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

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5,19.15.8, 19.15.9, AND 19.15.25 NMAC

CASE NO 24683

DIRECT TESTIMONY OF TREVOR GILSTRAP

Q: Would you please introduce yourself to the Commission?

A: My name is Trevor Gilstrap. My business address is 4582 S. Ulster St., Suite 600 , Denver, Colorado 80237. I am the Senior Vice President and National Energy Practice Leader with AssuredPartners, an international insurance brokerage.

Q: Would you please give the Commission a summary of your education and work history?

A: After graduating with a Bachelor of Arts in Psychology, I started my career as a claims adjuster with Farmers Insurance. I initially worked as a Liability claims adjuster, and then transitioned to Farmers' dedicated Catastrophe team, where I handled large scale natural disaster claims to insured automobiles and property. In 2011, I started working for Sisk & Co., a local insurance brokerage that primarily focused on placing insurance and surety programs for upstream and midstream service contractors and operators. My role with Sisk & Co. was that of an insurance producer, and I specifically targeted the oil and gas industry. After Sisk & Co. was sold to AssuredPartners in 2015, I continued in the same production role for another two years, before developing and now leading the Energy

vertical within AssuredPartners. The vast majority of our AssuredPartners Energy clients are directly tied to the oil and gas industry. In my current role, I still actively produce my own new business opportunities, support other vertical and non-vertical producers in winning energy related opportunities, as well as dictate the overall direction and management of the Energy vertical.

Q: Are there any other experiences that support your testimony in this rulemaking proceeding?

A: I have over a decade of experience securing and placing insurance and surety needs for energy clients throughout the country. I was named a 2021 and 2024 "Top Producer" by Insurance Business America (IBA), and a "2021 Traditional Energy Power Broker" by Risk & Insurance magazine. Additionally, I hold the Energy Risk & Insurance Specialist (ERIS) designation from the International Risk Management Institute (IRMI). I regularly work with oil and gas client and companies in placing their surety need through various surety providers. The vast majority of AssuredPartners Energy clients are linked to the oil and gas industry, and we provide insurance and surety placements for a few dozen exploration and production companies.

Q: You understand that this is sworn testimony to be submitted in writing to the New Mexico Oil Conservation Commission in connection with a rulemaking proceeding concerning financial assurances?

A: Yes, I do.

Q: Have you been involved in other rulemaking or regulatory proceedings regarding financial assurance requirements in the oil and gas industry?

A: Yes, I testified as a witness for the Colorado Oil and Gas Association before the Colorado Oil and Gas Conservation Commission during the 2022 Financial Assurance Rulemaking which followed the Colorado Legislature's enactment of SB19-181, amending the Colorado Oil and Gas Conservation Act.

Q: Can you provide a summary of your testimony as it relates to Western Environmental Law Center's (WELC) proposed changes to financial assurance requirements?

A: I believe that WELC's proposed regulations, which require single well bonding of $150,000 for marginal wells or potentially all of an operator's registered wells, could have significant unintended consequences. The current version of WELC's proposal appears to require single-well financial assurance on a per-well basis for many smaller operators. My primary concern is the feasibility of implementing such a drastic increase in bonding because the level of surety required by WELC's proposal is simply not available to most smaller operators. Even for those operators who would qualify for the required level of surety, I believe it will be prohibitively expensive.

Q: How is the surety market different for small- to medium-sized operators?

A: In the decade plus that I've worked as an insurance broker, I have been primarily focused on placing insurance and bond programs for oil and gas companies. Currently, we are in one of the hardest surety markets I've experienced in my career. In recent years, sureties have become far more restrictive in their underwriting guidelines in

determining collateral amounts—the days of zero-dollar collateral are largely gone. While there is no formal written guideline, my experience over the past 15 years is that sureties are looking to see financial statements from the Principal with working capital of at least 25% or more of the surety amount required, if the surety is even willing to offer terms with limited collateral. For most smaller companies, that level of capital is not readily available and the current proposed rules will only exacerbate the squeeze felt by smaller operators.

Q: How does a bond differ from an insurance policy?

A: Unlike an insurance policy, a bond is simply a promise to pay. With insurance, the insured pays a premium and the insurer absorbs the risk. In a bond relationship, there is no shifting of risk the risk always remains with the Principal. In the event the bond is called upon, the Surety then immediately seeks reimbursement from the Principal. In general, the lower the working capital, the higher the collateral required by the surety. In many instances, sureties are now requiring collateral of 50%-100% of the bond amount because sureties are not in the business of losing money, and want to ensure they immediately collect from the Principal in the event of a bond claim.

