STATE OF NEW MEXICO
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 **Case No. 24683**

TESTIMONY OF ANDREA FELIX

ON BEHALF OF

NEW MEXICO OIL AND GAS ASSOCIATION

August 8, 2025

TESTIMONY OF ANDREA FELIX

I. INTRODUCTION AND BACKGROUND

My name is Andrea Felix. My business address is 123 West Booth Street, Santa Fe, New Mexico 87505.

I am employed as Vice President of Regulatory Affairs for the New Mexico Oil & Gas Association ("NMOGA"), an oil and gas trade association with over 180 member companies. I have over 20 years of oil and gas experience, all in the State of New Mexico, and am also a Certified Right of Way Agent. My curriculum vitae is included as **Appendix A** with this testimony.

I have extensive experience in the oil and gas industry. Before being nominated to my executive position with NMOGA, I served as Director of Regulatory Affairs for EOG Resources, Inc. In this capacity, I had many roles and responsibilities, including but not limited to developing and implementing the company's environmental and regulatory compliance programs for both onshore and offshore activities at the local, state, tribal, and federal levels. I also interpreted regulations and guided development programs and internal disciplines to ensure compliance and drafted environmental assessments and regulatory reports. I also managed and coordinated activities internally and externally to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Prior to my tenure at EOG, I served as Regulatory Manager for Enduring Resources, Inc., Regulatory Manager for WPX Energy, Inc., and Land Representative for Williams Four Corners.

Unless modified, the proposed amendments being offered by the Western Environmental Law Center ("WELC") will have significant consequences for New Mexico's oil and gas industry and

the regulatory framework under which they operate.[1]

II. PURPOSE OF TESTIMONY

The purpose of my testimony is to provide a broader perspective on the proposed changes to the New Mexico Administrative Code ("NMAC") in this matter from an industry point of view. NMOGA has requested feedback from its member companies and their own internal subject matter experts on the proposed changes to the NMAC. I have reviewed and am familiar with the proposed changes to the New Mexico Oil Conservation Commission ("Commission") rules and, in particular, the proposed amendments to **Sections 19.15.2.7, 19.15.5.9, 19.15.8.9, 19.15.9.9, and 19.15.25 of the NMAC.** My testimony builds on the expert insight provided through NMOGA's witnesses and the feedback from its member companies.

III. TESTIMONY ON NMOGA POSITION ON PROPOSED RULE CHANGES

A. Beneficial Purpose or Beneficial Use, and Presumption of No Beneficial Use – 19.15.2.7(B)(7) NMAC and 19.15.25.9 NMAC

1. Adding a Definition for "Beneficial Purposes" or "Beneficial Use" – 19.15.2.7(B)(7) NMAC

i. Flexibility is Needed

WELC has proposed adding a new definition for the terms "beneficial purposes" and "beneficial use" under its newly proposed 19.15.2.7(B)(7) NMAC, which introduces a prohibition on what WELC calls "speculative purposes." With respect to beneficial purposes and uses, these terms are vague and intended to be broad because they are conceptual terms. For decades, both regulators and operators have applied these terms without rigid definitions—precisely because operational circumstances vary widely, and regulatory flexibility has been key to managing those

[1] NMOGA reserves the right to comment on any proposals later filed in this rulemaking proceeding by the New Mexico Oil Conservation Division ("OCD"), or any other party or intervenor.

realities. In practice, oil and gas operations demand a case-by-case approach. What constitutes a "beneficial" use often depends on evolving technologies, market conditions, infrastructure availability, and field-specific geologic and engineering challenges. Locking in narrow or subjective definitions would undermine the ability to make fact-specific determinations based on real-world circumstances. Therefore, it is NMOGA's position that the flexibility to determine uses and purposes that are beneficial should be maintained by the Commission. Further, WELC's proposed language prohibiting uses deemed "speculative" would impose limitations based solely on the subjective judgment of the Commission or the New Mexico Oil Conservation Division ("OCD"), as the entities charged with enforcing the NMAC. This effectively conditions the permissible use of wells on whether regulators believe a use is "speculative," without providing clear or objective criteria.

ii. Definitional Overreach

A common adage "the power to define is the power to exclude" is appropriate with respect to NMOGA's position on this proposed definition proposal from WELC. Regardless of how well-crafted the proposed definition might be, the mere act of defining "beneficial purposes" and "beneficial use" limits these terms in unforeseeable ways. Therefore, it is NMOGA's position that these phrases not be specifically defined to preserve the myriad ways in which the use of oil and gas wells can be considered to be "beneficial" and for WELC's language pertaining to "speculative purposes" be stricken so that the many uses not just today but in the future as technology matures and oil and gas operations evolve, are able to be applied to oil and gas operations. Further, maintaining the inherent breadth in these terms is critical so that the Commission and OCD can convene with operators, assess their current and proposed operations, and take the position that the particular circumstances of each well operated by individual operators are in fact beneficial and

non-speculative.

iii. Supporting Testimony from NMOGA Witnesses

NMOGA operational witnesses Dan Arthur and Harold McGowen and operational and legal witness Clayton Sporich have opined as to their respective operational and legal perspectives on the proposed definition for beneficial purposes and uses. Mr. Arthur, in his testimony, outlines the numerous ways in which the uses and operations of wells can be considered beneficial. Unfortunately, the proposed definition does not contemplate the many and multifaceted uses of oil and gas wells and the associated timelines and production variances inherent in oil and gas operations.

NMOGA operational and legal witness Clayton Sporich also notes that "beneficial use" is a legal term of art with a robust history in New Mexico water law. NMOGA believes that the Commission must clearly state that any definition of beneficial purpose or use be clearly limited to the meaning of those terms in an oil and gas context. Mr. Sporich also proposes an alternative definition that NMOGA feels better captures the breadth and flexibility necessary to determine whether uses and purposes are beneficial. NMOGA believes that this definition, if one is adopted, better fits operational realities and preserves regulatory flexibility.

iv. NMOGA's Position

NMOGA's position is that the Commission should decline to adopt WELC's proposed definition. However, if the Commission decides to adopt a new definition for beneficial purposes or use, it should err on the side of breadth to ensure operational and regulatory flexibility. This is critical to ensure that the many types of oil and gas operations that might be deemed to be beneficial are not inadvertently excluded, e.g., exploratory projects, secondary and tertiary recoveries, operational disruptions, etc. The Commission is charged with preventing waste and protecting

correlative rights. Therefore, it is NMOGA's view that the Commission and OCD are well positioned to determine uses and purposes that are beneficial without adopting specific and inherently limiting definitions. Rigid thresholds based on timeframes or production volumes would constrain the Commission's discretion and limit OCD's ability to evaluate well use on a case-by-case basis. The Commission's statutory obligations—to prevent waste and protect correlative rights—require regulatory flexibility, not preemptive constraints. An overly prescriptive definition would undercut that mission and risk excluding valid operational uses that further the public interest in resource conservation and responsible development.

2. Presumption of No Beneficial Use – 19.15.25.9 NMAC

WELC proposes that the Commission amend 19.15.25.9 NMAC to impose a presumption that a well is not capable of beneficial use—based solely on 90-day production or injection thresholds within a consecutive 12-month period. Unless an operator rebuts this presumption within thirty (30) days, the well would be subject to abandonment or temporary abandonment requirements. This framework shifts the burden to operators to affirmatively demonstrate continued utility by submitting to OCD a range of information, including forecasts of future production in paying quantities, evidence of financial capacity beyond existing financial assurance obligations, and other supporting data.

Such a presumption not only bypasses individualized well evaluations but also risks premature abandonment of wells that may retain economic or operational value. The proposed structure creates uncertainty, increases administrative burden, and may inadvertently discourage future investment in marginal wells that remain viable with proper planning and operational flexibility. NMOGA has deep concerns about the 90-day/1-year thresholds and raises the following six (6) points for the Commission's consideration:

i. The 90-day/1-year thresholds are arbitrary and operationally disruptive

Many viable wells—including those used in enhanced oil recovery (EOR), cyclic operations, pilot testing, or temporarily shut-in for maintenance—would fall below this threshold. As explained by NMOGA witnesses Dan Arthur and Harold McGowen, applying a blanket volumetric test risks misclassifying valuable producing or strategically maintained wells as abandoned.

ii. The presumption framework is unclear and impractical.

It is not specified whether the 30-day rebuttal window begins upon OCD's issuance of a presumption or upon notice to the operator. This ambiguity makes compliance uncertain and creates procedural risk. Any rebuttable presumption should be modeled on existing regulatory frameworks—such as the one found in 19.15.5.9(B)(2) NMAC—where rebuttal is meaningful, fact-based, and procedurally fair.

iii. Rebuttal requirements invite overreach and exposure of sensitive information

Rebutting the presumption may require submission of proprietary financial models, production forecasts, operational strategies, and other competitively sensitive data, which in many cases constitute proprietary trade secrets, as well as burdensome disclosures like lease economic analyses and reactivation schedules. OCD has no clear framework for how such information will be used, protected, or evaluated, which could deter investment and discourage candid operator engagement.

iv. Well-by-well presumptions undermine field-level economics and reservoir management

As NMOGA witnesses Dan Arthur and Harold McGowen explain in their testimony, pad-level and lease-level operations often depend on the interplay between multiple wells, some of

which may be cycled on and off or used intermittently. For example, Mr. Arthur and Mr. McGowen reference real-world operational examples like shut-ins for pad drilling or offset frac protection, which support this policy critique. Applying a well-specific test to justify plugging or temporary abandonment ("TA") status can disrupt optimized development strategies and result in premature plugging of otherwise valuable assets.

v. The proposal risks conflict with federal lease terms and broader regulatory schemes

Federal leases and some state leases evaluate beneficial use at the lease or reservoir level. Imposing well-specific standards that deviate from federal or contractual frameworks could create inconsistencies that jeopardize leasehold rights and regulatory harmony.

vi. The proposal exceeds the Commission's statutory authority and raise due process concerns

As legal witness Clayton Sporich testifies, the New Mexico Oil and Gas Act charges the Commission with preventing waste and protecting correlative rights—not with mandating plugging based on arbitrary volumetric cutoffs. Further, empowering OCD to presume abandonment based on insufficient production—without requiring proof of waste or actual disuse—risks depriving operators of property rights without proper legal justification or process.

3. NMOGA's Recommendations

First, if the Commission is inclined to adopt WELC's proposals, the rebuttable presumption framework should be limited to extended periods of true inactivity, such as five (5) years with no production or injection, and not tied to arbitrary daily or monthly volume thresholds. Second, any reference to "production in paying quantities" must reflect case-by-case, lease-level economic analysis, consistent with longstanding legal and regulatory interpretations—not a simple volumetric test. Third, the rebuttal process must provide clear procedural guardrails, reasonable

timeframes, and appropriate confidentiality protections for operator-submitted data. Finally, WELC's proposed definition of beneficial and presumption of no beneficial use fail to account for broader types of beneficial uses such as EOR, geothermal development, monitoring wells, injection, seismicity, etc.

Accordingly, NMOGA recommends that the Commission decline to adopt WELC's proposals until further work and analysis are performed to ensure that any changes make sense in light of actual regulatory and operational considerations. At a minimum, the Commission should require stakeholder engagement to address the concerns of the oil and gas community so that a workable rule might be crafted.

