

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

**IN THE MATTER OF
PROPOSED AMENDMENTS TO
19.15.2, 19.15.5, 19.15.8, 19.15.9, AND
19.15.25 NMAC**

CASE NO. 24683

**INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S
REPLY IN SUPPORT OF APPLICATION FOR REHEARING**

Applicants and OCD assert that none of the grounds raised in IPANM's Application for Rehearing "warrant rehearing" or "marshal compelling reasons." Response, ¶¶1&6. The Joint Response, however, does not cite contrary authority on the standard of review as to a request for rehearing, the underlying purpose served by concise explanatory statements, or the need for independent analysis and judgment by an agency. Here, the question raised in IPANM's Application under NMSA 1978, § 70-2-25(A)—whether sufficient reason for rehearing exists because the Rule Making Order is erroneous—is committed only to the Commission's discretion.

But, as a creature of statute, the Commission's orders and decisions must serve the two primary duties under the Oil and Gas Act, the prevention of waste being paramount. *See Santa Fe Explor. Co.*, 1992-NMSC-044, ¶27, 114 N.M. 103; NMSA 1978, § 70-2-3(A)(waste includes the "operating...of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil...ultimately recovered from any pool."); *id.*, ¶7 (acknowledging argument that drilling of an unnecessary wells results in waste."); *Cf.* Testimony of Representative Murphy, Tr. 140:23-25 (Nov. 4, 2025) (prematurely plugging wells removes from future recovery plans); OXY Tiffany Wallace, Tr. 21:2-8 (Oct. 28, 2025); OXY Kelly Montgomery, Tr. 140:21-141:5; 144:22-145:8, 161:10-162:9; David Mitchell, Tr. 204:11-21 (Oct. 31, 2025); Commission Ampomah, Tr. 505:6-19 (Oct. 21, 2025) (expressing concern that plugging wells leads to having to drill news wells for initial secondary recovery projects). In *Santa Fe Exploration*, the Court of Appeals

upheld the Commission's decision as reasonable because the Court was able to defer to the Commission's expertise:

In any contested administrative appeal, conflicting evidence will be produced. In the instant case, the resolution and interpretation of such evidence presented requires expertise, technical competence, and specialized knowledge of engineering and geology as possessed by Commission members. *See* NMSA 1978, § 70-2-4 (commissioners to have "expertise in regulation of petroleum production by virtue of education or training"); NMSA 1978 § 70-2-5 (director is "state petroleum engineer" who is "registered by the state board of registration for professional engineers and land surveyors as a petroleum engineer" or "by virtue of education and experience [has] expertise in the field of petroleum engineering"). Where a state agency possesses and exercises such knowledge and expertise, we defer to their judgment.

Id., ¶37 (citations omitted); *see also id.*, ¶38 (referring to the administrative process as one of "winnowing and sifting"). However, where as here, there is little to no evidence on the record that the Commission has exercised its independent "expertise, technical competence, and specialized knowledge" in the "winnowing and sifting" of conflicting evidence during deliberations, IPANM's Application for Rehearing raises that defect as error, because adoption of Applicants' findings and conclusions wholesale indicates an "complete[] disregard [of] conflicting evidence." *Santa Fe Explor. Co.*, ¶35; *see also Herman v. Miners' Hosp.*, 1991-NMSC-021, ¶ 6, 111 N.M. 550.

In contrast, the New Mexico Supreme Court in *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, provided a more explicit remonstration in declaring a the Commission's order invalid and void:

There is no indication that the commission attempted to do any of these things, even to the extent of 'insofar as is practicable.' ... The record of the commission furnishes us nothing upon which to base an assumption that the finding relates to the prevention of waste, or to the protection of correlative rights. We find no statutory authority vested in the commission to require the production of a greater percentage of the allowable, or to see to it that the gas purchasers can more nearly meet market demand **unless such results stem from or are made necessary by the prevention of waste or the Protection of correlative rights.**

Id., ¶¶14 & 18 (emphasis in original). There, the New Mexico Supreme Court identified four

factors which the Commission, in order to operate within its statutory jurisdiction, must determine for itself, and that the Commission had fallen short of doing so. “[B]asic jurisdictional findings, supported by evidence, are required to show that the commission has heeded the mandate and the standards set out by statute. Administrative findings by an expert administrative commission should be sufficiently extensive to show not only the jurisdiction but the basis of the commission's order.” *Id.*, ¶ 20.

Against this historical backdrop regarding the Commission’s exercise of authority in accordance with the mandates of the Oil and Gas Act, IPANM respectfully requests rehearing in Case No. 24683 on the grounds identified in its Application, in addition to the relief prayed for under the New Mexico Oil and Gas Association Application for Rehearing. Further, IPANM has asserted discrete grounds for rehearing pursuant to NMSA 1978, 70-2-25(A), but otherwise maintains and preserves all arguments raised or asserted during the rulemaking proceeding as available for appeal pursuant to NMSA 1978, § 70-2-12.2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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