

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

OCCASION 01
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**IN THE MATTER OF THE APPLICATION OF
RICHARDSON OPERATING COMPANY TO
ESTABLISH A SPECIAL "INFILL WELL" AREA
WITHIN THE BASIN-FRUITLAND COAL GAS
POOL AS PROVIDED BY RULE 4
OF THE SPECIAL RULES FOR THIS POOL,
SAN JUAN COUNTY, NEW MEXICO.**

Case No. 12734 (De Novo)

APPLICATION FOR REHEARING

San Juan Coal Company ("SJCC") hereby requests rehearing by the Oil Conservation Commission ("OCC") pursuant to NMSA 1978 Section 70-2-25 (Cum. Supp. 2001) in respect of the matters determined adversely to SJCC by the OCC's Order of December 19, 2002 ("Order"). In particular, SJCC sets forth the following respects in which it believes the Order is erroneous:

1. The Commission has broad authority to prevent waste, and the definition of "waste" in the Oil and Gas Act is not limited to gas. NMSA 1978 Section 70-2-2 and Section 70-2-3. The OCC has jurisdiction to consider waste of the coal resource. In paragraph 62 of its Order, the OCC erroneously concludes that it lacks jurisdiction to consider waste of the coal resource. Moreover, ignoring damage by marginal wells to a major coal deposit is bad policy. Additional infill wells will cause both economic loss for the mine and waste of coal. The OCC's finding in paragraph 24 that SJCC's principal objections seem to be safety and cost fails to mention or address SJCC's critical additional objection to the waste of coal.

2. The OCC's decision that it does not have authority to consider the waste of the coal resource (Order, paragraph 62) is inconsistent with the OCC's unnecessary and unsupported comments in paragraph 75 of the Order about SJCC's plan to develop it. When the OCC finds

that it lacks jurisdiction to consider the waste of coal resulting from SJCC's deviation from its mine plan to bypass wells, it should not then proceed in paragraph 75 to comment upon the perceived adequacy of the coal mine's planning. The OCC should not have it both ways. If the OCC believes that it does not have authority, under the Oil and Gas Act, to consider the coal mining issues inherent in the waste of coal, then paragraphs 75 and 76 of the Order should be stricken. Moreover, the record does not support the findings in these paragraphs.

3. Richardson Operating Company ("Richardson") has failed to meet the criteria of NMSA 1978 Section 70-2-17.B for establishing a proration unit. Under this statutory section, the OCC must consider "economic loss caused by the drilling of unnecessary wells," and "the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells." Even if, as a technical matter, a well may drain 160 acres, and not 320 acres, it must be "efficient" and "economic" under Section 70-2-17.B to drill and produce the well before the OCC should allow it. Evidence at hearing established that many of Richardson's wells are not economic. The OCC erred in granting the infill application in the face of Richardson's failure to establish that the area can be efficiently and economically drained by additional wells. In particular, the OCC failed to consider adequately, as required by Section 70-2-17.B, either economic loss to SJCC caused by the drilling of unnecessary wells or the avoidance of the augmentation of risk arising from the drilling of an excessive number of wells. The OCC's stated view that determining whether a well is commercial is an "academic exercise," and its deference to Richardson's being "willing to accept the risk," see paragraph 22 of the Order, evidence its failure to follow the Section 70-2-17.B factors. The findings of paragraph 12 of the Order do not support a conclusion of economic reserves throughout the application area. The OCC's grant of the application is erroneous in light of its recognition that the Cox model is not

reliable. Moreover, the OCC should have recognized that desorption data demonstrates that the Cox model's hypothetical gas content is too high, and many of Richardson's existing wells and proposed wells are not economic.

4. Under NMSA 1978 Section 70-2-12.B(5), the OCC is authorized to make orders to "prevent fires." SJCC raised serious safety concerns that stem from increased risk of fires caused by additional wellbores and coal seam fracturing. The OCC failed to address them.