B. Financial Assurance for Well Plugging – 19.15.8.9 NMAC

1. Proposal to Require OCD Deny Acquisitions Based on Financial Assurance – 19.15.8.9(A) NMAC

WELC proposes an addition to 19.15.8.9(A) NMAC requiring the Division to deny approval of any drilling or acquisition until appropriate financial assurance is furnished to OCD. This amendment is problematic for industry because it establishes OCD as a "gatekeeper" for drilling or acquisitions and the ability to prevent oil and gas transactions, which exceeds its current statutorily established authority over oil and gas operations. If OCD is empowered outside of the New Mexico Oil and Gas Act to halt an acquisitional transaction, this would constitute an exceedance of its statutory authority.

i. Legal Overreach and Statutory Limits

NMOGA's operational and legal witness, Clayton Sporich, has opined on this proposed change, and NMOGA agrees with his testimony. Mr. Sporich explains how the New Mexico Legislature clearly delimited OCD's authority to the prevention of waste and protection of correlative rights—

it did not vest the OCD with authority to regulate acquisitions or private property interests between parties. Expanding OCD's role to approve or deny asset acquisitions would extend its jurisdiction into areas far afield from well operations and beyond what the law permits.

Mr. Sporich explains in his testimony that the proposed bonding prior to transfers of assets improperly expands OCD's jurisdiction beyond the authority granted by the New Mexico Oil and Gas Act. The Act does not authorize OCD to impose bonding as a precondition for property transfers. Such a requirement would interfere with private contractual rights and exceed the OCD's enabling legislation. This pattern of regulatory overreach is now recurring across multiple rulemaking efforts advanced by WELC.

ii. Threat to Capital Deployment and Market Functionality

Beyond the legal concerns, this proposal would create substantial barriers to entry for new capital and operators in the state—especially for transactions involving distressed or legacy assets, which often change hands as part of responsible stewardship and remediation strategies. In essence, if the Commission adopts this proposal, barriers to entry into the New Mexico oil and gas market and deployment of capital within that market would be erected. Acquisitions of distressed and legacy assets from less capitalized market participants to better capitalized market participants would face additional hurdles. This would result in assets being stranded and reduce overall liquidity in New Mexico's oil and gas sector. New Mexico's upstream oil and gas market depends on the ability of operators to efficiently acquire, divest, and reinvest in assets. The proposal as written undermines that fundamental commercial reality.

iii. Regulatory Ambiguity and Logistical Barriers

Logistically, if OCD is authorized to require pre-approval of financial assurances before drilling or acquisitions take place, development and acquisitions would be delayed due to

regulatory barriers. Further, based on the proposed language, it is unclear what a "proposed acquisition" means for purposes of triggering securing pre-approved financial assurances that would be acceptable to OCD. Further, if a financial assurance is in the process of being secured, will OCD, for example, reject drilling permits and approvals? To what end? These issues must be clarified in the proposed rule if adopted. Such uncertainties could cause regulatory delays and increase administrative burdens for both the Division and operators.

iv. NMOGA's Recommendations

NMOGA recommends that the Commission decline to adopt WELC's proposed amendment to existing 19.15.8.9(A) NMAC as drafted. However, if the Commission chooses to explore this concept further, NMOGA urges the following refinements:

- Clarify the rule's application: Limit it strictly to operational approvals (e.g., APDs, Temporary Abandonment approvals) and not to asset ownership transfers. The focus should remain on plugging risk and not on transactions themselves.
- Distinguish between ownership and operations: Ensure that the rule does not confer OCD with authority over legal title or commercial transactions—matters that lie outside the scope of its statutory mandate.
- Define regulatory triggers: Clearly delineate when and how financial assurance must be submitted—whether tied to specific operational milestones or application types.
- Engage stakeholders: NMOGA urges the Commission to convene a working group of stakeholders—including industry, OCD, and other interested parties—to help design a workable framework, if any change to this provision is contemplated.

This proposed change risks blurring the line between operational regulation and commercial decision-making. While NMOGA supports robust financial assurance rules that

protect the public and the environment, such rules must remain legally grounded, operationally practical, and clearly defined.

2. Proposed Financial Assurance Requirements for Active and Marginal Wells – 19.15.8.9(C)-(D) NMAC

i. Current Requirements for "Active Wells"

Under the current version of 19.15.8.9(C)(1)-(2) NMAC ("Active wells"), operators are required to provide financial assurance for "active wells," i.e., wells subject to financial assurance requirements under 19.15.8.9(A) NMAC, but that have not been temporarily abandoned for more than two years and are not seeking temporary abandonment approval ("inactive wells" under the current regulations). The financial assurance may be satisfied through one of two mechanisms:

Single-well bonding: A bond in the amount of $25,000 plus $2 per foot of well depth, calculated based on the true vertical depth for vertical and horizontal wells or measured depth for deviated and directional wells.

Blanket bonding: A tiered bond structure based on the number of active wells covered under the bond:

- $50,000 for 1 to 10 wells
- $75,000 for 11 to 50 wells
- $125,000 for 51 to 100 wells
- $250,000 for more than 100 wells

There are currently no requirements specific to marginally producing active wells.

ii. Proposed Changes for Active Wells

WELC proposes amending 19.15.8.9(C)(1)-(2) NMAC to require companies with "active wells" – which WELC further proposes to define as wells required to have financial assurance

pursuant to 19.15.8.9(A) NMAC, but which are not inactive or in approved, expired, or pending temporary abandonment status, or classified as marginal wells – to provide financial assurance of: $150,000 per active well; or a blanket bond of $250,000 regardless of the number of wells secured.[2] The marginal well financial assurance requirements proposed by WELC and explained in the section immediately below would all be in addition to any blanket bond an operator has to cover its active wells.

iii. Proposed New Requirements for Marginal Wells and Tie to Inactive Well Inventory

Under its proposed 19.15.8.9(D) NMAC, WELC seeks to introduce new financial assurance requirements specifically targeting marginal wells and significantly restructure how marginal wells are bonded. WELC also proposes adding a new definition of "marginal well," which, as I explain in Part III.C. below, would misclassify viable wells and subject them to these heightened and unreasonable requirements. Key new marginal well assurance provisions include:

- Immediate financial assurance requirement upon transfer: Upon adoption of the rule, operators must provide a $150,000 single-well financial assurance for **each marginal well** prior to transfer of ownership, which, as worded, could be extended to operator changes, mergers and acquisitions, transactions, and asset assignments alike.
- Mandatory coverage by 2028: Beginning January 1, 2028, all marginal wells—regardless of transfer status—must **each** be covered by a $150,000 single-well financial assurance.

[2] Under its proposed 19.15.8.9(E) NMAC, as I explain below in Part III.B.3, WELC would require the same single-well financial assurance of $150,000 per inactive well, wells with approved or expired temporarily abandoned status, and for wells for which the operator is seeking approved temporary abandonment, but proposes that those inactive and temporarily abandoned wells' blanket financial assurance amount must total to an amount that averages $150,000 per well.

- Threshold provision based on marginal/inactive well inventory: Operators with 15% or more of their wells "in marginal or inactive well status, or a combination thereof" will be required to post a $150,000 single-well financial assurance for **every well registered to that operator**. This obligation continues until the operator's marginal/inactive well percentage falls below the 15% threshold.
- Flexibility in instrument structure: Operators may satisfy the above single-well financial assurance obligations using a single financial instrument.

This proposal represents a substantial shift from the current bonding framework under 19.15.8.9 NMAC which currently makes no reference to marginal wells or distinction in marginal well assurance requirements.

iv. Disproportionate Impact on Smaller Operators and Marginal Wells

WELC's proposed active and marginal well financial assurance requirements impose new pre-transfer and operational bonding obligations that may disproportionately affect small and mid-sized operators. NMOGA's operational witnesses, Dan Arthur and Harold McGowen, explain in great detail the implications of adopting WELC's proposed amendments. Mr. Arthur explains that adopting these proposed changes would exponentially increase bonding requirements, especially for smaller operators, who rely on marginal or stripper wells, which make up 54% of oil wells and 81% of gas wells in New Mexico.

Mr. Arthur and Mr. McGowen both explain that the 15% marginal well threshold for triggering mandatory one-well bonding of all well types is arbitrary, not grounded in empirical risk modeling or tied to actual well performance. It also penalizes operators solely on portfolio composition, not actual compliance behavior or plugging risk.

v. Real-World Operational and Economic Consequences

Mr. Arthur also explains that imposing these types of financial assurance requirements would impose significant administrative burdens on operators, complicate budgeting, and impede flexible oil and gas development. Further, Mr. Arthur and Mr. McGowen explain the waterfall effect of these requirements on operators with respect to internal capital compliance measures, transactional costs, would require legal reviews of acquisition documents to ensure bonding contingencies, and delay closing for transactions. Mr. Arthur also explains the ramifications of related changes in other jurisdictions and how the changes, while well-intentioned, caused permitting and transactional delays (California), raised operator solvency issues and stranded assets (Alaska), and operator consolidation and divestment from marginal assets and saw an increase in bonding disputes (Colorado).

vi. Bonding Capacity and Market Realities

Notably, NMOGA's surety witness, Doug Emerick, explains how the surety market is already limited in its appetite and capacity for oil and gas risk and that WELC's proposals will result in excessive bonding and any changes to the rules must consider the mix of various types of wells in an operator's portfolio. Importantly, Mr. Emerick explains that it will be difficult if not impossible for many operators to secure such high volumes of bonds—individual and/or blanket—in today's surety market. Mr. Emerick explains that regulations that presume unlimited access to private bonding markets are detached from reality and risk pushing responsible operators out of the market.

vii. NMOGA's Recommendations

Broadly, NMOGA's members are concerned that these proposals to amend active well financial assurance under existing 19.15.8.9(C) NMAC and add new marginal well assurance requirements constitute regulatory overreach due to OCD's ability to impede private party

transactions, would impose a heavy administrative burden due to impractical if not impossible requirements with respect to operators' ability to track well-by-well financial assurances, and would inhibit asset transfers, especially for depressed or marginal assets.

Based on the foregoing, NMOGA opposes the proposed amendments from WELC. NMOGA's position is that the Legislature must make statutory changes before these proposed rules may be implemented. And while the blanket bond requirement might be workable in some form, it should be scaled based on operator size and total well count instead of on a per-well basis. NMOGA supports a risk-based approach based on statistical data for orphan wells and operator default rates that can be adjusted based on operator history, production, and compliance records.

New Mexico's bonding framework should protect the public and the environment while remaining legally sound, financially viable, and operationally workable. WELC's proposals, while perhaps well-intended, risk undermining investment, stranding viable wells, and burdening operators with requirements they cannot meet. NMOGA urges the Commission to adopt a more balanced, risk-based, and practical approach—one that recognizes the economic value of marginal wells, the limits of the surety market, and the statutory boundaries within which OCD must operate.

3. Proposed Financial Assurance Requirements for Inactive and Temporarily Abandoned Wells – 19.15.8.9(E) NMAC

i. Current Requirements for Certain Wells in or Seeking Temporary Abandonment Status

Under the current version of 19.15.8.9(D) NMAC ("Inactive wells"), operators are required to provide financial assurance for any well that has been in temporary abandonment status for more than two years, or for which temporary abandonment status is being requested. The financial assurance may be satisfied through one of two mechanisms:

Single-well bonding: A bond in the amount of $25,000 plus $2 per foot of well depth, calculated based on the true vertical depth for vertical and horizontal wells or measured depth for deviated and directional wells.

