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January 22, 1958

File: I-Q-13

Mr. A. L. Porter, Jr.  
Secretary & Director  
New Mexico Oil Conservation Commission  
Santa Fe, New Mexico

Dear Mr. Porter:

In accordance with our conversation yesterday, this office would like to request that in the future when applications are made for water flood projects in connection with secondary oil recovery, the applicant state the source of his water supply, i. e., the geographical location of the supply by legal subdivision and the name of the formation and the depth from which the water will be produced. We would also like to have the analysis, of the water to be used, submitted with the application if the sample is available at that time and if the sample is not available at that time, we would want the analysis of the water as soon as the well has been drilled.

This office would sincerely appreciate the favorable consideration of this request by your Commission.

Yours truly,

S. E. Reynolds  
State Engineer

By:

Frank E. Irby  
Chief  
Water Rights Division

FEI/ma  
cc-F. H. Hennighausen

Blind copies to:

S. E. Reynolds  
J. C. Yates thru C. B. Thompson

Filed January 24, 1958  
Office Ground Water Supervisor  
Roswell, New Mexico

History: Laws 1925, ch. 118, § 3; C.S. 1929, § 97-303;  
1941 Comp., § 69-105; 1953 Comp., § 65-2-5.

## ARTICLE 2

### Oil Conservation Commission; Division; Regulation of Wells

- Sec.
- 70-2-1. Short title.
- 70-2-2. Waste prohibited.
- 70-2-3. Waste; definitions.
- 70-2-4. Oil conservation commission; members; term; officers; quorum; power to administer oaths.
- 70-2-5. Oil conservation division; director; state petroleum engineer.
- 70-2-6. Commission's and division's powers and duties.
- 70-2-7. Rules of procedure in hearings; manner of giving notice; record of rules, regulations and orders.
- 70-2-8. Subpoena power; immunity of natural persons required to testify.
- 70-2-9. Failure or refusal to comply with subpoena; refusal to testify; body attachment; contempt.
- 70-2-10. Perjury; punishment.
- 70-2-11. Power of commission and division to prevent waste and protect correlative rights.
- 70-2-12. Enumeration of powers.
- 70-2-13. Additional powers of commission or division; hearings before examiner; hearings de novo.
- 70-2-14. Bonding requirement.
- 70-2-15. Allocation of allowable production among fields when division limits total amount of production.
- 70-2-16. Allocation of allowable production in field or pool.
- 70-2-17. Equitable allocation of allowable production; pooling; spacing.
- 70-2-18. Spacing or proration unit with divided mineral ownership.
- 70-2-19. Common purchasers; discrimination in purchasing prohibited.
- 70-2-20. Penalty for violations.

#### 70-2-1. Short title.

Sections 70-2-1 through 70-2-36 NMSA 1978 may be cited as the "Oil and Gas Act."

History: 1953 Comp., § 65-3-1.1, enacted by Laws 1977, ch. 237, § 1.  
Law review. — For article, "New Mexican

- Sec.
- 70-2-21. Purchase, sale or handling of excess oil, natural gas or products prohibited.
- 70-2-22. Rules and regulations to effectuate prohibitions against purchase or handling of excess oil or natural gas; penalties.
- 70-2-23. Hearings on rules, regulations and orders; notice; emergency rules.
- 70-2-24. Reports of governmental departments or agencies as to market demand to be deemed prima facie correct.
- 70-2-25. Rehearings; appeals.
- 70-2-26. Review of oil conservation commission decision; appeals.
- 70-2-27. Temporary restraining order or injunction; grounds; hearing; bond.
- 70-2-28. Actions for violations.
- 70-2-29. Actions for damages; institution of actions for injunctions by private parties.
- 70-2-30. Violation of court order grounds for appointment of receiver.
- 70-2-31. Penalties for violations; accessories.
- 70-2-32. Seizure and sale of illegal oil or gas or products; procedure.
- 70-2-33. Definitions of words used in act.
- 70-2-34. Regulation, conservation and prevention of waste of carbon dioxide gas.
- 70-2-35. Legal representation before the federal power commission.
- 70-2-36. Removing or altering marks of identification; penalty.
- 70-2-37. Oil and gas reclamation fund created; disposition of fund.
- 70-2-38. Oil and gas reclamation fund administered; plugging wells on federal land; right of indemnification; annual report; contractors selling equipment for salvage.

Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

#### 70-2-2. [Waste prohibited.]

The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited.

History: Laws 1935, ch. 72, § 1; 1941 Comp., § 69-202; Laws 1949, ch. 168, § 1; 1953 Comp., § 65-3-2.

Cross-reference. — As to regulation and conservation of carbon dioxide gas, see 70-2-34 NMSA 1978.

Legislative intent. — Primary concern of oil and gas

legislation is eliminating and preventing waste in the pool so far as it can practicably be done, and also the protection of correlative rights of producers from the pool. *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 76 N.M. 268, 414 P.2d 496 (1966).

