for Hearing regarding the Dairy Rule. On April 5, 2011, prior to a hearing on the motion scheduled before the Commission, DIGCE, the New Mexico Environment Department ("Department"), and Amigos Bravos, the Caballo Concerned Citizens, and the Sierra Club Rio Grande Chapter (collectively, "the Coalition") filed a Stipulation on Motion for Stay which, among other things, postponed a hearing on the Motion for Stay pending settlement negotiations. Subsequently, the Motion for Stay was set for a hearing before the Commission on July 12, 2011, but the Parties continued to negotiate.

On July 7, 2011, DIGCE, the Department, and the Coalition signed a Settlement Agreement resolving all issues raised in DIGCE's appeal of the Dairy Rule to the New Mexico Court of Appeals. The settlement provides that the parties will jointly petition the Commission

to amend 20.6.2 NMAC to make changes to the rule consistent with the terms of the settlement. Once the settlement terms are carried out, DIGCE will withdraw its appeal of the Dairy Rules.

The Parties also agreed to seek a stipulated Stay of the Dairy Rule from the Commission until such time as an amended rule is adopted by the WQCC. Based upon the settlement, DIGCE amends its Motion for Stay to request a Stay consistent with the Settlement Agreement, *i.e.*, a Stay of the Dairy Rule is requested until such time as an amended rule is adopted by the Commission, after which the Dairy Rule will go into effect. The Department and the Coalition stipulate to a Stay of the Dairy Rule for that same period.

DIGCE, the Department and the Coalition will prepare and file with the Commission a joint petition requesting the amendments to the Dairy Rule identified in the Settlement Agreement. That petition is expected to be filed within the next few weeks and in time for the Commission to set a hearing on the proposed amendments by October 2011.

The Water Quality Control Commission may grant a stay of a rule it has adopted, pending an appeal, pursuant to NMSA 1978, § 74-6-7.C. Section 74-6-7.C provides that

After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted pending the outcome of the judicial review. The stay of the action may be granted by the commission or by the court of appeals if the commission denies a stay within ninety days after receipt of the application.

The Commission has set a hearing regarding DIGCE's Motion for Stay for July 12, 2011. The parties to the Settlement Agreement stipulate that there is good cause for the Commission to grant a stay consistent with the terms set forth above in order to carry out the settlement, to achieve dismissal of the pending appeal, and to allow the Dairy Rule to go into effect. For these reasons, DIGCE, the Department and the Coalition hereby request that the Commission grant a stay of the Dairy Rule for a period until the Commission can consider and, if it so chooses, adopt the amendments to the Dairy Rule

upon which the parties have agreed.

Respectfully submitted,



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Certificate of Service:

I hereby certify that a true and accurate Copy of the foregoing pleading was served upon the following parties this 8th day of July 2011 by electronic mail:

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