5. Under NMSA 1978 Section 70-2-12.B(7), the OCC is authorized to "require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or property." In paragraph 63 of its Order, the OCC recognizes its failure to address injury to neighboring leases and properties. Its failure was in part apparently based on the erroneous finding that the evidence does not support that granting Richardson's application will harm SJCC's mine operations. See Order, paragraph 63. Moreover, in paragraph 63, the OCC erroneously declined to recognize that the coalbed and the gas within it are neighboring estates.

6. Under NMSA 1978 Section 70-2-26, Secretarial review is available "to determine whether an order or decision issued by the Commission contravenes the public interest." The evidence at hearing was clear that the "public interest" is served by the denial of Richardson's infill application. Denial would mitigate the threat of loss to the State of tens, and perhaps hundreds, of millions of dollars in royalty revenue, and would help avoid the potential impact upon SJCC and San Juan Generating Station affecting employment and reliability of electricity. Paragraph 64 of the Order erroneously fails to apply the "public interest" standard to deny Richardson's application.

7. Similarly, the Oil and Gas Act confers upon the OCC authority to "exercise due regard for the conservation of the state's oil, gas **and mineral resources.**" (Emphasis added.)

NMSA 1978 Section 70-2-26. The jurisdiction of the OCC extends beyond oil and gas to other mineral resources such as coal. The OCC failed to recognize this fact and misapplied the "conservation" standard in paragraph 64 of its Order.

8. The OCC fails to recognize that infill will dramatically reduce royalty to the State of New Mexico and the United States. The OCC should compare generally, at least as an order of magnitude, the estimated royalty generated from coal bed methane infill wells with that generated from SJCC's coal mine. This comparison shows that granting of Richardson's infill application serves to deprive the State and the United States of many millions of dollars in royalty, contrary to the public interest and in waste of the coal resource.

9. The OCC misconstrues the import of MSHA regulations (see, e.g., paragraphs 44 and 45). Contrary to OCC's suggestion at paragraph 44 of the Order, SJCC does not claim the Act and regulations are inadequate to protect safety. Rather, the point is that, although the regulations may be adequate to protect safety, they are not an adequate solution to the problems caused by granting the infill application. MSHA regulations are inadequate as a solution because they require bypass and waste of coal worth many times the value of gas from the well that requires bypass. It is improper and contrary to public interest for OCC to encourage the waste of coal and economic loss to SJCC by allowing infill wells without due regard for the comparative values of gas and coal. The OCC also fails to recognize that fracturing the coal will damage the mine roof, and can endanger mining operations and miner safety.

10. SJCC has the right to vent gas under the Supreme Court decision of Amoco Production Co. v. Southern Ute Tribe, 526 U.S. 865, 879 (1999), the terms of its state leases, and other authority. Furthermore, it is appropriate to vent the less valuable gas resource as a necessary step in the development of the much more valuable coal resource. The OCC should

recognize the propriety of doing so, especially in the context of relative value. The OCC's consideration of relative value of coal and gas in paragraph 76 of its Order is entirely inadequate and leads to the wrong result.

11. Evidence demonstrated that the "Pictured Cliffs" wells already drilled by Richardson are producing from the Fruitland coal, and those Pictured Cliffs wells are the better producers. Therefore, the existing Pictured Cliffs wells already effectively provide Richardson with the drainage it seeks. The OCC failed to recognize this effect of the Pictured Cliffs wells.

12. The OCC erred in paragraph 72 in granting the Motion to Strike only with respect to Exhibit E-4. The Motion to Strike should be granted in full.

13. The OCC erred in denying SJCC's Motion to Supplement the Record. SJCC should be entitled to respond to questions by a Commissioner about its desorption data, just as Mr. Cox was allowed to respond to questions about his model.

14. In its December 9 filing, Richardson offered an affidavit of David Cox in rebuttal. The offer of that affidavit was improper, and the Order implicitly rejects it. However, for the record, the Order should expressly reject it.

For the foregoing reasons, SJCC respectfully requests rehearing of this matter.

Respectfully Submitted,

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CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing pleading was served upon counsel of record in the manner indicated this 8th day of January, 2003:

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