

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

**IN THE MATTER OF THE APPLICATION  
OF THE NEW MEXICO OIL CONSERVATION  
DIVISION TO CONSIDER THE PROPOSED  
RULES TO REGULATE THE VENTING AND  
FLARING OF NATURAL GAS FROM OIL AND  
NATURAL GAS PRODUCTION AND  
GATHERING FACILITIES**

**CASE NO. 21528**

**COMMISSIONER OF PUBLIC LANDS' AND NEW MEXICO STATE LAND OFFICE'S  
NOTICE OF INTENT TO SUBMIT TECHNICAL TESTIMONY  
AND PRE-HEARING STATEMENT**

Stephanie Garcia Richard, Commissioner of Public Lands of the State of New Mexico, and the New Mexico State Land Office (collectively referred to herein as “Commissioner”), through undersigned counsel, pursuant to the Notice of Public Hearing for Proposed Rulemaking and the Amended Procedural Order in this matter issued on November 19, 2020, hereby files her Notice of Intent to Present Technical Testimony and Pre-Hearing Statement for the hearing scheduled to begin on January 4, 2021 regarding the New Mexico Oil Conservation Division’s (“OCD”) Proposed Amendments to 19.15.27, 19.15.28, 19.15.7, 19.15.18, and 19.15.19 NMAC.

**1. Party Represented by Technical Witness.**

Commissioner of Public Lands Stephanie Garcia Richard and the New Mexico State Land Office.

**2. Technical Witness and Qualifications.**

The Commissioner intends to call Danny Martinez, Division Director, Royalty Management Division, New Mexico State Land Office. Mr. Martinez has nearly three decades of experience in accounting both in the public and private sectors, including with Ernst & Young and

the State of New Mexico, and significant experience in royalty management with the New Mexico Department of Taxation and Revenue and the New Mexico State Land Office. Mr. Martinez has a B.B.A. in accounting from New Mexico Highlands University.

### 3. Concise Statement of Witness's Testimony.

The Commissioner manages approximately 9 million acres of surface estate and 13 million acres of mineral estate owned by the State of New Mexico ("State Trust Lands") on behalf of the state lands trust to generate support for New Mexico public schools, hospitals, universities, and other public institutions.

More than half of the wells on State Trust Lands are classified as stripper wells under OCD standards – with a significant portion of those wells operated by large, profitable companies that can afford to meter their wells. The Commissioner is concerned that the proposed rule, while a necessary first step, does not go far enough toward ensuring compliance consistently and fairly for all operators. Crucially, the rule lacks a mandate for audit compliance, which is essential to the State Land Office's ability to assess royalties on flared gas.

Verifying estimated flared production for lower producing wells is essential and requires several verifiable components. Production volumes, sales volumes, and lease use volumes could all be verified by reviewing operator metering statements (production volumes), pipeline/settlement statements (sales volumes), and operator lease use formulas and schedules. Considering flared volumes to be the remainder after those volumes are accounted for is a reasonable inference.

If production volumes are not metered – especially for marginal wells which have some of the most egregious emission volumes – the next best alternative procedure to use is the Gas-to-Oil ration (GOR). GOR well testing yields a six-month estimate of the produced volumes that are part

of the formula. Being able to validate these three components – sales metering statements, producer lease use formulas, and GOR well tests – should also provide a reasonable basis for the flaring estimate. Each producer should provide the OCD with the producer’s methodology for estimating the amount of flared production.

In general, if a low-producing well is moving gas through a sales meter and there is no emergency or equipment failure, there should not be flared gas. If a producer makes an economic decision to flare gas as opposed to selling, then estimates of the total flared volumes would be based more on historical production and sales from the well considering depletion curves.

#### 4. Recommended Modifications.

The Commissioner suggests generally that the proposed rule be amended to ensure that industry-reported information is accurate and verifiable, as required for appropriate compliance and enforcement, including by the State Land Office.

The Commissioner proposes that independent verification of flared volumes be mandatory, and conducted on a routine basis.

The Commissioner also proposes the following revision to 19.15.27.8(E)(1)(f):

Estimated vented or flared volumes must be reported using a calculation method verifiable by third party, or other independently verifiable method as may be approved by the OCD. Approved methods are:

(1) Flared gas volumes may be determined through use of a representative gas-to-oil ratio (GOR) as follows: flared volume = GOR oil produced – gas sold – beneficially used gas; or

(2) Such other methods as may be approved by the Division.

#### 5. Estimated Amount of Time for Witness’s Testimony.

20 minutes.

6. Representation.

Undersigned counsel will serve as counsel for the Commissioner and hereby enters his appearance in this matter.

Respectfully submitted,

/s/ Ari Biernoff

Ari Biernoff  
General Counsel  
New Mexico State Land Office  
P.O. Box 1148  
Santa Fe, NM 87504-1148  
(505) 827-5756  
abiernoff@slo.state.nm.us

*Attorney for Commissioner of Public Lands  
Stephanie Garcia Richard and  
New Mexico State Land Office*