

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



In the Matter of:)
)
PROPOSED AMENDMENT)
TO 20.6.6 NMAC (Dairy Rule))
)

**WQCC 12-09 (R) and
WQCC 13-08 (R)**

**DIGCE’S RESPONSE TO THE “COALITION’S” MOTION FOR A PARTIAL CHANGE
OF VENUE AND RESCHEDULING**

Petitioner the Dairy Industry Group for a Clean Environment, Inc. (hereinafter, “DIGCE”) hereby responds to and opposes the Coalition’s Motion for a Partial Change of Venue and Rescheduling (“Motion”). As discussed in more detail below, the Motion is untimely; addresses, without raising any new facts or arguments, issues that already have been heard and decided by the Commission and the courts; does not identify any harm or prejudice to the Coalition if the Motion is denied; and would unduly prejudice DIGCE, the Petitioner in these matters, if granted.

Procedural History

1. The location of the hearing on these matters, including the Environment Department’s proposal to conduct the hearing in Roswell, New Mexico, was discussed among the parties at a scheduling conference on August 22, 2014.
2. The Commission, at its regular meeting on September 9, 2014, heard arguments by the parties regarding the location of the hearing and voted unanimously to hold the hearing in Roswell.
3. Public notices of the hearing location were issued in September 2014, and the hearing location in Roswell was indicated in the Procedural Order issued on October 3, 2014.
4. On October 2, 2014, one of the Coalition members, the Rio Grande Chapter of the Sierra Club (“Sierra Club”), filed a Verified Petition for a Writ of Mandamus in the First Judicial District seeking to require that the public hearing on these matters be held in Santa Fe rather than in

Roswell. On October 6, 2014, the Court issued an Alternative Writ of Mandamus. Following responses by the parties and a hearing on November 25, 2014, Judge Attrep issued an Order Quashing the Alternative and Denying the Peremptory Writ of Mandamus.

5. On December 1, 2014, the Sierra Club filed a Verified Writ of Superintending Control Of [sic] Other Appropriate Writ in the New Mexico Supreme Court requesting that the Supreme Court issue a writ to Judge Attrep or, alternatively, to the Commission, requiring that the hearing on these matters be set in Santa Fe rather than in Roswell.

6. By its Order dated December 15, 2014, the Supreme Court declined to issue a Writ requiring that the hearing be held in Santa Fe.

7. At its meeting on January 13, 2015, the Commission rescheduled the hearing on these matters to begin on April 6, 2015, in Roswell.

8. Public notices of the hearing were again issued in January 2015 with supplemental public notices issued by Order of the Hearing Officer in February 2015.

Arguments in Response to the Motion

9. The Motion was filed on March 23, 2015, just two weeks before the start of the scheduled hearing, nearly 11 weeks after the Commission rescheduled the hearing for Roswell, and several weeks after the public notices were issued.

10. The Motion requests that the technical portion of the hearing be set for Santa Fe, rather than Roswell. The issue of the hearing location, and the legal arguments regarding that issue, have been addressed and decided repeatedly, by the Commission at its September 9, 2014, and January 13, 2015, meetings and in the proceedings before the First Judicial District and the Supreme Court. The Motion presents no new arguments or information relating to that issue.

11. The Motion requests that public testimony be taken in additional locations other than Roswell. Again, the Motion presents no information or arguments on this point that either already

has been, or should have been, presented and considered in prior proceedings, including the two Commission meetings on the hearing schedule.

12. As to the other pending motions referenced in the Motion, two have been filed and served upon DIGCE: the Attorney General's Motion to Disqualify Hearing Officer and the Environment Department's Motion for Leave to File Amendment Notices of Intent to Present Technical and Rebuttal Testimony. Although the Motion suggests that "deferring" the hearing from April to June would "allow sufficient time to assure all pending issues are resolved prior to the hearing," the Motion does not explain why rulings on the pending motions cannot be made and the issues resolved before the scheduled commencement of the hearing on April 6.

13. The Motion does not identify any actual or potential prejudice to the Coalition if the Motion is not granted. In particular, the Motion does not indicate that any of the Coalition's witnesses are unavailable or that the Coalition will otherwise be prejudiced if the hearing goes forward as scheduled on April 6.

14. DIGCE, on the other hand, will be prejudiced if the Motion is granted. DIGCE has been waiting on a hearing on its Petitions in these matters since September 2012 and August 2013. Prior scheduled hearings have been continued for various reasons including, most recently, the Sierra Club's court actions that lead to the continuance of the December 9, 2014, scheduled hearing. In the meantime, dairy operators continue to receive discharge permits and to file Variance Petitions to obtain relief from the same permit conditions that are the subject of the proposed dairy rule amendments. Moreover, DIGCE has been required to prepare and pay for publication of multiple public notices of the scheduled hearings.

15. In addition, the Motion requests that the hearing be rescheduled until June 2015. The Commission previously has scheduled the hearing on the Triennial Review rulemaking to be held in June, as a result of rescheduling the hearing in these matters in April, the previous hearing

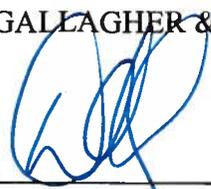
date for the Triennial Review. Considering the potential reluctance of the Commission to again reschedule the Triennial Review hearing, the hearing in these matters, if rescheduled, may not take place in June.

16. Based on the foregoing, DIGCE contends that the Motion should be denied as (1) being untimely, (2) because the issues raised in the Motion already have been addressed, or reasonably should have been raised and addressed, in previous proceedings, (3) because there is no evidence that the other pending motions cannot be decided in an orderly and timely manner before the hearing is scheduled to begin, (4) because denial of the Motion will not prejudice the Coalition, and (5) because granting the Motion will prejudice DIGCE and its members.

WHEREFORE, DIGCE respectfully requests that the Hearing Officer and/or the Commission deny the Motion. In the event that the Motion is granted, DIGCE requests that the Coalition be ordered to pay all costs of new public notices made necessary as a result of the Motion.

Respectfully Submitted,

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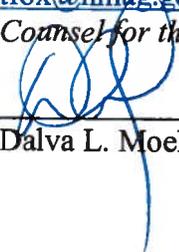
I hereby certify that a true and accurate copy of the foregoing pleading was served upon the following parties of record by mail, hand-delivery and/or electronic mail this Wednesday, March 25, 2015:

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