

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

**IN THE MATTER OF THE PROPOSED
AMENDMENTS TO THE COMMISSION'S
RULES ON RELEASES,**

19.15.29.6 AND 19.15.29.8, AND 19.15.29.15 NMAC

CASE NO.: 21834

**INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S
MOTION TO EXCLUDE CERTAIN PROPOSED
TESTIMONY OF KAYLEY SHOUP**

Independent Petroleum Association of New Mexico ("IPANM"), a party to these proceedings, makes the following Motion:

1. On May 26, 2021, a group of organizations which includes Citizens Caring for the Future ("CCF") filed a "Notice of Intent." In Section II (C) of that Notice of Intent, CCF indicates that it "will present Kayley Shoup as a non-technical witness" at the hearing of this rulemaking.

2. CCF indicates that Ms. Shoup will testify "about the industry that was surrounding and inundating her home" in Carlsbad, New Mexico and, in the same paragraph, indicates that her mother was "diagnosed with stage III ovarian cancer"; that a very close friend "deal[t] with stage IV testicular cancer"; and, that "she had heard of many relatively young people [apparently in the Carlsbad area] dealing with rare and aggressive cancers."

3. This proposed testimony about cancer appears to be based on Ms. Shoup's belief that produced water may be causing or contributing to incidents of cancer.

4. Ms. Shoup is presented as a non-technical witness and has no disclosed expertise in oncology, epidemiology, or any other field which would give her the ability to

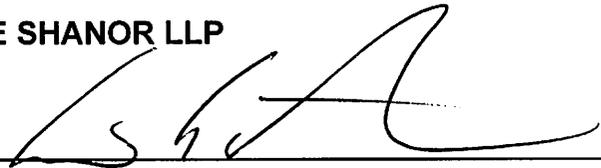
testify to or make causal links between cancer in any person with any potential or theoretical cause for the cancer, whether the alleged cause be produced water or something else. In short, despite being tendered as a non-technical witness, Ms. Shoop is offering testimony that is only competent if offered by a professional trained in highly specialized areas of medicine and science.

5. The rules of evidence do not apply in a rulemaking proceeding. Rule 19.15.3.12.(A)(1). However, the Commission's provide for the admission of "relevant evidence" but not "incompetent" evidence. *Id.* at (B)(2). CCF provides no indication that Ms. Shoop has competence to testify as to causes of cancer or the relative incidence of forms of cancer in a particular community or area and, in fact, purports to tender Ms. Shoop as a witness who does not have any technical expertise. Therefore, IPANM requests that Ms. Shoop be precluded from testifying as to those matters.

6. IPANM reserves the right to file additional Motions related to the Notice of Intent filed by CCF and others.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Motion* was e-mailed to the following on this 28th day of May, 2021:

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