

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

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**APPLICATION OF HILCORP ENERGY  
COMPANY TO AMEND THE WELL  
DENSITY AND LOCATION  
REQUIREMENTS AND ADMINISTRATIVE  
EXCEPTIONS OF THE SPECIAL RULES  
FOR THE BLANCO-MESAVERDE GAS  
POOL, RIO ARRIBA AND SAN JUAN  
COUNTIES, NEW MEXICO**

**Case No: 16403**

**MOTION FOR CONTINUANCE**

**Intervenor's name:**  
San Juan Citizens Alliance

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In accordance with NMRA 1-094.

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San Juan Citizens Alliance (SJCA), through its undersigned counsel, respectfully moves pursuant to New Mexico Administrative Code (NMAC) 19.15.4.1(C) to request a Motion for Continuance in this matter until the Oil Conservation Commission's (OCC) December 2018 hearing.

On August 7, 2018, Hilcorp Energy Company ("Hilcorp") submitted an application to the New Mexico Oil Conservation Division (OCD) seeking to amend the well density, location requirements, and administrative exceptions to the Special Rules for the Blanco-Mesaverde Gas Pool in Rio Arriba and San Juan Counties, New Mexico. *See* Hilcorp application, Case No. 16403 ("Case No. 16403") (While the cover letter has a date of August 8, 2018, it states that the application was submitted the day prior). The OCD subsequently approved the request for a hearing regarding Case No. 16403, before the Oil Conservation Commission (OCC), with a scheduled hearing date of September 13, 2018. *See* Notice of Hearing, State of New Mexico Oil Conservation Commission (dated August 21, 2018).

This matter is of great public importance. Granting Hilcorp's application has the potential to double the number of wells in the Blanco-Mesaverde Gas Pool, from 5,329 Hilcorp-operated wells to more than 10,000 wells,<sup>1</sup> without providing any further public process to neighboring landowners or other affected residents. *See* Case No. 16403 application (stating that Hilcorp currently operates 5,329 wells in the Blanco-Mesaverde Gas Pool). Such an increase in oil and gas activity has significant potential to cause harms that the OCC is empowered to mitigate, in particular injury to neighboring properties, risk to groundwater, and risk to public health and environment from nondomestic waste. Moreover, it is not clear that a by-right doubling of the

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<sup>1</sup> This number does not include wells owned and operated by other companies.

number of wells in the Blanco-Mesaverde Gas Pool will lead to efficiencies in the oil and gas extraction process—in fact, it may lead to economic losses and further waste of natural gas.

SJCA believes that a continuance is warranted on four grounds: 1) Mr. Don Schreiber, a key witness, SJCA member, and landowner in Rio Arriba County, has a pre-existing commitment on the hearing date and will therefore be unable to provide testimony about potential injuries resulting from the action; 2) SJCA should have received personal notice of Case No. 16403; 3) SJCA requires more time to prepare their case in order to properly inform the OCC about risks to property, groundwater, and public health and the environment, as well as potential economic losses and waste, that the Commission is authorized to consider by law; and 4) this is a matter of great public importance on which the public should be granted more notice and an opportunity to be heard.

**1. Mr. Don Schreiber, a key witness, SJCA member, and landowner in Rio Arriba County, has a pre-existing commitment on the hearing date and will therefore be unable to provide testimony.**

Mr. Don Schreiber is a rancher and resident of Rio Arriba County, and one of many residents of the San Juan Basin who has been—and undoubtedly will continue to be—affected by oil and gas drilling in the Blanco-Mesaverde Gas Pool. Mr. Schreiber’s ranch house is in sight of 10 active wells, and he works daily amongst hundreds of wells operating on the same land as his 3,000 acre grazing permit. Specifically, the significant loss of grazing forage and water on this land has directly affected his way of life. Erosion at well pads also continues to destroy grazing lands and impact Mr. Schreiber’s business. Mr. Schreiber is very concerned by the noxious gases that are emitted from these wells, included the direct venting of flowback gases at several sites.

The Oil and Gas Act authorizes the OCD to consider in its adjudications the prevention of injury to neighboring properties, *see* NMSA § 70-2-12(B)(7), protection of groundwater, *see id.* at §§ 70-2-12(B)(15) and (22), and prevention of injury to public health and the environment from nondomestic waste as a result of oil and gas operations, *see id.* at §§ 70-2-12(B)(21) and (22).

Mr. Schreiber is prepared to testify before the OCC, and his testimony would provide the Commission with critical information about how this action has the potential to affect his property, groundwater, and the region's public health and environment. However, Mr. Schreiber is unable to attend this hearing due to a prior commitment to the Rocky Mountain Farmers Union—of which he is a member—to join National Farmers Union members in Washington, DC, from September 11 – 14 to advocate for America's farmers and ranchers.

