

**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  
RESPONSE IN OPPOSITION TO NEW MEXICO OIL AND GAS ASSOCIATION'S  
MOTION TO STRIKE**

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 Amended Procedural Order in this matter issued on November 19, 2020, hereby submits this response in opposition to the New Mexico Oil and Gas Association’s (the “Association”) *Motion to Strike 19.15.27.8(G)(4) From Proposed Part 27 Rule on Venting and Flaring of Natural Gas* (the “Motion”).

The Motion is not well-founded and should be denied. First, the New Mexico Oil Conservation Commission (the “Commission”) and the New Mexico Oil Conservation Division (the “Division”) undeniably have the authority to require that vented and flared volumes be reported to royalty owners in addition to the Division itself. Second, rather than making its case at the rulemaking hearing, the Association improperly asks the Commission to simply excise language from the proposed rule that the Association dislikes. Third, contrary to the Association’s complaints, the proposed rule furthers the Commission’s and the Division’s statutory mandates to prevent waste and protect correlative rights.

**I. The Challenged Provision is Within the Broad Grant of Authority the Legislature Conferred on the Commission and the Division.**

Through the Oil and Gas Act, the Legislature has granted the Division “jurisdiction and authority over all matters relating to the conservation of oil and gas ... as a result of oil or gas operations in this state .... It shall have jurisdiction, authority, and control of and over all persons, matters, or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas...” NMSA 1978, § 70-2-6(A). The Commission has concurrent jurisdiction and authority with the Division as necessary to perform its duties. *Id.* § 70-2-6(B). New Mexico courts have long recognized the “broad statutory authority” granted to the Commission and the Division through the Oil and Gas Act. *Santa Fe Exploration Co. v. Oil Conservation Comm’n of State of N.M.*, 1992-NMSC-044, ¶ 29, 114 N.M. 103.

The Association nonetheless argues that because the reporting requirement in 19.15.27.8(G)(4) is not an expressly enumerated power itemized in statute, *see* Motion at 5-6, the enactment of that provision would exceed the Commission’s jurisdictional limits. The Legislature, however, closed the book on that argument decades ago when it included within the Oil and Gas Act the crucial directive that “[t]he division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights .... [t]he division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof.” NMSA 1978, § 70-2-11(A) (emphasis added). The Commission exercises similarly broad authority. *Id.* § 70-2-11(B).

The challenged reporting requirement in 19.15.27.8(G)(4) simply directs that the information already collected by operators and reported to the Division, *see* Proposed Rule,

19.15.27.8(G)(3) also be submitted to royalty owners as well. The Association fails to explain why reporting vented and flared volumes to the Division is consistent with the Oil and Gas Act, but reporting the same information to other interested parties is not.

**II. The Association Fails to Demonstrate That the Challenged Provision Imposes an Undue Burden on Operators.**

The Association claims in conclusory fashion that the challenged reporting requirement is an “unnecessary and arbitrary burden.” Motion at 8 n.4. But the Motion is bereft of any explanation as to how or why the reporting requirement in 19.15.27.8(G)(4) is so onerous or unreasonable. As with most (if not all) proposed rules before any administrative agency, the Commission will weigh 19.15.27.8(G)(4)’s benefits alongside its potential costs, and determine in its discretion what reporting requirements to impose. The Motion asks the Commission to short-circuit that process by simply refusing to consider the 19.15.27.8(G)(4) reporting requirement altogether. The Association, in other words, is asking to be relieved of the burden of persuading the Commission at the rulemaking hearing that the reporting requirement should not be adopted. The Association does not identify any principle of law to support the special treatment it requests in the Motion.

**III. Royalty Owners Like the State Land Office Benefit from the Proposed Reporting Requirement.**

The Association claims several times using various phrasings that the challenged reporting provision will not prevent waste. *See, e.g.*, Motion at 2 (“The proposed requirement to report flared and vented gas on a volume and percentage basis to royalty and overriding royalty interest owners does nothing to further the Commission’s duty to prevent surface waste.”).

Unlike the Association, the State Land Office is a “royalty owner[ ] in the mineral estate,” 19.15.27.8(G)(4). The reporting requirement would help the Commission, the Division, and the

State Land Office alike avoid waste by identifying patterns in venting and flaring, including identifying operators who may be venting and flaring excessively or in violation of Commission rules. In the case of the State Land Office, mineral resources that are owned by the State and managed by the Commissioner for the benefit of the trust are likely at greater risk for dissipation if vented and flared volumes are not reported to the agency as a matter of course.

For the foregoing reasons, the Association's Motion should be denied.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing by electronic mail on counsel as follows, this 28th day of December, 2020:

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