Q: How much does a bond cost?

A: The vast majority of operators are going to be required to provide collateral to secure their bonds. The typical collateral we are seeing for most operators is ranging between 50%-100%. The larger the bond amount, the larger the collateral requirement. In addition to these collateral amounts, sureties also charge an annual bond premium for placing the bond. Again, specific to these types of bonds in my experience, typical annual premiums

range from 2.5%-3.5% (or more) of the bond amount. An increase in operating costs of this scale is neither achievable nor feasible for the majority of small to midsize operators.

Q: Can you provide a few scenarios to explain how the proposed increases in bonding would affect different operators?

A: Yes. A couple of examples to put the "costs" of full cost bonding in perspective are:

In the first scenario, an operator with 150 wells that is required to provide full-cost single-well financial assurance of up to $150,000 per well would be facing a P&A bond obligation of approximately $22.5 million. They would more than likely be facing a collateral requirement from the surety of at least 50% the bond amount, meaning the operator would need to provide $11,250,000 in collateral to secure the bonding. The operator in this scenario would also be paying an annual bond premium of $562,500 - $787,500, on top of the $11.25 million tied up in collateral.

In a second scenario, an operator with 1,000 wells who is subject to full-cost single-well financial assurance of up to $150,000 per well would be facing a P&A bond obligation of about $150,000,000. They would more than likely be facing a collateral requirement from the surety of at least 50% of the bond amount, requiring a collateral commitment of at least $75,000,000 to secure the bonding. The operator in this scenario would also be paying an annual bond premium of $3,750,000- $5,250,000, on top of the $75 million tied up in collateral.

But the above scenarios only come into play if the operator is able to qualify for a bond in the first place. When I said that the surety market is difficult, and it is, that statement

should be further qualified—because for many small operators bonds may not even be an option given the amount of collateral required.

Q: If bonds are not available, are there other methods to meet the financial assurance requirements in the proposed rules?

A: Yes, but alternate does not mean easier for medium and small operators. Here, the existing and proposed rule contemplate either a cash bond, a surety bond (discussed above), an irrevocable letter of credit, or a plugging insurance policy. The requirements for a plugging insurance policy are so onerous, that the most commonly used non-surety alternate to meet financial assurance obligations are posting a letter of credit or cash. Going this route, there is no potential "discount" on the assurance amount, meaning 100% of the associated bond amount would be tied up through a letter of credit or cash. To clarify, the letter of credit is typically secured through one of two options: (1)The operator will draw on their line of credit with their bank to post the irrevocable letter of credit or (2) in instances where their line of credit is not sufficient or non-existent, they will post cash in a certificate of deposit (CD), to back the letter of credit issued by their bank. But again, I do not believe the vast majority of small to medium size operators would be able to comply with alternate financial assurance options under the rule. At a minimum, full-cost bonding, and the associated collateral requirements of the surety and/or cash bond or letter of credit alternates will tie up large sums of money from the operator. This has the potential to significantly decrease the capital readily available for scheduled plugging and abandonment, new drilling, routine maintenance, et cetera.

Q: Are there other consequences for operators in requiring up-front, single-well financial assurance, outside of the initial capital commitment?

A: Yes, the unintended consequences of full cost or increasing bond amounts by double-digit multiples include increased bankruptcies, increased orphaning of wells, increased bank debt, less capital on-hand for normal plugging and abandonment operations, new drilling, workovers, routine maintenance, et cetera, and even operators exiting New Mexico to pursue exploration and production in more favorable states.

Q: How are other producing states addressing financial assurance for oil and gas wells?

A: In Colorado, although bond levels increased for most small operators, the 2022 rulemaking introduced six tiers based on multiple factors, including the operator's average daily per-well production, the number of wells operated, option to contribute a certain percentage over 10 or 20 years, and other individual circumstances. In Colorado, this "sinking fund" option may have allowed some smaller operators to continue operating wells, but extinguished their capacity for future development or acquisition in Colorado.

