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

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

CASE NO. 24683

SELF-AFFIRMED STATEMENT OF CLAYTON SPORICH

1. My name is Clayton Sporich. I am over eighteen years of age, have personal knowledge of the matters addressed herein, and am competent to provide this Self-Affirmed Statement. I have not previously testified before the New Mexico Oil Conservation Commission ("Commission"). A copy of my resume is attached as **Appendix A**. I am providing this testimony on behalf of the New Mexico Oil & Gas Association ("NMOGA").

2. I obtained a Bachelor of Business Administration from the University of Mississippi in Real Estate. I also obtained my juris doctorate from South Texas College of Law. I have worked as legal counsel for multiple companies, including Matador Resources, Headington Energy Partners, and Tap Rock Resources.

3. I most recently served as Tap Rock Resources' Executive Vice President of Land & Legal, where I lead the land, legal, regulatory and administration departments in all aspects of the business and I have been involved in leading our company in New Mexico Oil Conservation Division ("OCD") hearings.

4. In the present case, I performed a review and study of the proposed changes to the New Mexico Administrative Code ("NMAC") proposed by the Western Environmental Law Center ("WELC"), particularly **Sections 19.15.2.7, 19.15.5.9, 19.15.8.9, 19.15.9, and 19.15.25**

NMAC.[1] Where appropriate, I have also provided alternative proposals to the language proposed by WELC as reflected in **Exhibit A** attached to NMOGA's Prehearing Statement.

5. Overall, I am concerned that WELC's proposals, in certain areas discussed herein, exceed the authority actually granted by the New Mexico Legislature under the New Mexico Oil and Gas Act (the "Act"), N.M. Stat. Ann. 1978 (NMSA), §§ 70-2-1 *et seq.* It is my legal opinion that many of these provisions should be stricken or, at the very least, substantially modified to comply with the applicable law.

6. In my opinion, WELC's proposed amendments reflect an overreach of regulatory authority and encroach upon matters that are squarely governed by established corporate law principles. In addition, the burdens associated with increased compliance requirements, the associated procedural delays, and the broadening of regulatory powers under the proposed amendments, which I discuss below, greatly outweigh any potential benefits.

I. Proposed Definition of Beneficial and Related Presumptions of No Beneficial Use Provision

A. Proposed New Definition: "Beneficial Purposes" or "Beneficial Use" – 19.15.2.7(B)(7) NMAC

7. WELC has proposed competing definitions for the newly defined term "beneficial purposes" or "beneficial use" under proposed 19.15.2.7(B)(7) NMAC.

8. In sum, these proposals contain unnecessary subjectivity for what is considered beneficial, constrain operational flexibility, and could trigger premature enforcement or plugging requirements.

9. Beneficial use is not specifically defined under OCD's rules. However, OCD has provided examples for what might constitute beneficial use, including activities that occur on a

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

lease that enhance existing or typical oil and gas production.[2] This is an important recognition by OCD because it establishes that uses considered "beneficial" require discretion and flexibility. In other words, uses and purposes that are "beneficial" are necessarily broad and flexible to provide all vested parties flexibility to encourage evolution and technological advancement.

10. Another example of OCD's use of the term "beneficial purpose" is found in 19.15.2.7(I)(4) NMAC pertaining to inactive wells, which means "a well that is not being used for beneficial purposes such as production, injection, or monitoring and that is not being drilled, completed, repaired, or worked over." For example, in my tenure, I have seen vertical wells with low production be used for geological testing for additional zones that eventually resulted in new development for the underlying lease.

11. Moreover, WELC's proposal to add financial assurance requirements for inactive wells and amend those for temporarily abandoned wells—while also revising the regulatory definition of "inactive" to reference its proposed definition of "beneficial use"—could have far-reaching and unintended consequences for financial assurance determinations.

12. Historically, uses deemed to be "beneficial" in the context of oil and gas regulation have been evaluated in relation to the concept of "waste." Under the New Mexico Oil and Gas Act (the "Act"), OCD has a clear statutory mandate to prevent waste and protect correlative rights (NMSA 1978, § 70-2-11). As such, so long as a particular use does not result in waste or otherwise violate these statutory mandates, it has generally fallen outside OCD's regulatory prohibition and may be considered beneficial within the meaning of the Act. WELC also includes language in its proposed definition that prohibits operators from using oil and gas wells for a "speculative

[2] N.M. Oil Conservation Division, *Notice of Rule Interpretation* (Sep. 6, 2022), available at https://www.emnrd.nm.gov/ocd/wp-content/uploads/sites/6/9-6-22-NOTICE-Waste-Rule-Interpretation-Beneficial-Use.pdf (accessed Aug. 1, 2025).

purposes." This language is problematic because it is unclear what constitutes a purpose that is speculative. Further, oil and gas exploration inherently involves some level of speculation, and such speculation, so long as there is a corresponding plan, should be protected in line with the correlative rights of those who have made investments underwritten by the ability to speculatively test scientific theories.

