

State of New Mexico
ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT
Santa Fe, New Mexico 87505



BRUCE KING
GOVERNOR



ANITA LOCKWOOD
CABINET SECRETARY

January 14, 1993

TANSEY, ROSEBROUGH, GERDING
& STORTHER
Attorneys at Law
P. O. Box 1020
Farmington, New Mexico 87499

RE: CASE NO. 10436
ORDER NO. R-7940-C

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

A handwritten signature in cursive script that reads "Sally Leichtle".

Sally Leichtle
Administrative Secretary

cc: Aztec OCD Office
BLM Farmington Office
T. Kellahin
E. Padilla
D. Meiklejohn
N. Kendrick

VILLAGRA BUILDING - 408 Galisteo
Forestry and Resources Conservation Division
P.O. Box 1948 87504-1948
827-5830

Park and Recreation Division
P.O. Box 1147 87504-1147
827-7465

2040 South Pacheco
Office of the Secretary
827-5950

Administrative Services
827-5925

Energy Conservation & Management
827-5900

Mining and Minerals
827-5970

LAND OFFICE BUILDING - 310 Old Santa Fe Trail
Oil Conservation Division
P.O. Box 2088 87504-2088
827-5800

LAW OFFICES

TANSEY, ROSEBROUGH, GERDING & STROTHER, P.C.

OIL CONSERVATION DIVISION
RECEIVED
NOV 10 AM 9 41

621 WEST ARRINGTON
FARMINGTON, NEW MEXICO 87401
TELEPHONE: (505) 325-1801

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Mailing Address:
P. O. Box 1020
Farmington, N.M. 87499

November 9, 1992

State of New Mexico
Energy, Minerals and Natural
Resources Department
New Mexico Oil Conservation Commission
P.O. Box 2088
Santa Fe, New Mexico 87501-2088

Attn: William J. Lemay, Chairman

Re: Application of Four Corners Gas Producers Association
to Rehear Case No. 10436

Dear Mr. Lemay:

Enclosed please find Applicant's Pre-hearing Statement
in the above-referenced matter.

Sincerely,

Tommy Roberts
Tommy Roberts *mkc*

TR:mkc
Encl.

cc: Robert G. Stovall, Esq.
Douglas Meiklejohn, Esq.
W. Thomas Kellahin, Esq.

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING: THE APPLICATION OF
FOUR CORNERS GAS PRODUCERS
ASSOCIATION TO REHEAR CASE NO.
10436.

CASE NO. 10436 (Rehearing)

PRE-HEARING STATEMENT

This prehearing statement is submitted by Four Corners Gas Producers Association as required by the Oil Conservation Commission.

APPEARANCES OF PARTIES

APPLICANT

ATTORNEY

Four Corners Gas Producers
Association
P.O. Box 168
Farmington, NM 87499

Tommy Roberts, Esq.
P.O. Box 1020
Farmington, NM 87499
505/325-1801

New Mexico Oil & Gas
Association
P.O. Box 1864
Santa Fe, NM 87504

W. Thomas Kellahin
P.O. Box 2265
Santa Fe, NM 87504
505/982-4285

OPPOSITION OR OTHER PARTY

ATTORNEY

Oil Conservation Division
State Land Office
Santa Fe, NM 87501

Robert G. Stovall, Esq.
P.O. Box 2208
Santa Fe, NM 87504
505/327-5800

Southwest Research and
Information Center

Douglas Meiklejohn, Esq.
1520 Paseo de Peralta
Santa Fe, NM 87501
505/989-9022

STATEMENT OF CASE

APPLICANT

(Please make a concise statement of what is being sought with the application and the reasons therefore.)

On or about August 25, 1992, Four Corners Gas Producers Association and New Mexico Oil & Gas Association filed an application with the New Mexico Oil Conservation Commission seeking rehearing of Case No. 10436. A copy of that application was served upon all parties of record in Case No. 10436. On September 4, 1992, the New Mexico Oil Conservation Commission issued its Order Granting Rehearing in Case No. 10436, providing, however, that the Commission would hear evidence only pertaining to certain issues specified therein. The Applicant believes that a copy of the Order Granting Rehearing was mailed to all parties of record in Case No. 10436.

OPPOSITION OR OTHER PARTY

(Please make a concise statement of the basis for opposing this application or otherwise state the position of the party filing this statement.)

