

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

**Ms. Florene Davidson  
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New Mexico Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505**

**APPLICATION OF HILCORP ENERGY  
COMPANY TO AMEND THE WELL  
DENSITY AND LOCATION  
REQUIREMENTS AND ADMINISTRATIVE  
EXCEPTIONS OF THE SPECIAL RULES  
FOR THE BLANCO-MESAVERDE GAS  
POOL, RIO ARRIBA AND SAN JUAN  
COUNTIES, NEW MEXICO**

**Case No: 16403**

**PRE-HEARING STATEMENT**

**Intervenor's name:**  
San Juan Citizens Alliance

**Intervenor's address:**  
P.O. Box 6655  
Farmington, NM 87499  
Email: info@sanjuancitizens.org  
Phone: 505-325-6724

**Addresses of intervenor's attorneys:**  
Western Environmental Law Center  
Julia Guarino, Staff Attorney,  
Kyle Tisdell, Attorney and Energy & Climate  
Program Director, and  
Erik Schlenker-Goodrich, Executive Director  
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University of New Mexico School of Law  
Natural Resources and Environmental  
Law Clinic  
Jon Anderson and Sabina Gaynor,  
Clinical Law Students  
Working under the supervision of  
Professor Gabriel Pacyniak,  
Supervising Attorney  
In accordance with NMRA 1-094  
1117 Stanford Drive NE  
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### **CONCISE STATEMENT OF THE CASE:**

On August 7, 2018, Hilcorp Energy Company submitted an application to the New Mexico Oil Conservation Division (OCD) seeking to amend the well density and location requirements and administrative exceptions in the Special Rules for the Blanco-Mesaverde Gas Pool in Rio Arriba and San Juan Counties, New Mexico. The OCD subsequently approved the request for a hearing before the Oil Conservation Commission (OCC), with a scheduled hearing date of September 13, 2018. San Juan Citizens Alliance (SJCA) moved to intervene in that hearing, and that motion was denied. However, the matter was continued for other reasons and a new hearing was scheduled on November 19, 2018. SJCA has again moved to intervene in this newly scheduled hearing, pursuant to its interest in protecting public health and the environment in the San Juan Basin.

Through its intervention SJCA seeks to understand how OCD will fulfill its statutory obligation to protect “public health and the environment,” NMAC 19.5.5.8, if this application is approved. Additionally, SJCA seeks to understand how approvals under this new well density rule would be implemented with respect to the federal government’s management responsibility in the San Juan Basin—in particular given that neither Bureau of Land Management’s (BLM) 2003 Resource Management Plan (RMP) nor that RMP’s underlying Environmental Impact Statement contemplates well density on this scale, suggesting an RMP Amendment and supplemental environmental review would therefore be required before changes made to OCC’s Special Rules may go into effect. SJCA further seeks to understand the apparent disconnect between the plain language of Hilcorp’s application—which appears to allow Hilcorp or other companies operating in the Blanco-Mesaverde Gas Pool to drill up to twice the number of *new* wells currently permitted—and public statements made by Hilcorp and state officials claiming

that Hilcorp's goal is simply to recomplete wells throughout the Pool. SJCA thus seeks clarification about the goals of approving this application, and whether modification of the language in the application might address SJCA's concerns about the potential for large-scale increase in well density in the Blanco-Mesaverde Gas Pool.

**NAMES OF WITNESSES THE PARTY WILL CALL TO TESTIFY AT THE HEARING:**

1. Mike Eisenfeld  
Energy and Climate Program Manager, San Juan Citizens Alliance
2. Don Schreiber  
Rio Arriba County Landowner and Member of San Juan Citizens Alliance

**THE APPROXIMATE TIME THE PARTY WILL NEED TO PRESENT ITS CASE:**

SJCA requests approximately one hour to make statements at the November 19 hearing, as well as the ability to cross examine any witnesses put up by Hilcorp.


**IDENTIFICATION OF ANY PROCEDURAL MATTERS THAT ARE TO BE  
RESOLVED PRIOR TO THE HEARING:**

SJCA contends that the upcoming November 19 hearing on this matter, while being held as an adjudication, should, under OCC's own rules and relevant case law, be conducted as a rulemaking. SJCA will file a separate motion requesting that OCC deny Hilcorp's application and follow rulemaking procedures for any subsequent substantially similar application. SJCA requests that OCC consider this motion in advance of considering SJCA's intervention arguments presented in SJCA's Notice of Intervention and substantive matters.

**EXTENT TO WHICH THE INTERVENOR OPPOSES ISSUANCE OF THE ORDER  
APPLICANT SEEKS:**

SJCA strongly opposes Hilcorp's request to amend the Special Rules that govern the Blanco-Mesaverde Gas Pool. If approved, this amendment to the Special Rules could result in a doubling of well density in the Pool by Hilcorp or any other operator, and would deny citizens of San Juan and Rio Arriba Counties the ability to meaningfully participate in the process. Furthermore, SJCA believes that OCD has not fulfilled its obligations to the public under NMAC 19.5.5.8, under which it is "charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas including the protection of public health and the environment." OCD is required to both fully consider the health and environmental implications of approving this application, and to consider how applications under this contemplated rule would be processed by OCC prior to appropriate federal analysis of the impacts of this scale of increased well density in this area of the San Juan Basin.

Respectfully Submitted,



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/s/

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**Case No: 16403**

**MOTION TO DENY HILCORP'S APPLICATION ON THE BASIS THAT IT SHOULD  
HAVE BEEN FILED AS A RULEMAKING RATHER THAN AN ADJUDICATION**

**Intervenor's name:**  
San Juan Citizens Alliance

**Intervenor's address:**  
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Farmington, NM 87499  
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San Juan Citizens Alliance (SJCA) respectfully moves that the New Mexico Oil Conservation Commission (OCC) deny Hilcorp's application in this case on the grounds that the public interest at stake in this case is such that the application and subsequent hearings should have complied with OCC's Rulemaking procedures under NMAC 19.15.3. OCC has implicitly acknowledged this public interest by allowing public comment at its September 13, 2018 hearing on this application. OCC's notice for the upcoming November 19 hearing describes the hearing as a "meeting and public hearing" and OCC presumably again intends to allow for public comment. Despite this acknowledgement of public interest in the matter, OCC has treated this proceeding as an adjudication under NMAC 19.15.4 for purposes of notice and comment procedure and thus has failed to provide meaningful opportunity for public engagement. OCC must make a clear distinction as to what manner of decision-making process it is conducting. As emphasized in the November 2, 2018 letter from the New Mexico Attorney General's office to OCC, no amount of discretion allows OCC to provide for partial opportunity for public engagement. *See* Letter from Assistant Attorney General Cholla Khoudry to OCC, Nov. 2, 2018 (attached as Exhibit A to this motion). If OCC chooses to allow public comment it must do so in full, following the rulemaking procedures in NMAC 19.15.3 and requiring Hilcorp to re-file its application to comply with those procedures. New Mexico law makes clear that allowing public participation under rulemaking procedures is the most appropriate course of action in this case. If OCC does not allow public comment it must allow SJCA to intervene under NMAC 19.15.4.11(C).

#### **I. OCC Has Conflated Its Adjudicatory and Rulemaking Procedures**

At its hearing on Hilcorp's application on September 13, 2018, OCC provided the public opportunity to comment on the application, and while it denied SCJA's motion to intervene,

offered that SJCA might present its concerns as sworn public comment. By styling its upcoming special hearing as a “meeting and public hearing” OCC perpetuates this confusion between inviting public participation as if it is conducting a rulemaking while treating the application procedurally as an adjudication. Public comment is contemplated under OCC’s rulemaking procedures, NMAC 19.15.3.12 (A)(2)(f), but not under its adjudication procedures. While SJCA commends OCC for allowing public comment on this matter, which contemplates large-scale change to well density in the San Juan Basin and thus implicates residents’ interests in protecting public health and the environment, OCC has not provided the opportunity for meaningful public participation because it did not follow notice procedures for rulemaking hearings.

OCC’s adjudicatory procedures in NMAC 19.15.4.9 simply require that notice of the hearing be published 20 days before the hearing on the division’s website, mailed to each person who requested notice, and published in a newspaper of general circulation. The rulemaking procedures in NMAC 19.15.3.9, on the other hand, require much more robust notice 30 days in advance of the hearing in six forums as well as extensive content providing the information necessary for the public to comment in a meaningful way. OCC’s attempt to strike some balance between these procedures leaves the public with anemic opportunity to comment that in no way approximates the public comment requirements in the New Mexico State Rules Act, NM ST § 14-4-2.

By following adjudicatory procedures but allowing public comment on this matter OCC conflates these two distinct processes in a manner that results in the unsatisfactory protection of all interests involved. A public process might specifically affect individuals and thus personal notice to those individuals may be appropriate in a rulemaking procedure. *See Johnson v. New Mexico Oil Conservation Commission*, 978 P.2d 327 (NM 1999). However, by allowing public



comment in what is allegedly an individual matter but failing to provide legally sufficient public notice under its own rules and New Mexico law, OCC is neither appropriately protecting and limiting the information under consideration in an allegedly adjudicatory proceeding nor allowing full and meaningful public participation as that right is established in New Mexico law and OCD's own regulations.

## **II. OCC Must Decide, as a Preliminary Matter, Whether It Is Conducting a Rulemaking or an Adjudication Before Substantively Considering Hilcorp's Application**

OCC has apparent<sup>1</sup> statutorily authorized discretion to consider Hilcorp's application in an adjudicatory proceeding. NMAC 19.15.3.8(D) specifically exempts "special pool orders" from rulemaking proceedings and provides that the OCC "may" adopt special pool orders through adjudicatory proceedings. By using the word "may", the rules give OCC the authority to elect to follow rulemaking procedures instead of adjudicatory procedures when changing special pool rules. Regardless, OCC must choose to follow one set of procedures or the other. New Mexico and federal precedent make a strong case that it would be most appropriate for OCC to consider this manner of decision a rulemaking given the impacts to the public at stake.

The U.S. Supreme Court distinguishes adjudicatory and rulemaking procedures by holding that rulemakings are appropriate when a relatively large number of people are affected by an administrative decision, while adjudicatory hearings are appropriate when "[a] relatively small number of persons was concerned, who were exceptionally affected, in each case upon individual grounds." *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 446 (1915) (holding that a tax levied on the city of Denver was properly decided through a rulemaking

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<sup>1</sup> The term "special pool orders" is not defined, however, and clarity from the OCC or OCD as to whether "special pool orders" and "special pool rules" (at issue in Hilcorp's application) are equivalent would be helpful.

procedure); *see also* *Londoner v. City and County of Denver*, 210 U.S. 373 (1908) (holding that a tax levied only on the residents of a particular street required notice and a hearing, rather than a general rulemaking process). Generally, under federal law, “[a]djudication operates concretely upon individuals in their individual capacity, with current effect, while rules apply prospectively to a defined class or to all persons.” § 22:1. Choosing adjudication over rules, O'Reilly, *Administrative Rulemaking* § 22:1 (2018 ed.). Federal courts have also found that “[u]se of adjudications to announce principles is permissible, except where the rule operates retroactively and ‘disturbs settled expectations.’” *Id.* (quoting *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 950 (9th Cir. 2007)). Here, while there are a limited number of companies currently operating in the pool, changes in the pool rules apply to all current and future operators, affect property use and values of the general public in San Juan and Rio Arriba Counties, and will result in public health and environmental effects that will impact residents of the entire region. This is not a retroactive application of a rule that has an effect on individuals but rather a prospective change in a rule that “disturbs settled expectations.”

Rulemaking does not implicate constitutional due process and thus public participation is a statutorily endowed right. *Livingston v. Ewing*, 652 P.2d 235, 238 (NM 1982). However, New Mexico courts have looked to federal precedent to guide New Mexico’s case law on this subject. The New Mexico Supreme Court has extended the logic of *Bi-Metallic* in the 1982 case *Livingston v. Ewing*, citing that case to hold that adoption of a rule is subject to statutory notice requirements, which is distinguishable from the personal notice that is required for an adjudicatory hearing. *Id.* A more recent New Mexico Court of Appeals case, *Earthworks' Oil & Gas Accountability Project v. New Mexico Oil Conservation Comm'n*, reiterated the New Mexico Court’s distinction in *Livingston* between an adjudication and a rulemaking, concluding that

“while rulemaking creates generally applied standards to which an agency and individuals are held, adjudication is the resolution of particular disputes involving specific parties and specific problems, by applying such rules.” 374 P.3d 710, 714 (NM Ct. App. 2016) (*cert. denied* (Apr. 15, 2016)). Again, here we do not have a dispute, rather Hilcorp asks OCC to change the way in which a large portion of San Juan and Rio Arriba Counties are governed.

Notably, in *Uhden v. New Mexico Oil Conservation Commission*, the New Mexico Supreme Court concluded, without considering New Mexico or U.S. Supreme Court precedent, that an application for increasing well spacing in a particular pool should be characterized as an adjudicatory proceeding, rather than a rulemaking. 817 P.2d 721, 723 (NM 1991). This conclusion was based on the plaintiff’s assertion that she should have been provided personal notice as her property was particularly and directly affected by the OCC’s decision. *Id.* The Court found that OCC’s decision would apply only to a limited and readily identifiable individuals but failed to distinguish individual exceptions to spacing rules from changes to the rules affecting an entire pool or to consider the attendant impacts to the public. Contrast may be found in the New Mexico Supreme Court’s subsequent decision in *Johnson v. New Mexico Oil Conservation Commission*, which concluded that while the rulemaking proceeding in question was appropriately a public process, individual property owners were still entitled to personal notice. 978 P.2d 327 (NM 1999). Furthermore, New Mexico courts have found that zoning ordinances, which apply generally to properties in a certain county or other defined geographic area, are rulemakings by nature. *Miles v. Bd. of Cty. Comm’rs of Cty. of Sandoval*, 964 P.2d 169, 173 (NM Ct. App. 1998). The matter at issue is much like a zoning ordinance – affecting a subdivision of state land but equally applicable to all lands and operators within that subdivision.