13. WELC's proposal also fails to account for wells used for other purposes, such as secondary and tertiary recovery, monitoring, other compliance issues, or converted uses which I am familiar with and have seen firsthand the benefit they can have for lease operations. Further, I have reviewed the testimony of NMOGA operational witness Dan Arthur and NMOGA plugging and abandonment expert Harold McGowen and found their discussion of numerous other beneficial uses of wells that go beyond production in their testimony to be persuasive.

14. Importantly, "beneficial use" is a legal term of art that is foundational in New Mexico water law.[3] To prevent cross-use of the term, the Commission should clarify that "beneficial use" in an oil and gas context is altogether separate from beneficial use in a water law context or use an alternative term such as "adequate."

15. Therefore, it is my opinion that defining "beneficial use" and "beneficial purposes" would inherently limit what uses are actually considered "beneficial." At best, the Commission should identify a robust set of uses that are considered beneficial but also build in flexibility for other uses to also be considered beneficial. And even with a robust set of criteria for what constitutes a beneficial use or beneficial purpose, the act of defining what constitutes a beneficial use or beneficial purpose could ultimately exclude other uses not contemplated or that, due to

[3] "**Beneficial use**: The direct use or storage and use of water by man for a beneficial purpose including, but not limited to, agricultural, municipal, commercial, industrial, domestic, livestock, fish and wildlife, and recreational uses. Beneficial use shall be the basis, the measure, and the limit of a water right." 19.26.2.7(D) NMAC (2025).

technological and other advancements, become desired uses that may not be captured by the definitions proposed by WELC and OCD.

16. Based on the foregoing, I have provided a practical definition:

> "Beneficial purposes" or "beneficial use" means that a well is being used, or is reasonably expected to be used, in a productive, operational, or regulatory capacity consistent with its intended purpose. This includes, but is not limited to, production, injection, monitoring, regulatory compliance, or participation in reservoir management, pressure maintenance, or infrastructure optimization programs.
>
> In determining whether a well is being used for beneficial purposes, the Division may consider operational records, production or injection history, regulatory filings, and operator-submitted plans or supporting documentation. The Division shall provide the operator a reasonable opportunity to demonstrate beneficial use prior to making any contrary determination.
>
> Use of a well shall not be deemed non-beneficial solely because: It has produced or injected below a specific volumetric threshold; It has been temporarily inactive due to maintenance, market conditions, infrastructure limitations, or field-wide optimization; It is not producing in paying quantities on a standalone basis but contributes value to a unitized or pad-level operation.
>
> Use of a well for speculative or indefinite purposes with no planned operational role may be deemed non-beneficial after consultation with the operator.

I have also provided this language in the redline proposal to the rules, which is attached as **Exhibit A** to NMOGA's Prehearing Statement.

B. Proposed Presumption: "Presumptions of No Beneficial Use" – 19.15.25.9 NMAC

17. WELC has also proposed a parallel amendment to create a presumption that a well is not capable of beneficial use under a new provision 19.15.25.9 NMAC. My prior discussion in Part I.A. above, regarding my proposed alternative definition of beneficial use, is further implicated by WELC's proposed presumption provision, which also contains the proposed defined term "beneficial use."

18. Therein, WELC proposes minimum time and volume thresholds that, if not met, would result in a presumption of no beneficial use. As proposed, production wells would be

presumed to have no beneficial use if, during any consecutive twelve (12) month period, there was less than ninety (90) days of production and less than ninety (90) total barrels of oil equivalent (BOE); saltwater disposal and injection wells would be presumed to have no beneficial use during any consecutive twelve (12) months of less than ninety (90) days of injection and less than one hundred (100) barrels total injected. But wells drilled but not completed for less than eighteen (18) months, and wells that have been completed but not produced for less than eighteen (18) months, would be exempt from WELC's presumption of no beneficial use threshold. In my experience, many viable wells with beneficial uses beyond just production, injection, or disposal would fall below this threshold, as explained in Part I.A.

19. It is my opinion that limiting what is considered to be a beneficial purpose or use based on the criteria is overly rigid and not operationally realistic, especially for wells with variable production, maintenance downtime, or wells waiting on infrastructure. NMOGA operational and plugging and abandonment expert witness Harold McGowen and operational expert witness Dan Arthur explain the myriad things that wells undergo over their lifetimes, which could lead to pauses of production, and could unnecessarily trigger WELC's presumption provision.

20. Mr. Arthur and Mr. McGowen go on to recommend that any presumption of beneficial use should consider a multiple-year timeframe to account for operational realities, preferably five years to align with the maximum timeframe a well may be in temporarily abandoned status and which WELC does not oppose. I found their testimony persuasive and recommend that a rebuttable presumption that a well is not in beneficial use only apply if the well has not produced or injected for any reason for five consecutive years, and the operator has not submitted a plan or application demonstrating intent to return the well to productive service. That

recommended language is reflected in the proposed amendments attached as **Exhibit A** to NMOGA's Prehearing Statement.

21. Under the proposed presumption provision 19.15.25.9 NMAC, if the presumption was triggered by the applicable volumetric production, injection, or disposal thresholds, operators would have only thirty (30) days to submit an administrative review request supported by documentation proving that the well may be reasonably projected to produce in paying quantities and that capitalization or projected revenue is sufficient to meet plugging and environmental liabilities (excluding financial assurance). Operators would also be required to produce any other relevant documentation and information that OCD may require.

