

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

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**APPLICATION OF NEW MEXICO OIL
CONSERVATION DIVISION TO AMEND
19.15.5 NMAC; STATEWIDE**

**CASE NO. 20895
ORDER NO. R-20895-A**

**NEW MEXICO OIL CONSERVATION DIVISION'S
RESPONSE TO LARRY MARKER'S APPLICATION FOR REHEARING**

The New Mexico Oil Conservation Division ("OCD") submits this response in opposition to Larry Marker's Application for Rehearing ("Application"). For the most part, the Application merely repeats the claims raised in Marker's earlier filings. Having rejected those claims already, and Marker having added nothing new in his Application, the Oil Conservation Commission ("Commission") should deny the Application.

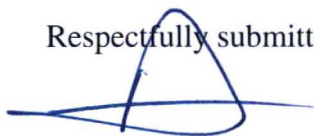
On January 15, 2020, the Commission issued an order denying Marker's Petition for Commission to Hold in Abeyance a Final Order. Marker filed his petition after the Commission held a full public hearing on OCD's proposed rule and took testimony from several parties, including Marker. The Commission's order explained that Marker's claims regarding the "totality of testimony and evidence" and the alleged conflicts between the rule and his pending lawsuits were not supported by fact or law. Because the Application repeats these claims nearly verbatim,¹ it should be rejected again for the reasons stated in the Commission's order.

¹ Marker does insert a new "fact" in support of his "totality" claim that is not supported by the record. Contrary to paragraph 7 of the Application, the Commission was not informed before the hearing that the witness was ill and unable to attend. Yet even if this were true, his "fact" would not be relevant, since "at no time either prior to or before the hearing did IPANM request that the hearing be continued or that the record remain open in order for IPANM to present this witness." Order at ¶¶ 1-3.

Marker's final claim expands on his earlier argument that OCD failed to "address in its petition potential violations of due process, division of powers and various other legal issues within the proposed regulations." *See* Petition at ¶ 27. Now he asserts a mishmash of concerns ranging from futility and exhaustion to abuse of discretion, bias, and due process, and warns the Commission that it will be subjected to a "staggering" volume of litigation. Marker does not explain the factual or legal basis for any of these concerns, so it is nigh impossible to respond meaningfully. However, even a cursory review of the record will show that the Commission complied with its statutory and constitutional obligations in adopting the rule.

For these reasons, OCD respectfully requests that the Commission issue an order denying the Application for Rehearing.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Eric Ames', with a horizontal line extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was mailed electronically on January 27, 2020 to:

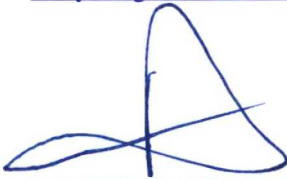
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