Hilcorp's application implicates the interests of the public, as does a zoning ordinance, by affecting property rights and values as well as public health and safety.

While OCC has discretion here the weight of the case law on rulemakings versus adjudications points OCC toward choosing to conduct a rulemaking in this matter. Regardless, OCC must follow its own procedures and must make a clear choice between those procedures as emphasized in the letter from the Attorney General's office attached as Exhibit A.

**III. OCC Should Deny Hilcorp's Application and Conduct any Future Hearings on Substantially Similar Matters as Rulemakings to Protect the Public Interest**

SJCA requests that deny Hilcorp's application in this case and conduct any future hearings on this or substantially similar matters as rulemakings in order to protect the public interest. As demonstrated above, hearings on matters such as the one currently before the OCC would be rulemakings before a federal agency or other New Mexico state agency, as the resulting decision would easily meet the definition of a rule. OCC has the discretion to do so, and has acknowledged as much by attempting to strike an unsatisfactory – and illegal – compromise between its rulemaking and adjudicatory procedures. OCC must make a clear decision in this case as to whether it is conducting an adjudication or a rulemaking before proceeding to consider the substance of this case in order to appropriately protect the interest of all parties involved.

Respectfully Submitted,

/s/

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# EXHIBIT A

To SJCA's Motion to Deny Hilcorp's Application on the Basis that It  
Should Have Been Filed as a Rulemaking Rather than an Adjudication

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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November 2, 2018

Bill Brancard, General Counsel  
Energy, Minerals, & Natural Resources Dept.  
1220 South St. Francis Drive Santa Fe, NM 87505  
Email: [bill.brancard@state.nm.us](mailto:bill.brancard@state.nm.us)

Dear Mr. Brancard:

The Office of the New Mexico Attorney General Consumer and Environmental Protection Division is dedicated to protecting New Mexico's consumers, our environment, and our economy. As such, we remain concerned about Case 16403, an application by Hilcorp Energy Company to amend well density in the Blanco-Mesaverde Gas Pool, now scheduled for a special hearing before the Oil Conservation Commission (OCC) on Nov. 19, 2018.

Given that this proposal seeks to potentially double the density of wells in portions of the San Juan Basin, we believe the Hilcorp proposal merits a meaningful opportunity for input by interested members of the public and other parties. We are seeking clarification, therefore, about the OCC's notice and public hearing procedures on three grounds: (1) compliance with 19.15.3.9 NMAC and the State Rules Act, NMSA 1978 § 14-4-5.2; (2) notification and publication as required by 19.15.4.9(B)(2),(3) NMAC, if that regulation applies instead; and (3) the parameters for intervention in 19.15.4.11(C) NMAC. Additionally, we are seeking information not available in the record now that we believe is essential to an adequate evaluation of the density application.

First, please provide the grounds on which you are following the notice provisions for an adjudicatory hearing, 19.15.4.11, rather than the more substantial (30-day) rulemaking provisions in 19.15.3.9 NMAC and the State Rules Act, Section 14-4-5.2.

Second, if 19.15.4.9(B)(1) does apply, we understand that notice was accordingly provided on the OCC website on Oct. 30, 2018, 20 days prior to the hearing. Please provide us with assurance that notice was also published in newspapers in San Juan and Rio Arriba counties, or newspapers with statewide circulation, as required by 19.15.4.9(B)(3). With regard to the notification of interested parties, please confirm that you have delivered notice by postal mail to known affected landowners and mineral rights holders which likely include the Carson National Forest, the Bureau of Land Management, the Bureau of Indian Affairs, the Navajo Nation, the Jicarilla Apache Nation, San Juan and Rio Arriba counties, and other state and private interests, as required by 19.15.4.9(B)(2).

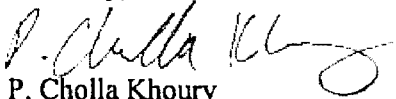
TOLL FREE 1 844 253 9210 TELEPHONE (505)490 4060 FAX (505)490 4883 [www.nmag.gov](http://www.nmag.gov)  
MAILING ADDRESS P.O. DRAWER 1508 SANTA FE, NEW MEXICO 87504 1508  
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Third, we understand that the OCC denied a move to intervene on Sept. 13 by at least one group seeking to "contribute substantially to the ... protection of public health or the environment" under 19.15.4.11(C). The OCC's reasoning for the denial of intervention appears to have focused on a need for technical expertise with regard to drilling and the avoidance of waste, but we seek to understand the denial with respect to the 19.15.4.11(C) exemption. In the OCC's view, why was the exemption inapplicable?

Finally, please provide on your web site or in response to this letter additional information that will assist this Office, the public, and other interested parties in evaluating and providing input on the application. This will include, in the least, the potentially affected lease parcel numbers, and ideally, NEPA documents associated with the parcels documenting prior evaluations of public health and environmental impacts.

Thank you for your prompt attention.

Sincerely,



P. Cholla Khoury  
New Mexico Office of the Attorney General  
Director, Consumer and Environmental Protection

**STATE OF NEW MEXICO  
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**Case No: 16403**

**MOTION FOR CONTINUANCE**

**Intervenor's name:**  
San Juan Citizens Alliance

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## INTRODUCTION

San Juan Citizens Alliance (SJCA) respectfully moves the New Mexico Oil Conservation Commission (OCC) for a continuance of Hilcorp's application in this case. SJCA does so on the grounds that:

- (1) Substantial information relevant to this case is pending public release. This includes:
  - Hilcorp's response to a U.S. Environmental Protection Agency (EPA) information request submitted pursuant to section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a). That information request raises important questions regarding the Clean Air Act compliance status of Hilcorp's production facilities in New Mexico. *See* U.S. EPA, Clean Air Act Information Request for Hilcorp Energy Company Production Facilities in New Mexico, Oct. 29, 2018 (attached as Exhibit F).
  - EPA and U.S. Bureau of Land Management responses to inquiries made by Senator Tom Udall, Senator Martin Heinrich, and Representative Ben Ray Lujan regarding the impact of increased well density to federal public lands in New Mexico.
- (2) New Mexico federal and state political leadership, inclusive of Governor-Elect Michelle Lujan Grisham, New Mexico State Land Commissioner-Elect Stephanie Garcia Richard, New Mexico House Majority Leader Peter Wirth, and Chairman of the New Mexico House Energy, Environment, and Natural Resources Committee Matthew McQueen have requested a continuance pending the production of additional information from EPA and BLM. Governor-Elect Grisham expressly noted, in the absence of this information, "it would be irresponsible to move forward with this hearing as scheduled." Letter from Representative Michelle Lujan Grisham to Secretary Ken McQueen, Nov. 15, 2018 (attached as Exhibit J).
- (3) The Rio Arriba County Commission issued Resolution No. 2019-028 expressing support for the delegation's request for EPA and BLM information to "determine whether an increase in the density of wells in the Blanco-Mesaverde Gas Pool will negatively affect air and water quality in Rio Arriba County and the region." Rio Arriba Board of County Commissioners, Resolution No. 2019-028, Declaring Rio Arriba County Commission's Support for the Federal Congressional Delegation's request that the BLM and the EPA Ensure that the Air and Water Quality in Rio Arriba County and the Region are Protected, Oct. 25, 2018, page 2 (attached as Exhibit G).

- (4) The potential preclusion of SJCA's opportunity to fully and thoroughly cross-examine all witnesses presenting testimony regarding or in support of Hilcorp's application. The records pending production described above are relevant and essential to SJCA's ability to evaluate and respond to Hilcorp's application, including through cross examination of Hilcorp's witnesses. In addition, OCC has provided no assurances, if intervention is granted, that SJCA will be afforded an opportunity to cross examine Hilcorp's witnesses. At the close of OCC's September 13th hearing on this application, Hilcorp was told that they did not need to have their witnesses attend the November 19<sup>th</sup> hearing. This raises serious procedural concerns regarding OCC's November 19<sup>th</sup> hearing, including SJCA's opportunity, if granted intervention, to support its position through cross examination of Hilcorp's witnesses.

Individually and collectively, these grounds demonstrate substantial, outstanding questions regarding Hilcorp's application that have yet to be resolved. To ensure OCC considers all relevant evidence necessary for a reasoned and informed decision, a continuance of this hearing should be provided until the production of those records and an opportunity for those records to be provided to the OCC by the public or other interested parties as part of this case.

**I. Time Should Be Permitted for the U.S. EPA, U.S. BLM, and Hilcorp to Produce Records Relevant and Essential to OCC's Decision and the Impacts of Hilcorp's Application, if Approved, to New Mexico Air and Water Quality, Public Health, Communities, and Federal Public Lands**

On October 5, New Mexico Senator Tom Udall, Senator Martin Heinrich, and Congressman Ben Ray Lujan sent letters to the EPA Office of Enforcement and Compliance and the BLM's Acting Director of Policies and Programs. Those letters requested, on behalf of SJCA, agency records pertinent to Hilcorp's application and more broadly to Hilcorp's operations in the Blanco-Mesaverde Gas Pool. *See* Exhibits A and B.

While the information was requested by November 1, BLM has yet to respond to this request. EPA did respond but requested, on October 26<sup>th</sup>, that SJCA seek this information through a Freedom of Information Act (FOIA) request. *See* Exhibit C. SJCA submitted that FOIA request to EPA on October 30<sup>th</sup>. *See* Exhibit D. EPA, however, denied SJCA's request for

expedited production on November 8th and SJCA continues to await EPA's substantive response. *See* Exhibit E. This information is relevant to Hilcorp's application.

Additionally, on October 29, EPA sent Hilcorp an information request pursuant to section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a), to determine whether Hilcorp is in compliance with applicable sections of the Clean Air Act. *See* Exhibit F. Hilcorp is required to respond within 30 calendar days of receiving this request, likely some time during the first week of December. The fact that EPA elected to send this information request to Hilcorp raises substantial, outstanding questions regarding Hilcorp's compliance with the Clean Air Act. Pending Hilcorp's response to EPA's request and a determination by EPA whether Hilcorp is or is not in compliance with the Clean Air Act, OCC should not approve Hilcorp's application.

## **II. Rio Arriba County Has Requested BLM and EPA Information That Should Be Provided to the County Before OCC Proceeds with this Hearing**

On October 25, the Board of County Commissioners of Rio Arriba County passed a resolution requesting that BLM and EPA comply with the delegation's October 5<sup>th</sup> letters to those agencies in order to "determine whether an increase in the density of wells in the Blanco-Mesaverde Gas Pool will negatively affect air and water quality in Rio Arriba County and the region." Exhibit G, page 2. The resolution emphasizes that while oil and gas development is important to the region's economy of the region, there is a pressing need to "balance the interests between economic growth and negative environmental impacts." *Id.*, page 1. The Blanco-Mesaverde Gas Pool extends into the northwest portion of Rio Arriba County, and the County Commission desires information about the potential effects of Hilcorp's application on the County's citizens. OCC should carefully weigh Rio Arriba County's concern and await the information that BLM and EPA can offer in OCC's consideration of this matter.

### **III. New Mexico Political Leaders and the New Mexico Public Have Requested a Delay**

As evidenced by the public comment letters uploaded to OCC's online record of this case on November 15, there is broad public interest and deep public concern about the effects that approval of Hilcorp's application would have on land values, public health, and the environment. Other letters from the public not yet posted on the OCC's site include a letter from former New Mexico State Land Commissioner Ray Powell and a letter from a coalition of more than 100 New Mexico residents, five state elected officials, and more than 30 NGOs representing over one million members. *See* Exhibits H and I.

Within the last several days, the public's concern has been echoed by political leaders at all levels of New Mexico's government. These political leaders have asked for a delay in OCC's hearing—in effect, a continuance—until additional information, such as the information pending from EPA and BLM, is made available. These political leaders include:

- Congresswoman and Governor-Elect Michelle Lujan Grisham.
- New Mexico State Representative and Land Commissioner-Elect Stephanie Garcia Richard.
- Senators Tom Udall and Martin Heinrich and Congressman Ben Ray Lujan.
- Congresswoman-Elect Debra Haaland.
- Navajo Nation Council Delegate-Elect Daniel Tso.
- New Mexico House Majority Leader Peter Wirth.
- Chairman of the New Mexico House Energy, Environment, and Natural Resources Committee Matthew McQueen.
- New Mexico State Senators Michael Padilla, Gerald Ortiz y Pino, and Cisco McSorely.
- Aztec Mayor Victor Snover.
- Aztec Mayor Pro-Tem Rosalyn Fry.

See Exhibits J through S. Additionally, County Commissioner Gwen Lachelt of La Plata County, Colorado, points to the effects the approval of this application will have on La Plata County residents, who already suffer from poor air quality in the San Juan Basin, and asks that OCC “not consider this application until studies are completed that analyze the social, economic and environmental impacts of doubling the number of wells in the San Juan Basin.” Exhibit T. The significant public interest and concern regarding Hilcorp’s application substantiates SJCA’s motion, here, for a continuance as well as its separate motion to deny Hilcorp’s application on the basis that it should be considered as a rulemaking, not an adjudication. Fundamentally, a continuance ensures OCC can properly and deliberatively consider all relevant information and its own responsibilities to consider that information before making a decision on Hilcorp’s application.

#### **IV. Intervention Would Be Meaningless Without Production of Information Relevant to Hilcorp’s Application and an Opportunity to Cross-Examine Hilcorp’s Witnesses**

Without production of the BLM and EPA records described above, SJCA’s ability to prepare a meaningful substantive response to Hilcorp’s application and to effectively cross examine Hilcorp’s witnesses is compromised. Furthermore, while the OCC, at its September 13<sup>th</sup> hearing invited SJCA to submit a renewed request to intervene, there are no assurances that intervention, if granted, would prove meaningful given there are no assurances Hilcorp’s witnesses will be available for cross examination on November 19<sup>th</sup>.