22. If the presumption is not adequately rebutted during the response window, then the presumption would become a determination that the subject well is not capable of beneficial use, one of the triggering events that mandates plugging and abandonment obligations under existing 19.15.25.8 NMAC (Wells to be properly abandoned).

23. WELC's presumption, as proposed, would deprive parties of property and the rights that they bargained for when those rights were acquired. By contrast, the law has historically abhorred forfeiture of property rights and instead favors interpretations that support protection of such rights. The Commission cannot deprive parties of property and the rights they bargained for, and should instead protect correlative rights by rejecting WELC's proposal.[4]

24. Moreover, there are serious notice and due process concerns raised by WELC's proposed presumption. It is unclear from the language proposed when the 30-day rebuttal window

[4] "We first consider whether the lease was in effect between the appellants and appellee, and in approaching this subject we must take notice of the long-established principle of law that forfeitures are not favored by the courts and they will readily adopt any circumstances that indicate an intent to waive a forfeiture. . . . That covenants against assignments will be strictly construed in order to prevent forfeitures, is an elementary proposition of law. . . . the rule of law is that leases are most strongly construed against the lessor, and if there is any doubt or uncertainty as to the meaning of the grant, it is to be construed in favor of the lessee." *Stamm v. Buchanan*, 1951-NMSC-005, ¶ 20, 55 N.M. 127, 227 P.2d 633 (collecting cases).

begins. This ambiguity makes compliance uncertain and creates procedural risk, and without clarity, could amount to a taking without adequate notice or a breach of contract. 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.

25. Such a strict timeline would be difficult to comply with – particularly if, as many large deals do, a certain transaction that may contain such presumptively determined well(s) occurs over the holidays. Considering the risk of triggering legal requirements to plug and abandon a well and potentially even forfeiture of the operator's financial assurance on file with the OCD, a more reasonable response time frame would be sixty (60) to ninety (90) days, or longer.

26. Furthermore, 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, with no clear framework for how such information will be used, protected, or evaluated. In sum, WELC's presumption provision creates a standardless review with serious consequences.

27. Additionally, the use of "paying quantities" in making such a determination is inappropriate as it would introduce legal risk from a private contracting perspective, regulatory ambiguity, and economic uncertainty, with significant unintended consequences for lease maintenance, production operations, and asset management. To the extent that such language is utilized as required to refute a presumption of no beneficial use, it should be expressly limited to specific regulatory contexts so that it cannot be interpreted to override private lease terms. The Commission should require advance stakeholder engagement before introducing concepts that use

economic metrics for regulatory compliance, that could undermine property interests or contractual rights, and force public disclosure of sensitive financial data.

28. Accordingly, I recommend that the Commission oppose and not adopt the proposed presumption provision 19.15.25.9 NMAC. The Commission should retain the current rebuttable presumption framework already embedded in the inactive well rules (e.g., 19.15.5.9(B)(2) NMAC), which offers a fairer, more administrable standard without shifting burdens prematurely.

29. If a mechanism to challenge presumptions is pursued, it needs to be tied to a clear notice requirement (e.g., "within 30 days of written notice from the Division"), and the rebuttal standards should be limited to non-economic beneficial uses, such as enhanced oil recovery, injection, monitoring, or planned reactivation.

II. Proposed New Definition: 19.15.2.7(M)(2) NMAC: "Marginal Well"

30. WELC has also proposed adding a new definition for "Marginal Wells," under a new 19.15.2.7(M)(2) NMAC. WELC proposes to define "Marginal Well" as an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent (BOE) within a consecutive twelve-month period.

31. Generally speaking, marginal wells are defined as an oil or gas well nearing the end of its producing lifecycle, evidenced by lower production volumes. Typically, regulatory bodies exempt these marginal wells from the stringent reporting and testing requirements.

32. The definitions proposed by WELC and OCD have the potential to reclassify non-marginal wells as marginal, which creates numerous risks, including triggering increased regulatory burdens, increasing operational costs, and threatening the economic viability of marginal well production. In addition, it is an open question whether the heightened individual well financial assurance requirements for marginal wells proposed by WELC, which I discuss in Part IV.A.ii, below, would be triggered where a well meets WELC's proposed definition of

marginal wells. Additionally, it creates a potentially absurd situation where productive wells may be misclassified because wells are often prudently shut in for the duration of nearby drilling or hydraulic fracturing—which in today's world of multi-well pad development may last for varied periods of time. This is why historically the focus has appropriately been on any particular well's *capability of production* rather than solely its actual production over a prescribed amount of time.

33. Most notably, classification as a marginal well would trigger the heightened financial assurance requirements for marginal wells proposed by WELC and OCD through 19.15.8.9 NMAC, which I analyze in Part IV.A.ii. Because it is unclear how the definition will be applied by OCD, i.e., whether it will trigger automatic classification or only apply only in financial assurance determinations, adding a new definition of "Marginal Well" may also affect regulatory enforcement, leasehold rights, and interpretations of "economic production" or "paying quantities."

