

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

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**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**

RENEWED AND AMENDED NOTICE OF INTERVENTION

Intervenor's name:
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NATURE OF INTERVENOR'S INTEREST IN THE APPLICATION:

San Juan Citizens Alliance (“SJCA”) is a grassroots advocacy organization based in San Juan County, New Mexico. SJCA was founded in 1986, and since then has worked to protect the water, air, lands, and character of rural communities in the San Juan Basin. SJCA focuses on four program areas, including the *San Juan Basin Energy Reform Campaign*, which ensures proper regulation and enforcement of the oil, gas, and coal industry and transitioning to a renewable energy economy. SJCA has been active in oil and gas issues in the San Juan Basin since the early 1990s. SJCA’s members live, work, and recreate throughout the San Juan Basin and San Juan Mountains. SJCA’s members’ health, use and enjoyment of this region is directly impacted by the OCC’s decision in this case. SJCA has actively negotiated with the other parties to come to an agreement about the appropriate scope of Hilcorp’s application in this case, and agreed to the Unopposed Motion to Amend the Special Rules for the Blanco-Mesaverde Pool filed by the New Mexico State Land Office’s (“Land Office”) on July 12, 2019. SJCA now submits this Renewed and Amended Notice of Intervention pursuant to NMAC 19.15.4.11(A), Adjudicatory Proceeding Intervention, in support of that Unopposed Motion.

I. SJCA’s Previous Motions to Intervene

On August 18, 2018, SJCA moved to intervene in this case. In response, Hilcorp Energy Company (“Hilcorp”) filed a motion to strike SJCA’s intervention, which the OCC orally granted at its September 13, 2018 hearing on the basis that “SJCA failed to show a basis for legal standing to intervene and that it failed to show it would contribute substantially to the particular issues before the Commission.” (OCC Order No. R-10987-A(2)). Also at that hearing, the OCC continued the case until November 19th so that Hilcorp could provide notice to other operators pursuant to N.M.A.C. § 19.15.4.12(A)(4)(b). OCC Commissioner Robert Balch invited SJCA to

file a renewed motion to intervene in the November 19th hearing. (see Reporter's Transcript of Proceedings, Commissioner Hearing, September 13, 2018, p. 134).

On November 9, 2018, SJCA again moved to intervene on the basis that it has legal standing and, alternatively, that SJCA's intervention would substantially contribute to the protection of public health and the environment. Hilcorp again filed a motion to strike SJCA's intervention. (Hilcorp's Motion to Strike SJCA's Second Notice of Intervention, November 15, 2018). OCC once again granted Hilcorp's motion to strike SJCA's intervention on the basis that "SJCA failed to show a basis for legal standing to intervene and failed to show that it had the special expertise to contribute substantially to the particular issues before the Commission." (OCC Order No. R-10987-A(2)). At the same hearing, OCC also denied the Land Office's motion to intervene. (OCC Order No. R-10987-A(2)).

Both the Land Office and SJCA filed motions for rehearing on December 31, 2018. The OCC scheduled a hearing to consider those motion on January 8, 2019. At that hearing and in a subsequent order, the OCC found that "the decisions to deny intervenor status to either SJCA or the Land Office may have been erroneous and that greater transparency would benefit the proceeding." (OCC Order No. R-10987-A(4)). OCC scheduled a rehearing in this case for May 9, 2019, which it subsequently rescheduled for August 15, 2019. SJCA understands the OCC's order to mean that the OCC has rescinded its November 19th grant of Hilcorp's motion to strike SJCA's intervention, and therefore that SJCA's November 9, 2018 Notice of Intervention will again be properly before the OCC at the August 15, 2019 hearing on this application. Importantly, the parties have also agreed to an unopposed motion, filed on July 12, 2019, to resolve their disputes in this proceeding. SJCA additionally submits this Renewed and Amended Notice of Intervention in advance of the August 15th hearing to consider that motion,

incorporating by reference the positions and arguments set forth in its original November 9th Notice of Intervention, November 19th Response to Motion to Strike Notice of Intervention, and in accord with NMAC §§ 19.15.4.11(A) and (C).