During OCC’s September 13 hearing on this application, Hilcorp put three expert witnesses on the stand: Charles Creekmore, Landman for Hilcorp; Andrew Sparks, Geologist for Hilcorp; and Michelle Sivadon, Senior Reservoir Engineer for Hilcorp. These witnesses provided testimony, but SJCA was not granted intervention and thus did not have a meaningful

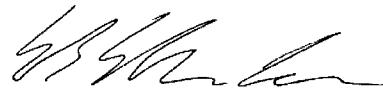
opportunity to cross examine Hilcorp's witnesses. At the conclusion of that hearing, Mr. William Brancard, Attorney for OCC, stated that Hilcorp was not required to bring those witnesses back to testify at the November 19 hearing. *See Reporter's Transcript of Proceedings, Commissioner Hearing, Case No.16403, September 13, 2018, Santa Fe, New Mexico, page 131.* Thus, if SJCA is granted intervention at the November 19 hearing, that intervention would not provide SJCA a full right of participation in the matter.

A continuance would allow the OCC to provide SCJA with assurances and proper notice that, if intervention is granted, SJCA would be afforded the full opportunity, on the basis of EPA and BLM records relevant to Hilcorp's application, to substantively respond to that application and to cross examine all of the witnesses who have given testimony in this matter.

### **CONCLUSION**

For the reasons stated above, SJCA respectfully moves the OCC for a continuance. Individually and collectively, these grounds demonstrate substantial, outstanding questions regarding Hilcorp's application that have yet to be resolved. Put simply, a continuance of this hearing pending production of those records and an opportunity for those records to be provided to the OCC by the public or other interested parties as part of this case is essential ensure that OCC's decision is reasoned and fully informed.

Respectfully Submitted,



Erik Schlenker-Goodrich  
Executive Director  
Western Environmental Law Center  
208 Paseo del Pueblo Sur #602  
Taos, NM 87571  
eriksg@westernlaw.org  
(575) 751-0351

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2018, I served a copy of the foregoing documents to the following counsel of record via Electronic Mail:

Michael H. Feldewert  
mfeldewert@hollandhart.com

Adam G. Rankin  
agrarkin@hollanhart.com

Jordan L. Kessler  
jlkessler@hollandhart.com

Julia Broggi  
jbroggi@hollandhart.com

James Bruce  
JamesBruc@aol.com

Attorneys for Hilcorp Energy Company

J. Scott Hall  
shall@logosresourcesllc.com

Attorney for LOGOS Resources II, LLC

/s/

---

Erik Schlenker-Goodrich

# EXHIBIT A

To SJCA's Motion for Continuance



**Congress of the United States**  
**Washington, DC 20515**

October 5, 2018

The Honorable Susan Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Mail Code 2201A  
Washington, DC 20460

Dear Assistant Administrator Bodine:

The attached letter was sent to us by Mr. Michael Eisenfeld of the San Juan Citizens Alliance in Farmington, New Mexico. In his letter, Mr. Eisenfeld expresses concern about the impact on the environment of oil and gas recompletion in the San Juan Basin of New Mexico. The alliance's letter also poses a number of important questions regarding the Environmental Protection Agency's (EPA) responsibility to assure compliance with federal air quality rules in the San Juan Basin and the status of EPA's enforcement in northwestern New Mexico.

Given the significant public interest in these matters, we respectfully ask that you carefully review Mr. Eisenfeld's letter and respond fully to each of the issues and questions. The State of New Mexico is set to rule on issues related to these matters by November 19, 2018. Therefore, a response is requested as soon as possible, but no later than November 1, 2018.

Sincerely,



TOM UDALL  
United States Senator



MARTIN HEINRICH  
United States Senator



BEN RAY LUJÁN  
Member of Congress



PO Box 6655  
Farmington, NM 87499  
505.325.6724  
sanjuancitizens.org

October 1, 2018

The Honorable Martin Heinrich, United States Senate  
303 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-5521

The Honorable Tom Udall, United States Senate  
531 Hart Senate Office Building  
Washington DC, 20510  
(202) 224-6621

The Honorable Ben Ray Luján, United States House of Representatives  
2231 Rayburn HOB  
Washington, D.C. 20515  
(202) 225-6190

Re: (CFR) 40, 60, 0000/New Mexico

Dear Senators and Representative Luján,

Oil and gas companies in San Juan and Rio Arriba counties in Northwestern New Mexico have recently applied to double the number of natural gas wells in the Blanco-Mesaverde formation in both counties. Doubling the number of wells in the area could significantly impact the air quality of the Four Corners region, already the subject of national and international studies relating to what is known as the "Four Corners Methane Hotspot". Indeed, the 60+ year old San Juan Basin natural gas field has been determined to be the leakiest gas field in the United States (Cassady 2016).

Extensive and ongoing peer-reviewed research shows that oil and gas emissions are the major contributor to this unusual accumulation of methane (Kort et al, 2014; Frankenberg et al, 2016). Natural gas emissions contain toxic and cancer causing chemicals such as benzene, toluene, xylene and others in addition to methane. As VOCs and agents for the formation of NOX, natural gas pollutants have been shown to be particularly damaging to the health of children, the disabled, and the elderly (McMullin, 2018).

At a September 13, 2018 hearing before the New Mexico Oil Conservation Commission (NMOCC), Texas-based Hilcorp Energy Company made an application to double the number of Blanco-Mesaverde wells from the current limit of 8 wells per section to 16 wells per section in San Juan and Rio Arriba counties. This could result in approximately 7,500 new natural gas wells in a region that already has approximately 40,000 active and abandoned wells. The hearing has been continued to November 19, 2018.

The purpose of this letter is to review EPA rule 0000 and 0000a as they apply to natural gas development in the San Juan Basin and elsewhere in New Mexico. We seek to determine if energy companies are in compliance with EPA rules regarding air quality as related to drilling and recompletion.

In light of industry's pending application before NMOCC to double the number of gas wells in the majority of the San Juan Basin, it is essential that we know the status of federal rule compliance and enforcement designed to protect New Mexico citizens from health and environmental threats arising from federal mineral development on both tribal and public lands. We ask that EPA meet its responsibilities under existing rules and regulations, and answer in a timely manner the questions and concerns we list below:

- EPA records for all well in San Juan and Rio Arriba counties, showing notification by operator two days prior to beginning hydraulic fracturing procedures;
- Annual reports to EPA from operators detailing well site completions, certified as accurate and truthful by a senior official of the owner or operator;
- Listing of specification by operator of deviations to CFR 40, 60, 0000 regulations experienced during completion and reported to EPA;
- Listing of exceptions granted by EPA to operator for hydraulically fractured low-pressure wells, including all "Determinations of Technical Infeasibility."

Additionally, we ask that EPA determine and report the number of Reduced Emission Completion units available to San Juan Basin operators at this time.

We also ask that EPA include how the information requested above is to be made available to the public and how EPA's oversight and enforcement are compatible with the existing plans and policies of adjacent local, state, federal, and tribal agencies. We ask that EPA show whether and how current oversight is consistent with the purposes, policies, and programs of federal law and regulations applicable to federal minerals on both tribal and federal public lands.

New Mexico citizens are entitled to the federal health and environmental safeguards that the Environmental Protection Agency was established to provide. If EPA is unable to answer the requests for information listed above in advance of the November 19, 2018 NMOCC hearing on doubling well density in San Juan and Rio Arriba counties, we believe it would be appropriate for EPA to request a further continuance of the hearing until a thorough understanding of whether or not energy companies are in compliance with CFR 40, 60, 0000 in New Mexico, what EPA enforcement actions regarding CFR 40, 60, 0000 are, and how this information may be made public so that a transparent process may take place.

Please reply in writing by November 1, 2018.

Sincerely,

*Michael Eisenfeld*

Michael Eisenfeld  
Energy and Climate Program Manager  
office: 505.325.6724  
mobile: 505.360.8994  
[sanjuancitizens.org](http://sanjuancitizens.org)

# EXHIBIT B

To SJCA's Motion for Continuance

**Congress of the United States**  
**Washington, DC 20515**

October 5, 2018

Mr. Brian Steed  
Deputy Director, Policy and Programs  
Exercising Authority of the Director  
Bureau of Land Management  
1849 C Street, NW, Room 5655  
Washington, DC 20240

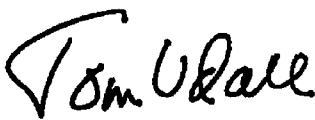
Dear Mr. Steed:

The attached letter was sent to us by Mr. Michael Eisenfeld of the San Juan Citizens Alliance in Farmington, New Mexico. The letter is in regard to an application currently pending in the New Mexico Oil Conservation Commission to amend the allowed density of wells in the Blanco-Mesaverde Gas Pool in Rio Arriba and San Juan Counties (Case No. 16403).

In his letter, Mr. Eisenfeld seeks clarification of the Bureau of Land Management's (BLM) oversight responsibility of oil and gas development of federal lands and the potential impact on public health and the environment of the proposed increase in well density in the San Juan Basin of New Mexico. The alliance's letter also poses a number of specific questions about how the application would comply with the Federal Land Policy and Management Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Environmental Policy Act of 1969, National Historical Preservation Act, and other applicable laws, Executive Orders, and BLM management policies. He also asks that you assure that any increase in well density is in full compliance with the BLM Farmington Field Office's 2003 Resource Management Plan.

Given the significant public interest in these matters, we respectfully ask that you carefully review Mr. Eisenfeld's letter and respond fully to each of the issues and questions. The State of New Mexico is set to rule on issues related to these matters by November 19, 2018. Therefore, a response is requested as soon as possible, but no later than November 1, 2018.

Sincerely,



TOM UDALL  
United States Senator



MARTIN HEINRICH  
United States Senator



BEN RAY LUJÁN  
Member of Congress



PO Box 6655  
Farmington, NM 87499  
505.325.6724  
sanjuancitizens.org

October 1, 2018

The Honorable Martin Heinrich, United States Senate  
303 Hart Senate Office Building  
Washington, D.C. 20510  
(202) 224-5521

The Honorable Tom Udall, United States Senate  
531 Hart Senate Office Building  
Washington DC, 20510  
(202) 224-6621

The Honorable Ben Ray Luján, United States House of Representatives  
2231 Rayburn HOB  
Washington, D.C. 20515  
(202) 225-6190

Dear Senators and Representative Luján,

Oil and gas companies in San Juan and Rio Arriba counties in Northwestern New Mexico have made clear the intention to downspace oil and gas drilling operations that could significantly impact federal lands (federal minerals and surface). Of particular note is the recent Hilcorp application to change the well density of Blanco-Mesaverde wells before the New Mexico Oil Conservation Commission (NMOCC) from the current 8 wells per section to 16 wells per section in San Juan and Rio Arriba counties. This could result in approximately 7,500 new natural gas wells in a region that already has significant oil and gas development.

At a September 13, 2018 hearing before the New Mexico Oil Conservation Commission (NMOCC), Hilcorp stated that the Bureau of Land Management (BLM) has been supportive of this proposed well density change. Hilcorp has also portrayed this application as a means for recompletion of wells. The hearing has been continued before the NMOCC to November 19, 2018.

The purpose of this letter is to gain clarity on BLM's oversight responsibilities pertaining to proposed oil and gas well density changes ensuring that energy development and production of our non-renewable resources are done carefully and in compliance with all federal rules designed

to protect the health and environment of New Mexico citizens and multiple use provisions for public land.

We would like to know if BLM has been formally presented with and /or notified about Hilcorp's proposal to downspace Blanco-Mesaverde drilling from the current 8 wells per section to 16 wells per section in San Juan and Rio Arriba counties? If so, we ask to be notified of the formal BLM response, and of what measures the BLM will take to evaluate impacts on federal subsurface minerals and the impacts well density changes will have to federal resources, including, but not limited to, air/water/climate. In addition, we ask if BLM has assessed how this proposed well density change would or would not conform with the existing 2003 Resource Management Plan for the BLM Farmington Field Office?

BLM Planning Criteria that must apply to the well density changes proposed by Hilcorp for the Blanco-Mesaverde formation include:

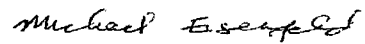
- Compliance with the Federal Land Policy and Management Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Environmental Policy Act of 1969, National Historical Preservation Act, and all other applicable laws, Executive Orders, and BLM management policies.
- Conformance with the existing reasonable foreseeable development scenario to predict future levels of development in the BLM Farmington Field Office.
- Coordination with federal, state, and local agencies and tribal governments in the process to achieve consistency with existing plans and policies.
- Recognition of special importance of public lands to people who live in communities surrounded by public lands and the importance of public lands to the nation as a whole.
- Broad-based public participation requirements and responsibilities. Decisions in any applicable plan will strive to be compatible with the existing plans and policies of adjacent local, state, federal, and tribal agencies as long as the decisions are consistent with the purposes, policies, and programs of federal law and regulations applicable to public lands.
- The BLM is required to update management actions that are no longer adequate to address unforeseen impacts of additional oil and gas development within proposed actions that are not accounted for in the current RMP.
- BLM is required to enforce Environmental Protection Agency (EPA) standards for recompletions if EPA has no state authority for compliance.

Please reply in writing by November 1, 2018 as to how BLM intends to respond to the Hilcorp proposal for well density changes within the Farmington Field Office. If BLM is unable to address the questions above prior to the November 19<sup>th</sup>, 2018 hearing of Hilcorp before the NMOCC, we believe it would be appropriate for BLM to request a further continuance of the hearing until a thorough understanding of how this proposal would impact federal lands, and whether Hilcorp's proposal is in compliance with the Federal Land Policy and Management Act,



the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Environmental Policy Act of 1969, National Historical Preservation Act, and all other applicable laws, Executive Orders, and BLM management policies.

Sincerely,

A handwritten signature in black ink that reads "Michael Eisenfeld". The signature is written in a cursive, slightly slanted style.

