

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

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APPLICATION OF THE NEW MEXICO
OIL CONSERVATION DIVISION FOR
ADOPTION OF AMENDMENTS TO
RULE 19.15.17, STATEWIDE

CASE NO. 14292

REQUEST FOR REHEARING

The EARTHWORKS Oil and Gas Accountability Project ("OGAP"), by and through its attorneys, the New Mexico Environmental Law Center (Bruce Frederick), requests a rehearing on Order No. 14292, which the Oil Conservation Commission entered in Case No. 14292 on June 18, 2009. The grounds for this Request for Rehearing, made pursuant to NMSA 1978, § 70-2-25(A) (1999), are as follows:

1. OGAP is the only project in the United States with the sole mission of working with tribal, urban and rural communities to protect their homes and the environment from the devastating impacts of oil and gas development.
2. In its ten-year history, OGAP has succeeded in building alliances with economically, racially and politically diverse constituencies. By bringing together such diverse partners as Native Americans, ranchers and environmentalists to work towards a common – and critically important – goal, its ability to voice their concerns and work to lessen impacts has increased.
3. OGAP is a resource for citizens and communities that are dealing with oil and gas development. OGAP's multi-tiered approach involves people who are directly affected by the impacts of oil and gas development in working for strong reforms and better industry practices. It utilizes media, public education and community organizing in our efforts to change the way oil and gas development occurs in North America.

4. OGAP and its members are adversely affected by the OCC's decision in Case No. 14292, which is set out in OCC Order No. R-13939-A. The OCC's decision will unnecessarily increase the adverse impacts of oil and gas development in New Mexico, which is directly contrary to OGAP's mission, by increasing the number and toxicity of uncontrolled and unmonitored oil field waste disposal sites. OGAP's members who live in New Mexico are adversely affected, because OCC's decision will cause more contamination of their groundwater supplies and soil resources, as well as increase the potential for exposure to toxic chemicals.

5. OCC's decision to amend 19.15.17 NMAC ("Pit Rule") was made as a political accommodation to the industry and not for any purpose relating to OCC's statutory duties of protecting correlative rights, preventing waste, or protecting the environment and fresh water supplies.

6. OCC's stated reason for amending the Pit Rule is to "aid oil and gas companies in absorbing the costs of the Pit Rule." Order R-12939-A ¶ 87. However, the OCC lacks statutory authority to adopt or amend a rule for purely economic reasons. Moreover, even if OCC possessed such authority, no substantial evidence was introduced into the record showing that the oil and gas industry has suffered any economic hardship as a result of OCC's decision to adopt the Pit Rule in May 19, 2008.

7. Paragraph 62 of Order No. R-12939-A demonstrates that the OCC misinterpreted its duty to protect fresh water supplies. As set out in the October 2, 1985, Oil Conservation Division Memorandum regarding "Hearings for Exception to Order No. R-3221" ("OCD Memorandum"), "fresh water supplies" includes all groundwater that

has a total dissolved solids concentration of less than 10,000 mg/l, except groundwater for which there is no present or no reasonably foreseeable beneficial use.

8. Whether there is present or reasonably foreseeable beneficial use of groundwater cannot be determined by rule, but must be decided on a case-by-case basis. See Order R-3221; OCD Memorandum. "Reasonably foreseeable beneficial use" does not mean merely holding back groundwater contamination for some arbitrary number of years, as the Oil Conservation Division ("OCD") and OCC appeared to believe in the instant proceeding. See R-12939-A, ¶¶ 60, 61. Instead, OCC and OCD must determine whether there is any reasonably foreseeable future use of groundwater at a given location, based on objective site-specific criteria such as site location, depth to water, present use, background water quality and aquifer characteristics. OCC's failure to do this in Order R-12939-A, or to include any requirement to do this on a case by case basis, renders its decision arbitrary and capricious.

9. OGAP further requests rehearing based on its Proposed Findings of Fact and Conclusions of Law, which the OCC implicitly rejected.

WHEREFORE, OGAP requests a rehearing of this matter before the OCC pursuant to NMSA 1978, § 70-2-25(A).

Respectfully submitted,

NEW MEXICO ENVIRONMENTAL LAW CENTER

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was mailed on the ~~28~~⁷⁺⁶ of ~~April~~^{July}, 2009, to the following persons:

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