Blanket bonding: A tiered bond structure based on the number of temporarily abandoned wells covered under the bond:

- $150,000 for 1 to 5 wells
- $300,000 for 6 to 10 wells
- $500,000 for 11 to 25 wells
- $1,000,000 for 26 or more wells

This framework is intended to ensure that sufficient financial resources are available to address plugging and reclamation obligations if necessary, while allowing operators flexibility in meeting their bonding obligations.

ii. Proposed Changes for Inactive and Temporarily Abandoned Wells

Under its proposed amendment to 19.15.8.9(E) NMAC, WELC seeks to require mandatory single-well financial assurance for all inactive wells, and wells that are in approved, expired, or pending (i.e., seeking) temporary abandonment status. Specifically, operators would be required to either post a $150,000 financial assurance for each individual well, or provide a blanket financial assurance in an amount averaging $150,000 per covered well.

As noted above in Part III.B.2., under proposed 19.15.8.9(D)(3) NMAC, WELC would require operators with 15% or more of their wells "in marginal or inactive well status, or a combination thereof" to post a $150,000 single-well financial assurance for **every** well. This obligation continues until the operator's marginal/inactive well percentage falls below the 15% threshold.

iii. NMOGA's Concerns

NMOGA strongly opposes these proposals. First, WELC's proposed average-based blanket bond structure introduces a moving target that is operationally unworkable. The average bond amount would fluctuate as wells move in and out of temporarily abandoned or inactive status, forcing operators to constantly recalculate financial assurance needs across dynamic well portfolios. As a result, the proposal would create significant compliance burdens—not only for operators, but also for the Division, which would have to review and verify ever-changing bond levels.

NMOGA has reviewed WELC's proposals and is concerned that it is overly complex and unworkable as a practical matter. One-well bonding would create a substantial administrative burden on operators and the Division. Further, there is concern that WELC's proposal eliminates blanket financial assurance, which is practical and familiar for operators and the Division. In addition, the volume of surety instruments needed to comply with these rules would likely overwhelm the bond market, especially for smaller and medium-sized operators. It is also unclear whether this proposal would apply retroactively or on a forward-looking basis.

iv. Legal and Statutory Overreach

NMOGA's operational and legal witness, Clayton Sporich, explains how the proposed amendment is outside the scope of the statutory authority vested in the OCD by the New Mexico Legislature. Notably, Mr. Sporich explains that OCD has limited financial assurance authority by statute and is required only to ensure that financial assurance amounts are in place to pay the reasonable costs to plug the wells covered by the financial assurance based on factors such as well depth and length of time since last production, among others.[3]

[3] "The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance . . . and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In

The proposals would illogically remove depth from the regulatory language, which currently determines both active and inactive well bonding requirements, and results in legally impermissible financial assurance requirements that do not reflect the actual, reasonable costs of plugging the subject well, as evidenced by Mr. Arthur and Mr. McGowen's examples of low-cost abandonment scenarios.

Mr. Sporich raises a separate concern that deserves Commission attention: the WELC proposal likely exceeds the statutory bonding authority granted to OCD. Under NMSA 1978, Section 70-2-14(A), OCD may require financial assurance "not to exceed" specific amounts, depending on the category of well.[4] A blanket bond structure based on an open-ended average per well risks contravening this statutory limit, especially if the calculated average routinely exceeds existing thresholds. Importantly, WELC's proposal is inconsistent with its own recommendations under 19.15.8.9(C) NMAC, where a fixed blanket bond amount is proposed. There is no policy justification for allowing fixed amounts under some sections but imposing a dynamic average under others.

v. Operational and Practical Concerns

NMOGA operational witness Dan Arthur explains that, in his decades of field experience, a fluctuating average-based bonding framework is not feasible from a compliance or planning perspective. It would complicate internal tracking systems, increase administrative costs, and impair business operations—particularly asset sales and divestitures, where certainty and clarity

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establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant." NMSA 1978, § 70-2-14(A).

[4] ". . . blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars ($250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000), . . ." *Id.*

in bonding obligations are critical. As Mr. Arthur notes in both this and prior testimony, ensuring compliance during due diligence and confirming that bonding obligations are met would be extremely difficult under such a variable structure.

Mr. Arthur further explains that managing bonding on a per-well basis introduces serious operational complications. Under such a system:

- Bonding amounts would have to be recalculated with each fluctuation in well status, making asset transfers and divestitures difficult to model or close.
- Small and medium-sized operators—already operating on thinner margins—would face disproportionate impacts.
- Similar policies in other states have led to reduced investment, delays in field development, and fewer acquisitions of idle assets, increasing the risk of orphaned wells.

vi. Surety Market Constraints

NMOGA surety witness, Doug Emerick, explains that the surety market cannot absorb the volume of single-well financial assurance instruments that this rule would require and reaffirms that this structure is incompatible with how the commercial surety market functions. In his testimony—consistent with prior rules—he emphasizes that the $150,000 per-well average significantly exceeds bonding levels the surety market typically supports, particularly for noncancelable obligations tied to wells with low remaining economic value. These costs would likely be passed through to operators, creating market distortions, and may even result in denial of coverage.

Sureties typically require 25% or more collateral per bond. For smaller operators, this ties up capital that would otherwise fund active operations, plugging, and maintenance. Restrictive bonding may lead operators to walk away from marginal assets, ironically increasing the likelihood

of orphaned wells—precisely what the rule purports to prevent. These constraints were echoed in prior NMOGA testimony concerning other rules, underscoring a consistent and well-documented disconnect between WELC's proposals and real-world financial markets.

Additionally, WELC's proposal effectively eliminates the blanket bonding option for inactive and temporarily abandoned wells—a longstanding and familiar practice for both operators and OCD—without demonstrating that the current system has failed, and replaces it with an ever-changing average. Mr. Emerick further explains that blanket bonding for a fixed amount is the favored alternative for sureties that underwrite based on fixed liabilities, not fluctuating averages, and are unlikely to issue coverage on this basis.

vii. Risk on Noncompliance Already Adequately Addressed

As explained in NMOGA's feedback on 19.15.2.7 NMAC and 19.15.5 NMAC below in Part III.E., rulemaking must focus on noncompliance risk, not blanket assumptions based on well categorization. New Mexico's Reclamation Fund, funded through various oil and gas production fees and penalties, already exists to cover plugging costs in cases of insolvency or abandonment. That fund, coupled with existing financial assurance requirements and OCD oversight, adequately addresses the risk of noncompliance without the need for dramatic new bonding burdens.

viii. NMOGA Recommendations

NMOGA supports rules that protect New Mexico's environment and natural resources, but those rules must be legally sound, operationally feasible, and economically grounded. WELC's proposal does not meet those requirements. Instead, NMOGA suggests that a fixed, tiered bonding structure—aligned with well counts and status—would provide a more transparent, administrable, and legally sound alternative. For example, tiered levels could reflect the number of inactive or

temporarily abandoned wells not covered by an existing blanket bond, thereby preserving regulatory certainty while achieving bonding coverage goals.

NMOGA urges the Commission to reject WELC's proposed amendments to existing 19.15.8.9(D) NMAC setting forth inactive and certain temporarily abandoned well financial assurance requirements. If the Commission proceeds with any revisions, NMOGA recommends the following:

- Maintain blanket bonding as an option and allow operators flexibility to choose between blanket or single-well financial assurance mechanisms.
- Adopt a risk-based approach tied to actual compliance history, rather than arbitrary well classification thresholds.
- Clarify applicability and timing to ensure that any new requirements apply prospectively and not retroactively to already permitted or bonded wells.
- Engage stakeholders to identify practical mechanisms for bond tracking and oversight before requiring an instrument-by-instrument compliance system.
- Avoid expanding OCD's authority beyond the Oil and Gas Act. Financial assurance should remain within the statutory scope intended for the protection of public resources—not used as a de facto tool for transfer approval or enforcement expansion.

4. Incomplete Blanket Financial Assurances – 19.15.8.9.(E) or (F) NMAC

i. Current Requirements

Under the current regulations, all wells in New Mexico must be covered by adequate plugging financial assurance. When an operator maintains a blanket bond that does not cover certain wells—including those in temporary abandonment or inactive status—under existing 19.15.8.9(E)

NMAC, the operator must either 1. post a single-well financial assurance for those uncovered wells or 2. replace the existing blanket bond with one that includes the full well portfolio.

ii. Proposed Changes

Under proposed Subsection 19.15.8.9(F) NMAC, WELC would effectively require operators holding a blanket bond that does not cover additional wells to add a single well financial assurance of $150,000 for uncovered wells that is consistent with the requirements of 19.15.8.9 NMAC (i.e., WELC's proposed heightened and excessive bonding requirements explained above in Parts III.B.1.-3.). This is in contrast with the current framework that allows operators to either submit additional single well bonds starting at $25,000 + $2 per foot proposed or drilled, or submit a replacement blanket bond that covers more wells. WELC's proposals would remove the additional blanket bond alternative entirely.

iii. Proposal Creates Unnecessary Redundancy and Administrative Burden.

NMOGA's members are concerned about the administrative burdens associated with this proposal because it would require significant resources to track ever-changing well inventories over time as well as the capability for the Division to track WELC's proposed form of bonding from a resource perspective on a real-time basis. Members also point out that this requirement is redundant with the requirements of existing 19.15.8.9(E) NMAC, which already provides pathways to cure financial assurances deemed to be inadequate under the extant blanket bonding framework.

iv. Economic Impact and Surety Market Constraints.

NMOGA operational and plugging and abandonment expert witnesses Harold McGowen and Dan Arthur address this proposal in their testimony and note that a $150,000 bond requirement is greater than the typical costs associated with plugging and abandoning wells in New Mexico.

Further, NMOGA surety expert witness Doug Emerick explains that this proposal will be problematic for the surety market writ large due to the noncancelable nature of bonds in New Mexico. In addition, Mr. Emerick explains that because well inventories frequently change from an administrative standpoint for operators and an enforcement standpoint for the Division, this change would be challenging to track over time.

Mr. Emerick recommends a blanket bond structure, which is already in place, making this proposed amendment unnecessary. Moreover, the blanket bond structure would require less operator capital to be tied up, is a standard industry practice, and is better for smaller oil and gas operators. Mr. Emerick is not sure that many surety companies will be willing to underwrite such a change, and many will find it difficult to implement mid-cycle billing to cover frequently changing well inventories.

v. Operational Inefficiencies and Barriers to Investment.

Mr. Arthur and Mr. McGowen also address the challenges faced by operators if this proposal by WELC is adopted. Mr. Arthur explains that an average $150,000 per well bond creates a "moving target" framework which complicates internal compliance systems, causes frequent bond recalculations, and makes it difficult to forecast financial assurance needs during acquisitions and divestitures due to shifting well classifications. Managing financial assurances on a per well basis creates operational efficiency risks and complicates field development plans. This will also increase third-party costs that oil and gas operators will have to utilize to ensure compliance. Further, Mr. Arthur explains how these heightened financial assurance requirements will result in reduced access to capital, especially for smaller and mid-sized operators, and result in less participation in acquisitions and farm-in agreements, which may result in more orphaned wells. Mr. Arthur provides examples from other jurisdictions that have modified their financial assurance

requirements and explains their various impacts, many of which negatively impacted the oil and gas industry.

vi. Legal Authority Concerns

NMOGA legal and operational witness, Clayton Sporich provides an assessment of WELC's proposed amendment on the context of the Division's statutory authority. Specifically, Mr. Sporich explains that WELC's $150,000 average bond requirement would quickly exceed the maximum allowed under statute of $250,000 under NMSA 1978, 70-2-14(A).

vii. NMOGA Recommendations

NMOGA opposes the proposed amendment to existing 19.15.8.9(E) NMAC and recommends that the Commission decline to adopt this amendment. However, if the Commission decides to amend the rule, it should clarify the language under Subsection E to expressly allow replacement bonds to cure any under coverages and allow for operators to choose between single-well and blanket bond replacement coverage. Further, a clear transition period to allow for operators to secure replacement coverage should be established.