Two fundamental powers and duties of commis-

History: Laws 1935, ch. 72, § 4; 1941 Comp., § 69-206; Laws 1949, ch. 168, § 4; 1953 Comp., § 65-3-5; Laws 1965, ch. 58, § 2; 1977, ch. 255, § 41;

1979, ch. 175, § 1.

The 1979 amendment added the second sentence in Subsection B.

## 70-2-12. Enumeration of powers.

A. Included in the power given to the division is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, and tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy thereof; to limit and prorate production of crude petroleum oil or natural gas, or both, as in this act [this section] provided; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products thereof, or both such oil and products, or both such natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the division by virtue of this act [this section] or the statutes of this state, the division is hereby authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated herein, viz.:

(1) to require dry or abandoned wells to be plugged in such a way as to confine the crude petroleum oil, natural gas or water in the strata in which they are found, and to prevent them from escaping into other strata; the division shall require a corporate surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which they are found into another stratum or other strata;

(3) to require reports showing locations of all oil or gas wells, and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quantities, and to prevent the premature and irregular encroachment of water, or any other kind of water encroachment, which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas, or both such oil and gas, from any pool;

(5) to prevent fires;

(6) to prevent "blow-outs" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well, or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool or pools producing crude petroleum oil or natural gas or both, and from time to time redetermine such limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or of any product thereof including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operation;

(15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas, or both, and to direct surface or subsurface disposal of such water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine such limits;

(17) to regulate and where necessary prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities or where such operations would interfere unduly with the orderly commercial development of such potash deposits; or

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells in accordance with the provisions of the Oil and Gas Act [70-2-1 to 70-2-36 NMSA 1978] and the Public Purchases Act [13-1-1 to 13-1-27 NMSA 1978] including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state.

History: 1963 Comp., § 65-3-11, enacted by Laws 1978, ch. 71, § 1.

Repeals and reenactments. — Laws 1978, ch. 71, § 1, repeals 65-3-11, 1963 Comp. (former 70-2-12 NMSA 1978), relating to enumeration of powers, and enacts the above section.

Effective dates. — Laws 1978, ch. 71, § 2, makes the act effective on March 31, 1978.

Emergency clauses. — Laws 1978, ch. 71, § 3, makes the act effective immediately. Approved February 24, 1978.

### 70-2-13. Additional powers of commission or division; hearings before examiner; hearings de novo.

In addition to the powers and authority, either express or implied, granted to the oil conservation commission or division by virtue of the statutes of the state of New Mexico, the division is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the division to provide for the appointment of one or more examiners to be members of the staff of the division to conduct hearings with respect to matters properly coming before the division and to make reports and recommendations to the director of the division with respect thereto. Any member of the commission or the director of the division or his authorized representative may serve as an examiner as provided herein. The division shall promulgate rules and regulations with regard to hearings to be conducted before examiners, and the powers and duties of the examiners in any particular case may be limited by order of the division to particular issues or to the performance of particular acts. In the absence of any limiting order, an examiner appointed to hear any particular case shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and transcribed and shall certify the same to the director of the division for consideration together with the report of the examiner and his recommendations in connection therewith. The director of the division shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if the hearing had been conducted before the director of the division. When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

History: 1953 Comp., § 65-3-11.1, enacted by Laws 1956, ch. 235, § 1; 1961, ch. 62, § 1; 1977, ch. 255, § 48; 1981, ch. 63, § 1.

The 1981 amendment substituted "of" for "or" preceding "order" near the middle of the first sen-

tence, substituted "the" for "said" preceding "hearing" near the end of the fifth sentence and preceding "matter" near the middle of the last sentence and inserted "of record" following "party" near the middle of the last sentence.

reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law.

**History:** Laws 1935, ch. 72, § 9; 1941 Comp., § 69-210; Laws 1949, ch. 168, § 9; 1953 Comp., § 65-3-10; Laws 1977, ch. 255, § 46.

**Meaning of "this act".** — See same catchline in notes to 70-2-3 NMSA 1978.

**Authority based on power of prevention of waste.** — The statutory authority of the commission to pool property or to modify existing agreements relating to production within a pool under either 70-2-17C or 70-2-17E NMSA 1978 must be predicated on prevention of waste. *Sims v. Mechem*, 72 N.M. 186, 382 P.2d 183 (1963).

Commission has jurisdiction over matters related to conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights, as set forth in this section. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

**Powers of proration and creation of spacing units remain intact.** — The standards of preventing waste and protecting correlative rights, as laid out in this section, are sufficient to allow commission's power to prorate and create standard or nonstandard spacing units to remain intact, and 70-2-18 NMSA 1978 is not an unlawful delegation of legislative power. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

**Prevention of waste by pooling.** — Commission's finding that most efficient and orderly development of the subject acreage could be accomplished by force pooling is not equivalent to a finding that this pooling will prevent waste. *Sims v. Mechem*, 72 N.M. 186, 382 P.2d 183 (1963).

**Former act to prohibit waste.** — There was no delegation to the commission of power to make law or

determine what it shall be in the former Oil Conservation Act, but act was, in effect, a prohibition against waste. 1951-52 Op. Att'y Gen. 5397.

