

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSIONS
RULES ON FINANCIAL ASSURANCE
PLUGGING AND ABANDONMENT OF
WELLS 19.15.8.9 NMAC
Subsection C part 1 and 2
Subsection D part 1
Fed wells/State assurance

Case No. 16078

APPLICATION FOR REHEARING

APPLICANT
Larry Marker (pro se)

Pursuant to Oil Conservation Commission Statute 70-2-25. I am submitting this application for Rehearing of the decision of the Commission on Case # 16078, Amendments to the Commission's rules on financial assurance and plugging and abandonment of wells. Particular of specified Part and paragraph as noted in text of this application.

SUBJECT - FEDERAL WELLS/STATE ASSURANCE

19.15.8.9 PART A. "A person who has drilled or acquired ,is drilling or proposes to drill or acquire an oil, gas or injection or other service well on privately- owned or state -owned lands within this state shall furnish" ...

This excerpt references lands privately or state owned only. No reference to federally owned land is made.

Part C paragraph (2) a blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled ,acquired or operated in this state the principal on the bond.

This excerpt uses the term “all oil, gas or service wells”...

Part C paragraph (3) “In determining the amount of the blanket plugging financial assurance, if an operator can demonstrate that it has federal wells”...

This excerpt of the rule references “federal wells”

BASIS OF REHEARING REQUEST ON THIS SUBJECT

The amended rule does not communicate that wells on federal lands require state administered financial assurance. Yet the amended rule references federal wells in calculating the amount of financial assurance required. The jurisdiction of the commission over the federal lands is limited to the prevention of “waste of gas or oil” please refer to opinion 35-1110. The rule as proposed is vague and ambiguous. The jurisdiction of the legislature or commission to require state administered financial assurance is not clearly established and is preempted by federal assurance requirements. To require an operator to now provide financial assurance on federal wells will be contrary to a decades long policy and will invoke a specific part of the of doctrine of estoppel.

SUBJECT-SINGLE WELL FINANCIAL ASSURANCE

Referencing 19.15.9.9 Part C paragraph (2) Part D paragraph (1)
Commission approved a \$25,000.00 plus \$2 per foot on both active and temporarily abandoned single wells.

To apply the same base formula of calculation to all wells regardless of depth is arbitrary. I will use the example of a well in the Seven Rivers formation east of Artesia that is 480 feet deep. With the proposed formula this well will have a financial assurance of \$25,960.00. This is a clear violation of any form of fiscal common sense.

The single well financial assurance for single active wells could easily be construed as targeting and bias. Serving no purpose other than to prevent future entrepreneurial ventures as well as preventing potential selling of existing assets by existing operators.

The application of the same level of financial assurance for single wells active and single wells temporarily abandoned is not reasonable and would also support the notion of bias as to discourage future entrepreneurial ventures.

BASIS OF REHEARING REQUEST ON THIS SUBJECT.

The OCD did not in the hearing demonstrate a complete effort to investigate the consequences of arbitrarily applying the same formula of calculation to all single wells. Obviously ignoring the depth, status or any other aspects of vast differences of individual wells in all of the different areas of the state.

SUBJECT-BLANKET FINANCIAL ASSURANCE ACTIVE WELLS.

The commission approved these ratios of blanket financial assurance.
19.15.8.9 Part C paragraph (2) A blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled acquired, or operated in this state the principal on the bond.

- (a)\$50,000 for one to 10 wells
- (b)\$75,000 for 11 to 50 wells
- (c)\$125,000 for 51 to 100 wells
- (d)\$250,000 for more than 100 wells.

The Commission did have proposed by the IPANM alternative ratios of blanket financial assurance. The reason for rejection of that proposal was not explained or is understood.

BASIS OF REHEARING REQUEST ON THIS SUBJECT.

The OCD did not provide any information as to the process involved in the formulation of the ratios of blanket financial assurance. The logic of 4 tiers of financial assurance applied to thousands of wells of varying depths, condition,

structure, age, formation, status, type, location and amount of production would seem arbitrary to any reasonable level of scrutiny.

GENERAL ISSUES RELEVANT.

The OCD was allowed to submit various different documents containing very technical and complicated information thru out the hearing. Although this does not violate the rules of evidence it did create an unfair advantage for the OCD.

Some of the amendments as presented do contain the elements of bias against the operators of shallow marginally producing wells.

The OCD provided no evidence that implementing the proposed increases in financial assurance will have a positive effect on any part of the Oil and Gas industry.

The OCD provided no evidence of considering the adverse effects or financial impact of these proposed amendments for the operators affected. To implement rules of this magnitude with no apparent consideration of the economic impact on the operators is arbitrary and capricious. These small to medium operators own wells that hold leases on millions of acres in the state. To jeopardize the continued production of these wells also puts in jeopardy the active status of these leases potentially depriving the position of non-operator interest owners to continue receiving their interest funds or lose their position altogether.

The State does receive funds for the Oil and Gas Reclamation funds from wells on federal lands via the tax on production. The OCD did not indicate that these funds were inadequate to cover the expense of the small number of federal wells the OCD has plugged or plans to plug.

The position of the OCD that the financial assurance required by the BLM is inadequate, is not a legitimate or legal reason for the OCD to require an operator to double bond a well on federal lands.

The increase of blanket financial assurance as proposed affects exclusively the small to medium operators. These proposed changes will have no direct effect on the large operators creating a situation of invidious discrimination against the small to medium operators.

The increase of financial assurance as proposed will dramatically reduce the value of the marginal wells to the point of making them almost worthless. To increase the cost of regulation to this extreme is nothing short of regulatory taking.

Article 2 section 70-2-14 of the Oil and Gas act does state that every well in the State of New Mexico will have state administered financial assurance. This statute could be argued to violate the doctrine of preemption of federal regulations. This statute as written is also vague not specifically including wells on federal or Indian owned lands. Again please refer to the opinion of the Attorney General #35-1110

TO CONCLUDE, Myself, the members of the IPPC and non-member independent operators consulted respectfully request the OCC consider the submissions of this application and grant a rehearing as requested.

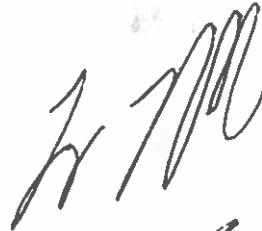
Respectfully submitted

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A handwritten signature in black ink, appearing to read 'Larry Marker', written in a cursive style.

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