WELC's proposed changes to financial assurance obligations would impose costly, duplicative, and legally problematic requirements that would disrupt responsible development and disproportionately affect smaller operators. NMOGA urges the Commission to uphold the proven blanket bonding framework, which balances environmental protection with operational and economic realities in New Mexico.

5. CPI- Based Annual Adjustments – 19.15.8.9(G) NMAC

i. Proposed Changes

WELC proposes adding a new Subsection (G) to 19.15.8.9 NMAC that would require the Division to adjust financial assurance amounts annually based on the Consumer Price Index (CPI),

as published by the U.S. Department of Labor. This adjustment would apply to several categories of bonding, including financial assurance for "active wells" (existing Subsection C), inactive and temporarily abandoned wells (existing Subsection D), blanket bond shortfalls (existing Subsection E), and WELC's newly proposed assurance for marginal and inactive wells described above. NMOGA opposes this proposal. While the concept of periodic adjustment may merit consideration in the abstract, WELC's proposed approach is operationally unworkable, economically misaligned with oilfield realities, and inconsistent with the way financial assurance markets function.

ii. Annual CPI adjustments introduce unnecessary complexity and uncertainty into operator compliance planning

Particularly for small and mid-sized operators, bonding obligations are a key component of long-term capital budgeting, and most operators plan for such expenditures over 5- to 10-year horizons. Requiring yearly updates based on general inflation would make these projections volatile and difficult to manage, potentially affecting creditworthiness and project development timelines.

iii. Unique oilfield economics

NMOGA's operational and plugging and abandonment expert Harold McGowen explains, oilfield service costs do not track general consumer inflation. They fluctuate based on global commodity markets, regional rig activity, and supply chain dynamics — not grocery or housing prices. Applying a broad CPI measure to oilfield-specific cost structures is neither accurate nor helpful, and could result in over- or under-shooting actual financial assurance needs.

iv. Surety Market Adjustments

Surety markets that underwrite many of these financial assurances do not operate on annual CPI-based schedules. NMOGA's surety expert witness Douglas Emerick notes that surety

companies adjust bonding terms based on underwriting standards that are typically re-evaluated every several years — not annually. A mandatory annual CPI adjustment would therefore introduce misalignment between OCD's requirements and what the surety market is able or willing to underwrite, potentially making it more difficult or expensive for operators to secure bonds in New Mexico. Mr. Emerick further recommends that if the Commission believes periodic financial assurance adjustments are necessary, such adjustments should be (1) based on New Mexico-specific indices relevant to the oil and gas industry, and (2) implemented no more frequently than every two years. This approach would allow operators and surety companies alike to adapt their planning and pricing models and maintain the viability of the bonding market in the state.

v. NMOGA Recommendations

NMOGA opposes a CPI-based inflation adjustment and instead recommends a New Mexico-specific index or interval-based review. NMOGA recommends that the Commission reject WELC's proposed new 19.15.8.9(G) NMAC, adding annual CPI adjustments to financial assurance amounts, and instead implement adjustments based on 5–10-year timeframes while also taking into account real-world plugging cost data, industry risk profiles, and bonding market conditions. This more deliberate and tailored approach would ensure financial assurance amounts remain responsive to long-term trends and actual field costs — without imposing administrative burdens or creating avoidable dislocations in the surety market.

C. Marginal Wells – 19.15.2.7(M)(2) NMAC

1. Adding a Definition of "Marginal Well" – 19.15.2.7(M)(2) NMAC

WELC proposes adding a new definition of "marginal well" under 19.15.2.7(M)(2) NMAC. Therein, WELC proposes a two-pronged test: less than 180 producing days and less than 1,000 barrels of oil equivalent (BOE) over a consecutive 12-month period. NMOGA is concerned how

this definition will be used to trigger regulatory classifications, enhanced bonding, or plugging obligations.

i. NMOGA's Concerns with Rigid Triggers

NMOGA members' central concern is how WELC's proposed definition would be applied. Will the classification of a well as "marginal" be automatic and tied to plugging or financial assurance requirements? Or will it simply inform regulatory analysis?

If applied rigidly, the definition risks sweeping in viable, strategically managed, or temporarily offline wells, especially those shut in for maintenance, operational curtailments, or infrastructure upgrades. The lack of operational context in the proposed definition could create unintended consequences, particularly in complex developments such as EOR projects or wells pending recompletion.

ii. Need for Operational Flexibility

Operators manage wells under constantly shifting operational and economic conditions. Curtailment orders, compressor issues, third-party takeaway constraints, or seasonal maintenance can all temporarily suppress production. That does not make a well unproductive or valueless.

NMOGA members recommend that any marginal well definition:

- Use a retrospective 12-month window, not an arbitrary "consecutive" one;
- Include operational context and flexibility for temporarily inactive or shut-in wells; and
- Avoid being used as an automatic trigger for classification without opportunity for case-specific review or to refute the classification.

NMOGA witnesses Dan Arthur and Harold McGowen explain in detail how applying a rigid marginal well standard could misclassify viable wells and lead to unnecessary plugging—contrary to the Commission's duty to prevent waste.

iii. Legal and Economic Consequences

NMOGA's legal witness Clayton Sporich also highlights the legal risks: misclassification of marginal wells could create substantial compliance burdens, invite unnecessary disputes over leasehold rights, and conflict with how production economics are assessed under existing oil and gas leases.

There are also real economic risks. Stripper (a subset of marginally producing wells) and marginal wells—by definition—operate with slim margins but produce meaningful revenue for the State of New Mexico, local communities, and royalty owners. Many smaller operators depend on these wells as the backbone of their business. An overly rigid or poorly defined regulatory trigger could force premature plugging and reduce state income.

iv. NMOGA's Recommendations

NMOGA urges the Commission to reject a definition that impose rigid volumetric thresholds without regard to operational reality. Marginal wells remain a vital part of the state's energy mix. Preserving flexibility ensures that the Commission can fulfill its statutory duty to prevent waste, protect correlative rights, and promote responsible development—while also sustaining the economic value these wells bring to New Mexico.

NMOGA recommends the Commission reject in full WELC's proposed definition to add a new definition of "marginal wells" and the associated heightened financial assurance requirements, as discussed below in Part III.C.2. and above in Part III.B.2. NMOGA legal expert Clayton Sporich raises the concern that the sole purpose for introducing a new definition of marginal well is to support WELC's heightened financial assurance requirements it proposes to apply specifically to marginal wells, but the Commission does not have the authority to mandate single well financial assurance for low-producing wells. However, if the Commission chooses to adopt a definition of

"marginal well," Mr. Sporich recommends the following definitions be adopted instead, as reflected in the redline proposal attached to NMOGA's Prehearing Statement as **Exhibit A.**

- For oil wells, a well that produces 15 barrels or less of oil per day for the preceding twelve-month period; or for gas wells, a well that produces 35 Mcf or less of gas per day for the preceding twelve-month period.
- Alternatively, wells producing less than 750 BOE annually.

Wells considered to be "marginal" or "stripper" wells (a subset of marginally producing wells) provide meaningful economic support to countless small oil and gas operators as well as meaningful revenues to the state of New Mexico; the Commission should not adopt any proposed changes that undercut this critical economic revenue stream to individuals, small companies, or the state itself.

2. Financial Assurance for Marginally Producing Wells – 19.15.8.9(D) NMAC

WELC's proposed definition of "marginal well" and a well's classification thereunder would appear to trigger WELC's heightened financial assurance requirements under its proposed amendment to 19.15.8.9(D) NMAC. Under WELC's proposal, operators would be required to post $150,000 in one-well financial assurance for each marginal well prior to transfer. Additionally, starting January 1, 2028, all marginal wells—regardless of whether a transfer is pending—would be required to carry a $150,000 individual financial assurance. WELC further proposes a threshold-based trigger: if 15% or more of an operator's well inventory consists of wells classified as marginal or inactive, or a combination thereof, the operator would be required to post $150,000 per well across their entire inventory—not just the marginal or inactive wells—until that percentage falls below 15%. As explained in detail above in Part III.B.2., while perhaps well-

intentioned, WELC's proposal is unworkable in practice, overly complex in structure, and inconsistent with how financial assurance is managed across the industry today.

i. Administrative Burden and Lack of Flexibility

NMOGA has significant concerns about the administrative impracticality of WELC's marginal well financial assurance proposals for both operators and the Division. Requiring individualized bonding at a per-well level would place an enormous tracking and compliance burden on operators—particularly small and mid-sized independents—and the Division alike. This complexity stands in stark contrast to the existing and more manageable blanket bond option, which WELC's proposal fails to meaningfully preserve for inactive and temporarily abandoned wells, as detailed in Part III.B.3, and does not include at all for marginal wells. NMOGA recommends that any revisions to this rule must retain and improve the blanket bonding option, allowing operators to choose between individualized bonding or blanket coverage depending on their operational model and risk profile.

ii. Arbitrary Thresholds and Lack of Risk-Based Justification

Under WELC's proposed 19.15.8.9(D)(3) NMAC, the 15% marginal/inactive well inventory threshold is arbitrary and lacks a risk-based foundation. Operators who responsibly acquire and manage distressed assets—including marginal wells with ongoing utility or redevelopment potential—could be penalized simply because of their portfolio mix. As NMOGA's surety witness Doug Emerick explains, this kind of blanket rule could discourage asset transfers and consolidation of liabilities by better-capitalized, more responsible parties, thus undermining environmental and policy goals. Mr. Emerick also highlights the need for a risk-based bonding framework rather than rigid thresholds, which would better align bonding requirements with actual plugging risk and operator history.

iii. Surety Market Capacity and Economic Impacts

Mr. Emerick further explains that the private surety market is unlikely to absorb the volume of bonding WELC's proposal would require, particularly for individual one-well bonds at $150,000 for each marginal well. For many small and mid-sized operators, especially those already investing in marginal assets, the working capital and collateral needed to secure these bonds may be prohibitive.

iv. NMOGA's Recommendations.

First, NMOGA recommends that the Commission adopt a risk-based approach instead of a categorical threshold-based approach, which NMOGA has previously proposed. Second, NMOGA urges the Commission to retain and even improve on the blanket bond option that would allow operators to choose between a per-well bond or a blanket bond based on operational structure. Third, the Commission must clarify the administrative mechanisms and tracking logistics that would be required if this rule is adopted before imposing a rule that requires an instrument-by-instrument financial assurance for these types of marginally producing wells. Fourth, NMOGA urges the Commission to reconsider the need for the 15% threshold and instead adopt criteria that better reflect risk and target enforcement against wells that are actually non-compliant. Finally, NMOGA recommends that the Commission convene a stakeholder group to help shape any future bonding rules, ensuring alignment with the operational, legal, and financial realities of New Mexico's oil and gas sector.

D. Well Abandonment – 19.15.25.8(B) NMAC, 19.15.25.12-.15 NMAC, 19.15.2.7(A)(13) NMAC, and 19.15.2.7(E)(8) NMAC

1. Wells to be Properly Abandoned – 19.15.25.8(B) NMAC

The current version of 19.15.25.8(B) NMAC requires operators to either plug and abandon a well, or place it in approved temporary abandonment within ninety (90) days of one of three events:

1. 60 days after drilling operations are suspended; 2. A determination that the well is no longer usable for beneficial purposes; or 3. Within 1 year of **continuous** inactivity. WELC proposes: reducing the action window to thirty (30) days; modifying the requirement to place the well in approved temporary abandonment within the compliance window to instead require the operator to apply to do so within the new 30-day timeframe; and striking the word "continuously" from the 1-year triggering event.

i. NMOGA's Concerns

NMOGA's members oppose the proposed amendments by WELC and have numerous concerns with the proposed amendments because they create compliance burdens disproportionate to risk; introduce legal ambiguity and overreach; undermine operator flexibility in managing shut-in wells.