On the other hand, Wyoming recently enacted legislation which allows medium and smaller operators to combine resources to meet well bonding requirements through a state-run bonding pool. Other states, including Wyoming, Oklahoma, California and Mississippi have incorporated or are considering an insurance-like product, primarily offered in the United States by OneNexus. The OneNexus Oklahoma Captive Corporation, for example, is a licensed and regulated insurance company by the Oklahoma Insurance Department, and operators enter into Asset Retirement Agreements and Contractual Liability Insurance Policies to fund a financial assurance guarantee. In Wyoming, OneNexus pools collateral under Asset Retirement Agreements to obtain surety bonds for operators at preferred rates. In fact, New Mexico's own Legislative

Finance Committee Orphan Well Policy Spotlight Report, issued June 24, 2025, recommends alternate funding options, like a third-party trust or escrow account, which can be tailored or tiered to capture the bulk of the plugging costs during the most productive periods of the well's lifetime. My understanding is that New Mexico's Oil and Gas Conservation Tax and Reclamation Fund could be structured to accomplish a similar outcome because more tax revenue will be generated when the wells are most productive and funnel into the Reclamation Fund.

Q: Does the proposed rule contemplate any of the third-party alternatives you've mentioned to meet the proposed Financial Assurance requirements?

A. Based on my review of the proposal, no. Financial Assurance options remain limited to cash bond, surety bond, irrevocable letter of credit, or a statutorily defined plugging insurance policy.

Q: In your opinion, does increasing bonding reduce the number of orphaned wells?

A: No. If the proposed drastic increases in surety requirements are adopted in New Mexico, I fear that more wells will become orphaned, not less. The single-well bonding scheme proposed by WELC will likely create a situation where once stable operators can no longer afford the costs associated with operating their wells in New Mexico. Thus, the state will see a precipitous increase in abandoned wells when smaller operators can no longer meet or comply with New Mexico's requirements, and exit the state to operate under achievable regulatory and surety obligations. After Colorado's rulemaking, for example, not only did statewide bonding levels decrease by $4 million, the number of

orphan wells doubled in the first year, and has quadrupled to 941 orphan wells as of July 1, 2024.

Q: You've talked about the capital crunch on smaller operators where full-cost bonding is required prior to achieving production or profit from the well itself. How is this compounded during the plugging process?

A: Taking the first example operator, that operator has over $11 million in capital tied to the bonds, is paying the annual premiums of $600-$700,000, and then has to generate and pay the costs of plugging and remediating the well without access to any of those funds. Sureties will not cancel a bond until the original bond has been released by the obligee, and is returned to the surety with a letter of release. Based on my understanding of the New Mexico plugging and abandonment process, remediation efforts can take a year or more until the Division agrees to release the operator, let alone accomplish release of the bond. Then, the bond will be formally cancelled with a pro-rata return of premiums effective that date, with the first year of premium fully earned. The longer the bond is in place, the more premium the operator pays. With an average well life of about 25 years, operators could pay over $130,000 per well during its lifetime in premiums alone, and then must come up with the cash to pay out-of-pocket for plugging, remediation, and reclamation. On top of this squeeze, there is no formal timeline under the rules for the Division or the State to release bonds after an operator has satisfied its plugging obligations. Without a hard backstop from the Division, operators cannot prepare their own balance sheets for when premium and collateral obligations with the surety will cease.

Q: Based on your experience in the financial market and the effects of the Colorado rulemaking, do you see bonding increases as an effective policy to target orphan well liability?

A: No, under the levels of financial assurance required by the proposed rule, the vast majority of small to medium size operators will not be able to comply. Such drastic increases in financial assurance, which disproportionately target smaller operators with lower producing wells, will only increase the likelihood of bankruptcies, the orphaning of wells by previously-responsible operators made insolvent by burdensome FA requirements, increase bank debt, and leave less capital on-hand for operators to accomplish normal plugging and abandonment operations, new drilling, workovers, and routine maintenance. In Colorado, we saw the numbers of orphan wells double and available bonding decrease after adopting new financial assurance rules. Here, WELC's proposals target financial assurance as the answer when the Division itself testified, corroborated by the Orphan Well Spotlight Report, that not a single claim has been made against existing plugging bonds. In conclusion, not only do WELC's proposed rules fail to accomplish the plugging of a single orphan well, they have the capacity to kill off mid- and smaller operators, and leave a new generation of orphan wells numbering in the thousands. While admittedly, all wells at some point must be plugged, New Mexico has more tools at hand than bonds to address the issue.

TREVOR GILSTRAP

I hereby affirm under the penalty of perjury of the laws of the State of New Mexico that the above statements are true and correct to the best of my knowledge, information, and belief.

DATE: July 31st, 2025

TREVOR GILSTRAP