34. Codification of a "Marginal Well" definition also impacts leasehold rights—and therefore directly threatens the correlative rights that OCD is charged with protecting. If such a definition, particularly one with rigid thresholds such as the ones proposed, is put into effect, then the courts and lessors may defer to such thresholds instead of continuing to utilize long-standing common law standards that analyze production and costs over a reasonable time frame as well in light of a reasonably prudent operator standard. This may result in premature termination of leasehold rights or, by contrast, an express ability to do the bare minimum and indefinitely hold leases by virtue of low production over a long duration. Interpretations of "economic production" or "paying quantities" are properly left to individual property rights holders to negotiate in their own leases or else for the courts to interpret using common law principles. New Mexico oil and gas operators have an implied duty under their leases to produce oil and gas in "paying quantities."

Paying quantities generally means an operator's net revenue from oil and gas sales exceeds certain operational costs, including maintenance, monitoring, testing, and compliance expenses on a lease-wide basis. By significantly restricting which wells qualify as marginal, many low-producing wells previously benefiting from compliance exemptions would face heightened regulatory costs. As a result, operators risk no longer meeting the "paying quantities" regulatory standard, potentially forcing premature lease termination, abandonment, or shutdown of otherwise economically viable wells. Paying quantities is a purposefully flexible determination—as opposed to a fixed numerical standard. A well that or group of wells may temporarily be unprofitable may still properly maintain a lease so long as the operator in question is operating diligently and in good faith—factors that are totally absent from the proposed definition.

35. Moreover, inserting a new definition of "Marginal Well" into New Mexico's existing oil and gas regulatory framework without consideration of the holistic regulatory regime could inadvertently conflict with the provisions already in place and pose numerous regulatory compliance risks and taxation issues.

36. Currently, New Mexico law does not explicitly define "Marginal Wells." New Mexico instead distinguishes between "Marginal Units" (versus non-marginal) and "Stripper Property Units."

37. Marginal Units are related to "stripper wells," referred to as "Stripper Well Property" under New Mexico law. The terms differ by their legal use. Stripper Well Properties refers to tax incentives for lower-producing well units.[5] Whereas Marginal Units refer to regulatory

[5] Stripper Property Units are tax-focused classifications that provide financial incentives to lower-producing wells through clearly defined thresholds. These regulatory and tax provisions collectively enable smaller operators to economically produce marginal wells. The existing defined term of Stripper Well Property "means an oil or gas producing property that the taxation and revenue department assigns a single production unit number (PUN)" and meets the eligibility criteria. 19.15.2.7(M) NMAC. To be eligible, the property must produce either: (1) less than ten barrels of oil per day the preceding calendar year, (2) a daily average less than 60,000 cubic feet of gas per well per day, or (3) for properties producing oil and gas, produce less than ten barrels of oil per well the preceding calendar

compliance.[6] Both are characterized by low production volume. But while a "Stripper Property Unit" is very likely considered a "Marginal Unit," a "Marginal Unit" is not automatically a "Stripper Property Unit." The OCD governs marginal units for compliance with production, whereas the New Mexico Taxation and Revenue Department governs stripper property units for tax incentives.

38. References to marginal and non-marginal units are analogous to "marginal wells" and fall under the New Mexico Annotated Code. New Mexico law refers to these units for regulatory compliance. The OCD assigns allowable production prorations to units to allocate gas production in an effort to prevent waste and protect correlative rights. There are no defined thresholds for marginal units; rather, the OCD uses "marginal units" to describe a unit not producing its allowed amount. The allowed unit proration is dynamic based on the OCD's determination. Marginal units are provided with regulatory exemptions, thus making production cost-effective. Therefore, marginal and non-marginal units are currently used in the regulatory sense to prevent waste, manage correlative rights, and incentivize production.

39. "Stripper well property" is similar to "marginal units" in the sense that they refer to lower producing units, but are distinguishable by governing authority and applicable thresholds. Stripper well properties are defined in the Oil and Gas Severance Act (OGSA) under the New

year "as determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6000 cubic feet to one barrel of oil." 19.15.2.7(M)(1)-(3) NMAC.

[6] The existing defined term of Marginal Units "means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located." 19.15.2.7(M)(1) NMAC. Conversely, a non-marginal unit "means a proration unit that can produce the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable." 19.15.2.7(N)(4) NMAC). The top proration unit allowable for oil "means the maximum number of barrels for oil daily for each calendar month the division allocated on a proration unit basis in a pool to non-marginal units." 19.15.2.7(T)(5) NMAC. Marginal units are expressly exempted from certain measurement and allocation requirements when commingling production at the surface. 19.15.12.10(B)(1)(a) NMAC. Specifically, if all wells or units to be commingled are marginal and incapable of producing the top proration unit allowable, operators are permitted to commingle production without separately measuring each pool or lease. 19.15.12.10(B)(1)(a) NMAC. Instead, operators may determine production from each marginal well through periodic well tests conducted at least annually. 19.15.12.10(B)(1)(a) NMAC.

Mexico Statutes Annotated. Under the OGSA, stripper well properties have clearly defined thresholds to meet eligibility for tax incentives. The thresholds apply to oil-producing units, gas-producing units, or a combination of both. The purpose of stripper property unit tax incentives is to alleviate financial burdens related to compliance, incentivizing continued oil or gas production from the well.

