

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE REHEARING OF  
PROPOSED AMENDMENTS TO THE COMMISSIONS  
RULES ON FINANCIAL ASSURANCE  
PLUGGING AND ABANDONMENT OF  
WELLS 19.15.8.9 NMAC

Case No. 16078

PRE-HEARING STATEMENT

Larry Marker (pro se) files this pre-hearing statement and notice of appearance.

STATEMENT OF THE CASE

- 1 I, Larry Marker and affected independent operators acknowledge, support and appreciate the amending of the application removing from state administered financial assurance requirements wells covered by federally required financial assurance.
- 2 We request the commission approve the particular proposed amendment to rule 19.15.8.9 part A to exclude Federal assured wells as presented by the OCD.
- 3 The rehearing filed was requested to include amendments proposed of rules 19.15.8.9 NMAC part C paragraph 1 and 2 also part D paragraph 1.
- 4 The rehearing request was accepted and a limited re-hearing was granted by the commission while acknowledging the lack of proper standing of Larry Marker as a "party to the original hearing".
- 5 The rule 19.15.3.7 part B defines a party as an applicant or person filing a pre-hearing statement.

20 The OCD testimony of July 20<sup>th</sup> was not known by Larry Marker prior to the deadline and filing of the application for re-hearing on sept 6<sup>th</sup>

21 The testimony of July 20<sup>th</sup> was not known by Larry Marker in time to be examined or rebutted in the text of the rehearing application.

22 The OCD testimony provided post deliberation had it been known would have been used in the application for rehearing.

23 I am including this information in this pre-hearing statement to provide a complete record of the events of this case.

24 A reasonable person would conclude that the testimony the OCC allowed the OCD to present post deliberation far exceeds the threshold of documentation clarifying previous provided testimony and violates administrative rulemaking procedures.

25 The following text will refer to the transcript of the hearing of July 20<sup>th</sup> (Exhibit A) with observations, comments and rebuttal as to attempt to offer an alternative analysis of the information provided by the OCD.

26 Ref –Ex A The transcript of the 2<sup>nd</sup> day of the hearing reinforces our position that the OCD is biased towards the small to medium operators.

27 Ref-Ex A The OCD is using a strictly mathematical approach to demonstrate potential liability. Assuming that is proper and we extrapolate from the 5.9 compliance list (the basis of liability according to the OCD) we find 949 inactive wells under state jurisdiction. Using OCD provided plugging cost data the assumed liability to the State would be about \$30,000,000.00 (30 million dollars). The OCD testified to currently having about 30 million dollars in financial assurance. From a strictly mathematical approach the current assurance would appear to be sufficient.

28 Ref-Ex A page 23, 24 and 57 The OCD testified that our current financial assurance requirements are grossly inadequate compared to other states. The OCD would agree and the OCC stated that other states have similar compliance issues. The logical conclusion would be that if the states that have larger assurance requirements still have the same compliance issues as we do is an indicator that an increase in assurance does not solve the problem.

37 Most of the small to medium independent producers are unable to offset this increase of costs of regulation.

38 The OCD did not express any concern or even address the number of operators forced to be out of compliance by these proposed increases.

39 The OCD did not demonstrate an effort to research the financial jeopardy to overriding interest owners affected by the implementation of these rules.

40 The commission did not demonstrate an effort to apply a grandfather (ex post facto) clause to these rules.

41 The cost of this regulation will reduce the value of, or completely make worthless, marginally producing properties to the extent of forcing a regulatory takings claim (inverse condemnation) when ripe.

42 Financial resources, cash, credit, assets pledged and premium costs that are committed to financial assurance, will reduce the amount of financial resources available to the operator to operate or grow his business.

43 A fact-specific analysis reveals that the OCC did not ask for or receive enough evidence to make a competent decision on this subject.

#### LIMITED WITNESS CLARIFICATION

44 After discussions with several independent operators, I will not be requesting an appearance or testimony from any independent operators at this hearing

45 Over the past several months, I have been warned by several experienced operators that my attempts to participate in the rule making process would bring retribution from the regulatory agencies.

46 I dismissed these unverified warnings.

47 I was of the belief that the participation of the operators in the rulemaking process is vital, and felt the regulatory agencies shared this belief.

48 I was able to provide my comments and opinion at the hearing of this case on July 19<sup>th</sup> of this past summer. I was not comfortable in such a setting but

60 To offer a snap shot of these or any operator's properties without the full consideration of all of the circumstances is not fair and violates any form of consideration of due process.

61 This act on its face demonstrates an intent of retribution by the OCD.

62 Without more evidence, I cannot claim that the culture of the OCD does or does not endorse or allows this type of retribution.

63 I, in good conscience, cannot expect another operator to expose himself and his business to a culture of retribution by appearing or testifying in front of the Commission in a rulemaking hearing.

## REQUEST FOR WITNESS

Allison Marks – Former Deputy Director of the OCD

Heather Riley – Director of the OCD and Chairwomen of the OCC

I also request to have the option to cross examine any witness or person of interest that participates in the hearing.

## EXHIBIT

Exhibit A - A true and correct copy of Reporters Transcript of Proceedings from July 20<sup>th</sup>, 2018 Commissioners hearing.

Respectfully submitted,

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