NMOGA's legal witness, Clayton Sporich, identifies legal risks and recommends alternative regulatory language that better aligns with operational constraints while still meeting the Division's policy goals. His proposed language, included as **Exhibit A** to NMOGA's Prehearing Statement, provides a practical, enforceable framework without sacrificing environmental protection.

ii. The 30-Day Requirement Is Impractical and Counterproductive

NMOGA's operational witness, Dan Arthur, explains that the proposed 30-day compliance window is operationally infeasible. Plugging and abandonment operations require substantial lead time due to well depth, contractor availability, weather, site access, coordination with landowners and regulators, and internal planning. These realities make a 30-day mandate unworkable. Additionally, imposing such a compressed deadline disrupts operators' normal prioritization processes, which account for environmental and safety risks, recompletion potential, and shared infrastructure considerations.

Harold McGowen, NMOGA's operational and plugging and abandonment expert, reinforces that 30 days is not a realistic timeframe to safely plan, schedule, and execute a plugging and abandonment operation, or obtain temporary abandonment status—particularly in high-activity areas like the Permian Basin, where plugging contractors are in high demand and already booked months in advance. Operators often rely on master service agreements that require the use of specific vendors. These contractual obligations cannot be met under a 30-day constraint, forcing operators into potential non-compliance despite good faith efforts.

Large operators maintain plugging and abandonment schedules with backlogs that can extend nine (9) months or longer. A 30-day mandate would force operators to bypass higher-risk wells that demand immediate attention to instead meet arbitrary compliance deadlines. This would elevate environmental and safety risks. The rule would also create an unnecessary surge in temporary abandonment applications, overwhelming OCD's permitting system and undermining its effectiveness.

iii. Removing the Word "Continuously" Creates Legal Ambiguity and Overreach, and Will Result in Premature Plugging

The deletion of "continuously" from the one-year inactivity threshold (Subsection B(3)) introduces ambiguity and opens the door to unintended consequences. A single day of non-use scattered throughout the year could trigger regulatory obligations, discouraging operators from maintaining marginal but viable wells and potentially leading to premature abandonment. This introduces the risk that wells awaiting repairs, workover equipment, or shut-in due to pipeline issues or commercial reasons could automatically be classified for abandonment based on arbitrary timing rather than engineering judgment. Accordingly, NMOGA is very concerned that the striking

of continuous will lead to premature plugging, especially in fields requiring investment due to their viable economic potential.

In addition, Mr. McGowen explains the interplay between WELC's proposal to remove the word "continuous" while simultaneously reducing the action window to 30 days. In effect, WELC's proposed 19.15.25.8(B)(3) NMAC would assume that after 13 noncontinuous months without production (12 months total noncontinuous idle time plus a 30-day reduced compliance period), a well must either be permanently abandoned or officially transitioned to TA status to remain legally idle.

NMOGA is concerned that WELC is attempting to accomplish through rulemaking what has been previously considered—but not adopted—by the New Mexico Legislature. These changes may conflict with the New Mexico Oil and Gas Act by imposing duties that exceed the Division's statutory authority and by creating regulatory standards not contemplated by the Act.

iv. NMOGA Recommendation

NMOGA members support regulatory clarity and timely management of inactive wells. However, the proposed changes to 19.15.25.8(B) NMAC are unworkable in practice, legally problematic, and likely to produce negative unintended consequences. NMOGA respectfully urges the Commission to adopt the more balanced and practicable language proposed in **Exhibit A** to NMOGA's Prehearing Statement and to preserve regulatory consistency with operational realities, statutory authority, and sound environmental stewardship.

2. Approved Temporary Abandonment – 19.15.25.13-.14 NMAC

The current versions of 19.15.25.12-.13 NMAC establish the process for operators to request and obtain approval from the Division to place wells in Approved Temporary Abandonment status. This rule provides necessary flexibility for operators to preserve wellbore integrity, accommodate

operational delays, and plan for future development, while ensuring compliance with mechanical integrity testing and reporting obligations.

WELC proposes amending existing 19.15.25.12 NMAC concerning "Approved Temporary Abandonment" (which is codified as 19.15.25.13 NMAC under WELC's proposal) to require a beneficial use demonstration as a condition for approval or extension; impose extensive documentation requirements, including seismic data, economic projections, Health, Safety, and Environment (HSE) plans, etc.; enabling broader public intervention in temporary abandonment extension requests; creating hard cutoffs for temporary abandonment eligibility based on inactivity; and requiring operators of wells in expired temporary abandonment status to re-apply or plug said well.

i. NMOGA's Concerns

NMOGA's members have serious concerns about the proposed amendments, which, if adopted, would have unintended yet significant operational, legal, and regulatory consequences identified below. NMOGA's concerns with WELC's proposed amendments to existing 19.15.25.12 NMAC "Approved Temporary Abandonment" (which WELC would recodify to 19.15.25.13 NMAC) extend to WELC's proposed amendment to existing 19.15.25.13 NMAC "Request for Approval and Permit for Approved Temporary Abandonment" which WELC would (recodify as 19.15.25.14 NMAC and) amend to require such requests "set[] forth the demonstration required in 19.15.25.12 NMAC."

ii. Overly Burdensome Documentation Requirements

WELC's proposal to require submission of geophysical, geological, seismic, economic, casing, leasing, and safety data imposes an unreasonable burden on operators. Much of this information is proprietary, commercially sensitive, or not readily available in a standardized form. The Division

would face significant administrative challenges in reviewing such complex submittals, potentially leading to: regulatory delays, legal disputes over trade secret protection and data sufficiency, and decreased investment in marginal fields and older infrastructure where long-term planning is critical.

iii. Mandatory Reapplication and Expiration Consequences

Requiring mandatory reapplication for approved temporary abandonment upon expiration would flood the Division with duplicative paperwork and increase processing delays. The current framework already enables the Division to monitor well status through Form C-103 filings and exercise discretion in granting renewals.

iv. Expanded Protest Rights Create Unnecessary Delay and Risk

WELC's proposal to broaden standing for protest or intervention in Approved Temporary Abandonment ("ATA") cases threatens to politicize a previously routine administrative process. It would increase uncertainty, delay approvals, and inject unnecessary conflict into decisions that are best left to technical and regulatory experts.

v. Operational Considerations

NMOGA's operational witness, Dan Arthur, and operational and plugging expert, Harold McGowen explain how retaining the current rule is critical for allowing operators to responsibly manage temporarily inactive wells until conditions permit reactivation.

vi. Legal Considerations

NMOGA's legal and operational witness, Clayton Sporich, emphasizes that approved temporary abandonment is already well-defined in Division rules and tied to the broader regulatory framework governing inactive wells under 19.15.2.7(I)(4) NMAC. He notes that mechanical

integrity testing—internal and external—is already required for approved temporary abandonment approval, ensuring wellbore safety.

As an alternative to WELC's proposal, Mr. Sporich offers proposed language in **Exhibit A** attached to NMOGA's Prehearing Statement. His recommendation allows operators to continue using Form C-103 to explain the basis for approved temporary abandonment and proposed timeframes, while allowing the Division discretion to impose conditions or request a hearing where appropriate. This approach preserves regulatory flexibility without burdening the process with unworkable mandates that Mr. Arthur and Mr. McGowen explain in detail within their testimony.

vii. NMOGA Recommendation

NMOGA opposes WELC's amendment and encourages the Commission to reject it as impractical and unreasonable. NMOGA recommends that the Commission provide the ability for operators to provide a streamlined narrative to establish beneficial use, maintain standing for intervenors under current rules, provide the Division with broad and necessary discretion to approve temporary abandonment extensions without automatic plugging deadlines, and maintain operator control over operational decisions instead of shifting the responsibility to the Division. These recommendations strike a balanced approach—ensuring accountability and transparency—while preserving operational flexibility and regulatory efficiency.

3. Demonstrating Mechanical Integrity – 19.15.25.15(A)(4)-(5) NMAC

WELC proposes amendments to the current version of 19.15.25.14(A) NMAC that would revise the standards for demonstrating internal and external mechanical integrity when seeking approved temporary abandonment status. Pursuant to proposed new Subsections (4) and (5) (which WELC would recodify under 19.15.25.15(A)), WELC would require that bridge plugs or packers

remain in place throughout the entire period of temporary abandonment, and that operators conduct caliper and casing integrity logs as a condition for ATA approval.

NMOGA acknowledges the importance of ensuring mechanical integrity for temporarily abandoned wells. Still, WELC's proposals introduce technically burdensome requirements that are neither necessary under existing regulatory frameworks nor supported by operational experience across jurisdictions. NMOGA members believe these proposed amendments would create unintended safety, operational, and compliance challenges without meaningfully improving the ostensibly intended protections.

NMOGA members have concerns about WELC's proposal regarding Subsection (4) because requiring a bridge plug or packer to remain in place during the entirety of the temporary abandonment period may create operational safety and monitoring issues and could also hinder reentry and maintenance that is necessary during temporary abandonment. In addition, under Subsection (5), WELC's proposed requirement for caliper and casing integrity logs lacks defined criteria for what constitutes logs that would be deemed sufficient upon review. NMOGA's members recommend that caliper and casing integrity logs be required only when problems are suspected.

To assist the Commission in evaluating these issues, NMOGA witnesses Dan Arthur and Harold McGowen have provided detailed testimony explaining the risks, inefficiencies, and technical limitations associated with WELC's proposal. Mr. Arthur and Mr. McGowen's extensive experience with plugging and abandonment operations highlights several key concerns:

i. Operational Safety & Monitoring Conflicts

Mr. Arthur and Mr. McGowen detail how mandating permanent isolation devices (e.g., bridge plugs or packers) for the full duration of temporary abandonment can hinder ongoing pressure

diagnostics, such as fluid level surveys or other wellbore monitoring necessary to ensure continued integrity. These devices can deteriorate over time and, if left in place without access, may silently fail—creating more risk than they prevent.

ii. Logistical and Economic Impact

Mr. Arthur and Mr. McGowen explain how retrieving or milling isolation devices during reentry or maintenance can damage casing or other downhole hardware, especially when well access is needed for recompletion or workover operations. This creates significant planning challenges and unnecessary costs, particularly for multi-well programs where equipment availability, rig time, and personnel resources are already constrained.

iii. Redundancy and Lack of Standards for Logging Requirements

Mr. Arthur and Mr. McGowen also describe how WELC's proposal to require caliper and casing integrity logs lacks objective acceptance criteria. These logs are expensive, technically intensive, and often impractical for older wells or complex wellbores. Moreover, they do not directly demonstrate hydraulic integrity, which is the core objective of a temporary abandonment assessment. Standard industry practice—and the approach used in many other leading oil and gas states—is to reserve such logs for when problems are suspected, not as a blanket requirement.

iv. Conflict with Established Regulatory Frameworks Which Grant Operators Flexibility

Finally, Mr. Arthur and Mr. McGowen contextualize current Division rules that already align with the U.S. Environmental Protection Agency's Class II Underground Injection Control (UIC) program, and undermine operator flexibility granted by the EPA. That program recognizes pressure testing and annular monitoring as accepted methods for demonstrating mechanical integrity.