40. The proposed definition of "Marginal Well" is only relevant to this rulemaking if the Commission concludes that it has authority under existing statutes to mandate single-well financial assurance for low-producing wells. If, as I believe, the Commission lacks such authority, then the proposed definition is unnecessary. Even if the Commission finds some basis to consider defining "Marginal Well," it remains unclear how the proposed definition would interact with existing definitions, regulatory uses, and established practices. Moreover, potential conflicts with statutory language and the current common law framework could create legal uncertainty and invite future litigation Therefore, NMOGA opposes WELC's definition of "marginal well" and urges the Commission to reject WELC's proposal.

III. Proposed Changes to New Mexico's Temporary Abandonment Program

A. Proposed Definitional Change: "Temporary Abandonment" or "Temporary Abandonment Status" – 19.15.2.7(A)(13) NMAC

41. After thoroughly analyzing WELC's proposed amendment to the current version of 19.15.2.7(A)(13) NMAC, I conclude that the addition of "temporary abandonment" (and "temporary abandonment status") alongside the existing "approved temporary abandonment" is redundant and risks operational and regulatory confusion for the oil and gas industry and OCD. The proposed language overlaps with the current definition in 19.15.25.12 NMAC, which I discuss below in Part III.C., governing approved temporary abandonment procedures.

42. The proposed distinction between "temporary abandonment" and "approved temporary abandonment" lacks a defined purpose and could complicate compliance. For example, 19.15.25.12 NMAC requires OCD approval for temporary abandonment, ensuring wells are properly secured and monitored. WELC's addition of an unapproved "temporary abandonment" term may imply a status not recognized by OCD, potentially misclassifying wells as abandoned without oversight. This risks conflating such wells with "orphan wells," defined in existing 19.15.2.7(A)(13) NMAC, as those without a responsible operator, creating ambiguity in enforcement and liability allocation.

43. WELC's proposal appears to aim for heightened environmental accountability, possibly to address orphan well risks or align with federal standards, e.g., the Bureau of Land Management's 43 C.F.R. § 3162.3-4 "Well Abandonment." However, without a clear objective articulated, the existing definition in 19.15.25.12 NMAC sufficiently governs temporary abandonment by mandating OCD approval, bonding (per 19.15.3.8 NMAC), and monitoring. Introducing redundant terms could increase compliance costs, exacerbate OCD's permitting backlog (e.g., Form C-103), and create confusion.

44. To avoid regulatory confusion and unnecessary burdens, the Commission should reject WELC's proposed amendments or require clarification of its intent for purposes of identifying a more appropriate amendment. The Commission must also ensure that this terminology is harmonized across the sections that deal with Approved Temporary Abandonment in NMAC, and particularly with 19.15.25.12 and 19.15.2.7(A)(13) to ensure clarity.

45. Alternatively, the Commission could initiate a stakeholder review to assess whether new definitions enhance environmental protection without duplication of existing rules.

B. Proposed New Definition: "Expired Temporary Abandonment" and "Expired Temporary Abandonment Status" – 19.15.2.7(E)(8) NMAC

46. WELC has proposed adding a new 19.15.2.7(E)(8) NMAC to define "expired temporary abandonment" or "expired temporary abandonment status." WELC's proposed definition is:

> "Expired temporary abandonment" or "expired temporary abandonment status" means the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC."

47. Broadly, these proposed definitions are vague and ambiguous, without a clear delineation for when a well's status is deemed "expired," even for momentary or minor non-compliance issues. Therefore, the definitions proposed by WELC create uncertainty as to the types of noncompliance that trigger the loss of approved temporary abandonment status. Without further clarification, the OCD could deem a well "expired" for minor infractions or temporary compliance lapses, such as but not limited to delays in conducting mechanical integrity tests, minor lapses in required financial assurances, or even paperwork delays.

48. Additionally, the NMAC already defines "Approved Temporary Abandonment" under 19.15.2.7(A)(13) NMAC (means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC, and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC) and "Temporarily Abandoned Status" under 19.15.2.7(T)(3) NMAC ("means the status of a well that is inactive"). Notably, an "inactive well" is also defined under 19.15.2.7(I)(4) NMAC: "means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over." These definitions make clear that the NMAC distinguishes between approval of temporary abandonment under 19.15.25.13 NMAC and compliance with temporary abandonment under 19.15.25.12 NMAC through 19.15.25.14 NMAC.

49. My chief concern is that WELC's proposal ties "expiration" under 19.15.25.13 NMAC to issues associated with compliance, which, in my view, causes confusion for those actually required to comply with OCD regulations, creates unnecessary regulatory exposure, and operational uncertainty. WELC's proposed definitions attempt to clarify the status of temporarily abandoned wells, but actually insert ambiguity because of the extent to which NMAC definitions adequately address the status that WELC attempts to define further.

