STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSIONS
RULES ON FINANCIAL ASSURANCE
PLUGGING AND ABANDONMENT OF
WELLS 19.15.8.9 NMAC
Subsection C part 1and 2
Subsection D part 1
Fed wells/State assurance

Case No. 16078

APPLICATION FOR REHEARING

APPLICANT
Larry Marker (pro se)

Pursuant to Oil Conservation Commission Statute 70-2-25. I am submitting this application for Rehearing of the decision of the Commission on Case # 16078, Amendments to the Commission's rules on financial assurance and plugging and abandonment of wells. Particular of specified Part and paragraph as noted in text of this application.

1- SUBJECT - FEDERAL WELLS/STATE ASSURRANCE
PROPOSED RULE EXCERPT:
19.15.8.9 PART A. "A person who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well on privately- owned or state –owned lands within this state shall furnish" …

A-This excerpt references lands privately or state owned only. No reference to federally owned land is made.

PROPOSED RULE EXCERPT:
Part C paragraph (2) a blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled, acquired or operated in this state the principal on the bond.

B-This excerpt uses the term "all oil, gas or service wells"…

PROPOSED RULE EXCERPT:
Part C paragraph (3) "In determining the amount of the blanket plugging financial assurance, if an operator can demonstrate that it has federal wells"…

C-This excerpt of the rule references "federal wells"

BASIS OF REHEARING REQUEST ON THIS SUBJECT

The amended rule does not communicate that wells on federal lands require state administered financial assurance. Yet the amended rule references federal wells in calculating the amount of financial assurance required. The jurisdiction of the commission over the federal lands is limited to the prevention of "waste of gas or oil" please refer to opinion 35-1110. The rule as proposed is vague and ambiguous. The jurisdiction of the legislature or commission to require state administered financial assurance is not clearly established and is preempted by federal assurance requirements. To require an operator to now provide financial assurance on federal wells will be contrary to a decade's long policy and will invoke several legal principles.

The new rules as written do not address several specific issues and will certainly provide for arbitrary enforcement.

The new rules do not clearly address operators with federal wells only requirement to provide state administered financial assurance.

The new rules do not in any way address wells on Indian lands.

The OCD's jurisdiction to issue "plug or produce orders" on federal wells is questioned.

The position of the OCD that "the financial assurance required by the BLM is inadequate", is an opinion, not a valid reason for the OCD to require an operator to provide additional state required financial assurance for wells on federal lands.

The requirement of, or forfeiture of, state administered financial assurance on fed lands has no precedence.

The arbitrary financial assurance policies of the BLM cannot reliably be considered in any rulemaking decision of the OCD.

The lack of equitability in the BLM policy will help to create an equally unequitable situation when combined with the OCD policy.

2- SUBJECT-SINGLE WELL FINANCIAL ASSURANCE
PROPOSED RULE EXCERPT:
Referencing 19.15.9.9 Part C paragraph (2) Part D paragraph (1)
Commission approved a $25,000.00 plus $2 per foot on both active and temporarily abandoned single wells.

A-To apply the same base formula of calculation to all wells regardless of depth is arbitrary I will use the example of a well in the Seven Rivers formation east of Artesia that is 480 feet deep. With the proposed formula this well will have a financial assurance of $25,960.00. The current single well assurance is $5480.00. This is a clear violation of any form of fiscal common sense and more importantly, the formula magnifies the fact that the Oil Conservation Division through the Oil Conservation Commission are biased against the small, 1 to 100 well or "stripper well", operators which obviously serves no other purpose than to limit and/or prevent future entrepreneurial ventures as well as limit and/or prevent future acquisition and divesture opportunities which is the foundation of fully functional industry.

BASIS OF REHEARING REQUEST ON THIS SUBJECT.

At the original hearing the OCD did not demonstrate a complete or competent effort to investigate the consequences of arbitrarily applying the same formula of calculation to all single wells, regulation by the "blanket" approach.

This "blanket" regulation method obviously ignores the depth, status or any other attributable aspects of the vast differences of the individual wells in all of the different areas of the state.

3- SUBJECT-BLANKET FINANCIAL ASSURANCE ACTIVE WELLS.

PROPOSED RULE EXCERPT:
19.15.8.9 Part C paragraph (2) A blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled acquired, or operated in this state the principal on the bond.
(a)$50,000 for one to 10 wells
(b)$75,000 for 11 to 50 wells
(c)$125,000 for 51 to 100 wells
(d)$250,000 for more than 100 wells.

BASIS OF REHEARING REQUEST ON THIS SUBJECT.

The theme expressed in this Financial Assuredness effort continues to echo the refrain of bias against the small operator, which the small operators consider to be government's efforts to put them out of business. The efforts of the IPANM Board of Directors to work with the OCD in structuring a tiered system that accomplishes the Secretary's desire for an increase of Financial Assuredness and accounts for the small and very small operators' personal financial condition went unheard. The IPANM recommended tier structure is more acceptable to the very small and small operators. The OCD did not provide any information as to the process involved in the formulation of the ratios of blanket financial assurance. The logic of 4 tiers of financial assurance applied to thousands of wells of varying depths, condition, structure, age, formation, status, type, location and amount of production would seem arbitrary and extremely capricious to any reasonable level of scrutiny.

The rules as written will substantially increase the cost of blanket financial assurance on at least 433 of the 515 active operators.

The OCD claim that over "50% of the operators would not be subject to a blanket bond greater than is currently required" is not substantiated and, in this Financial Assuredness case, cause a continuation of our concern regarding staff competency, inadequate staffing and additionally our gravest concern that staff is being directed

to create statistics which, while enhancing the Secretary's efforts, are truly and purposefully misleading and inaccurate.

GENERAL ISSUES RELAVENT.

1-The OCD provided no evidence that implementing these significant increases in financial assurance will in any practical way solve any existing issue.

2-The OCD provided no evidence of considering the adverse effects or financial impact of these proposed amendments for the operators affected. To implement a 500% increase in financial assurance requirements with no apparent consideration of the economic impact on the operators is arbitrary and capricious.

3-The OCD did not demonstrate an effort to determine the number of operators potentially forced out of business by these new rules.

4-The State does receive funds for the Oil and Gas Reclamation funds from wells on federal lands via the tax on production. The OCD did not indicate that these funds were inadequate to cover the expense of the small number of federal wells the OCD has plugged or plans to plug.

5-The increase of financial assurance as proposed will dramatically reduce the value of the marginal wells to the point of denying the operator his ability to realize the full economic benefit of his property. To increase the cost of regulation to this extreme shall create a case for inverse condemnation.

6-Article 2 section 70-2-14 of the Oil and Gas act does state that every well in the State of New Mexico will have state administered financial assurance. This statute could be argued to violate the doctrine of preemption of federal regulations. This statute as written is also vague does not address wells on federal or Indian owned lands. Again please refer to the opinion of the Attorney General #35-1110.

7-The commission's conclusion of evidence substantial to support these proposed rule changes is premature.

TO CONCLUDE, Myself, the members of the IPPC and several non-member independent operators consulted respectfully request the OCC consider the submissions of this application and grant a rehearing as requested.

Respectfully submitted

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