

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

**Ms. Florene Davidson
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New Mexico Oil Conservation Division
1220 South St. Francis Drive
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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

RESPONSE TO MOTION TO STRIKE NOTICE OF INTERVENTION

Intervenor's name:
San Juan Citizens Alliance

Intervenor's address:
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Farmington, NM 87499
E-Mail: Info@SanJuanCitizens.org
Phone: 505-325-6724

Address of intervenor's attorney:
University of New Mexico School of Law
Natural Resources and Environmental Law Clinic
Jon Anderson, Clinical Law Student,
Working under the supervision of
Prof. Gabriel Pacyniak, Supervising Attorney,
In accordance with NMRA 1-094.

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San Juan Citizens Alliance (“SJCA”), through its undersigned counsel, files this motion responding to Hilcorp Energy Company’s (“Hilcorp”) Motion to Strike Notice of Intervention in Case No. 16403, filed on September 10, 2018.

SJCA responds to two specific points raised in Hilcorp’s Motion: 1) That the Notice of Intervention was not timely filed; and 2) that SJCA lacks standing to intervene.

1. OCC Chair May Grant Intervention Even Though Notice to Intervene Was Not Filed One Day Prior to Hearing

In the Motion to Strike Notice of Intervention, Hilcorp wrongly asserts that SJCA’s motion to intervene “must be denied” by the Commission because it was not filed one day before the pre-hearing statement was due.¹

The assertion that the OCC “must deny” SJCA’s application is, simply put, not true. 19.15.4.11(B) NMAC clearly states that “the commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date approved in Subsection A of 19.15.4.8 NMAC, or by oral appearance on the record at the hearing.” 19.15.4.11(B) NMAC. Therefore, the OCC Chair has the authority to approve SJCA’s Motion for Intervention at their discretion.

This is a matter of great public importance, and as such, we respectfully request that the OCC Chair grant SJCA’s motion for intervention under the authority provided in 19.15.4.11(B) NMAC. *See e.g., Attachment 1* (Letter from Conservation Voters New Mexico to Attorney

¹ 19.15.4.11(A) NMAC states that the Notice of Intervention must be filed “one business day before the date for filing a pre-hearing statement.” 19.15.4.11(A) NMAC. Counsel for SJCA is new to this venue and was engaged shortly prior to the filing date, and acknowledges that they should have filed notice of intervention one day prior to pre-hearing statement.

General Balderas citing concerns about environmental and economic impacts of Hilcorp's Application as well as due process concerns, and requesting that the Attorney General inquire into the matter); *see also* **Attachment 2** (*Santa Fe New Mexican* article stating that "environmentalists and some residents in Northern New Mexico are denouncing a move...that would allow for more extraction...in what they describe as an already densely drilled region," and that the New Mexico Attorney General's Office is "monitoring the issue.").

Hilcorp did not provide any reasons for how a one-day delay in the filing of a notice of intervention could impede their preparation for this hearing. In fact, SJCA previously filed a timely notice to intervene in a substantially similar application made by Hilcorp in May 2018, SJCA Notice of Intervention in Case No. 16193, and Hilcorp subsequently withdrew their application and then filed the new, amended application as a new matter in this current case. Hilcorp was therefore already informed that SJCA had an interest in the matter and would likely seek to intervene.

Given the important public interest in the case and the fact that Hilcorp knew of SJCA's interest in this matter from its May application, SJCA respectfully requests that the OCC Chair grant intervention under the authority of 19.15.4.11(B) NMAC.

(Motion continues on following page)

2. SJCA Does Not Lack Standing in This Matter, And Even If SJCA Did Lack Standing the Commission May Grant Intervention Due to SJCA's Substantial Contribution to the Protection of Public Health and the Environment.

In the Motion to Strike Notice of Intervention, Hilcorp argues that SJCA “lacks standing to intervene” and that SJCA “alleges no basis to establish standing with respect to the effective and efficient drainage of the Blanco-Mesaverde Gas Pool.” *See* Motion to Strike Notice of Intervention, ¶¶ 5, 8.