50. From a practical standpoint, oil and gas companies are currently allowed to place wells in an inactive status for up to one year plus ninety (90) days. 19.15.25.8(B) NMAC. After this fifteen (15) month period, a well must be properly plugged and abandoned or placed in approved temporary abandoned status by seeking approval from OCD. Importantly, such a status is at the OCD's discretion, as it may approve, or deny, a temporarily abandoned status if the operator can demonstrate internal and external mechanical integrity pursuant to 19.15.25.13(C) NMAC and 19.15.25.14 NMAC, and provide sufficient financial assurances pursuant to 19.15.8.9(D) NMAC, but which currently only applies to wells "that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment." Further, even if the OCD does approve such a status, it will establish an expiration date for the temporary abandonment not to exceed five (5) years, per 19.15.25.13(F) NMAC. Finally, if an operator falls out of compliance with these requirements, OCD can classify the wells as "inactive" pursuant to 19.15.5.9(B) NMAC and can then enforce compliance measures pursuant to NMSA 1978, § 70-2-14(B) and 19.15.5.10 NMAC. The OCD and operator may conduct an informal review and agree to resolve the alleged violation to regain compliance pursuant to 19.15.5.10(C)(3) NMAC. OCD also has the authority to employ other enforcement mechanisms

such as notices of violation (NOVs), compliance orders, penalties, and mandatory plugging orders against operators for falling out of compliance.

51. The current rules allow for appropriate operational and regulatory discretion depending on the fact-specific circumstances. The existing statutes and rules, NMSA 1978, §§ 70-2-14(B) and 70-2-31(A), and 19.15.5.5.9(B) and 19.15.5.10 NMAC, properly address the compliance situation involving temporary abandonment, define procedures, timelines, enforcement measures, informal compliance agreements, cessation orders, and plugging mandates. This flexible framework reflects the complex reality faced by operators and regulators and the often collaborative nature of addressing operational and regulatory challenges. Therefore, WELC's use of the phrase "no longer complies" introduces ambiguity into a regulatory framework that must remain flexible to accommodate operational and regulatory realities. It also conflates the initial approval of temporarily abandoned status with the separate, ongoing compliance obligations required to maintain that status.

52. I recommend that the Commission decline to adopt WELC's proposed revisions for the aforementioned reasons. It is my view that the Commission should only adopt definitions, if at all, that increase clarity for operators and regulators through clear parameters and without unnecessary duplicatively defined terms.

C. Changes to "Approved Temporary Abandonment" – Proposed 19.15.25.13 NMAC

53. WELC has also proposed amending the current versions of 19.15.25.12 NMAC, which governs the temporary abandonment approval process and requirements for an operator to request and receive approval from OCD to place a well in "Approved Temporarily Abandoned" status. I will discuss the requirements relevant to my legal expertise in turn.

54. WELC has proposed to impose extensive documentation requirements, including geological, geophysical, seismic data, economic forecasts, and detailed casing, waste, lease, reservoir, and safety plans. Seismic and geophysical data is usually subject to some of the most rigorous confidentiality provisions in our business. Further, the economic forecasts would be proprietary and highly dependent on the individual company, subject to frequent change, and may be restricted from disclosure by other regulatory regimes.

55. WELC has proposed requiring a beneficial use demonstration as a condition for approval or extension.

56. I recommend that language allowing projected beneficial use should be added. Additionally, my analysis of WELC and OCD's competing definitions of beneficial and presumptions of no beneficial use in Part I above are also implicated here.

57. WELC has proposed to enable public intervention in temporary abandonment extension requests. There is no clarification that the public at large has standing or a vested interest in any particular request.

58. WELC has proposed creating hard cutoffs for temporary abandonment eligibility based on inactivity. Again, the current framework that allows the OCD discretion to evaluate specific facts and circumstances is more practical and workable.

59. WELC has proposed requiring operators of wells in expired temporary abandonment status to reapply for temporary abandonment or permanent plugging and abandonment.

60. I have reviewed NMOGA operational expert Dan Arthur and plugging and abandonment expert Harold McGowen's testimonies and found their critiques of these provisions persuasive.

61. Accordingly, I recommend that these proposed requirements be rejected entirely. Alternatively, if the Commission proceeds with revisions to the current version of 19.15.25.12 (Approved temporary abandonment), in my opinion, the procedures and requirements proposed should preserve regulatory flexibility without burdening the process with unworkable mandates; in that case, I recommend allowing operators to continue using Form C-103 to explain the basis for approved temporary abandonment and proposed timeframes, while allowing OCD discretion to impose conditions or request a hearing where appropriate, but not automatically mandating those requirements. This approach preserves regulatory flexibility.

IV. Proposed Changes to Financial Assurance Requirements for Securing Permanent P&A of Wells and Surface Reclamation

A. Financial Assurance for Active Wells, Inactive Wells, and Wells in Approved and Temporarily Abandoned Status, and Incomplete Blanket Financial Assurance – 19.15.8.9(C)-(F) NMAC

62. These financial assurance requirements enumerated below also exceed OCD's limited grant of financial assurance authority under the Act, under NMSA 1978, § 70-2-14, the financial assurance enabling statute, for multiple reasons.

63. Under NMSA § 70-2-14(A), OCD has the authority to require single-well and blanket financial assurance; however, the statute makes clear that the one-well financial assurance must be "in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance." After reviewing the testimony of Mr. Arthur and Mr. McGowen, the single-well and blanket bonding amounts identified below are not reasonable and do not represent the typical costs to decommission New Mexico oil and gas wells.