Approval of this Motion for Continuance will enable Mr. Schreiber to come before the OCC and provide information about how increased well density and changes in spacing rules could cause substantial injury to his property, groundwater, and the public health and environment.

## **2. SJCA should have received personal notice of Case No. 16403.**

SJCA previously filed a motion to intervene in a substantially similar matter, and therefore should have been served personal notice of this matter.

19.15.4.9 NMAC requires notice to be provided ahead of an OCC hearing at least 20 days in advance by posting on the OCD website, publication in a newspaper of general circulation in the counties the application affects, and by personal delivery via mail or electronic mail “to each

*person who has requested in writing to be notified of such hearings.”* 19.15.4.9 B. NMAC (emphasis added).

In May of 2018, Hilcorp filed a substantially similar application with the OCD to change administrative rules for the Blanco-Mesaverde Gas Pool. *See* Application of Hilcorp Energy Co., Case No. 16193 (“Case No. 16193 Application”) (requesting to amend the well density requirements and administrative exceptions of the Special Rules for the Blanco-Mesaverde Gas Pool to permit administrative approval for well density exceptions, Rio Arriba and San Juan Counties, New Mexico). SJCA filed a Notice of Intervention and a Motion for Continuance in that matter, (*see* SJCA Notice of Intervention to Case No. 16193 and SJCA Motion for Continuance to Case No. 16193), at which point Hilcorp withdrew their application.

On August 7, 2018, Hilcorp filed its application in this matter, Case No. 16403, with a substantially similar proposal to the one it made in Case No. 16193. *See* Application of Hilcorp Energy Co., Case. No. 16403 (“Case No. 16403 Application”). In its application, Hilcorp stated that it provided all operators in the area with personal notice of its application. *Id.*

The OCD subsequently issued notice of the September 13, 2018, hearing in this matter on August 21, 2018. *See* OCC Notice of Hearing (dated August 21, 2018). The notice was published in the *Farmington Daily Times* on August 23, 2018. *See* Notice of Hearing, State of New Mexico Oil Conservation Commission, *Farmington Daily Times* (Aug. 23, 2018).

In contrast to the operators who received personal notice of this matter prior to August 7, 2018, SJCA did not learn of the matter until August 23, 2018.

SJCA’s written motion to intervene in the matter of Case No. 16193 should be deemed as “a request in writing to be notified of such hearings” under 19.15.4.9(B)(2) NMAC. If granted, SJCA’s written motion to intervene in the prior case would have required personal service by

Hilcorp to SJCA, including personal service of any amended complaint. SJCA had no way of knowing that after withdrawing its initial proposal, Hilcorp would then submit an amended application as a new matter. SJCA's written motion to intervene in the prior, substantially similar case should therefore be deemed to be a written request to be notified of hearings in this subsequent matter.

Hilcorp did not provide personal notice to SJCA at least 20 days prior to the hearing date, as it did with operators. Because Hilcorp failed to provide personal notice where such notice had been requested through a written motion for intervention in a substantially similar case, the Commission should grant a motion for continuance in this case.

**3. SJCA requires more time to prepare their case in order to properly inform the OCC about risks to property, groundwater, and public health and the environment, as well as potential waste of resources and economic loss, that the OCC is authorized to consider.**

SJCA seeks to provide the commission with testimony from witnesses, expert witnesses, and exhibits that can inform the commission about the potential harms that are likely to result from this action, and that the Commission is authorized—and in some cases required—to consider under the Oil and Gas Act. Informed consideration of these issues is also in keeping with the Oil Conservation Division's goal to “strive for balance that supports the industry while protecting the environment, with decisions based on sound science.”<sup>2</sup>

While Hilcorp has had more than three months to consult with experts and prepare for this hearing since they withdrew their previous application, SJCA has had less than 20 days notice. This is insufficient time to adequately prepare a case to inform the Commission in this

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<sup>2</sup> Energy, Minerals, and Natural Resources Department, 2017 Annual Report 12 (2018), [http://www.emnrd.state.nm.us/ADMIN/documents/Final\\_2017\\_Annual\\_Report.pdf](http://www.emnrd.state.nm.us/ADMIN/documents/Final_2017_Annual_Report.pdf).

complicated matter that has the potential to lead to an increase of more than 5,000 Hilcorp-operated wells in the Blanco-Mesaverde Gas Pool (*See* Case. No. 16403 application).