Michael Eisenfeld  
Energy and Climate Program Manager  
office: 505.325.6724  
mobile: 505.360.8994  
[sanjuancitizens.org](http://sanjuancitizens.org)

# EXHIBIT C

To SJCA's Motion for Continuance



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Michael Eisenfeld  
Energy and Climate Program Manager  
San Juan Citizens Alliance  
Farmington, New Mexico 87499

Dear Mr. Eisenfeld:

We are in receipt of your letter ("Enclosure") to the Honorable Martin Heinrich, the Honorable Tom Udall and the Honorable Ben Ray Lujan, dated October 1, 2018. I have been asked to respond to your letter.

In your letter, you specifically ask for the following records:

1. EPA records for all well [sic] in San Juan and Rio Arriba counties, showing notification by operator two days prior to beginning hydraulic fracturing procedures;
2. Annual reports to the EPA from operators detailing well site completions, certified as accurate and truthful by a senior official of the owner or operator;
3. Listing of specification by operator of deviations to CFR 40.60.000 [sic] regulations experienced during completion and reported to the EPA;
4. Listing of exceptions granted by the EPA to operator for hydraulically fractured low-pressure wells, including all "Determinations of Technical Infeasibility"; and
5. The number of Reduced Emission Completion units available to San Juan Basin operators at this time.

To provide a response to this request, we ask that you submit a request using the Freedom of Information Act (FOIA). The FOIA is a federal law that gives the public the right to make requests for federal agency records. FOIA requests may be submitted through FOIAonline at <https://www.foiaonline.gov/foiaonline/action/public/request>. Information specific to the EPA's implementation of the FOIA process may be found <https://www.epa.gov/foia>. Using the FOIA process will enable the EPA to make these documents available through FOIAonline to you and to other interested members of the public, as described below.

Prior to submitting a request for this information, you may wish to search FOIAonline. Some of the information you requested may have been collected in response to previous FOIA requests. Please use the search terms "EPA-HQ-2018-001886," "EPA-HQ-2018-001268," and "EPA-HQ-2018-003357" in the "Quick Search" box on the FOIAonline home page at <https://www.foiaonline.gov/foiaonline/action/public/home>. Please search on each of these terms individually (e.g. one at a time). Additionally, with respect to your item number 5, above, the EPA observes that while you are welcome to include this in a request, we do not collect this information.

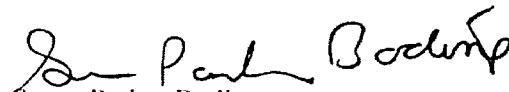
In addition to your request for specific records, you asked that the EPA describe how the information you requested is to be made available to the public. As described above, the EPA provides public access to agency records through the fulfillment of FOIA requests. Additionally, EPA's progress to implement the tenets of open government set forth in the Open Government Directive (M-10-06) may be found at [https://www.epa.gov/sites/production/files/2018-10/documents/epaopengovplanversion5\\_0final.pdf](https://www.epa.gov/sites/production/files/2018-10/documents/epaopengovplanversion5_0final.pdf). "ECHO," the Enforcement and Compliance History Online, is a web tool developed and maintained by the EPA's Office of Enforcement and Compliance Assurance for public use. The ECHO website provides environmental regulatory compliance and enforcement information for approximately 800,000 regulated facilities nationwide. It also offers information about compliance and enforcement activities at the state level. "ECHO" may be found at <https://echo.epa.gov/>.

Compliance with the law is a fundamental priority of the agency and the EPA works collaboratively with states, local governments, and tribes to implement and enforce laws that protect human health and the environment. *See*, "Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States" <https://www.epa.gov/sites/production/files/2018-01/documents/guidance-enhancingregionalstatecommunicationoncompliance.pdf>.

Regarding your request that the EPA request a further continuance of the September 13, 2018, hearing before the New Mexico Oil Conservation Commission (NMOCC) by Hilcorp Energy Company (currently scheduled for November 19, 2018), the EPA is not a party to that proceeding.

Thank you again for your letter. If you have additional questions, please contact Apple Chapman of my staff at [chapman.apple@epa.gov](mailto:chapman.apple@epa.gov) or 202-564-5666.

Sincerely,

  
Susan Parker Bodine

Enclosure

cc: The Honorable Martin Heinrich, United States Senate  
The Honorable Tom Udall, United States Senate  
The Honorable Ben Ray Lujan, Member of Congress

# EXHIBIT D

To SJCA's Motion for Continuance

# Preview Request

The Freedom of Information Act (FOIA) is a federal law that gives the public the right to make requests for federal agency records. Agencies may withhold information according to nine exemptions contained in the statute. The FOIA applies only to federal agencies. It does not apply to records held by Congress, the courts, or by state or local government agencies. Each state has its own public access laws that should be consulted for access to state and local records.

★ indicates a required field.

## Agency Selection

**Agency** Environmental Protection Agency  
Region 6 (AR, LA, NM, OK, TX)

If you are looking for information regarding a specific property, you may obtain this information immediately without filing a FOIA request by using the MyProperty portal, accessible at <http://www.epa.gov/myproperty>

## Request Type

**Request Type** FOIA

## Contact Information

<b>Salutation</b>	Mr.	<b>Mailing Address Location</b>	United States/US Territories
<b>First Name</b>	Michael	<b>Address Line 1</b>	PO Box 6655
<b>Middle Initial</b>		<b>Address Line 2</b>	
<b>Last Name</b>	Eisenfeld	<b>City</b>	Farmington
<b>Email Address</b>	mike@sanjuancitizens.org	<b>State/Province</b>	New Mexico
<b>Organization</b>	san Juan Citizens Alliance	<b>Zip Code/Postal Code</b>	87499
<b>Phone Number</b>	5053256724		
<b>Fax Number</b>			

## Processing Fees

**Will Pay Up To** \$0.00

## Description

---

**Description**

• EPA records for all well in San Juan and Rio Arriba counties, showing notification by operator two days prior to beginning hydraulic fracturing procedures; • Annual reports to EPA from operators detailing well site completions, certified as accurate and truthful by a senior official of the owner or operator; • Listing of specification by operator of deviations to CFR 40, 60, 0000 regulations experienced during completion and reported to EPA; • Listing of exceptions granted by EPA to operator for hydraulically fractured low-pressure wells, including all "Determinations of Technical Infeasibility." Additionally, we ask that EPA determine and report the number of Reduced Emission Completion units available to San Juan Basin operators at this time.

## Request Expedited Processing

---

**Make Request?**

Yes

**Justification**

Submitted data request on October 1, 2018 that is time sensitive.

## Request a Fee Waiver

---

**Make Request?**

Yes

**Justification**

Pursuant to 5 U.S.C. 552(a)(4)(iii), SJCA is requesting a fee waiver.

## Attach Supporting Files

---

**Attached File Name****Size (MB)****File Type**

SJCA Letter to delegation - EPA.docx

0.9015

Microsoft Word 2007

☒ **I Agree.****I have read the Privacy and Security Notice and agree to the terms set forth.**☒ **I Agree.**

**Affirmation. Pursuant to 28 USC § 1746, I declare and affirm that under penalty of perjury under the laws of the United States of America that all of the foregoing information, statements, and signatures submitted in connection with this request and in any supporting documents are true and correct to the best of my knowledge.**





# Preview Request

The Freedom of Information Act (FOIA) is a federal law that gives the public the right to make requests for federal agency records. Agencies may withhold information according to nine exemptions contained in the statute. The FOIA applies only to federal agencies. It does not apply to records held by Congress, the courts, or by state or local government agencies. Each state has its own public access laws that should be consulted for access to state and local records.

★ indicates a required field.

## Agency Selection

**Agency** Environmental Protection Agency  
Headquarters

If you are looking for information regarding a specific property, you may obtain this information immediately without filing a FOIA request by using the MyProperty portal, accessible at <http://www.epa.gov/myproperty>

## Request Type

**Request Type** FOIA

## Contact Information

<b>Salutation</b>		<b>Mailing Address Location</b>	United States/US Territories
<b>First Name</b>	Michael	<b>Address Line 1</b>	PO Box 6655
<b>Middle Initial</b>		<b>Address Line 2</b>	
<b>Last Name</b>	Eisenfeld	<b>City</b>	Farmington
<b>Email Address</b>		<b>State/Province</b>	New Mexico
mike@sanjuancitizens.org		<b>Zip Code/Postal Code</b>	87499
<b>Organization</b>	San Juan Citizens Alliance		
<b>Phone Number</b>	5053608994		
<b>Fax Number</b>			

## Processing Fees

**Will Pay Up To** \$0.00

## Description

---

<b>Description</b>	All 114s issued to Hilcorp in San Juan and Rio Arriba counties, New Mexico as of October 30, 2018.
--------------------	--

## Request Expedited Processing

---

<b>Make Request?</b>	Yes
<b>Justification</b>	Time sensitive materials allowing our organizations to understand 114 compliance.

## Request a Fee Waiver

---

<b>Make Request?</b>	Yes
<b>Justification</b>	Pursuant to 5 U.S.C. 552 (a)(4)(iii), SJCA is requesting a fee waiver.

## Attach Supporting Files

---

No supporting files have been uploaded.

✓ I Agree.

I have read the Privacy and Security Notice and agree to the terms set forth.

✓ I Agree.

**Affirmation. Pursuant to 28 USC § 1746, I declare and affirm that under penalty of perjury under the laws of the United States of America that all of the foregoing information, statements, and signatures submitted in connection with this request and in any supporting documents are true and correct to the best of my knowledge.**

# EXHIBIT E

To SJCA's Motion for Continuance

**Subject:** Fwd: FOIA Expedited Processing Disposition Reached for EPA-HQ-2019-000956

**Date:** Friday, November 16, 2018 at 3:06:57 PM Mountain Standard Time

**From:** Mike Eisenfeld

**To:** Julia Guarino

Begin forwarded message:

**From:** [admin@foiaonline.gov](mailto:admin@foiaonline.gov)

**Subject:** FOIA Expedited Processing Disposition Reached for EPA-HQ-2019-000956

**Date:** November 8, 2018 at 2:30:34 PM MST

**To:** [mike@sanjuancitizens.org](mailto:mike@sanjuancitizens.org)

Your request for Expedited Processing for the FOIA request EPA-HQ-2019-000956 has been denied.  
Additional details for this request are as follows:

- Request Created on: 10/30/2018
- Request Description: All 114s issued to Hilcorp in San Juan and Rio Arriba counties, New Mexico as of October 30, 2018.
- Expedited Processing Original Justification: Time sensitive materials allowing our organizations to understand 114 compliance.
- Expedited Processing Disposition Reason: Criteria not met.

**Subject:** Fwd: FOIA Fee Waiver Disposition Reached for EPA-HQ-2019-000956

**Date:** Friday, November 16, 2018 at 3:06:48 PM Mountain Standard Time

**From:** Mike Eisenfeld

**To:** Julia Guarino

Begin forwarded message:

**From:** [admin@foiaonline.gov](mailto:admin@foiaonline.gov)

**Subject:** FOIA Fee Waiver Disposition Reached for EPA-HQ-2019-000956

**Date:** November 8, 2018 at 2:27:54 PM MST

**To:** [mike@sanjuancitizens.org](mailto:mike@sanjuancitizens.org)

Your request for Fee Waiver for the FOIA request EPA-HQ-2019-000956 has been denied. Additional details for this request are as follows:

- Request Created on: 10/30/2018
- Request Description: All 114s issued to Hilcorp in San Juan and Rio Arriba counties, New Mexico as of October 30, 2018.
- Fee Waiver Original Justification: Pursuant to 5 U.S.C. 552 (a)(4)(iii), SJCA is requesting a fee waiver.
- Fee Waiver Disposition Reason: Criteria not met.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOV - 8 2018

OFFICE OF  
GENERAL COUNSEL

Mr. Michael Eisenfeld  
San Juan Citizens Alliance  
P.O. Box 6655  
Farmington, NM 87499

RE: Request Number EPA-HQ-2019-000956

Dear Mr. Eisenfeld:

This is in response to your request for fee waiver and expedited processing in connection with the above referenced Freedom of Information Act request regarding all 114s issued to Hilcorp in San Juan and Rio Arriba counties, New Mexico as of October 30, 2018.

We have reviewed your submission and based on the information you provided, we are denying your request for a fee waiver. Fee waiver determinations must be determined based upon the criteria set forth in our regulations at 29 CFR Part 2. You have failed to address these criteria. The Office of Enforcement and Compliance Assurance will be responding to your information request. You have been placed in the "other" fee category and will be charged for the costs of search time and duplication excluding the first two hours of search time and the first 100 pages of duplication. If the estimated costs exceed \$25.00, OECA will contact you regarding the cost of processing your requests and seek an assurance of payment. They will be unable to process your request until they receive your assurance of payment.

Your request for expedited processing was evaluated as to whether there is an urgency to inform the public about an actual or alleged Federal government activity by a person primarily engaged in disseminating information to the public and whether a lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. Your request does not show that it was submitted by a person primarily engaged in disseminating information to the public. Your request also does not contain enough information to support a finding that a lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. Therefore, I find that neither standard is met by your request and your request for expedited processing is denied. This request will be processed as expeditiously as possible.

You may appeal this determination by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the EPA's National FOIA Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC

20460 or through FOIAonline if you are an account holder. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1200 Pennsylvania Avenue, N.W., Room 5315, Washington, DC 20460. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read 'Larry F. Gottesman', written over a horizontal line.

Larry F. Gottesman  
National FOIA Officer

# EXHIBIT F

To SJCA's Motion for Continuance





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C., 20460

OCT 29 2018

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Matt Henderson, Environmental Manager  
Hilcorp Energy Company  
1111 Travis St  
Houston, Texas 77002

Re: Clean Air Act Information Request for Hilcorp Energy Company Production Facilities in New Mexico

Dear Mr. Henderson:

The United States Environmental Protection Agency (EPA) hereby requires Hilcorp Energy Company (Hilcorp) to provide certain information to determine the Clean Air Act (CAA or the Act) compliance status of its production facilities in New Mexico.