64. NMSA § 70-2-14 goes on to require that when OCD determines financial assurance amounts, OCD must 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." None of these factors were considered under the proposed financial assurance requirements, and none are included in the proposal itself; instead, a one-size-fits-all assurance scheme is proposed that has no bearing on well characteristics, which implicate decommissioning costs, as mandated by the enabling statute.

65. Additionally, as explained below with respect to the massive blanket bonding amounts that will be required under the rules as proposed, OCD does not have the legal authority to require this scale of bonding under NMSA § 70-2-14.

66. It is also unclear whether OCD would be able to apply these requirements retroactively. Retroactive application of these requirements could amount to a taking. Accordingly, I recommend that the specification that these requirements only operate prospectively be added in 19.15.8.9 NMAC.

67. Finally, the Reclamation Fund should be used and relied on as an alternative to excessive bonding. The New Mexico Legislature established the Oil and Gas Reclamation Fund in 1977 as a nonreverting fund for use by OCD in carrying out the New Mexico Oil and Gas Act. Under NMSA 1978 § 70-2-38(A), the Fund is used for the purposes of surveying abandoned wells, well sites and associated production facilities, preparing plans for administering and performing the plugging of abandoned wells, restoring and remediating abandoned well sites and associated production facilities, and supporting energy education. The Fund may not be used for any purpose outside of the purposes outlined in §70-2-38(A). Historically, the Fund has been used primarily for the plugging and reclamation of wells and related infrastructure that lack a locatable or financially viable operator. Currently, the Reclamation Fund receives 10.5% of conservation tax proceeds when the price of West Texas Intermediate crude oil is below $70 per barrel, and 19.7% when it exceeds $70. The Reclamation Fund also receives forfeited financial assurances from oil

and gas producers that fail to fulfill their reclamation obligations; however, these contributions represent a relatively minor portion of the Fund's overall revenue. As of April 2025, the Reclamation Fund's balance was at $66,700,000. Despite the high balance, New Mexico has made minimal expenditures from the Reclamation Fund in the last two years, instead using federal grants to pay for plugging orphaned wells.

68. The foregoing legal concerns apply to each of the following financial assurance requirements I identify below. Issues specific to the individual proposals are noted below under each applicable requirement, followed by my recommendations for the same.

69. In addition, all the legal, administrative, and commercial concerns I identified immediately below in Part V.A., regarding OCD's lack of regulatory authority under the Act to regulate acquisitions, apply to the various financial assurance proposals WELC proposes in 19.15.8.9(C)-(E) NMAC, which I discuss next. Without the removal of the reference to acquisitions and the other ambiguous terms in 19.15.8.9(A) NMAC, the following requirements could be used as grounds for OCD to unlawfully stop or stall asset transfers between private parties. To reiterate, it is my understanding and belief that the OCD's jurisdiction is limited to oversight of the operation of wells as opposed to entities that may own title to the wells.

i. Active, Temporarily Abandoned, and Inactive Wells, and Incomplete Blanket Bonding – 19.15.8.9(C),(E),(F) NMAC

70. Under the amendments proposed by WELC to the current version of 19.15.8.9(C)(1) NMAC, operators would be required to provide individual financial assurance of $150,000 for each active well, whether through a bond, letter of credit, or insurance policy. Alternatively, operators could obtain a blanket bond of $250,000 to cover all active wells. WELC alone proposed an additional option of a $200,000 blanket bond for operators with five (5) or fewer active wells in its proposed amendment to the current version of 19.15.8.9(C)(2) NMAC.

71. Under the amendments proposed by WELC to 19.15.8.9(E)(1) NMAC, operators would also be required to provide individual financial assurance of $150,000 per well, whether through a bond, letter of credit, or insurance policy, for each inactive well or well assigned approved, pending, or expired temporarily abandoned status. However, for each inactive and temporarily abandoned well, WELC's proposal requires individual coverage at an average of $150,000 per well, with no flat blanket bond alternative in its proposed amendment to 19.15.8.9(E)(2) NMAC.

72. WELC also proposes adding a requirement under 19.15.8.9(F) NMAC that a $150,000 single well bond be obtained for each well not covered by blanket financial assurance, and would remove the blanket bond alternative in place under the existing rule.

73. As discussed above for the active well proposal, these categorical requirements for inactive, approved, pending, and expired temporarily abandoned wells should be replaced with a risk-based framework.

74. I am also concerned that lumping together inactive wells with wells assigned approved, pending, or expired temporarily abandoned status effectively expands the definition of temporarily abandoned, thereby increasing the number of wells deemed "inactive" for purposes of financial assurance determinations.

75. Additionally, the blanket bonding requirement for inactive and approved, pending, or expired temporarily abandoned wells under 19.15.8.9(E) NMAC which would require an average of $150,000 per well in total coverage, as well as the additional blanket bonding provision under 19.15.8.9(F) NMAC, requiring $150,000 in additional per-well coverage for each well not covered by a blanket assurance amount, could each easily require over $250,000 in bonding. But as I read NMSA § 70-2-14(A), authorizing blanket bonding, there is an express maximum for

blanket bonding of $250,000: "Such categories shall include a 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)[.]" The blanket bonding proposals under 19.15.8.9(E) NMAC clearly exceed OCD's statutory authority on the blanket bonding amounts it can demand.

