

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

APPLICATION OF THE INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO FOR THE AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS AND SUMPS, AND AMENDING OTHER SPECIAL RULES RELATED TO THE FOREGOING MATTERS, STATEWIDE.

CASE NO.: 14785

RESPONSE TO MOTION FOR SEVERANCE AND CONTINUANCE

Independent Petroleum Association of New Mexico's ("IPANM") for its Response to The New Mexico Wilderness Alliance, The Wilderness Society, The Sierra Club, New Mexico Chapter of Backcountry Hunters and Anglers, National Wildlife Federation, and New Mexico Wildlife Federation (collectively "Wilderness Alliance") request for a continuance and severance of the January 23, 2012 hearing date for its Application in Case No. 14785 states that the request should be denied for the following reasons:

1. IPANM filed its application on November 29, 2011 seeking various changes to 19.15.17 *et seq.* and a conforming amendment to 19.15.39.8(B). The issues presented in the two cases are interrelated and the testimony presented concerning the proposed amendments to Rule 17 is pertinent to and overlaps the issues presented by the conforming amendment set forth in Rule 39. Although Rule 39 was originally enacted in 2004, when the Division amended Rule 17 in 2008 in it also amended 19.15.39.8(B). The proposed amendments to Rule 17 will eliminate the permitting and design and consultation specification and closure requirements for closed-loop systems. Since Rule

39 has been interpreted to require the use of closed-loop drilling systems, the proposed amendments to Rule 17 will affect Rule 19.15.39(B).

2. The Wilderness Alliance's contention that the amendments sought in the two cases are not related is factually incorrect since the rules were previously amended in the same rulemaking proceeding.

3. The Commission's rules require that notice of hearings in rulemaking proceedings be provided 20 days in advance of the hearing. *See* 19.15.3.9 NMAC. Almost **three times** the required notice period (58 days) was provided the Commission regarding the hearing on IPANM's application. All parties have to deal with difficulties presented with working around holidays and other scheduling commitments to prepare for hearings. The request does not contend that the Wilderness Alliance is unable to comply with the schedule for filing prehearing statements nor was any evidence presented to support the contention that complying with the schedule was difficult and burdensome.

4. Full public participation at the January 23rd hearing is ensured by the Commission's rules which allow anyone to make an unsworn statement at the hearing without filing prior notice and to even offer exhibits at the hearing. *See* 19.15.3.11(A). Additionally, members of the general public desiring to present non-technical testimony can do so simply by indicating their intent on the sign-in sheet at the hearing. Persons other than the applicant can also propose modifications to proposed rule changes a mere 10 days before the hearing date. 19.15.3.11(C).

5. Although IPANM disagrees with the claimed reason for seeking to sever the hearings -- "that the application of IPA[NM] in Case No. 14785 raises important issues of

public policy regarding the conservation of lands” -- it should be noted that the Commission’s jurisdiction does not extend to the conservation of lands but is limited to the prevention of waste and protection of correlative rights. Therefore, any evidence that the Wilderness Alliance seeks to present concerning the conservation of lands is beyond the Commission’s jurisdiction and is not germane to the rulemaking proceeding.

WHEREFORE, Independent Petroleum Association of New Mexico requests that the request for continuance and severance be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 5th day of January, 2012 by e-mail:

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Response to Motion for Continuance (W1613532)