Pursuant to section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of the EPA is authorized to require any person who owns or operates an emissions source to establish and maintain records, make reports, sample emissions (in accordance with the procedures and methods that the Administrator shall prescribe) and provide such other information as he may reasonably require for the purpose of, among other things, determining whether any person is in violation of the CAA. This authority has been delegated to the undersigned official. You are hereby required, pursuant to section 114(a) of the CAA, to provide responses to Requests 1 – 11 (Information Request), within 30 calendar days from receipt of this Information Request. Instructions and definitions are provided in Enclosure 1 and the information requested is specified in Enclosure 2.

You are required to attach a properly executed Statement of Certification (see Enclosure 3) with your response to this Information Request. The statement must be signed and dated. You are under an obligation to preserve all documents requested in this letter until you receive further instructions from the EPA.

Failure to provide the required information is a violation of the Act and may result in one or more of the following actions: 1) issuance of an administrative penalty order pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d); 2) issuance of an order requiring compliance with this Information Request; 3) the initiation of a civil action pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b); and/or 4) any other action authorized under the Act. In addition,

knowingly providing false information in response to this Information Request may be actionable under section 113(c) of the Act, 42 U.S.C. § 7413(c), and 18 U.S.C. §§ 1001 and 1341. The information you provide may be used by the EPA in administrative, civil, and criminal proceedings.

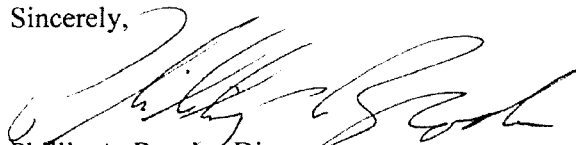
Under section 114(c) of the Act, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, including 40 C.F.R. § 2.301, you are entitled to claim as confidential any information you provide to the EPA that involves trade secrets and is regarded as confidential business information by you. For such information, you may request that the EPA treat such information as confidential. Any such claim for confidentiality must conform to the requirements of 40 C.F.R. § 2.203(b). Note that emission data cannot be claimed as confidential under section 114(c). For detailed instructions, please see Enclosure 4. Information you supply will be treated as confidential business information to the degree determined to be appropriate according to the regulations. If you fail to furnish a business confidentiality claim with your response to this Information Request, the EPA will construe your failure as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please submit the requested information to:

Mr. Daniel Hoyt  
Air Enforcement Division  
U.S. Environmental Protection Agency  
Room 1142C, Mail Code 2242A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

If you have any questions regarding this Information Request, please contact Daniel Hoyt at 202-564-7889 or your counsel may contact Robert Klepp at 202-564-5805.

Sincerely,



Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Civil Enforcement

Enclosures: 1) Instructions  
2) Information Request  
3) Statement of Certification  
4) Confidential Business Information

cc: Ralph Gruebel, Compliance & Enforcement Section Chief, New Mexico Environment  
Department  
Steve Thompson, Air Enforcement Branch Chief, EPA Region 6

## **ENCLOSURE 1**

### **A. Instructions**

1. Provide a separate narrative response to each request and subpart set forth in the Information Request. Provide all Documents supporting your responses to this Information Request, such as performance test reports, inspection records, memorandums, facility records, permits, etc. If Hilcorp has no responsive information or Documents pertaining to a particular request, submit an affirmative statement and explanation.
2. Precede each answer with the number of the request to which it corresponds and at the end of each answer identify the Person(s) (including name, title, and a description of job duties) who provided information that was used or considered in responding to that request, as well as each Person (including name, title, and a description of job duties) who was consulted in the preparation of that response.
3. Indicate on each Document produced in response to this Information Request, or in some other reasonable manner, the number of the request to which it corresponds. If a Document is responsive to more than one request, this must be so indicated and only one copy of the Document needs to be provided.
4. You may provide all Documents responsive to this Information Request in electronic Portable Document Format (PDF). All submitted Documents must be accurate and legible.
5. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner and the basis for the number provided (e.g., estimated, measured or engineering judgment).
6. Where Documents or information necessary for a response are neither in Your possession nor available to You, indicate in Your response why such Documents or information are not available or in Your possession and identify any source that either possesses or is likely to possess such Documents or information.

### **B. Definitions**

All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the Clean Air Act, its implementing regulations, or below.

*Document and Writing* and the plural forms thereof means all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "Document" and "Writing" shall include, but are not limited to: any receipts; invoices; shipping records; purchase orders; purchase records; books; pamphlets; periodicals; memoranda (including those of telephone or oral conversations); contracts; correspondence; agreements; applications; financial records; security instruments; disbursements; checks; bank statements; time records; accounting or financial records; notes;

diaries; logs; facsimiles (faxes); telegrams or cables prepared, drafted, received or sent; electronic mail (emails), whether drafted, received or sent; tapes; transcripts; recordings; minutes and notes of meetings; directives; work papers; charts; drawings; prints; flow sheets; photographs; infrared camera recordings; film; computer printouts; x-ray photographs; advertisements; catalogs; data; sampling reports, plans, protocols, reports, analyses; or any handwritten, recorded, transcribed punched, taped, filmed or graphic matter, however produced or reproduced, in Hilcorp's possession, custody or control or to which Hilcorp has or has had access.

*Hilcorp* means Hilcorp Energy Company and includes any parent corporation, subsidiaries, whether wholly or partially owned, or joint-ventures, or other business affiliations.

*Owner or Operator* means any Person who owns, leases, operates, controls, or supervises a well affected facility.

*Person* or its plural or any synonym thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local or any agency of the government of a foreign country) or any other entity.

*You* and/or *Your* means Hilcorp, and all its agents, servants, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, contractors and others who are in possession, custody or control (actual or constructive) of relevant information that is otherwise available to You, or may have obtained information for or on behalf of, Hilcorp.

## **ENCLOSURE 2**

### **Information Request**

Using the instructions and definitions set forth in Enclosure 1, provide the following information. Unless specifically stated otherwise, these Information Requests relate to activities that occurred in San Juan and Rio Arriba Counties, New Mexico on or after November 16, 2016 to and including the date this Information Request was received.

- 1) Provide a copy of each NSPS OOOOa completion or recompletion event notification, required by 40 CFR §60.5420a(a)(2), that You submitted to the State of New Mexico (NM) that was not submitted to [r6wellcompletion@epa.gov](mailto:r6wellcompletion@epa.gov).
- 2) 40 CFR §60.5375a(a)(1)(iii) requires You to have a separator onsite at each well affected facility during the entirety of the flowback period for completions and recompletions, except as provided in 40 CFR §60.5375a(a)(1)(iii)(A) through (C). For each of Hilcorp's completions and recompletions of well affected facilities:
  - a. Indicate whether or not a separator was onsite during the entire flowback period;
  - b. If there were any flowback periods that a separator was not on site, indicate the dates and times when a separator was not on-site, and indicate whether any of criteria for exceptions provided in 40 CFR §60.5375a(a)(1)(iii)(A) through (C) were met; and
  - c. If any of the criteria for exceptions provided in 40 CFR §60.5375a(a)(1)(iii)(A) through (C) were met, for each criterion that was met, provide a description of how the criterion of the exception was met.
- 3) Describe how flowback fluids were managed during the initial flowback stage for each completion and recompletion at Hilcorp's well affected facilities including a description of equipment that was used and stepwise procedures that describe how the equipment was used.
- 4) Describe the information that was evaluated by the Owner or Operator and how that information was used to determine when the initial flowback stage ended, and production began, for each well completion and recompletion at Hilcorp's well affected facilities, where the initial flowback stage was followed immediately by production (i.e., no separation flowback stage occurred). Additionally, include production records for the transitional time from just prior to the end of the initial flowback stage through initiation of production, including but not limited to records indicating a metered increase at the gas line and liquids flow to onsite tanks.
- 5) Describe the information that was evaluated by the Owner or Operator and how that information was used to determine when the initial flowback stage ended and the separation flowback stage began for each well completion and recompletion at Hilcorp's well affected facilities, where the initial flowback stage was followed by a separation flowback stage prior

to initiation of production (an example well is San Jacinto 6E on or around February 19-24, 2018). Additionally, include production records for the transitional time from the beginning of the separation flowback stage through initiation of production including but not limited to records indicating a metered increase at the gas line and liquids flow to onsite tanks.

- 6) Describe how flowback fluids were managed during each separation flowback stage for well completions and recompletions at Hilcorp's well affected facilities, where the initial flowback stage was followed by a separation flowback stage prior to initiation of production (an example well is San Jacinto 6E on or around February 19-24, 2018), including a description of equipment that was used and stepwise procedures that describe how the equipment was used.
- 7) 40 CFR §60.5375a(a)(1)(iii) requires you to capture and direct recovered gas to a completion combustion device, if it is technically infeasible to route the recovered gas as required in 40 CFR §60.5375a(a)(1)(ii), except when conditions exist that may result in a fire hazard or explosion, or where high heat emissions from a completion combustion device may negatively impact tundra, permafrost or waterways. For each well completion and recompletion at Hilcorp's well affected facilities where it was determined to be technically infeasible to route the recovered gas as required in 40 CFR §60.5375a(a)(1)(ii), including San Jacinto 6E on or around February 19-24, 2018, provide the following information:
  - a. Describe the information that was evaluated by the Owner or Operator and how that information was used to determine that routing the recovered gas as required in 40 CFR §60.5375a(a)(1)(ii) was technically infeasible;
  - b. Identify each well affected facility, and the dates and times when the Owner or Operator determined that routing the recovered gas as required in 40 CFR §60.5375a(a)(1)(ii) was technically infeasible, and recovered gas was not directed to a completion combustion device;
  - c. For each well affected facility identified in response to Request 9b, during the identified dates and times, indicate if the Owner or Operator determined that routing recovered gas to a completion combustion device would have caused any conditions to exist that may have resulted in a fire hazard or explosion, or where high heat emissions from a completion combustion device may have negatively impacted tundra, permafrost or waterways; and
  - d. If the Owner or Operator determined that routing recovered gas to a completion combustion device would have caused any conditions to exist that may have resulted in a fire hazard or explosion, or where high heat emissions from a completion combustion device may have negatively impacted tundra, permafrost or waterways, describe the information that was evaluated by the Owner or Operator, and how that information was used to make the determination.
  - e. If the Owner or Operator did not route recovered gas to a completion combustion device for other reasons, please describe those reasons. If the reason was because of

the use of nitrogen as the hydrofracking fluid, please answer the following questions specific to the use of nitrogen:

- i. Why do You use nitrogen over other fracking fluids? Provide reasons, including but not limited to technical and economic benefits. Please be specific as to what the benefits are.
- ii. Characterize the use of nitrogen in each well completion and recompletion.
- iii. Describe Hilcorp's general protocol for injecting nitrogen during these well completions and recompletions;
- iv. Provide the composition of the fracturing fluid on a mass percent basis used to complete or recomplete each well (provide percentages for water, nitrogen, sand, and any other additives).
- v. Provide the composition of flowback fluid on a mass percent basis during each initial flowback stage (provide percentages for water, nitrogen, additives and natural gas).

10) Provide the following additional information individually for each well completion and recompletion at Hilcorp's well affected facilities regarding how gases in the flowback fluids were managed between flowback initiation and bringing the well into production: If this information is provided in the 2018 annual report due on November 16, 2018, then please provide the name and address of the person to whom you submitted the annual report. If you submitted the report to CEDRI, please indicate as such.

- a. Total duration (in hours) that gases from the flowback fluids were vented to the atmosphere during the initial flowback stage;
- b. Total duration (in hours) that gases from the flowback fluids were captured and routed to a completion combustion device during the initial flowback stage;
- c. Total duration (in hours) that gases from the flowback fluids were vented to the atmosphere during the separation flowback stage;
- d. Total duration (in hours) that gases from the flowback fluids were captured and routed to a completion combustion device during the separation flowback stage;
- e. Total duration (in hours) that gases from the flowback fluids were routed into a gas flow line or collection system during the separation flowback stage;
- f. Total duration (in hours) that gases from the flowback fluids were re-injected into the well or another well during the separation flowback stage;
- g. Total duration (in hours) that gases from the flowback fluids were used as an onsite fuel source during the separation flowback stage;
- h. Total duration (in hours) that gases from the flowback fluids were used for another useful purpose that a purchased fuel or raw material would serve during the separation flowback stage; and
- i. If the total duration (in hours) that gases from the flowback fluids were used for another specific useful purpose that a purchased fuel or raw material would serve during the separation flowback stage was greater than zero, describe each specific

useful purpose, and provide a separate total duration (in hours) for each identified specific useful purpose.

- 8) Provide the anticipated schedule, including the date and location for each of Hilcorp's completions and recompletions for well affected facilities subject to NSPS OOOOa, planned in San Juan and Rio Arriba Counties for the period December 1, 2018 to and including June 30, 2019



**ENCLOSURE 3**

**Statement of Certification**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations pursuant to section 113(c)(2) of the Clean Air Act, and 18 U.S.C. §§ 1001 and 1341.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

## **ENCLOSURE 4**

### **Confidential Business Information (CBI)** **Assertion and Substantiation Requirements**

#### **A. Assertion Requirements**

You may assert a business confidentiality claim covering all or part of the information provided in response to this Information Request, as provided in 40 C.F.R. § 2.203(b). You may assert a business confidentiality claim covering such information by placing on (or attaching to) the information you desire to assert a confidentiality claim, at the time it is submitted to the EPA, a cover sheet, stamped, or typed legend (or other suitable form of notice) employing language such as "trade secret" or "proprietary" or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by the EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by such a claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in section 114(c) of the Clean Air Act and 40 C.F.R. Part 2. The EPA will construe the failure to furnish a confidentiality claim with your response to this Information Request as a waiver of that claim, and the information may be made available to the public without further notice to you.