II. SJCA Has Standing

SJCA presented extensive evidence in its November 9, 2018 Notice of Intervention that SJCA has standing in accordance New Mexico law because changes to well density in the places where SJCA's members live and work will cause them direct injury. The prior OCC decisions to deny SJCA's Motions to Intervene have been based on both the OCC's determination as to SJCA's legal standing as well as its ability to provide relevant information. In making those prior decisions, OCC misapprehended the law as to standing, as well as the scope of its authority to consider the effect of its decisions on surface waste, economic waste, human health, and the environment. Since that point, SJCA has demonstrated its standing by virtue of constructively working with the other parties to develop the unopposed July 12th motion now pending before OCC for consideration in its the upcoming August 15 hearing.

SJCA's standing in this proceeding is premised on OCC's duty to "prevent waste" and "protect correlative rights" of operators. N.M. Stat. § 70-2-11; N.M.A.C. § 19.15.2.3.

"Correlative rights" are defined in the Oil and Gas Act as:

[T]he opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce *without waste* the owner's just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained *without waste*, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy.

N.M. Stat. § 70-2-33; N.M.A.C. § 19.15.2.7 (emphasis added). New Mexico Courts have found that of these duties, "the prevention of waste is the paramount power, inasmuch as this term is an

integral part of the definition of correlative rights.” *Cont'l Oil Co. v. Oil Conservation Comm'n*, 373 P.2d 809, 814 (N.M. 1962).

a) “Waste” in the Oil and Gas Act

The New Mexico Oil and Gas Act provides six definitions for “waste” – definitions that are “in addition to its ordinary meaning.” N.M. Stat. § 70-2-3; N.M.A.C. § 19.15.2.7(W)(1).

While the prior proceedings fixated on “underground waste,” there are five additional definitions of waste. The Oil and Gas Act specifically prohibits “surface waste” which is defined as:

[T]he unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas in excess of the reasonable market demand.

N.M. Stat. § 70-2-3(B); N.M.A.C. § 19.15.2.7(W)(1)(B) (emphasis added).

In the present case, SJCA has been concerned with the lack of evidence provided by Hilcorp as to its application’s effect on surface waste. SJCA, however, supports the Unopposed Motion and will not present witnesses or oral argument assuming that Unopposed Motion is granted. However, if OCC does not grant the Unopposed Motion, SJCA will desire to actively engage in the hearing for the purpose of testing the reasonableness of Hilcorp’s application relative to surface waste management through cross examination and introducing relevant information regarding surface management issues to ensure a meaningful discussion on the application’s impact on surface waste.

b) OCC’s duty to prevent “surface waste”

SJCA’s witnesses have expertise in oil and gas regulation and the environmental effects or oil and gas leasing on surface resources, as well as personal experience with the effects of oil

and gas development as San Juan County and Rio Arriba County landowners. While SJCA does not intent to present these witnesses if OCC grants the Unopposed Motion, these witnesses will present important testimony that goes to the core of the OCC's duty to prevent surface waste in the event that OCC denies the Unopposed Motion.

Throughout OCC's existence, the agency has rested regulatory decisions on its authority to prevent surface waste, including through production in excess of reasonable market demand. In its first exercise of this authority, OCC issued a 1939 emergency order suspending crude oil production in the state for 15 days to prevent production in excess of the reasonable market demand. OCC Order No.196 (1939). The Commission then began promulgating oil to gas ratio regulations, and developed monthly proration schedules starting in 1940 in order to ensure that production would track market demand. OCC Order No.235 (1940). OCC has also made use of this authority to promulgate special proration or spacing rules for various pools throughout the state. *See* OCC Order No. 726 (1947); OCC Order No. R-1670-C (1960); OCC Order No. R-8170-E (1990); OCC Order No. R-9976-B (1995). OCC has also relied on its authority to reduce surface waste to approve waste oil salvage or gas processing plants. *See* OCC Order No. 724 (1947); OCC Order No. 726 (1947); OCC Order No. R-3221 (1985). And in 1954, it considered implementing a "no flare" rule under this authority. *See* Hearing Transcript for OCC Case No. 673 (May 10-11, 1954).