883 WELC's proposed changes depart from this balanced framework and would make New Mexico
884 an outlier among peer states such as Texas, Wyoming, and North Dakota.

885 *v. NMOGA Recommendations*

886 For these reasons, NMOGA strongly recommends that the Commission reject WELC's
887 proposed additions to existing 19.15.25.14(A) NMAC in their current form. If the Commission
888 determines that updates to this section are appropriate, NMOGA supports adopting the
889 recommendation of its plugging and abandonment witness, Harold McGowen, to strike WELC's
890 proposed subparagraphs (4) and (5) entirely, as reflected in NMOGA's proposed amendments to
891 the rules in **Exhibit A** to NMOGA's Prehearing Statement.

892 NMOGA urges the Commission to preserve the effectiveness and clarity of the existing
893 mechanical integrity framework while resisting unnecessary mandates that may introduce new
894 risks, burdens, or compliance ambiguity. In the event the Commission moves forward with
895 considering these requirements, Mr. McGowen offers an alternative: utilizing a tiered risk-based
896 approach to evaluating mechanical integrity, which only imposes heightened requirements that go
897 beyond the existing rules for the oldest or highest-risk wells. Just like the NMOGA's
898 recommendations for the financial assurance provisions, using a risk-based analysis provides more
899 practical and balanced approach that responds to WELC's underlying concerns while preserving
900 operational flexibility, regulatory consistency, and well integrity.

901 ***4. Definition of Approved Temporary Abandonment – 19.15.2.7(A)(13) NMAC***

902 WELC proposes amending the current definition of "approved temporary abandonment,"
903 under existing 19.15.2.7(A)(13) NMAC, which "means the status of a well that is inactive, has
904 been approved in accordance with existing 19.15.25.13 NMAC and complies with existing

19.15.25.12 NMAC through 19.15.25.14 NMAC" to incorporate the terms "temporary abandonment" and "temporary abandonment status."

NMOGA opposes the proposed amendment because it introduces unnecessary duplication and confusion by collapsing two distinct regulatory concepts—"temporary abandonment" and "approved temporary abandonment"—into a single definition. These are not synonymous terms. "Approved temporary abandonment" is a defined and regulated status under OCD rules, while "temporary abandonment" is a broader and often informal term used in industry contexts that may or may not implicate regulatory oversight. WELC's proposed change threatens to blur this distinction and could inadvertently eliminate recognition of wells that are inactive but have not yet received OCD approval for temporary abandonment.

The current rule already provides regulatory clarity. Adding similar but undefined terms creates ambiguity where precision is critical, particularly in interpreting compliance obligations, assessing enforcement triggers, and managing operator risk. Moreover, NMOGA does not support the addition of these terms as separately defined concepts elsewhere in the rules, as this would create inconsistencies with numerous existing provisions across the NMAC that distinguish between "temporary abandonment" and "approved temporary abandonment."

i. Operational Impacts

NMOGA witness Dan Arthur explains that from an operational standpoint, wells can be inactive for various legitimate reasons without being placed into OCD-approved temporary abandonment. Operators depend on this flexibility to manage field development, infrastructure scheduling, and capital deployment. Mandating that all inactive wells seek formal "approved" status would impose redundant regulatory burdens without commensurate environmental benefit.

Mr. Arthur further observes that the proposed definition could result in wells being improperly categorized as non-compliant, even when they are mechanically sound, expected to return to service, and play an integral role in a lease's long-term development plan. For example, operators may maintain wells in a non-producing but temporarily inactive condition to preserve leasehold interests, await infrastructure buildout, respond to market conditions, or complete technical evaluations. Removing this flexibility would disrupt practical field operations and discourage efficient resource planning.

ii. Plugging and Abandonment Cost Structures

NMOGA witness Harold McGowen emphasizes that the proposed definition risks treating all wells with any form of inactivity as subject to the same regulatory and financial treatment, despite meaningful differences in cost and risk profiles. Wells in the early stages of inactivity may pose minimal risk and be subject to near-term reactivation plans, while others in later stages of abandonment require more intensive financial assurance planning and technical oversight. Collapsing these into a single status misaligns regulatory triggers with actual field conditions and cost structures. Mr. McGowen notes that although WELC's proposal may appear to simplify terminology, it masks critical operational, economic, and environmental distinctions that are essential for a workable, risk-based regulatory system.

iii. Legal Concerns

NMOGA operational and legal witness, Clayton Sporich, explains that merging these terms into a single definition creates definitional uncertainty that undermines regulatory clarity. Specifically, adding the undefined term "temporary abandonment" implies the existence of a recognized regulatory status that is not presently authorized under OCD rules. This could mislead stakeholders into assuming that an unapproved "temporary abandonment" designation carries legal

standing, leading to enforcement confusion and potential misclassification of wells as improperly abandoned.

Mr. Sporich further cautions that this definitional expansion risks conflating inactive but managed wells with "orphan wells" under 19.15.2.7(A)(13) NMAC—those without a responsible operator—which could undermine the integrity of OCD's oversight and financial assurance programs. Such confusion may impair the State's ability to assign liability appropriately and maintain an accurate inventory of wells requiring regulatory attention.

iv. NMOGA Recommendations

NMOGA urges the Commission to reject WELC's proposed amendment to avoid creating ambiguity where regulatory certainty currently exists. The proposal would introduce overlapping, ill-defined terms that undermine the clarity of existing rules, create operational burdens, and weaken legal distinctions that serve important oversight functions.

Alternatively, if the Commission wishes to explore definitional updates, it should convene a stakeholder working group—including operators, regulators, and environmental interests—to assess whether any such changes are necessary and, if so, how they can be crafted to improve environmental outcomes without duplicating or undermining current regulatory structures.

5. Definition of Expired Temporary Abandonment or Expired Temporary Abandonment Status – 19.15.2.7(E)(8) NMAC

WELC proposes adding a definition for "Expired temporary abandonment" or "expired temporary abandonment status" under a new provision 19.15.2.7(E)(8) NMAC, to mean "the status of a well that is inactive and has been approved for temporary abandoned status in accordance with existing 19.15.25.13 NMAC, but that no longer complies with existing 19.15.25.12 NMAC through 19.15.25.14 NMAC."

NMOGA opposes this proposed definition because it is vague, overbroad, and creates unnecessary regulatory uncertainty. Specifically, the phrase "no longer complies" is ambiguous, particularly when applied to three separate rule sections (existing 19.15.25.12-.14 NMAC), each of which covers distinct and often evolving reporting and mechanical integrity requirements. The proposal provides no clear standard for what constitutes noncompliance or how long such a status must persist before a well is considered "expired."

NMOGA is particularly concerned that under WELC's formulation, a well could lose its approved temporary abandonment status due to momentary, minor, or administrative deficiencies—such as a delayed report or a minor field discrepancy—thus triggering serious consequences, including possible forced plugging, without affording the operator a reasonable opportunity to cure.

i. Operational Considerations

NMOGA operational witness, Dan Arthur, explains that the current structure and administration of existing 19.15.25.12–.14 NMAC by the Division is grounded in practical, case-by-case oversight. The rules do not operate as self-executing enforcement triggers, but rather are implemented through a combination of annual reporting requirements, Form C-145 updates, and OCD field inspections. These provisions collectively ensure that temporarily abandoned wells remain structurally sound and are not neglected. For instance: existing 19.15.25.12 NMAC addresses ATA; existing 19.15.25.13 NMAC governs the process for requesting ATA status; and existing 19.15.25.14 NMAC sets forth the requirements for demonstrating mechanical integrity.

Field practices typically involve periodic inspections (e.g., quarterly or annually) to confirm wellhead condition, pressure status, and site integrity. OCD's current approach allows operators a reasonable opportunity to remedy any deficiencies or file supplemental documentation before any

enforcement action is taken. Under WELC's proposed definition, however, minor reporting oversights could automatically result in status expiration—an outcome inconsistent with how these rules are intended to function.

ii. Legal Considerations

NMOGA's operational and legal witness, Clayton Sporich, notes that WELC's definition lacks clarity and enforceable standards. It fails to identify the triggering events, threshold duration, or severity of noncompliance necessary to justify a change in status from "approved" to "expired." This creates ambiguity for both operators and regulators and invites inconsistent application across cases. Moreover, WELC's proposal conflates regulatory compliance with legal status. Importantly, existing 19.15.25.13 NMAC establishes the process for approved temporary abandonment approval—not the framework for evaluating ongoing compliance or revocation. Using 19.15.25.13 NMAC as a basis for determining expiration is not only illogical, but legally unsound. If the Commission wishes to define "expired temporary abandonment," any definition must clearly distinguish between: the expiration of the time-limited approved temporary abandonment approval (e.g., beyond the 5-year term), and routine, correctable compliance matters under 19.15.25.12 and 19.15.25.14 NMAC. Mr. Sporich proposes a clearer alternative definition as reflected in **Exhibit A** to NMOGA's Prehearing Statement, which NMOGA supports if the Commission elects to adopt a definition.

iii. NMOGA Recommendations

NMOGA recommends the Commission reject WELC's proposed definition as drafted. If the Commission determines that a definition of "expired temporary abandonment" is warranted, it should: 1. Tie expiration status to the lapse of the five-year approved temporary abandonment term under existing 19.15.25.12 and 19.15.25.13 NMAC unless an extension is granted; 2. Avoid

linking expiration to general compliance issues, which may be temporary or de minimis; 3. Preserve the current regulatory approach that emphasizes operator accountability through reporting and inspections, while allowing for correction and resubmission; and 4. Maintain regulatory certainty to encourage responsible management of temporarily abandoned wells without creating an undue risk of forced plugging based on technicalities.

WELC's proposal would significantly increase regulatory and legal exposure for operators and disrupt the stable, collaborative system currently administered by OCD. A clearer, time-based standard would better serve the public interest and support sound environmental and operational oversight.

E. Waste Prevention Requirements – 19.15.5.9(A)(4)-(5) and 19.15.5.9(B)(2) NMAC

WELC proposes to amend the Waste Prevention Requirements in 19.15.5.9(A)(4)–(5) NMAC to define operator "compliance" based on several criteria, including financial assurance, the absence of unpaid penalties or violations, and the number of noncompliant wells. The proposals also seek to incorporate other provisions—namely 19.15.25.8 NMAC and 19.15.27.A.8 NMAC (NMOGA believes the applicant meant 19.15.27.8(A), and for this analysis assumes the same, but does not concede that reference is what WELC actually applied for)—into the compliance evaluation framework.

Additionally, in its Notice of Errata, WELC revised the rebuttable presumption under 19.15.5.9(B)(2) to trigger a finding of that a well is out of noncompliance with 19.15.25.8 NMAC when a well is inactive for more than 13 months, instead of 15 months.

1. NMOGA's Position and Concerns

NMOGA's members are concerned that these proposed amendments are both unnecessary and potentially harmful, as they duplicate existing Division requirements while introducing new legal and operational uncertainty.

First, incorporating 19.15.27.8 NMAC into the Waste Prevention compliance standard does not enhance enforceability, as that rule is already mandatory. Instead, such incorporation risks distorting its application by converting a broad policy statement into a rigid threshold for compliance. This change could allow the Division to use 19.15.27.8 NMAC as a discretionary "good operator" standard, granting it new authority to deny or condition permit transfers or approvals in ways not contemplated under existing rules.