SJCA believes that our Notice of Intervention adequately explains our basis for standing in this matter, identifying SJCA's interests in protecting public health and the environment and due process. SJCA Notice of Intervention in Case No. 16403 at 2, 3 (“SJCA Notice of Intervention”). In its Motion for Continuance, SJCA also further articulated the interests of its members in preventing harm to “neighboring properties” and “groundwater,” both issues that the OCC is also authorized to consider. SJCA Motion for Continuance in Case No. 16403 at 4; *see* NMSA §§ 70-2-12(B)(7), (15), and (22) (authorizing SJCA to make orders with respect to “injury to neighboring ... properties” and groundwater).

Hilcorp's Motion to Strike notably fails to mention that, even without standing, the Division *explicitly* has the authority to grant intervention if the party shows that the “intervenor's participation will contribute substantially to the...*protection of public health or the environment.*” 19.15.4.11(C) NMSA. It is SJCA's position that even if the Division found that SJCA lacks standing in the matter, the Notice of Intervention should be approved because SJCA has shown that they can substantially contribute to the protection of public health and the environment. *See* Notice of Intervention at 4.

Hilcorp's Motion to Strike Notice of Intervention further states that SJCA “does not establish how the interest it seeks to protect – whatever that may be – can be redressed by the

Commission.” *See* Motion to Strike Notice of Intervention, ¶ 10. SJCA explicitly addressed the question of redressability in its Notice of Intervention, explaining that the Commission could redress potential harms to public health and the environment by denying Hilcorp’s application or using a rulemaking process. *See* Notice of Intervention, at 5.

Because Hilcorp did not identify valid regulatory constraints on OCC’s authority to grant intervention, and because there is substantial public interest in having SJCA inform the Commission of its consideration of this application, SJCA respectfully requests that the OCC grant SJCA’s Motion to Intervene.

Respectfully Submitted,



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Attachment 1



Attorney General Hector Balderas
Villagra Building
408 Galisteo Street
Santa Fe, NM 87501

Dear Attorney General Balderas,

I'm writing you today to bring to your attention to an action by the New Mexico Oil Conservation Commission (OCC) that I believe has the potential to have significant impacts on northern New Mexico communities and landscapes.

OCC is currently considering Case 16403, which would double the number of natural gas wells in San Juan and Rio Arriba counties in the Blanco/MesaVerde formation. There is a potential for 7,500 additional wells. The application, submitted by Hilcorp - the state's largest natural gas producer- seeks to double the number of wells by cutting in half the number of acres required to drill a Blanco/MesaVerde well. Currently it is 80 acres. The rule, if changed, would make it 40.

The Four Corners area of New Mexico is home to an unusually large cloud of methane. The National Oceanic and Atmospheric Administration concluded that leaks from the natural gas industry were a significant contributor to this cloud, or "Methane Hotspot". When drilling operations leak, vent and flare methane, they also release other harmful substances such as volatile organic compounds (VOCs). In the absence of a more robust state regulatory structure to limit these emissions, doubling well density has the potential to exacerbate this existing public health threat.

As you know from being a party to the conversation surrounding the retirement of the remaining two units of the San Juan Generating Station, San Juan County is finding itself in a time of energy and economic transition. One of the solutions that is quickly gaining traction in the area is the potential for the development of a robust and ambitious plan around supporting the outdoor recreation economy. Potentially doubling the intensiveness of extractive industry practices on surface lands may seriously limit the ability of San Juan County to develop this asset.

Additionally, using the OCC hearing process to add 7,500 wells effectively eliminates the federal protections that the public is normally afforded under the National Environmental Policy Act. Since NEPA's inception, federal protections have always been available to New Mexico citizens when a large environmental impact is contemplated on our state. In fact, oil and gas producers in the San Juan Basin are now all operating under the 2003 Department of Interior Resource Management Plan and its Environmental Impact Statement (EIS). That EIS contemplated future drilling in the Blanco/MesaVerde on 80 acre spacing, not 40. The OCC hearing process is flawed and takes federal rights away from New Mexico citizens.