Most recently, in a 2019 OCC order regarding a spacing change application, OCC justified its decision between two different proposals by selecting the proposal that they believed would result in greater environmental protection and less surface waste. The order states:

Chisholm and Premier have presented competing arguments over the preferred drilling direction, where the facilities of the wells should be located, and other issues. Chisholm presented substantial testimony and evidence demonstrating . . . that its well design and

surface operations will protect the environment and fresh water sources, including the Capitan Aquifer; and that its operations will protect against subsurface and surface waste.

OCC Order No. R-14876 (2019). This decision falls squarely within OCC's mandate to prevent surface waste by preventing "the unnecessary or excessive surface loss or destruction without beneficial use...incident to or resulting from the manner of spacing" in N.M. Stat. § 70-2-3(B); N.M.A.C. § 19.15.2.7(W)(1)(B). It also demonstrates that SJCA may intervene to address these very same surface waste issues.

c) OCC's duty to consider impacts to public health and the environment and to afford SJCA intervention to address public health and environmental impacts.

In addition to preventing waste and protecting correlative rights, OCC is charged with preventing injuries from oil production activities, including protecting neighboring properties from injury and regulating non-domestic waste produced during "exploration, development, production, or storage of crude oil" in order to "protect public health and the environment." N.M. Stat. § 70-2-12(B)(7), (21), and (22). As SJCA has described in previous filings in this case, OCC's own intervention regulations, NMAC § 19.15.4.1 I(C), make clear that a party that wishes to intervene for the purpose of discussing an adjudicatory matter's effects on public health and the environment should be allowed to do so, even if they would not otherwise have standing. When the Oil Conservation Division ("OCD") adopted these regulations, it considered its duty to understand an application's effects on public health and the environment a "mandate." OCD Order No. R-12327-A 13482 at 2. SJCA intervenes in this matter to advance these interests.

In last November's proceedings, the OCC itself raised questions regarding surface impacts. Then Commissioner Balch asked Hilcorp questions regarding surface impacts, including whether Hilcorp would engage in blanket or targeted infill drilling, how many wells would be recompletions, whether there is horizontal potential in the pool, and whether

recompleted wells are preferable over infill wells, adding as part of his question that such a preference “minimizes surface” impacts. Case No. 16403, Reporter’s Transcript of Proceedings, Commissioner Hearing, (September 13, 2018) at 74-79. In addition, then Chairwoman Riley asked Hilcorp questions regarding pipeline capacity and pressure. *Id.* at 107-108. Hilcorp responded by explaining it had “several pipe projects going on currently,” inclusive of “surface modeling,” “several projects identified where [Hilcorp] can fit in additional compressions to help lower those surface gathering system pressures so that we can even extend the life of current wells even further,” and the acquisition of “Williams Midstream Assets in the San Juan Basin” so that Hilcorp “will be able to do more of those types of [surface pipeline] projects.” *Id.* at 108.

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

SJCA supports the July 12 Unopposed Motion to Amend the Special Rules for the Blanco-Mesaverde Pool. SJCA will not present witnesses or otherwise actively participate in the case if the OCC grants that Unopposed Motion. SJCA continues to oppose Hilcorp’s original Application and will present witnesses and cross-examine Hilcorp’s witnesses if the Unopposed Motion is denied and Hilcorp’s original Application is under consideration at the hearing instead.

Respectfully Submitted,

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2019, I served a copy of the foregoing documents to the following counsel of record via Electronic Mail:

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