As noted above, the Oil and Gas Act authorizes the OCC to consider risks to property and groundwater, as well as risks to public health and environment from nondomestic oil and gas waste, in its adjudications. NMSA §§ 70-2-12(B)(1)-(2), (7), (21)-(22). SJCA is seeking to identify other witnesses, including additional landowners in the region, expert witnesses, and exhibits that can inform the commission about such harms likely to result from this action. For example, Prof. Mark Squillace has written about the potential impacts of “breakneck” oil and gas development on surface properties, groundwater, air quality, and communities. *See* Mark Squillace, *Managing Unconventional Oil and Gas Development As If Communities Mattered*, 40 Vt. L. Rev. 525 (2015-2016) (although this article focuses on unconventional oil and gas development, many of the impacts noted can also apply to intensive conventional oil and gas development).

Moreover, the Oil and Gas Act requires that the OCC “shall ... consider the economic loss caused by the drilling of unnecessary wells” and “avoidance of the augmentation of risks arising from the drilling of an excessive number of wells.” NMSA § 70-2-17(B). Increases in well density are not necessarily efficient, and may lead to economic losses. SJCA is similarly seeking to identify expert witnesses and exhibits that can inform the commission about why the current special exception process continues to be appropriate given the potential for economic loss. For example, in a 2017 article published by the Society of Petroleum Engineers, engineers have found that suboptimal well spacing in fracking wells may lead to “poorer than expected

production.”<sup>3</sup> The paper found that in some instances, the drilling of new wells can actually lead to a decrease in production of older nearby wells. This paper, and others like it, lends credibility to the notion that well spacing and density exceptions should be made on a case-by-case basis, and a change to the Special Rules for the Blanco-Mesaverde Gas Pool may lead to economic loss.

Finally, the chief purpose of Oil and Gas Act is to prevent waste of oil and gas resources. *See* NMSA § 70-2-11 (A). Numerous reports have identified a “large-scale methane hotspot” in the San Juan Basin, and a recent study using NASA instruments confirmed that “most of the enhanced methane is related to natural gas extraction.”<sup>4</sup> This study suggests that significant waste is resulting from drilling operations themselves and from natural gas storage. SJCA seeks to provide expert witness testimony and exhibits demonstrating how a by-right doubling of wells can lead to further waste of natural gas.

**4. This is a case of substantial public importance, and the public should be granted additional notice and an opportunity to be heard.**

As a broad-based membership organization, the SJCA believes that there will be substantial public interest in the sweeping application and its likely negative effects on San Juan and Rio Arriba counties. The SJCA needs more time, however, to engage with its members and the public to inform them of these complicated issues so that they can choose to testify at a hearing.

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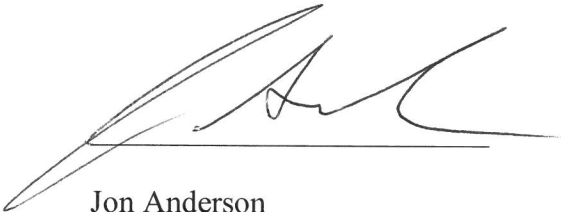
<sup>3</sup> Trent Jacobs, *Frac Hits Reveal Well Spacing May be Too Tight, Completion Volumes Too Large*, JOURNAL OF PETROLEUM TECHNOLOGY, SOCIETY OF PETROLEUM ENGINEERS (2017), <http://www.spe.org/en/jpt/jpt-article-detail/?art=3510>.

<sup>4</sup> The study was conducted by researchers from the California Institute of Technology, University of Michigan, and University of Colorado. Christian Frankenberg et al., *Airborne Methane Remote Measurements Reveal Heavy Tail Flux Distribution in Four Corners Region*, Proceedings of the National Academy of Sciences of the United States of America, June 17, 2016, <http://www.pnas.org/cgi/doi/10.1073/pnas.1605617113>.

## CONCLUSION

For the aforementioned reasons, SJCA respectfully requests that this Motion for Continuance be approved and the hearing be rescheduled for December 2018 in order to enable SJCA to consult with the requisite experts and affected landowners, so that the potential impacts of this action can be thoroughly and properly evaluated. Granting SJCA's request to continue the hearing until December 2018 would grant SJCA approximately three months to develop their case, a comparable amount of time to what Hilcorp was afforded by withdrawing and then resubmitting their May 2018 application.

Respectfully Submitted,



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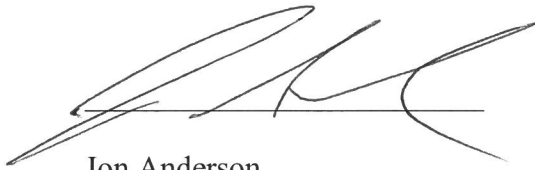
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2018, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

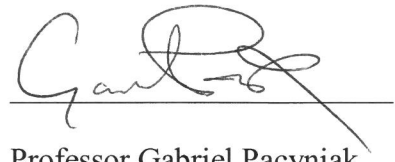
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