Second, NMOGA is concerned that WELC's proposal would disadvantage operators acquiring noncompliant wells. Currently, buyers often play a key role in bringing legacy wells into compliance—yet the proposed amendments contain no provisions for reasonable cure periods or transitional compliance windows. Penalizing new operators for inherited issues would undermine the Division's broader policy goals of encouraging remediation and responsible ownership.

Third, 19.15.27.8(A) NMAC is not a binary compliance rule; it is a high-level policy provision that guides the Division's discretion across a range of factual contexts. Cross-referencing it in a checklist-style compliance evaluation eliminates necessary nuance and creates legal ambiguity, which may chill investment or delay transactions involving otherwise qualified operators.

Fourth, the proposed removal of the 2–10 well compliance buffer, which currently provides flexibility for small-scale operational variances, is impractical and punitive—especially for smaller operators. It disregards the realities of field operations, where minor noncompliance is often temporary and quickly resolved.

Finally, WELC's reduction of the inactivity timeframe that triggers a rebuttable presumption of noncompliance with 19.15.25.8 NMAC down to 13 months is operational unrealistic for the same reasons I explain in Part III.D.1.iii.

2. Technical and Legal Testimony in Support of NMOGA's Position

NMOGA's operational expert, Dan Arthur, explains that the realities of day-to-day oil and gas operations involve intermittent, unplanned events such as pressure fluctuations, third-party pipeline constraints, workovers, and equipment failures. These events may necessitate short-term venting or flaring, which are already subject to detailed reporting and oversight through Form C-129. Adding new compliance hurdles in 19.15.5.9(A) NMAC creates redundant regulation without improving environmental performance.

NMOGA's operational and legal witness, Clayton Sporich, testifies that the proposed amendments improperly expand the Division's regulatory reach by tying compliance decisions to unrelated provisions like 19.15.27.8 NMAC. He explains that this approach alters the legal effect of existing rules without transparent rulemaking and opens the door to arbitrary enforcement. It undermines predictability for operators and creates legal risks for asset transactions and development planning.

NMOGA's plugging and abandonment witness, Harold MCGowen, explains that 13 months of inactivity can be typical of lease operations where certain wells are used strategically and others cycled off.

3. NMOGA Recommendations

NMOGA recommends that the Commission reject WELC's proposal and preserve the existing framework under 19.15.5.9(A) NMAC, which governs operator compliance based on: financial assurance, timely penalty payments, absence of recent violation orders, and limited tolerance for

noncompliant wells. NMOGA urges the Commission to avoid cross-referencing broad rules such as 19.15.27.8(A) NMAC by shoehorning that rule into binary compliance tests to avoid legal and regulatory ambiguity. Finally, if the Commission chooses to amend the rule, it should provide a compliance grace period for newly acquired assets and exceptions for temporary noncompliance. These measures will preserve regulatory integrity while ensuring continued investment in compliance, remediation, and responsible operations.

F. Operator Registration – 19.15.9.8.(B)-(E) NMAC

WELC proposes significant changes to the operator registration process in 19.15.9.8 NMAC that would impose expansive disclosure and certification obligations as a precondition to obtaining or maintaining an Oil and Gas Reporting Identification Number ("OGRID"). The proposed requirements include: 1. operators must certify that they are in compliance with all federal and state oil and gas laws in each state where an operator does business; 2. Whether any current or past officers or owners with more than a 25% interest in the company were affiliated with non-compliant operators in the past five (5) years; and 3. Annual certifications that all past and current leadership is in compliance.

NMOGA strongly opposes these proposed amendments, which are legally overbroad, oddly articulated, practically unworkable, and risk chilling investment, employment, and transactions in New Mexico's oil and gas industry. NMOGA's members are concerned that these requirements are excessive and exceed the Division's authority under the New Mexico Oil and Gas Act. Notably, WELC does not propose any thresholds for what constitutes "non-compliance." It's not possible for operators to track compliance of entities over a retroactive five (5) year timeframe, particularly because operators likely do not have access to records of former or current officers, particularly post-departure from prior employers. NMOGA's members are also concerned that these

requirements, if adopted by the Commission, could chill investments, chill hiring, and penalize experienced individuals due to past affiliations even if the individual did not take any actions considered "non-compliant."

1. Practical Infeasibility and Risk of Investment Chil.

From an operational standpoint, NMOGA members find WELC's proposal untenable. As noted by NMOGA plugging and abandonment expert Harold McGowen, requiring operators to investigate the compliance status of every past or present officer or investor across jurisdictions over a rolling five-year period would amount to a de facto forensic audit—not a registration. Many operators lack access to historical personnel records, particularly post-departure or following mergers and acquisitions. In many cases, relevant data may not be publicly available, and tracking cross-jurisdictional "non-compliance" would be speculative and subjective due to varying standards and enforcement practices among states.

NMOGA operational witness Dan Arthur further emphasizes that in an industry characterized by frequent M&A activity, WELC's proposal would insert significant uncertainty into transactions. Requiring historical compliance certifications for individuals tied to legacy entities—some long since merged or dissolved—would discourage deals, delay due diligence, and drive up legal and administrative costs. It could also dissuade experienced professionals from joining new ventures due to potential guilt-by-association risks.

2. NMOGA Recommendations

NMOGA opposes the adoption of WELC's proposed amendments. At a minimum, the Commission should remove the odd 25% language and other unworkable disclosure requirements, and limit the requirements to those who have actual operational control at the time that a material violation was finally adjudicated and exclude individuals who are merely passive investors.

Further, with respect to violations in New Mexico, the Commission should limit instances of non-compliance to violations memorialized through a final order issued by the Division. At bottom, the Commission must ensure that there are clear limits and guardrails for the types of information WELC proposes that are administratively feasible for operators and the Division. While NMOGA supports transparency and responsible operations, WELC's proposed revisions to 19.15.9.8 NMAC would impose vague, burdensome, and legally questionable obligations on operators without providing commensurate benefits to the public or the environment. NMOGA urges the Commission to preserve a balanced and lawful registration framework that reflects the operational realities of the industry while maintaining the Division's regulatory focus within its jurisdiction.

G. Changes of Operator – 19.15.9.9(B), (C), and (E) NMAC

1. Change of Operator – 19.15.9.9(B) NMAC

Current Division rules define when a change of operator occurs, how that change is reflected in OGRID numbers, specify the information required in C-145 forms, and stipulate when the Division may deny a change of operator. WELC proposes adding extensive new requirements to 19.15.9.9(B) NMAC including the following requirements it proposes adding to 19.15.9.8(B)-(E) NMAC that I discuss immediately above in Part III.F., namely operator certification that it is in compliance with federal and state oil and gas laws in every state where it does business, disclosure of whether any officer, director, partner, or 25%+ interest holder was affiliated (in past five years) with another operator out of compliance with 19.15.5.9(A) NMAC, as well as requiring a plugging and abandonment plan certified by an officer or partner demonstrating the operator's financial ability to meet its obligations, and Division discretion to request detailed financial documentation, including credit rating, corporate financials, and decommissioning history.

i. Legal and Administrative Concerns

NMOGA operational and legal witness, Clayton Sporich, explains how this proposed amendment by WELC, much like its proposed amendments to 19.15.9.8(B)-(E) NMAC, lacks materiality thresholds for what constitutes "non-compliance," which raises the risk of arbitrary or overbroad enforcement. Mr. Sporich also raises concerns with respect to retroactive and vicarious liability by requiring disclosures based on affiliations or owners or officers, regardless of their operational role. Additionally, Mr. Sporich identifies conflicts with fiduciary duties and corporate governance principles, particularly regarding disclosure of confidential or sensitive information. Finally, Mr. Sporich explains that the Division has no statutory or regulatory authority to require such disclosures to enforce federal or out-of-state compliance.

ii. Operational and Practical Impacts

NMOGA operational and plugging and abandonment witness, Harold McGowen, explains that requiring operators to submit detailed plugging and abandonment plans as part of the change of operator process beyond proof of bonding is nonsensical and impractical. It's unclear what utility, if any, the Division would get from submitting plugging and abandonment plans for wells that are not ready to be plugged and abandoned.

2. Change of Operator – 19.15.9.9(C) and (E) NMAC

19.15.9.9(C) NMAC allows the Division to deny a change of operator when the acquiring operator is out of compliance or the assets are under a compliance order with no schedule for resolution. WELC now proposes a dramatic expansion of this authority by allowing the Division to deny a transfer: 1. If the new operator is out of compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business; 2. If any officer, director, or twenty-five percent or more interest holder of the operator is or was in the past five (5) years involved with an entity not currently in compliance with 19.15.5.9(A) NMAC; 3. If the new

operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with 19.15.5.9(A) NMAC; 4. If an applicant is not properly registered or in good standing with the New Mexico Secretary of State; and 5. Denying a change of operator if the applicant cannot meet the plugging and abandoning requirements. Additionally, WELC proposes adding a new Subsection (E) that would prohibit the transfer of non-compliant wells or facilities unless they are brought into compliance or under a compliance schedule.

i. Legal and Structural Concerns

NMOGA operational and legal witness, Clayton Sporich, explains in his testimony various issues and concerns that he has from a legal perspective. First, Mr. Sporich explains how this proposed amendment would have negative implications for corporate structure requirements, could overstep the legal limits of corporate veil piercing, and various corporate law doctrines. Second, Mr. Sporich recommends that the Division assess whether an operator is registered with the New Mexico Secretary of State because issues regarding good standing can be vague, and operators are required to abide by ("SOS") requirements to do business in New Mexico, which makes this requirement by OCD redundant. Third, Mr. Sporich recommends striking the proposed requirement that operators deemed to pose a "substantial risk" that they cannot meet plugging and abandonment requirements, as it is vague and WELC offers no criteria for what would constitute a "substantial risk." Fourth, Mr. Sporich recommends that the proposed amendment to Subsection (E) be modified so that the buyer or seller of an asset is required to submit a compliance plan only for material and ongoing compliance issues, which the Commission should clearly define. Mr. Sporich has proposed striking 19.15.9.9(E) NMAC and using alternative language for

19.15.9.9(B)-(C) NMAC, as reflected in **Exhibit A** to NMOGA's Prehearing Statement, which NMOGA finds more practical.

ii. Operational and Transactional Impacts

NMOGA operational witness Dan Arthur explains the impact that these proposed changes from WELC and OCD would have, which are similar if not identical to the effects of WELC's proposed changes to 19.15.9.8(B)-(E) NMAC, which I discussed above in Part III.F. Mr. Arthur explains that these requirements are largely unworkable if not impossible to meet due to the challenges associated with verifying compliance across multiple jurisdictions, unaffiliated teams of employees, and records stretched across various corporate entities due to numerous and frequent mergers and acquisitions that would make assembling such data difficult, if not impossible.

NMOGA operational and plugging and abandonment witness, Harold McGowen aligns his perspectives with Mr. Arthur and also provides real-world examples of how these proposed amendments might work in practice, particularly in instances when operators acquire large numbers of wells, requiring them to submit hundreds of proposed plugging and abandonment plans that will likely not be implemented in the near future is impractical. Specifically, Mr. McGowen explains that these requirements would increase transactional uncertainty by heightening due diligence burdens that would inhibit investment. Even for inactive wells that are acquired, operators may have plans for continuing operation of those wells, which would make submitting a plugging and abandonment plan prior to the Division's approval of a transfer unreasonable. Mr. McGowen also highlights that sellers cannot realistically certify a buyer's compliance across other jurisdictions.