#### **B. Substantiation Requirements**

All confidentiality claims are subject to EPA verification in accordance with 40 C.F.R. Part 2, subpart B. The criteria for determining whether material claimed as confidential is entitled to such treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301, which provide, in part, that you must satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; that the information is not and has not been reasonably obtainable by legitimate means without your consent; and the disclosure of the information is likely to cause substantial harm to your business's competitive edge.

Pursuant to 40 C.F.R. Part 2, subpart B, you must substantiate your CBI claim in writing to the EPA when you submit your response to this Information Request. Failure to submit your responses to the questions detailed below will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information. The EPA asks you to specify which portions of the information you consider confidential. You must be specific by page, paragraph, and sentence when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim may be disclosed without further notice to you. For each item or class of information that you identify as CBI, you must answer the following questions, giving as much detail as possible, in accordance with 40 C.F.R. § 2.204(e):

1. What specific portions of the information are alleged to be entitled to confidential treatment? For what period of time do you request that the information be maintained as confidential: until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to Question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available sources such as the Internet, databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.
8. Any other issue you deem relevant.

Please note that emission data provided under section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. "Emission data" means, with reference to any source of emission of any substance into the air:

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and

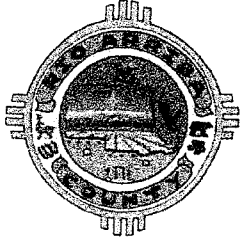
(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.301(a)(2)(i)(A) – (C).

Finally, conclusory allegations will be given little or no weight in the determination. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

# EXHIBIT G

To SJCA's Motion for Continuance



***Rio Arriba***  
***Board of County Commissioners***

Doc Id: 2019-028 Erik  
Meeting Date: 10/25/2018  
Receipt #: 45044 Page 1 of 2 Doc Code: RES  
Linda J. Padilla County Clerk & Recorder Rio Arriba, New Mexico



Resolution No. 2019-028

**COMMISSIONERS**

**Barney Trujillo**  
**Chairman**  
**District I**

**Alex M. Naranjo**  
**District II**

**Danny J. Garcia**  
**District III**

**COUNTY MANAGER**  
**Tomas Campos III**

**DEPUTY COUNTY**  
**MANAGER**  
**Leo R. Marquez**

**Resolution No. 2019-028**

**Declaring the Rio Arriba County Commission's Support for the  
Federal Congressional Delegation's Request that the BLM and the EPA Ensure  
that the Air and Water Quality in Rio Arriba County and the Region are  
Protected**

**WHEREAS**, the northwestern portion of Rio Arriba County lies within the San Juan Basin, an oil and gas-producing area with tens of thousands of active oil and gas wells; and

**WHEREAS**, this region relies substantially on the oil and gas industry for its economic well-being, and major public and private investment has been made over the years; and

**WHEREAS**, the Rio Arriba County Commission has come to learn of an application currently pending in the New Mexico Oil Conservation Commission to amend the allowed density of oil and gas wells in the Blanco-Mesaverde Gas Pool of the San Juan Basin, which is located partially in Rio Arriba County; and

**WHEREAS**, the Rio Arriba County Commission has come to learn that the following members of the federal Congressional delegation, Senator Tom Udall, Senator Martin Heinrich and Congressman Ben Ray Lujan have recently sent letters to the Deputy Director of the Bureau of Land Management (BLM) and the Assistant Administrator of the Environmental Protection Agency (EPA) requesting that their respective agencies review and determine whether an increase in the density of wells in the Blanco-Mesaverde Gas Pool will negatively affect the air and water quality in the region, or violate existing environmental protection laws and regulations; and

**WHEREAS**, the Rio Arriba County Commission is an elected body that represents the citizens of the County including the northwestern portion of Rio Arriba County; and

**WHEREAS**, the Rio Arriba County Commission is committed to fighting for its constituents' rights to clean air and water, and to balance the interests between economic growth and negative environmental impacts; and

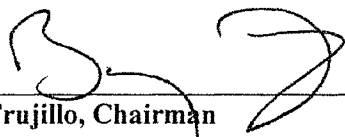
**WHEREAS**, the Rio Arriba County Commission hereby declares its support for the federal Congressional delegation's request that the BLM and the EPA ensure that the air and water quality in Rio Arriba County and the northwestern New Mexico region are protected.

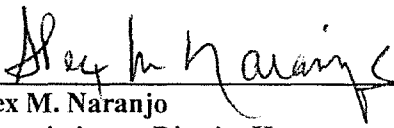
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of Rio Arriba County that:

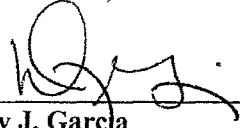
1. The Rio Arriba County Commission formally requests that the BLM and the EPA comply with the request from the above-mentioned Congressional delegation and review and determine whether an increase in the density of wells in the Blanco-Mesaverde Gas Pool will negatively affect air and water quality in Rio Arriba County and the region.

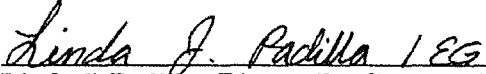
**SIGNED, ADOPTED AND APPROVED THIS 25<sup>th</sup> DAY OF OCTOBER 2018.**

**BOARD OF COUNTY COMMISSIONERS  
RIO ARRIBA COUNTY, NEW MEXICO**

  
Barney Trujillo, Chairman  
Commissioner, District I

  
Alex M. Naranjo  
Commissioner, District II

  
Danny J. Garcia  
Commissioner, District III

ATTEST:   
Linda J. Padilla, Rio Arriba County Clerk



Doc Id: 2019-028 Erik  
Meeting Date: 10/25/2018  
Receipt #: 45044 Page 2 of 2 Doc Code: RES  
Linda J. Padilla County Clerk & Recorder Rio Arriba, New Mexico

# EXHIBIT H

To SJCA's Motion for Continuance



November 15, 2018

Bill Brancard, General Counsel  
Energy, Minerals & Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, NM 87505

RE: Case No. 16403

Dear Mr. Brancard/Bill,

As a former elected New Mexico Commissioner of Public Lands (NMCPL) and an interested New Mexico resident, I wish to add my voice to that of Stephanie Garcia Richard – NMCPL elect regarding her concerns related to the well density spacing changes in San Juan and Rio Arriba counties. I am told this issue, referred to as Case No. 16403, will be addressed in a special hearing before the New Mexico Oil

Conservation Commission (OCC) on November 19, 2018.

I would suggest that this hearing be delayed until Land Commissioner elect Garcia Richard, Governor Elect Lujan Grisham, and the newly appointed Secretary of EMNRD have the opportunity

to fully review and analyze the merits of the proposal to double the drilling of the Blanco-Mesa Verde pool in San Juan and Rio Arriba counties.

Sincerely,

Ray Powell

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Ray Powell, DVM  
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"We have the choice to use the gift of our life to make the world a better place--or not to bother"  
— Jane Goodall

# EXHIBIT I

To SJCA's Motion for Continuance

November 15, 2018

**BY ELECTRONIC MAIL AND**

**U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Bill Brancard  
General Counsel Energy, Minerals, & Natural Resources Dept.  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Re: Case No. 16403

Dear Mr. Brancard:

As concerned citizens, New Mexico residents, and NGOs, we wish to add our voices to the serious concerns raised by State Land Commissioner-elect Stephanie Garcia Richard regarding well-density increases in San Juan and Rio Arriba Counties to be addressed in a special hearing before the New Mexico Oil Conservation Commission on November 19, 2018, and referred to as Case No. 16403.

We endorse Land Commissioner-elect Garcia Richard's call that this hearing be delayed until her office and the transition team of Gov. Michelle Lujan Grisham may fully address the critical concerns of this highly contested and controversial action to allow double drilling in the Blanco-Mesaverde pool across San Juan and Rio Arriba counties.

The issues at stake here should be of great concern not only to elected officials and the residents of San Juan and Rio Arriba counties, but to every New Mexican. Any decision should be made transparently with sufficient public notice and comment, should be informed by all the available facts, and should be done in concert with similarly affected state and federal agencies. Furthermore, and of equal importance, we expect that a proper and orderly transition of Oil Conservation Commission (OCC) and Division business will be carried out between the outgoing administration of Governor Martinez and the incoming administration of Governor-elect Lujan Grisham. As it appears now, the OCC is about to rule on a down-spacing change that has the potential for tremendous environmental impact just as one administration is coming to a close and another is working to address the challenges of the next four years.

As Land Commissioner-elect Garcia Richard points out, there are a number of outstanding answers regarding Environmental Protection Agency (EPA) rules concerning applicant Hilcorp Energy Company's practice of "re-completing" wells in the subject area as well as many unanswered questions that both the EPA and the Bureau of Land Management (BLM) have either failed to respond to or have required FOIA filings for, making it impossible for the public to have critical information prior to the OCC hearing of November 19. These concerns were addressed in joint delegation letters to both the EPA and the BLM signed by Senators Tom Udall and Martin Heinrich and Congressman Ben Ray Lujan on October 5, 2018, with a deadline for reply of November 1, 2018. Although the EPA replied, stating that a FOIA submission is required, the

EPA denied the request for expediting the submitted FOIA requests. The BLM has failed to respond. On October 25, 2018, the Rio Arriba County Commission issued a Resolution supporting our delegation's call for information.

Hilcorp will not suffer if Land Commissioner-elect Garcia Richard's request, which is supported by the public, is accepted. Since January 2018, Hilcorp has applied to the OCC for exceptions to the current drilling limit for the Blanco-Mesaverde pool in the subject area over 50 times and has never been denied a request. Hilcorp will simply continue to do that. No rigs will be stacked out, no crews sent to the yard, no State royalties or taxes need be lost.

An examination of the testimony and evidence presented by Hilcorp at the previous hearing of Case No. 16403 shows that Hilcorp is looking far beyond a doubling of wells in San Juan and Rio Arriba counties by allowing wells at 40 acres spacing, citing the 10-acre and 5-acre spacing allowed in the Piceance Basin and in the Green River Basin. Even at the proposed 40-acre spacing, the multi-use nature of these affected lands in the San Juan Basin will be lost and a door closed forever on the outdoor recreation, appreciation of cultural heritage and economic diversification that the incoming administration has made a cornerstone of their economic-development plan.

We, the undersigned, that includes over 30 groups representing over 1 million members, 5 state elected officials, and over 100 concerned citizens and residents of New Mexico ask that the scheduled November 19, 2018, special hearing of OCC Case No. 16403 be delayed until all the relevant and necessary facts are in and that the incoming administration be given consideration to assess this proposal for increased well density that will affect New Mexico's citizens far beyond the next four years.

Sincerely,

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# EXHIBIT J

To SJCA's Motion for Continuance

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COMMITTEE ON THE BUDGET

COMMITTEE ON AGRICULTURE

BIOTECHNOLOGY, HORTICULTURE AND RESEARCH, RANKING MEMBER

11/11/2018

November 15, 2018

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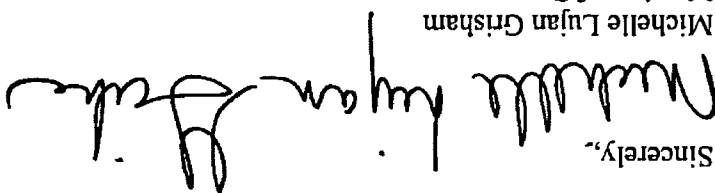
I write to request a delay of the New Mexico Oil Conservation Commission (NMOCC)'s special hearing regarding potential increases to well density in San Juan and Rio Arriba Counties (Case 16403), which is currently scheduled for November 19.

On October 5, my colleagues Senators Tom Udall, Senator Martin Heinrich, and Representative Ben Ray Lujan sent letters to the Environmental Protection Agency (EPA) and Bureau of Land Management (BLM) requesting answers to constituent concerns about the vital issues of public health, safety, and environmental protection. These letters requested responses by November 1 so that the public could have timely access to this important information.

Unfortunately, BLM has yet to respond to the letter, and while the EPA responded in a timely manner, it is my understanding that the agency will not expedite Freedom of Information Act (FOIA) requests for those seeking additional information. Furthermore, Hilcorp Energy Company has yet to respond to the EPA's Section 114 request for information concerning recompleted wells. Since this information is related to the NMOCC's special hearing, it is vital that the public has a chance to see it before the hearing takes place.

As a twelfth generation New Mexican, my deep-rooted values in our state have taught me to appreciate our world-class energy resources as well as our pristine land and natural beauty. The oil and gas industry is a cornerstone of the New Mexican economy, but it is imperative that we balance this key economic driver with health, safety, and environmental considerations. Without public access to all the relevant information concerning potential increases to well density, it would be irresponsible to move forward with this hearing as scheduled.

Sincerely,

  
Michelle Lujan Grisham  
Member of Congress

# EXHIBIT K

To SJCA's Motion for Continuance





State of New Mexico  
**House of Representatives**  
Santa Fe

**STEPHANIE GARCIA RICHARD**

D - Los Alamos, Rio Arriba, Sandoval & Santa Fe  
District 43

30 Glenview Court  
Los Alamos, NM 87544  
Home Phone: (505) 500-4343  
E-mail: stephanie.garciarichard@nmlegis.gov

November 12, 2018

Bill Brancard,  
General Counsel Energy, Minerals, & Natural Resources Dept.  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Dear Mr. Brancard;

As the recently elected Commissioner of Public Lands, it will soon be my responsibility to protect our State Trust Lands and the constituents of our beautiful state.

It has come to my attention that on November 19, 2018, the New Mexico Oil Conservation Commission will hold a Special Hearing regarding well density spacing changes, potentially doubling the number of natural gas wells in the San Juan and Rio Arriba County Blanco-Mesaverde pool. This hearing requires an understanding of the technical mineral and reservoir management issues that will clearly impact my office as the largest mineral interest owner in the State.

This issue is highly contested, it has already been delayed since September, and will clearly affect my administration. I am respectfully asking that this proceeding be delayed until my office as well as our new Governor's representatives may address the magnitude of this very important issue.

