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## Western Environmental Law Center

*Via Facsimile (505.476.3462)*

November 24, 2008

Florence Davidson  
Commission Clerk  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

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*Re: Notice of Recommended Modifications, Case No. 14255, Docket No. 43-08*

Dear Ms. Davidson:

Thank you for the opportunity to comment on the Oil Conservation Division's ("OCD") Application For Rule Amendment, Case No. 14255 ("Application") for the Chulisteo Basin. At this time, we are submitting proposals for changes<sup>1</sup> to the actual language of the proposed rule. We will also be submitting more general comments before the December 3, 2008 deadline.

1. Throughout the rule changes, there are provisions added to ensure that oil and gas plans do not negatively impact fresh water, human health, and the environment. While we support and applaud OCD's consideration and protection of these incredibly important values, we believe that the rule should also include consideration of wildlife and plant species as well. As such, we propose the addition of the following language in all places where the rule includes consideration of the values mentioned above. The following example is in Subsection B and we have included additional examples in our comments below:

(12) other information that the division may require to demonstrate that the plan will prevent waste, protect correlative rights, protect fresh water, protect human health and the environment, including wildlife and plant species, and will

<sup>1</sup> All suggested changes are made in track changes format with additions underlined and deletions in strikethrough.

assure the division that operation of the plan will be in compliance with division rules and orders;

In addition, we propose the addition of a new Subsection B(5)(k):

(5)(k) the location of site features such as flood plain designations, water courses, watersheds, drainages, ditches, intermittent and ephemeral water bodies (including but not limited to playa lakes, arroyos and draws), wetlands or aquatic habitat, significant plant ecosystems, wildlife habitat and migration routes, geologic features, vegetative cover, known areas of historical, archeological or cultural significance, recreational areas, and otherwise environmentally, culturally or socially significant or sensitive areas which may be impacted by the proposed plan.

2. We recommend the inclusion of a new Subsection B(12) to reinforce and complement Subsection (C) and properly ensure that exploration and development plans are, in fact, plans that account for existing and reasonably foreseeable oil and gas development. Such a provision would better ensure that exploration and development of oil and gas is properly coordinated, through time, in the Galisteo Basin and better ensure that the evaluation of exploration and development plans is cognizant of the cumulative exploration and development potential – and the consequent cumulative impacts of such exploration and development – within the Galisteo Basin. New Subsection B(12) would read:

(12) data and analysis addressing existing and potential oil and gas development relevant to the application, whether conducted by the applicant or by another operator, including:

- (a) other pending or approved Exploration and Development Plans subject to these provisions pursuant to Subsection A;
- (b) a good faith forecast of reasonably foreseeable future exploration and development within the area subject to the application;
- (c) pending or approved exploration and development within two (2) miles of the external boundaries of the Galisteo Basin as defined by Subsection A;

Adoption of this recommended provision would necessitate changing existing Subsection B(12) to B(13) and B(13) to B(14).

3. We reiterate our support for OCD's provisions to "prevent waste, protect correlative rights, protect fresh water, and protect human health and the environment," as set forth in Subsections (B)(12), (J)(2)(d), (J)(3), (J)(4). In keeping with that support, we request that OCD explain that this authority includes the ability to prevent, or at the very least mitigate, impacts from oil and gas development, consistent with valid existing rights.

4. OCD states that it "may approve an exploration and development plan *only if* . . . the plan will prevent waste, protect correlative rights, protect fresh water, and protect human health and the environment." Application, ¶ 29 (emphasis added). However, the proposed rule itself does not accurately reflect this statement. Additionally, Subsection J(3)'s reference to oilfield waste should be struck as it appears unnecessarily and confusingly limiting on the Division's authority to impose conditions of approval. As such, we propose the following changes (shown in track changes) to Subsection J:

(3) The division shall ~~may~~ impose conditions on its approval of an application for an exploration and development plan or an amendment or renewal of an exploration and development plan if the division determines that the conditions are necessary to prevent waste, protect correlative rights, protect fresh water, and protect human health and the environment, including wildlife and plant species ~~from oil field waste~~.

(4) The division shall ~~may~~ include provisions in a special pool order that replaces an exploration and development plan if the division determines that the provisions are necessary to prevent waste, protect correlative rights, protect fresh water, and protect human health and the environment, including wildlife and plant species.

5. The Oil and Gas Act places great emphasis on conserving oil and gas and preventing waste. Consistent with that mandate, we recommend that you require a showing that oil and gas companies will work to ensure that they are preventing waste, and as a result, preventing unnecessary contributions of greenhouse gases, in particular methane, into the atmosphere. Methane is, of course, not only a commercial product, but a potent greenhouse gas. As such, we recommend the addition of another section (1) to Subpart B(5):

(5)(1) demonstrate compliance with the Environmental Protection Agency's Natural Gas STAR program, or demonstrate similar measures that will be used to ensure that development of the plan will not cause waste and will minimize the emission of greenhouse gases to the atmosphere;

6. OCD states that the Energy, Minerals, and Natural Resource Department's recommendations included adopting rules that provide for notice and public input on applications. Application ¶18. We applaud OCD's changes which allow for public input into this process as an incredibly important step forward. Consistent with OCD's proposed changes, we ask that OCD add language clarifying how and when the public will be able to submit comments on a proposed plan. We propose the following additions to Subsection H, or alternatively we propose adding the following language to a new subsection entitled "Public Comment":

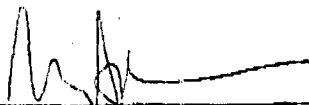
H. Public Notice and Comment

(4) Public comments on the proposed plan will be accepted for 45 days following the publication of the legal notice. This time period is computed using calendar days, including Saturdays, Sundays, and State holidays. However, when the time period expires on a Saturday, Sunday, or State holiday, comments shall be accepted until the end of the next State working day (11:59 p.m.).

Again, thank you for the opportunity to submit comments on the proposed language. We commend OCD in its efforts to provide for a more holistic approach to oil and gas applications. In particular, we are happy to see OCD's inclusion of provisions that will help ensure that oil and gas drilling does not degrade our environment and water, as well as OCD's incorporation of greater public involvement in the oil and gas application process.

If you have any questions, or would like to discuss these comments, please do not hesitate to contact us.

Sincerely,



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