Not Applicable

PROPOSED EVIDENCE

APPLICANT

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
Randall T. Hicks Hydrogeology	1 hour	1) Area of Influence Calculations 2) Survey of Notice Requirements applicable to various industry operations and activities

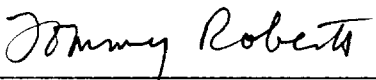
OPPOSITION

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
	Not Applicable	

PROCEDURAL MATTERS

(Please identify any procedural matters which
need to be resolved prior to the hearing)

NONE, AT THIS TIME



TOMMY ROBERTS, Attorney for
FOUR CORNERS GAS PRODUCERS
ASSOCIATION

Tommy Roberts
for W. THOMAS KELLAHIN, Attorney
for NEW MEXICO OIL & GAS
ASSOCIATION

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF AMENDING COMMISSION ORDER R-)
7940 TO PROVIDE FOR THE EXPANSION OF THE)
DESIGNATED VULNERABLE AREA OF THE SAN)
JUAN BASIN, ELIMINATION OF DISCHARGES TO)
UNLINED PITS, CREATION OF WELLHEAD)
PROTECTION AREAS, ESTABLISHMENT OF)
DEADLINES FOR COMPLIANCE, AND OTHER)
MATTERS)

CASE NO. 10436

RECEIVED

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UPON THE APPLICATION OF THE OIL)
CONSERVATION DIVISION)

OIL CONSERVATION DIVISION

Southwest Research and Information Center's
Summary of Testimony and Exhibits for Rehearing

Southwest Research and Information Center hereby gives notice that it will present one witness at the rehearing in this matter. Christopher Shuey, the Director of the Community Water Quality Program, will testify that the Oil Conservation Commission should not change the Order that it entered in this matter on August 5, 1992 except to clarify the procedure to be used to determine whether variances should be granted and to limit the time within which discharges must be eliminated. Mr. Shuey will testify for about two hours on direct examination, and will refer to the exhibits that Southwest Research and Information Center introduced during the hearing that has already been conducted. Specifically, Mr. Shuey will address the following issues.

The Commission should not change the wellhead protection provisions in its August 5, 1992 Order. The Oil and Gas Act requires protection of fresh water supplies and ground water,

which are the source of drinking water for 90 percent of the people in New Mexico. All fresh water must be protected, whether it is used by any wells, private or public, and the evidence indicates that a 1,000 foot buffer zone around all types of wells is appropriate for three reasons.

First, contamination from produced water has traveled at least half a mile in one instance and 600 feet in another, and Michael Wallace's saturated flow model demonstrates that such contamination can travel more than 1,000 feet. Second, that model understated the potential migration of contaminants because it did not take into account the impact that a pumping well would have. Finally, wells can act as conduits to ground water, thereby increasing their potential for contamination if they become polluted.

The second and third issues that Mr. Shuey will address are the circumstances under which variances should be permitted and the notice that should be given of an application for a variance. Variances from the requirements of the Commission's Order should be granted by the Oil Conservation Division only in extraordinary circumstances, based upon a demonstration that the measures which are proposed will provide protection for fresh water and the rest of the environment that is either equivalent to or better than the protection that would be provided by compliance with the Order. Variances should be granted only on a site by site basis, unless the applicant for the variance demonstrates that the conditions that justify the variance apply uniformly throughout a particular area.

Since they may be affected by the granting or denial of a variance request, the owner of the surface rights where the variance is proposed, and all owners and occupants of property within one-half mile of the variance site, should be given actual notice of the variance request.


Finally, the Commission should require compliance with its Order sooner than is provided in the Order. The Order indicates that operators must eliminate discharges into unlined pits within one, two, or three years, depending upon the location of the sites in question, and that the Division can extend those deadlines for as much as a year and a half. The Order should be changed to provide either that discharges be eliminated within one, two, or three years and that no extensions be available, or that discharges be eliminated within one, one and one-half, or two years, and that the Division is authorized to extend those time periods for a maximum of one year.

The reasons for these discharge elimination schedules are as follows. First, the Oil and Gas Act requires protection of water and the rest of the environment, and the Commission has determined that discharge of produced water into unlined pits causes contamination of the water that must be protected. Second, clean up of contaminated water is difficult and very expensive at best, and it cannot be accomplished in some circumstances. Third, the technology used to replace unlined pits is available and being used in the area covered by the Order. Finally, the industry has had ample notice that

discharges into unlined pits would have to be eliminated.

Dated: November 6, 1992.

NEW MEXICO
ENVIRONMENTAL LAW CENTER


Douglas Meiklejohn
1520 Paseo de Peralta
Santa Fe, N.M. 87501
(505) 989-9022

Attorney for Southwest
Research and Information
Center

ELEVENTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF SAN JUAN

FOUR CORNERS GAS PRODUCERS ASSOCIATION
and NEW MEXICO OIL & GAS ASSOCIATION,

Petitioner,

No. CV 92-575-4

vs.


OIL CONSERVATION COMMISSION OF THE
STATE OF NEW MEXICO, OIL CONSERVATION
DIVISION OF THE STATE OF NEW MEXICO, and
SOUTHWEST RESEARCH AND INFORMATION CENTER,

Respondents,

ACCEPTANCE OF SERVICES OF PROCESS

Robert G. Stovall, Esquire, hereby accepts for and
on behalf of the Oil Conservation Commission of the
State of New Mexico, and the Oil Conservation Division
service of process in the above suit and acknowledges
receipt of a copy of the Summons and Petition against
said Respondents in this matter. The undersigned
warrants that he is authorized and able to accept
service of process for both respondents.