In addition, I have been made aware that Hilcorp Energy Company, the applicant in this case, has refused to respond to a U.S. Environmental Protection Agency 114 request for material information regarding the venting and flaring of natural gas from the recompletion of their wells in the Blanco-Mesaverde pool. Both Senators Udall and Heinrich and Congressman Lujan have made inquiries of the Bureau of Land Management regarding whether the impacts of the increased number of wells in the pool would exceed the limits of the current Federal Resource Management Plan. The environmental issues surrounding venting and flaring are especially important to my office, and our mutual constituency, and MUST be part of the record of this case.

I would also point out that Hilcorp will lose nothing in the delay of this case. But the impact of doubling, or even tripling the number of wells in the San Juan Basin will certainly affect the citizens of our state. Hilcorp cited the use of "10 acre spacing in the Piceance Basin" and "5 acre spacing in the Green River Basin" as examples of why they need to reduce the current spacing rules in New Mexico. Without adequate time to evaluate the critical missing EPA and BLM environmental information and without input and analysis from the officials elected last week to guide the state for the next four years, it would be highly irresponsible for your agency to move forward on this far-reaching proposal.

Sincerely,



Stephanie Garcia Richard  
New Mexico House of Representatives, District 43  
New Mexico Commissioner of Public Lands-Elect

Cc: Heather Riley, Director NMOCD, Chair of NMOCC  
Robert Balch, Governor Martinez Representative to the NMOCC  
Ed Martin, State Land Office Representative to the NMOCC  
Bill Brancard, General Counsel

Hector Balderas, Attorney General  
Senator Michael Padilla  
Senator Cisco McSorley  
Senator Jerry Ortiz y Pino

# EXHIBIT L

To SJCA's Motion for Continuance

# Congress of the United States

Washington, DC 20510

November 16, 2018

Secretary Ken McQueen  
New Mexico Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, NM 87055

Dear Mr. Secretary:

We write to respectfully request a delay of the New Mexico Oil Conservation Commission's special hearing on an application currently pending before them to amend the allowed density of wells in the Blanco-Mesaverde Gas Pool in Rio Arriba and San Juan Counties (Case 16403). The hearing is currently scheduled for November 19, 2018.

On October 5, we sent letters to the Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM) asking them to respond to constituent concerns about federal oversight responsibility of oil and gas development on federal lands and the potential impact on public health and the environment of the proposed increase in well density in the San Juan Basin of New Mexico. Please see the attached requests to EPA and BLM. Responses were requested by November 1 to allow for timely review of this information by the public.

As of November 16, the BLM has not responded to the request. Staff inquiries about the status of the request on November 5 and 14 were returned on November 16 saying the response is still under review.

The EPA responded on October 26 to requests for pertinent records, but directed our constituents to file requests through the Freedom of Information Act (FOIA). On November 8, EPA denied a constituent request to expedite processing of the records request.

Given the impact that an increase in well density could have on federal lands in New Mexico, we respectfully request that you delay this hearing and any action on this matter until adequate information can be obtained to understand the full impacts of any changes. Without responses from the lead federal oversight departments and all of the relevant information requested concerning potential increases in well density, we feel that proceeding with the hearing as scheduled would be rushing a decision without complete information.

Sincerely,



TOM UDALL  
United States Senator



MARTIN HEINRICH  
United States Senator



BEN RAY LUJAN  
Member of Congress

# EXHIBIT M

To SJCA's Motion for Continuance

Ken McQueen  
Secretary, Energy, Minerals, & Natural Resources  
Dept. 1220 South St. Francis Drive  
Santa Fe, NM 87505

**re:Case No. 16403**

Dear Secretary McQueen,

I write to you today regarding well density spacing changes in San Juan and Rio Arriba Counties to be addressed in a Special Hearing before the New Mexico Oil Conservation Commission(NMOCC) on November 19, 2018 and referred to as Case No. 16403. It is especially concerning to me as a lifelong environmentalist and advocate that full consideration be given to the cultural and environmental impacts that often affect Indian Tribes first, and always with such devastating consequences.

As you may be aware, Senators Tom Udall and Martin Heinrich, and Congressman Ben Ray Lujan issued a joint delegation letter to both the Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM) on October 5 of this year asking for responses from those agencies to address constituent concerns raised in San Juan and Rio Arriba counties. Although their letter asked that the information requested be returned by November 1, BLM has yet to respond.

The EPA has timely responded, but it will be necessary for all seeking information to file Freedom Of Information Act (FOIA) requests and EPA has stated that they will not be able to expedite those FOIA requests.

In either event, not having received, studied and made public the missing information, it is my concern that it would be premature to continue with the scheduled hearing of

November 19. In a decision of this magnitude, it is imperative that the decision process be as informed as possible and fully transparent to the public. Again, given the challenges of living in rural New Mexico, it is difficult at best for Native Americans to fully participate in a public process without the added challenges to access and transparency as Attorney Balderas has cautioned in his November 2, 2018 letter attached.

And today, the EPA has made public it's issuance of a Request for Information concerning the 70 wells that have been recompleted in San Juan and Rio Arriba counties and we need to see the oil company's answers to EPA's questions as well since the recompletion of gas wells is the exact subject of NMOCC's November 19 hearing. Those answers won't be available until after January 15, 2019. It's very disturbing again to learn that Hilcorp may be engaging in violations of the Clean Air Act while recompleting gas wells on Tribal lands and in such close proximity to residents.

Oil and gas development, operation and production have been a cornerstone of New Mexico's economy for 70 years, and it is so important that we insure that we are able to balance this key economic driver for our state with environmental considerations and public safety and health. When we have all the facts and are publicly transparent, we can proceed to drill responsibly, and balance our many natural assets to create a diverse, stable and sustainable economy in New Mexico.

Sincerely,

A handwritten signature in black ink, appearing to read "Deb", with a stylized flourish extending from the end.

Debra A. Haaland

# EXHIBIT N

To SJCA's Motion for Continuance



November 16, 2018

**BY ELECTRONIC MAIL AND  
U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Daniel Tso  
Navajo Nation Council Delegate-Elect  
92 Road 3050  
Aztec, New Mexico  
87401

Bill Brancard  
General Counsel Energy, Minerals, & Natural Resources Dept.  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Re: Case No. 16403

Dear Mr. Brancard,

I write to you today as a Council Delegate-Elect to the Navajo Nation Council. Beginning in January, I will serve a four-year term representing the Navajo Chapters of Baca Prewitt, Counselor, Casamero Lake, Little Water, Ojo Encino, Pueblo Pintado, Torreon/Star Lake, and Whitehorse Lake. I am also a community advocate with the Tri-Chapter Alliance and a member of the Counselor Chapter Health Impact Assessment Committee. Furthermore, I am a proud registered voter in San Juan County, New Mexico.

It has come to my attention that Heather Riley, Director of the New Mexico Oil Conservation Division (NMOCD), will be serving as Chair in the upcoming November 19 New Mexico Oil Conservation Commission (NMOCC) Hearing on Hilcorp's application in Case 16403 to double the well density in the Blanco-Mesaverde gas pool across San Juan and Rio Arriba counties without undergoing a thorough environmental and ethnographic study of the analysis of the cumulative impacts of increased production in the area.

Between the years of 2005-2018, Heather Riley served as Regulatory Manager for WPX, now Enduring Resources, who would stand to financially benefit from approval of this application. Because of this glaring conflict of interest, I request that Heather Riley immediately recuse herself from Case 16403.

Moreover, I request that this case be deferred until the cumulative impacts of Hilcorp's proposal to environmental and cultural resources be robustly assessed.

Diné communities in San Juan and Rio Arriba Counties, and across the Greater Chaco landscape, would be negatively affected by Hilcorp's proposal. Diné communities already disproportionately experience harmful impacts from oil and gas development, including increased levels of asthma and respiratory problems, air contamination due to venting, flaring and leaks of toxic air emissions, destroyed roads and unsafe travelling conditions from heavy truck traffic, the desecration of sacred landscapes, and much more. Hilcorp's application for double drilling could result in approximately 8,000 new natural gas locations in San Juan and Rio Arriba counties within Diné homelands. This would greatly exacerbate the harmful public health impacts that our communities are already suffering.

The Tri-Chapter communities of Counselor, Ojo Encino, and Torreon-Star Lake have been waiting since 2014 for the Bureau of Land Management and the Bureau of Indian Affairs to complete the Mancos-Gallup Resource Management Plan Amendment/Environmental Impact Statement (RMPA/EIS). The Tri-Chapters, the Navajo Nation, the All Pueblo Council of governors, and the National Congress of American Indians have all passed resolutions requesting a moratorium on oil and gas leasing and permitting in the region until the RMPA/EIS is completed. However, the BLM has continued to hold quarterly lease sales in this sacred landscape, with two upcoming lease sales in December 2018 and March 2019. Interior Secretary Zinke deferred the March 2018 lease sale calling for more cultural consultation and admitted that the region needs more cultural study. To date, there has not been a single attempt by the BLM to survey cultural resources in the area. Therefore, the BLM is violating the National Environmental Policy Act (NEPA) and the National Historic Preservation Act, and is breaking its commitment to consult with tribal governments and impacted communities.

In this context of existing violations, Hilcorp's application pending before NMOCC adds insult to injury. If this proposal is approved, thousands of new wells would only be subject to NEPA analysis on a well-per-well basis, when BLM assesses individual Applications for Permit to Drill. In the case of re-completions, it is not clear what, if any, environmental assessments will occur. However, the magnitude of Hilcorp's proposal warrants a harder look at the cumulative, direct, and indirect effects of double drilling in the Blanco-Mesaverde gas pool. As a sacred and expansive landscape, the Greater Chaco region requires landscape-level management that meaningfully includes all stakeholders.

Despite the potential for significant environmental, health, and cultural impacts, Hilcorp's application has not been subject to any comprehensive analysis by federal agencies to assess whether it would comply with federal laws and regulations. The current 2003 Resource Management Plan (RMP) for the BLM Farmington Field Office is based on existing spacing rules in the Blanco-Mesaverde gas pool. Given that the RMP has not assessed the potential for an additional 8,000 new and re-completed gas wells in San Juan and Rio Arriba Counties and that the pending RMPA/EIS will not assess Blanco-Mesaverde development, a more robust analysis of Hilcorp's proposal is needed before a by-right doubling of wells is permitted.

On October 5, Senator Tom Udall, Senator Martin Heinrich, and Representative Ben Ray Lujan sent letters to the Environmental Protection Agency and the Bureau of Land Management requesting answers to constituent concerns similar to our own. A response was requested by November 1<sup>st</sup> so that the public could have access to this important information prior to the

November 19<sup>th</sup> NMOCC hearing on Case 16403. Unfortunately, the BLM has not yet provided a response. The EPA responded to constituents by requiring them to file Freedom of Information Act requests to obtain the information they sought. The EPA also sent a Section 114 request to Hilcorp for information regarding compliance with federal air quality rules on recompleted wells. Hilcorp's response has yet to be publicly released, but this information is critical to Diné citizens in the San Juan and Rio Arriba Counties, as we are particularly concerned about the air quality impacts of oil and gas development.

It would be irresponsible for NMOCC to proceed with the November 19<sup>th</sup> hearing on Case 16403 before the public has had a chance to fully understand the potential implications of this proposal. I respectfully request that NMOCC delay ruling on Case 16403 until there is a comprehensive and cumulative impact assessment of this proposal, and until all pertinent information regarding these impacts is made available to the public.

Sincerely,

Daniel Tso  
Navajo Nation Council Delegate-Elect

CC:  
Congresswoman-Elect Deb Haaland  
Land Commissioner-Elect Stephanie Garcia Richard  
Secretary Ken McQueen  
Senator Tom Udall  
Senator Martin Heinrich  
Representative and Governor-Elect Michelle Lujan Grisham

# EXHIBIT O

To SJCA's Motion for Continuance



# New Mexico State Senate

State Capitol  
Santa Fe

COMMITTEES:

VICE CHAIR:  
• Committees' Committee

MEMBER:  
• Conservation  
• Judiciary

**SENATOR PETER WIRTH**  
MAJORITY FLOOR LEADER  
D-Santa Fe-25

708 Paseo de Peralta  
Santa Fe, NM 87501-1923

Office: (505) 986-4727  
E-mail: [peter.wirth@nmlegis.gov](mailto:peter.wirth@nmlegis.gov)

November 15, 2018

Bill Brancard, General Counsel  
Energy, Minerals & Natural Resources Dept.  
1220 South St. Francis Drive  
Santa Fe, NM 87505

VIA Email: [bill.brancard@state.nm.us](mailto:bill.brancard@state.nm.us)

RE: Case No. 16403

Dear Mr. Brancard:

It is with great urgency that I write this letter regarding the New Mexico Oil Conservation Commission's (OCC) hearing in the above-referenced case scheduled on November 19, 2019. My concern is that compliance with administrative rules regarding public notice and opportunity for public input has not been adequately met. In addition, my understanding is that the record does not include all relevant information necessary for members of the OCC to make an informed decision.

Therefore, I respectfully request that the OCC hearing scheduled for November 19, 2019 be postponed until assurances are made that proper procedures have been followed regarding public notice and input. Also, a postponement will allow the members of the OCC to have a complete record of all relevant information.

Thank you for your anticipated cooperation.

Sincerely,

Peter Wirth  
Majority Leader

# EXHIBIT P

To SJCA's Motion for Continuance



State of New Mexico  
House of Representatives  
Santa Fe

**MATTHEW MCQUEEN**

D - Santa Fe, Torrance, Valencia & Bernalillo  
District 50

7 Avenida Vista Grande B7-120  
Santa Fe, NM 87508

E-mail: [matthew.mcqueen@nmlegis.gov](mailto:matthew.mcqueen@nmlegis.gov)  
Twitter.com/@McQueenForNM  
Facebook.com/McQueenForNM

**COMMITTEES:**  
Chair: Energy, Environment  
& Natural Resources  
Judiciary

November 15, 2018

Bill Brancard  
General Counsel  
Energy, Minerals, & Natural Resources Dept.  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Re: *Case No. 16403, Hilcorp Energy Company application*

Dear Mr. Brancard:

As the Chairman for the New Mexico House Energy, Environment and Natural Resources committee, I am concerned by information I have received about the New Mexico Oil Conservation Commission (NMOCC)'s intent to move forward on November 19, 2018 on the Hilcorp Energy Company application (Case No. 16403). This hearing should be delayed until Case No 18403 can be fully investigated and the missing information supplied.