**Protection of correlative rights.** — The prevention of waste is of paramount interest to the legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes the term "without waste." However, protection of correlative rights is a necessary adjunct to the prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Although subservient to prevention of waste and perhaps to practicalities of the situation, protection of correlative rights must depend upon the commission's findings as to extent and limitations of right. This the commission is required to do under legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

**Property rights of natural gas owners.** — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

**Law reviews.** — For comment on *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962), see 3 *Nat. Resources J.* 178 (1963).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 *Am. Jur. 2d Gas and Oil* §§ 145 to 148, 157. 58 *C.J.S. Mines and Minerals* §§ 229, 234.

## 70-2-12. Enumeration of powers.

A. Included in the power given to the oil conservation division is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports; to limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act [70-2-1 to 70-2-36 NMSA 1978]; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(3) to require reports showing locations of all oil or gas wells and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool;

(5) to prevent fires;

(6) to prevent "blow-ups" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any product of either, including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations;

(15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;

(17) to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash which may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits;

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells in accordance with the provisions of the Oil and Gas Act and the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state;

(19) to make well price category determinations pursuant to the provisions of the Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars (\$25.00) per filing. Such fees shall be credited to the account of the oil conservation division by the state treasurer and may be expended as authorized by the legislature; and

(20) to regulate the construction and operation of oil treating plants and to require the posting of bonds for the reclamation of treating plant sites after cessation of operations.

**History:** 1953 Comp., § 65-3-11, enacted by Laws 1978, ch. 71, § 1; 1986, ch. 76, § 1; 1987, ch. 234, § 61.

**Cross-references.** — For filing rules and regula-

tions, see 14-4-1 NMSA 1978. As to public utilities commission's lack of power to regulate sale price at well head, see 62-6-4 NMSA 1978.

**Repeals and reenactments.** — Laws 1978, ch. 71,

§ 1, repealed 65-3-11, 1953 Comp. (former 70-2-12 NMSA 1978), relating to enumeration of powers, and enacted a new 70-2-12 NMSA 1978.

The 1986 amendment substituted "oil conservation division" for "division" in Subsection A and in the introductory paragraph of Subsection B; substituted "provided in the Oil and Gas Act" for "in this act provided" in Subsection A; substituted "the Oil and Gas Act" for "this act" in the introductory paragraph of Subsection B; substituted "cash or surety bond" for "corporate surety bond" in Subsection B(1); added Subsection B(19), and made minor stylistic changes throughout the section.

The 1987 amendment, effective July 1, 1987, in Subsection B(18), substituted "Procurement Code" for "Public Purchases Act"; added Subsection B(20); and made minor changes in language and punctuation throughout the section.

Effective dates. — Laws 1986, ch. 76 contains no

effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Natural Gas Policy Act of 1978.** — The federal Natural Gas Policy Act of 1978, referred to in Subsection B(19), appears as 15 U.S.C. § 3301 et seq.

**Powers pertaining to oil well fires.** — The lawmakers intended commission not only to seek fire prevention to conserve oil, but also to conserve other property and lives of persons peculiarly subject to hazard of oil well fires. *Continental Oil Co. v. Brack*, 381 F.2d 682 (10th Cir. 1967).

The terms "spacing unit" and "proration unit" are not synonymous and commission has power to fix spacing units without first creating proration units. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil §§ 145 to 163.

58 C.J.S. Mines and Minerals §§ 229 to 243.

### 70-2-13. Additional powers of commission or division; hearings before examiner; hearings de novo.

In addition to the powers and authority, either express or implied, granted to the oil conservation commission or division by virtue of the statutes of the state of New Mexico, the division is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the division to provide for the appointment of one or more examiners to be members of the staff of the division to conduct hearings with respect to matters properly coming before the division and to make reports and recommendations to the director of the division with respect thereto. Any member of the commission or the director of the division or his authorized representative may serve as an examiner as provided herein. The division shall promulgate rules and regulations with regard to hearings to be conducted before examiners, and the powers and duties of the examiners in any particular case may be limited by order of the division to particular issues or to the performance of particular acts. In the absence of any limiting order, an examiner appointed to hear any particular case shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and transcribed and shall certify the same to the director of the division for consideration together with the report of the examiner and his recommendations in connection therewith. The director of the division shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if the hearing had been conducted before the director of the division. When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

**History:** 1953 Comp., § 65-3-11.1, enacted by Laws 1955, ch. 235, § 1; 1961, ch. 62, § 1; 1977, ch. 255, § 48; 1981, ch. 63, § 1.



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



BRUCE KING  
GOVERNOR



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November 25, 1992

KELLAHIN, KELLAHIN & AUBREY  
Attorneys at Law  
P. O. Drawer 2265  
Santa Fe, New Mexico 87504

RE: CASE NO. 10439  
ORDER NO. R-9790

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

A handwritten signature in cursive script that reads "Sally E. Leichtle".

Sally E. Leichtle  
Administrative Secretary

cc: BLM - Carlsbad  
Rick Brown