Dated: Oct 13, 1992



Robert G. Stovall, Esq.

acct.001

FILED
DISTRICT COURT
SAN JUAN COUNTY
NEW MEXICO

SEP 23 4 49 PM '92

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
IN THE ELEVENTH JUDICIAL DISTRICT COURT

FOUR CORNERS GAS PRODUCERS ASSOCIATION
and NEW MEXICO OIL & GAS ASSOCIATION,

Petitioners.

vs.

No. CV 92-575-4

OIL CONSERVATION COMMISSION OF THE STATE
OF NEW MEXICO, OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO, and SOUTHWEST
RESEARCH AND INFORMATION CENTER,

Respondents.

PETITION FOR REVIEW OF DECISION
OF OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

COME NOW Four Corners Gas Producers Association and New Mexico Oil & Gas Association, pursuant to the provisions of § 70-2-25, N.M.S.A. (1978 Comp.), as amended, and respectfully petition the Court for review of the action of the Oil Conservation Commission of the State of New Mexico in Case No. 10436 on the Commission's docket, and its Order R-7940-B entered therein.

PARTIES:

1. Four Corners Gas Producers Association ("FCGPA") is a trade association comprised primarily of oil and gas operators having bases of operations in the San Juan Basin in Northwest New Mexico, is a party of record in all of the proceedings before the Oil Conservation Commission of the State of New Mexico

("Commission") in this matter, and is adversely affected by Commission Order R-7940-B entered in Case No. 10436.

2. New Mexico Oil & Gas Association ("NMOGA") is a trade association comprised primarily of oil and gas operators having bases of operations in the State of New Mexico, including the San Juan Basin in Northwest New Mexico, is a party of record in all of the proceedings before the Commission in this matter, and is adversely affected by Commission Order R-7940-B entered in Case No. 10436.

3. The Commission is a statutory body created and existing under the provisions of the New Mexico Oil & Gas Act, §§ 70-2-1 through 70-2-36, N.M.S.A. (1978 Comp.), as amended.

4. The Oil Conservation Division of the State of New Mexico ("Division") is a statutory body created and existing under the provisions of the New Mexico Oil & Gas Act, §§ 70-2-1 through 70-2-36, N.M.S.A. (1978 Comp.), as amended, and is the applicant in Case No. 10436.

5. Southwest Research and Information Center ("SRIC") is an environmental public interest organization which is a party of record in all of the proceedings before the Commission in Case No. 10436.

JURISDICTION:

1. The Commission held public hearings in Case No. 10436 on January 16th, April 9th, April 10th, and May 21st, 1992, and entered Order R-7940-B therein on August 5th, 1992.

2. On August 25th, 1992, Petitioners filed their Application for Rehearing with the Commission, a copy of which is attached hereto as Exhibit "A" and incorporated herein as though fully set forth.

3. On September 4th, 1992, the Commission entered its Order Granting Rehearing, a copy of which is attached hereto as Exhibit "B" and incorporated herein as though fully set forth, which Order provides that the Commission will hear evidence pertaining only to certain specified issues raised in Petitioners' Application for Rehearing.

4. The Commission's Order Granting Rehearing is, in effect, a denial, in part, of Petitioners' Application for Rehearing.

5. Petitioners have exhausted their administrative remedies before the Commission and now seek judicial review of the Commission's decision within the time provided for by § 70-2-25 N.M.S.A. (1978 Comp.), as amended.

6. The Eleventh Judicial District, San Juan County, New Mexico, has jurisdiction of this case pursuant to the provisions of § 70-2-25 N.M.S.A., (1978 Comp.), as amended, because a significant amount of the property affected by Commission Order R-7940-B is located within San Juan County, New Mexico.

RELIEF SOUGHT:

Petitioners complain of Commission Order R-7940-B and assert

that said Order (a) deprives them of their constitutionally protected rights of due process of the law, (b) is contrary to the public interest, (c) is arbitrary and capricious, (d) fails to contain sufficient findings, and (e) is not supported by substantial evidence, all as is more specifically set forth in Exhibit "A".

WHEREFORE, insofar as Petitioners' Application for Rehearing has been denied by the Commission, Petitioners pray that the Court review the testimony and evidence submitted in Case No. 10436, and Order R-7940-B entered therein, and hold said Order unlawful, invalid, and void. Petitioners further pray for such other and further relief as the court may deem proper in the premises.

Respectfully submitted:

TANSEY, ROSEBROUGH, GERDING
& STROTHER, P.C.
P.O. Box 1020
Farmington, New Mexico 87499

By Tommy Roberts
Tommy Roberts,
Attorney for Four Corners
Gas Producers Association

KELLAHIN and KELLAHIN
Attorneys at Law
P.O. Box 2265
Santa Fe, New Mexico 87404-2265

By Tommy Roberts
for W. Thomas Kellahin,
Attorney for New Mexico Oil
& Gas Association