Finally, there are serious questions about the functional sufficiency of the process that OCC has undertaken in soliciting public input and comment on this action. The announcement of the rule was printed in the legal section of two local papers on August 23, and the deadline for intervention in the case was seven (7) business days later. The legal notice and the deadline spanned the Labor Day holiday. Given the potentially enormous impacts of the adoption of this rule, I'm concerned that period of time is insufficient to ensure that the many potential stakeholders that need to be brought to the table have an opportunity to be heard.

I believe that the above questions are serious enough to warrant further inquiry from your office in your capacity as the ombudsman for New Mexico citizens and consumers, the authority on New Mexico's environmental protection laws, and a strong voice for environmental and community protection in New Mexico in your own

Attachment 1

right. I hope that you'll join us in asking the Oil Conservation Commission for a delay in the consideration and implementation of this rule.

Thank you for your attention in this important matter.

Sincerely,

A large, stylized handwritten signature in cursive script that reads "Demis Foster". The signature is written in dark ink and is positioned to the left of the date.

9/10/18

Demis Foster

Executive Director, Conservation Voters New Mexico

Attachment 2



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http://www.santafenewmexican.com/news/local_news/drilling-company-pushes-for-more-wells-in-nw-new-mexico/article_966a2783-5bd4-5d87-a1e8-31392db11d7b.html

Drilling company pushes for more wells in NW New Mexico

By Sarah Halasz Graham | sgraham@sfnewmexican.com Sep 10, 2018 Updated 16 hrs ago

Environmentalists and some residents in northwest New Mexico are denouncing a move by one of the state's largest natural gas producers that would allow for more extraction in what they describe as an already densely drilled region.

Texas-based Hilcorp Energy Co., a privately held outfit that in 2017 purchased oil behemoth ConocoPhillips' assets in the San Juan Basin, is petitioning to change the drilling rules governing the Blanco-Mesaverde gas pool, a region spanning vast swaths of mostly federal land in San Juan and Rio Arriba counties.

Attachment 2



Hilcorp representatives say the move would spur economic development in the region, further bolstering New Mexico's oil and gas industry. But opponents claim doubling well density would have vast environmental implications for the area.

"They're going to take this multiuse land that we have, and they're going to tip it into an industrial zone," said Don Schreiber, an environmental activist who operates a 2,000-acre cattle ranch east of Farmington.

Schreiber, who is featured in a political ad funded by CVNM Verde Voters Fund that is critical of Republican gubernatorial candidate Steve Pearce, said he fears additional wells will worsen health conditions for residents, destroy an already brittle high-desert landscape, decimate wildlife populations and further fuel a rural exodus he said has been playing out for decades.

As he passes any of the 122 wells dotting his federally permitted grazing land, Schreiber said he can smell gas seeping into the air. The Four Corners region has been classified a methane hot spot — a cloud of methane gas the size of Delaware hangs over the land — and NASA scientists have linked much of the greenhouse gas emissions to natural gas wells, storage tanks and pipelines in the region.

Schreiber criticized Hilcorp for lack of transparency. Legal notices in the *Farmington Daily Times* and the *Rio Grande Sun* on the Friday before Labor Day alerted stakeholders to the proposed move, and opponents were left scrambling to organize and formally object to the move within a seven-day deadline, he said.

The issue, Schreiber said, deserves a more intense public-input process and environmental impact statements.

Activists with the nonprofit group Conservation Voters New Mexico on Monday petitioned New Mexico Attorney General Hector Balderas to intervene. David Carl, a spokesman for Balderas, said the office is "monitoring the issue" and will ensure transparency in government agencies.

Attachment 2



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rule within the past year, a fact that “demonstrates the need to update the existing rule,” spokesman Justin Furnace said in the statement.

“Hilcorp’s proposed amendment to the current pool rule promotes new investment into northwest New Mexico communities and extends the life of the San Juan Basin,” he said.

Furnace noted any application for a new well bore still would have to funnel through state, local and federal regulatory bodies and meet environmental, cultural, archaeological and other requirements.

But Schreiber said the end result of the new rule still is likely to be more drilling — and whether new wells are drilled or old ones reused, the environment will suffer.

“Whether you’ve entered the same well bore or no, ... when you bring it to the surface, all hell breaks loose,” he said.

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2018, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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