It is my understanding that Land Commissioner-elect Stephanie Garcia Richard, Attorney General Hector Balderas and his staff, and members of the New Mexico Senate have all raised concerns regarding well density spacing changes in San Juan and Rio Arriba Counties. Additional time is essential to look at both procedural and substantive concerns. An application which seeks to double the drilling of the Blanco-Mesaverde pool in San Juan and Rio Arriba Counties merits a full and appropriate review.

There are numerous issues of concern which merit delay of the hearing into the new year:

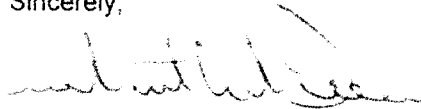
- Hilcorp has not yet answered questions asked by the EPA in their 114 Request for Information made public two days ago. In the request, EPA asks questions to discover if Hilcorp has violated the Clean Air Act when they recompleted 70 gas wells using an NMOCC exception in the San Juan Basin this year. Hilcorp has until January 15, 2019 to respond, and their answers must be known before NMOCC considers doubling well density.
- Land Commissioner-elect Garcia Richard has outlined the importance for her incoming administration to have adequate time to look at the issue. Among other issues, she wants to investigate whether the impacts of the increased number of wells in the pool would exceed the limits of the current federal Resource Management Plan. She would specifically like time to investigate the issues surrounding venting and flaring and wants these issues to be fully developed in the record.

- The Attorney General has raised numerous issues related to due process to affected stakeholders, including whether the hearing was properly noticed and proper notification of the proceeding was sent to parties entitled to notice. He further questioned whether interested intervenors should have been allowed to fully participate in the process. There is no reason to push forward without the answers to the Attorney General's questions since procedural irregularities will negate the hearing results.
- My colleagues in the Senate, Senators Michael Padilla, Gerald Ortiz y Pino and Cisco McSorley, have raised many concerns including those related to the impact on the multi-use nature of those affected lands in the San Juan Basin that will be lost. These include opportunities for outdoor recreation, cultural heritage appreciation and economic diversity. These issues must be given fully weight and allowed to be examined with appropriate input from the new administration.

Numerous sources have indicated that the company will not be harmed by a delay. I understand that since January of 2018, Hilcorp has applied to the OCC for exceptions to the current drilling limit for the Blanco-Mesa Verde pool in the subject area 70 times and has never been denied a request. Hilcorp may simply continue to do that. No rigs will be stacked out, no crews sent to the yard, no State royalties or taxes need be lost.

The best path forward is a delay that allows these issues of significant concern to be fully and properly examined. I urge you to delay the hearing.

Sincerely,



Matthew McQueen

cc: Speaker Brian Egolf  
Senate Majority Leader Peter Wirth



# EXHIBIT Q

To SJCA's Motion for Continuance



*New Mexico State Senate*  
*State Capitol*  
*Santa Fe 87501*

TELEPHONE:  
(505) 986-4714

November 14, 2018

Bill Brancard, General Counsel  
Energy, Minerals & Natural Resources Dept.  
1220 South St. Francis Drive  
Santa Fe, NM 87505

RE: Case No. 16403

Dear Mr. Brancard,

As state senators, concerned citizens and New Mexico residents, we wish to add our collective voices to the serious concerns raised by our recently elected Commissioner of Public Lands, Stephanie Garcia Richard, regarding well density spacing changes in San Juan and Rio Arriba counties. This issue, referred to as Case No. 16403, will be addressed in a special hearing before the New Mexico Oil Conservation Commission (OCC) on November 19, 2018.

We ask that this hearing be delayed until both Land Commissioner elect Garcia Richard's office and Governor Elect Michelle Lujan Grisham's office may fully address the critical concerns surrounding the highly contested proposal to double the drilling of the Blanco-Mesa Verde pool in San Juan and Rio Arriba counties.

The issues at stake here should be of great concern not only to state legislators and local residents, but to every New Mexican that expects decisions of this magnitude to be made in a transparent way, to be informed by all available facts, and to be done in concert with similarly affected state and federal agencies. Furthermore, we expect a proper and orderly transition of Oil Conservation Commission and Division business between the outgoing administration of Governor Susana Martinez and the incoming administration of Governor elect Lujan Grisham. The OCC is prepared to rule on a downspacing change that has the potential for tremendous environmental impact at an inopportune and transitional time, as one administration is coming to a close and another is preparing to take on the challenges of the next four years.

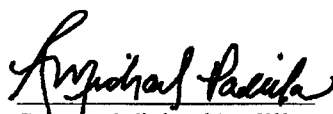
There are a number of outstanding answers regarding Environmental Protection Agency rules and applicant Hilcorp Energy Company's practice of "re-completing" wells in the subject area. Additionally, both EPA and the Bureau of Land Management have either failed to respond to many unanswered questions, or have required FOIA filings, making it impossible to obtain critical information prior to the November 19 OCC hearing. These concerns were addressed in joint delegation letters to both EPA and BLM, signed by Senators Tom Udall and Martin Heinrich and Congressman Ben Ray Lujan on October 5, with a deadline for reply of November 1. EPA replied by requiring FOIAs, which were filed, and denying a request for expediting the processing of those FOIA requests. BLM, to date, has not responded. On October 25, the Rio Arriba County Commission issued a resolution supporting our delegation's call for information.

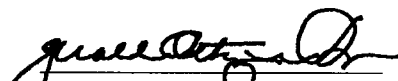
Hilcorp will suffer no harm in the delay that we, state senators, are calling for. Since January 2018, Hilcorp has applied to OCC for exceptions to the current drilling limit for the Blanco-Mesa Verde pool more than 70 times and has never been denied a request. The company may simply continue to do that.


An examination of the testimony and evidence presented by Hilcorp at the previous hearing of Case No. 16403 shows that Hilcorp is looking far beyond a doubling of wells in San Juan and Rio Arriba counties by allowing wells at 40 acres spacing, citing the "10 acre" and "5 acre" spacing allowed in the Piceance Basin and Green River Basin. Even at the proposed 40-acre spacing, the multi-use nature of these affected lands in the San Juan Basin will be lost and a door closed forever on the outdoor recreation, cultural heritage appreciation and economic diversity that the incoming administration has made a cornerstone of its economic development plans.

We ask that the scheduled November 19 special hearing of OCC Case No. 16403 be delayed until all relevant and necessary facts are in, and that the incoming administration be allowed to assess this proposal for increased well density that will affect New Mexico's citizens for the next four years, and far beyond.

Sincerely,

  
Senator Michael Padilla  
State Senate

  
Senator Gerald Ortiz y Pino  
State Senate

  
Senator Cisco McSorely  
State Senate

# EXHIBIT R

To SJCA's Motion for Continuance

November 16, 2018

Secretary Ken Mc Queen

New Mexico Energy, Minerals, and Natural Resources Department

1220 South St. Francis Drive

Santa Fe, NM 87505

RE: Case 16403

Dear Secretary Mc Queen,

As a concerned citizen, New Mexico resident, and City of Aztec Mayor, I wish to add my voice to the concern raised by Land Commissioner-elect Garcia- Richards regarding the special hearing set to address increased well density before the New Mexico Oil Conservation commission on November 19, 2018, also referred to as case 16403.

I strongly endorse Land Commissioner-elect Garcia-Richards' call to delay this hearing until her office and the incoming team of Governor-elect Lujan Grisham may adequately address the valid and critical concerns of this contested and highly controversial action to allow for double drilling in the Blanco-Mesaverde pool across San Juan and Rio Arriba counties.

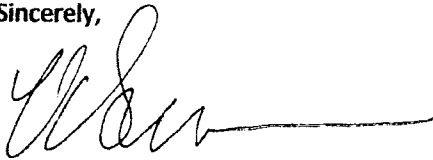
This decision should be made in a transparent manner allowing for sufficient public notice and comment period, should include all available facts, and in concert with similarly affected state/federal agencies. Additionally, it seems that by postponing this hearing, it allows for the incoming administration to have the opportunity to be involved in an extremely important policy decision that will directly impact our communities in the immediate future. The outgoing administration should, in good faith, allow this to be taken up by the Lujan Grisham administration along with incoming Land Commissioner Garcia-Richards. Frankly, the impacts to our area, our municipalities, and our environment are potentially too great to not allow this decision to be put in the hands of our incoming administration.

Hilcorp will not be adversely affected if the request to delay is granted. More than 50 requests have been filed by Hilcorp, none have been denied and it can be reasonably assumed that they will continue to proceed as before with their multiple requests and furthermore, there will be no subsequent loss of man hours, crews being sent back to yards, and no loss of royalties/taxes.

As a small city mayor in San Juan County, we will be directly affected by the outcome of this hearing and with all of our elected officials (especially in the Farmington/Aztec region) touting the need to diversify away from the extractive energy industry based economy as we move forward, this well density request flies directly in the face of our plans as a region to move into an outdoor tourism based economy. The ORII initiative that Farmington has spearheaded and that we in Aztec are following closely behind, I feel that it is not in our best interest to further the interests of Hilcorp and others, and certainly not until ALL due diligence is allowed to take place by the interested parties.

I, the undersigned, along with over 30 groups representing over a million members, several state elected officials and more than 100 concerned residents of New Mexico ask that the November 19<sup>th</sup>, 2018 hearing of OCC case 16403 be delayed until all pertinent and necessary facts are taken into consideration and that the incoming administration be given consideration to be the parties to assess this proposal of increased well density that will affect our fellow New Mexicans for generations to come.

Sincerely,

A handwritten signature in black ink, appearing to read 'V. Snover', followed by a long horizontal line extending to the right.

Victor C. Snover

Mayor, City of Aztec

(304)550-7099

vsnover@aztecnm.gov

# EXHIBIT S

To SJCA's Motion for Continuance

November 16, 2018

Bill Brancard, General Counsel

Energy, Minerals & Natural Resources Department

1220 South St. Francis Drive

Santa Fe, NM 87505

RE: Case No. 16403

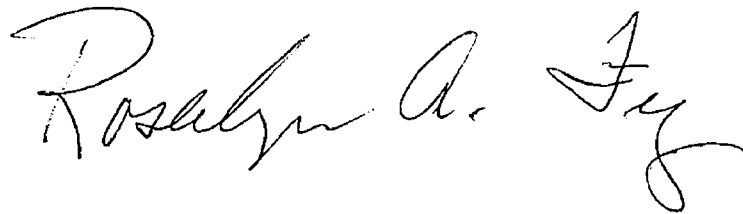
Dear Mr. Brancard,

As an elected official of the City of Aztec and as a resident of New Mexico, I add my voice to those of so many others expressing concerns about the well density spacing changes in San Juan and Rio Arriba counties. I request that the hearing before the New Mexico Oil Conservation scheduled for November 19, 2018 be delayed until Land Commissioner elect, Garcia Richard and Governor Elect, Lujan Grisham, and the newly appointed Secretary of EMNRD have the opportunity to fully review and analyze this proposal to double the drilling of the Blanco-Mesa Verde pool in San Juan and Rio Arriba counties.

Regards,

Rosalyn A. Fry, Mayor Pro-Tem

Aztec City Commission

A handwritten signature in cursive script, reading "Rosalyn A. Fry". The signature is written in dark ink and is positioned to the right of the typed name.



# EXHIBIT T

To SJCA's Motion for Continuance



*La Plata County*  
Colorado

Commissioner Gwen Lachelt

[Gwen.Lachelt@co.laplata.co.us](mailto:Gwen.Lachelt@co.laplata.co.us)

1101 East 2<sup>nd</sup> Ave  
Durango, CO 81301  
970-382-6219

November 16, 2018

Mr. Bill Blancard, General Counsel  
New Mexico Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Dear Mr. Blancard:

I'm writing to request a delay of the New Mexico Oil Conservation Commission's special hearing to consider increases to well density in San Juan and Rio Arriba counties (Case 16403) currently scheduled for November 19.

As your neighbor to the north of San Juan and Rio Arriba counties, I urge you to not consider this application until studies are completed that analyze the social, economic and environmental impacts of doubling the number of wells in the San Juan Basin. As you may know, NOAA and NASA have conducted exhaustive studies and determined that the San Juan Basin is home to the highest levels of methane emissions in North America. The agencies have pinpointed the sources of those emissions, most of which are oil and gas facilities and pipelines on public lands on the New Mexico side of the basin. Quite unfortunately, the rule that went into effect to limit those emissions has been rescinded. I've served as a La Plata County commissioner since 2012 and was a strong advocate for that rule on behalf of my constituents in Colorado. Without that rule and without a study evaluating the cumulative impacts of potentially doubling the number of wells, methane emissions and air pollution in our region will increase.

This year, the American Lung Association gave La Plata County an "F" rating for high ozone due to methane emissions in the basin. Farmington and San Juan County received a "C" rating. High ozone levels are dangerous to public health and put our most vulnerable populations and our children and elderly at risk of asthma and other respiratory illnesses.

Despite the state line that separates us, we are inextricably linked. We share the

Animas and San Juan rivers, the same air shed, and our economies are dependent upon one another.

Without clean air and water, we have nothing. I've long advocated for oil and gas policies and practices that balance the right of oil and gas companies to develop resources with the right of our residents to a healthy environment. We can strike a balance here but not without conducting appropriate studies and analyzing all alternatives.

Sincerely,

A handwritten signature in black ink that reads "Gwen Lachelt". The signature is written in a cursive, flowing style with a large initial 'G'.

Gwen Lachelt  
Commissioner