

Hernandez, Jessica, GOV

From: Moore, Brian, GOV
Sent: Monday, January 03, 2011 4:35 PM
To: Hernandez, Jessica, GOV
Subject: FW: Executive Order
What do you think?

From: Trujillo, Anthony J. [mailto:AJT@gknet.com]
Sent: Monday, January 03, 2011 3:59 PM
To: Moore, Brian K
Subject: Executive Order

Brian:

My client, Walter Bradley, asked that I send you an e-mail regarding the status of the dairy rules and how such rules relate to the new Executive Order. In short, the dairy rules were voted on by the Water Quality Control Commission (WQCC) mid-December of 2010, and the rules are set to be published by the state records center mid-January of 2011.

Pursuant to the State Rules Act, Section 14-4-5 NMSA 1978 states: "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register."

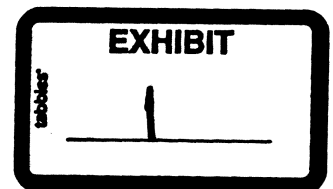
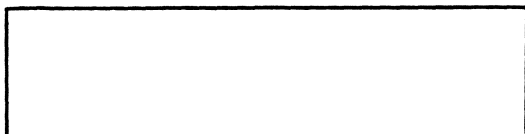
Applying Section 14-4-5 NMSA 1978 to the dairy rules, the rules will not be effective, valid, or enforceable until mid-January when such rules are published in the New Mexico register. Therefore, the dairy rules are pending, and they clearly fall under the new Executive Order.

In turn, I called John Martinez, Administrative Law Division Director, to determine how this state agency would deal with the dairy rules in light of the new Executive Order. Mr. Martinez informed me that the Administrative Law Division would proceed with publication of the dairy rules unless they received notification from the WQCC that the dairy rules needed to be pulled pursuant to the Executive Order. Moreover, the last day to stop publication of the dairy rules is tomorrow due to the fact that the rules have to get type-setted for publication in the New Mexico register. Finally, Mr. Martinez told me that he was planning on calling Keith Gardner to discuss this situation and several other rules that are pending.

In response, I called Mr. Bradley to inform him of the situation. My interpretation of the Executive Order is that it would apply to the actions of the Administrative Law Division; therefore, they would have the authority to stop the publication of the dairy rules independent of any action by the WQCC. The rules are not final until they are published in the New Mexico register. I told Mr. Bradley that it might be useful to discuss the situation with Mr. Martinez to determine an appropriate method of proceeding forward. The telephone number for Mr. Martinez is 476-7941.

Please let me know if you have any further question or need additional information.

Thanks,
T.J.



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Anthony (T.J.) J. Trujillo

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