3. NMOGA Recommendations

NMOGA opposes WELC's proposed changes to 19.15.9.9(B) NMAC and 19.15.9.9(C) NMAC and recommends that the Commission strike references to other states and federal compliance due to the Division's limited authority that is confined to New Mexico. The Commission should replace the 25% threshold with a "control-based" test (e.g., operational authority or >50% equity or voting interest). Further, it is unclear what WELC means when it proposes that an operator demonstrate that it has sufficient plugging and abandonment capacity, and the Commission must establish clear and objective standards if it decides to require this demonstration.

NMOGA also opposes WELC's proposed changes to 19.15.9.9(B) NMAC and 19.15.9.9(C) NMAC because it is impossible to know or verify the compliance status of other entities associated with former business affiliations. In addition, adopting this proposed rule would essentially make the Division a veto power over valid business transactions. Specific to Subsection (C), while the proposed amendments to subsections (1) and (2) might be workable if modified to address screening during operator transfers, subsections (3), (4), and (6) should be stricken because they are overly broad and impose excessive due diligence and compliance burdens.

IV. CONCLUSION

Based on the foregoing, NMOGA recommends that the Commission refrain from adopting any of the proposed amendments at this time. Additional analysis and further work are necessary to ensure that any regulatory changes are informed by practical operational realities, as detailed in the direct testimony of NMOGA expert witnesses Daniel Arthur, Harold McGowen, Douglas Emerick, and Clayton Sporich. Continued stakeholder engagement is essential to developing workable, effective rules. However, if the Commission chooses to move forward with consideration of the proposed amendments, NMOGA respectfully requests, for the reasons set

forth above, that:

A. No new definition of beneficial use or any related presumptions of no beneficial use should be added, or if the proposals are considered for adoption, they should be substantially amended to recognize beneficial uses that go beyond production or injection/disposal volumes achieved.

B. The existing financial assurance requirements should be retained, which currently employ risk-based individual well assurance requirements and tiered blanket bond alternatives for both active and inactive wells. The current financial assurance regime in place more accurately reflects the actual costs being secured (i.e., the decommissioning of the secured well) compared to the one-size-fits-all proposals under consideration, which the private surety market is not prepared to supply. Coupled with the unnecessary distinction and heightened requirements for financial assurance for marginal wells, a brand-new regulatory construct, individually and collectively, each of these proposals will drive operators, businesses, and tax dollars out of New Mexico.

C. Relatedly, no new definition of "marginal well" should be adopted due to the risks of misclassification of wells as well as creating uncertainty in investment and production decisions. If the definition is to be added, NMOGA requests clarity on how OCD would apply the classification of a well as marginal under the proposed definition, and whether it will trigger the proposed heightened bonding requirements for marginal wells.

D. No changes to the existing Temporary Abandonment program should be made, which already provides sufficient protection through existing mechanical integrity requirements and procedures, and because the proposals would be unworkable in practice.

E. The changes to the Waste Prevention Requirements provision should be rejected and the

existing framework preserved, or at a minimum, the regulatory cross references should be removed and a compliance grace period added for newly acquired assets and exceptions for temporary noncompliance.

F. The changes to the operator registration and change of operator requirements should be wholly rejected or seriously amended to remove the unreasonable and unworkable documentary, disclosure, and compliance requirements, each of which individually amounts to regulatory overreach.

This concludes my testimony on behalf of the New Mexico Oil and Gas Association.

SIGNATURE PAGE

I hereby affirm that the statements, analyses, and opinions contained in this report are true and accurate to the best of my knowledge and belief. This report has been prepared in a manner consistent with generally accepted standards.

Prepared by:

Signature: _____ **Date:** August 7, 2025

Name: Andrea Felix

Title: Vice President of Regulatory Affairs

Company: New Mexico Oil and Gas Association

Dated this 8th day of August, 2025.

Respectfully submitted,

By:_____

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APPENDIX A

Curriculum Vitae

Andrea Felix

Andrea Felix

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Vice President Regulatory Affairs with 20+ years of NM experience in oil and gas development navigating the regulatory, political, and tribal climate. Extensive background in planning, managing, and directing efforts relative to environmental permitting, compliance, policies, and programs by interpreting and applying local, state, tribal and federal regulatory statutes regarding principles and practices. Team player with excellent communication skills, high quality of work, driven and highly self-motivated. Strong negotiating skills and business acumen and able to work independently.

As a native New Mexican, it is important to me to see our industry continue to thrive in NM, with balancing environmental stewardship and stakeholder engagement to ensure transparency. I am motivated to do what it takes by investing my time and expertise to ensure my children and grandchildren come to know what a vast wealth of resources we have in our state and how we can see them developed the right way for all.

Experience

MARCH 2024- PRESENT

Vice President of Regulatory Affairs| New Mexico Oil and Gas Association (NMOGA) |Santa Fe, NM

Monitor and interpret regulatory changes: Stay abreast of new and evolving state and federal regulations, advising membership on potential risks, opportunities, and compliance strategies. Develop and implement regulatory strategies: Formulate comprehensive regulatory strategies aligned with the association's goals and members' interests. Lead advocacy efforts: Represent the association's interests before regulatory agencies and government bodies, participating in policy discussions, developing positions, and potentially providing testimony or comments on proposed rules. Build and maintain relationships: Foster strong relationships with regulatory agencies, policymakers, industry stakeholders, and member companies. Provide regulatory guidance and support: Offer expertise and guidance on regulatory matters to the NMOGA team and member companies. Coordinate cross-functional initiatives: Collaborate with other departments, such as government affairs, legal, community engagement, and communications, to ensure alignment on regulatory priorities and advocacy messaging. Collaboration: Participate in joint trade regulatory collaboration and foster a positive alignment on matters within NM and at the federal level. Regulatory rulemaking matters: Lead and oversee the association's active party status in NM rulemaking matters by securing member consensus on participating in rulemaking matters, securing outside legal representation, and coordinating to ensure alignment on witnesses, testimony, and the association’s rulemaking strategy. Coordinate NMOGA Joint Committee Meetings: Collaborate with state agency leaders, NMOGA committee chairs, and other departments within NMOGA to provide a quarterly meeting allowing information sharing between industry and state agency leaders.

JANUARY 2020-MARCH 2024

Director of Regulatory Affairs | EOG Resources, Inc. | Oklahoma City, OK

Developed and implemented the organization’s environmental compliance programs at a local, state, tribal and federal level both on and offshore. Managed and coordinated activities within the Company and with outside consultants to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Built and maintained relationships with state, federal and tribal regulatory agencies, partners,

contractors, consultants, and other stakeholders. Interpreted federal, state, local and tribal regulations and guided development programs and internal disciplines to ensure compliance with each. Draft and manage environmental assessments as well as regulatory reports and correspondence. Represented the company in matters involving federal, state, local and tribal agencies to manage environmental permitting, regulatory and compliance issues on behalf of the company. Manage staff by recruiting, training, and coaching employees, communicating job expectations and company goals. Managed tribal and community stakeholder outreach for both on and offshore development programs. Interfaced with regulatory agencies for permitting, compliance, enforcement actions and rulemaking. Managed all surface land related approvals and activities both off and onshore for execution of development programs.

MARCH 2018- JANUARY 2020

Regulatory Manager | Enduring Resources, Inc. | Farmington, NM

Developed and implemented the organization's environmental compliance programs at a local, state, tribal and federal. Managed and coordinated activities within the Company and with outside consultants to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Built and maintained relationships with state, federal and tribal regulatory agencies, partners, contractors, consultants, and other stakeholders. Interpreted federal, state, local and tribal regulations and guided development programs and internal disciplines to ensure compliance with each. Draft and manage environmental assessments as well as regulatory reports and correspondence. Represented the company in matters involving federal, state, local and tribal agencies to manage environmental permitting, regulatory and compliance issues on behalf of the company. Manage staff by recruiting, training, and coaching employees, communicating job expectations and company goals. Managed tribal and community stakeholder outreach for development programs. Interfaced with regulatory agencies for permitting, compliance, enforcement actions and rulemaking. Managed all surface land related approvals and activities for execution of development programs. Managed and executed the basins agency and stakeholder relations programs serving as the technical subject expert and primary contact. Managed all trade organizations and grass roots programs, public relations programs and served as the media point of contact.

SEPTEMBER 2013- MARCH 2018

Regulatory Manager | WPX Energy, Inc. | Aztec, NM

Developed and implemented the organization's environmental compliance programs at a local, state, tribal and federal. Managed and coordinated activities within the Company and with outside consultants to achieve all regulatory, siting, and environmental requirements and approvals needed to achieve project completion. Built and maintained relationships with state, federal and tribal regulatory agencies, partners, contractors, consultants, and other stakeholders. Interpreted federal, state, local and tribal regulations and guided development programs and internal disciplines to ensure compliance with each. Draft and manage environmental assessments as well as regulatory reports and correspondence. Represented the company in matters involving federal, state, local and tribal agencies to manage environmental permitting, regulatory and compliance issues on behalf of the company. Manage staff by recruiting, training, and coaching employees, communicating job expectations and company goals. Managed tribal and community stakeholder outreach for development programs. Interfaced with regulatory agencies for permitting, compliance, enforcement actions and rulemaking. Managed all surface land related approvals and activities for execution of development programs. Managed and executed the basins agency and stakeholder relations programs serving as the technical subject expert and primary contact. Managed all trade organizations and grass roots programs, public relations programs and served as the media point of contact.

JULY 2004- SEPTEMBER 2013

Land Representative | Williams Four Corners | Bloomfield, NM

Responsible for acquisitions and renewals of new and existing agreements, due diligence research, third party damage settlement, preparation, and execution of agreements, tracking and monitoring project costs. Responsible for coordinating weekly customer meetings to maintain an excellent customer relationship, liaison between the land department and Commercial marketing team as well as all federal, tribal, state and local agencies. Responsible for all environmental and permitting activities related to right of way approval for all surface related activities.

JANUARY 2001- JULY 2004
HR / Payroll & Consumer Awareness Director | Premier Distributing Company | Farmington, NM

Prepared weekly payroll, monthly forecasts and month end inventory and submitted it to Anheuser Busch headquarters. Responsible for all employment recruitment, new hire orientations, exit interviews, drug testing, employee training program and all related employment activities. Educated San Juan County stakeholders which included public officials, police officers, schools, and the public of the awareness of drug and alcohol abuse.

MAY 1997- JANUARY 2001
Operational Lead Teller | Wells Fargo Bank | Bloomfield, NM

Responsible for new teller training, scheduling, and orientation. Responsible for daily cash vault audits, daily teller cash audits and compliance with banking regulations. Responsible for excellent customer service.

Skills

Strong Management & Leadership Experience • Success with policy making and partnering • Team player • Excellent time management skills • Conflict management • Public speaking • Team player • Strong state, federal and local agency working relationships • Strong tribal relationships

Education

FEBRUARY 2011
Certified Right of Way Agent | International Right of Way Association | Gardena, CA

MAY 1998
High School Diploma | Bloomfield High School | Bloomfield, NM

Relevant Career Development Training

- **Anheuser Busch Talent Center**
    - Media & Public Relations Training
    - HR Training
    - Financial Training
- **National Historic Preservation Act section 106**
- **Endangered Species Act**

- **NEPA process**
- **Williams Midstream Employee Excellence Training**
    - DOT training
    - Six Sigma Yellow belt
    - Diversity
    - How to deal with difficult employees
    - Time management certification
- **Rocky Mountain Mineral Law Foundation**
    - The continuing Challenge of Multiple use
    - Energy and mineral development on Tribal Lands

References

1. Alex Campbell | Enduring Resources, Inc. | 303-929-8429
2. Patrick Padilla | EOG Resources, Inc. | 432-208-5172

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 8th day of August 2025, as follows:

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