76. Accordingly, I oppose the use of an average-based $150,000 per well blanket bonding requirement. In my opinion, a $250,000 maximum blanket bonding amount could be utilized across the board, regardless of the number of wells, in accordance with the maximum amount of assurance set forth in the Act.

77. Alternatively, a tiered bonding amount could be used based on the number of uncovered, temporarily abandoned wells, similar to that already in place.[7] Those existing blanket bonding options for temporarily abandoned wells could be retained, and operators allowed to choose between those blanket bonding options or per-well bonding based on their operational structure. For the solid waste industry in New Mexico, a tiered bonding system is in place that creates different financial assurance requirements for landfills compared to all other solid waste facilities, as seen in 20.9.10.9 through 20.9.10.12 NMAC.

78. I further recommend striking the confusing requirements regarding additional individual well financial assurance where a blanket bond is already on file, as proposed under 19.15.8.9(F) NMAC. Alternatively, the proposal should be amended to expressly allow replacement blanket bonds to cure any under-coverage, and should explicitly defer to operator

[7] Under the current version of 19.15.8.9(D) NMAC, operators must provide financial assurance for wells in temporary abandonment status for more than 2 years or for which temporary abandonment is being sought. FA may be satisfied by either: (i) Per-well bonding: $25,000 + $2/foot of well depth; or (ii) Blanket bonding: $150,000 for 1–5 wells, $300,000 for 6–10 wells, $500,000 for 11–25 wells, $1,000,000 for 26+ wells.

choice between single-well and replacement blanket coverage and provide a transition period for compliance.

ii. Heightened Requirements for Marginally Producing Wells – 19.15.8.9(D) NMAC

79. Under its proposed 19.15.8.9(D)(1) NMAC, WELC would require a $150,000 single well financial assurance for **each** marginal well involved in an operator transfer, to be posted by a transferee operator, and required immediately upon effective date of the proposed regulations. As written, this proposal is so broadly worded it could be extended to operator changes and asset transfers, assignments, and various types of transactions.

80. Under its proposed 19.15.8.9(D)(2) NMAC, WELC would require a $150,000 single well bond financial assurance for **every** marginal well, required effective January 1, 2028.

81. Under its proposed 19.15.8.9(D)(3) NMAC, if the amount of marginal and inactive wells registered to an operator, or a combination thereof, makes up at least 15% or more of their total New Mexico wells, then WELC would require a $150,000 single well financial assurance for every well registered to that operator, not just marginal wells. It is unclear if "inactive" as used here would encompass temporarily abandoned wells, but it conceivably could, especially since WELC proposes inactive and approved, expired, and pending temporarily abandoned well financial assurance requirements under its proposed amendments to 19.15.8.9(E) NMAC.

82. These provisions penalize producing wells where other regulators provide mechanisms to reduce costs associated with marginal well production. For example, since 1992, the U.S. Department of the Interior, Bureau of Land Management (BLM) has been authorized to issue royalty rate reductions for stripper oil wells, pursuant to the federal Mineral Leasing Act, before that authority was moved to the Energy Policy Act of 2005 § 343, 42 U.S.C. § 15903

(Marginal property production incentives).[8] "The policy was implemented to prevent premature abandonment of marginally economic and shut-in oil wells and to maximize the ultimate recovery of such wells."[9]

83. I recommend that the 15% thresholds proposed by WELC be amended to better reflect risk in favor of targeted enforcement against non-compliant wells. Additionally, these various marginal well-specific financial assurance provisions should be clarified to add administrative mechanisms and tracking logistics before imposing any rules that require instrument-by-instrument financial assurance submissions for marginal wells. As proposed, the 15% thresholds are arbitrary, not risk-based, and risk penalizing operators that have acquired troubled assets in good faith.

84. For the foregoing reasons, I recommend rejecting or, at a minimum, editing the existing financial assurance requirements already in place. My recommendations are reflected in the proposed amendments to the Commission's rules attached as **Exhibit A** to NMOGA's Prehearing Statement.

B. Annual Consumer Price Index Adjustments to Financial Assurance Requirements – 19.15.8.9(G) NMAC

85. Under a newly proposed 19.15.8.9(G) NMAC, WELC proposes that OCD adjust the financial assurance amounts required based on inflation, as published by the U.S. Department of Labor's Consumer Price Index (CPI).

[8] *See* BLM, *Fluid Mineral Leases and Leasing Process*, 89 Fed. Reg. 30916, 30933 (Apr. 23, 2024).

[9] BLM Handbook 3102-1, *Fees, Rental, and Royalty,* p. 52, available at: https://www.blm.gov/sites/default/files/docs/2022-03/H-3103-1%20rel.%203-306.pdf (accessed Aug, 1, 2025).

86. It is important to note the legislative history of this idea. 2024 N.M. H.B. 133 § 4(B) attempted to introduce such a CPI adjustment to financial assurances but it failed to pass in the legislature.

87. WELC now seeks to bypass the separation of powers and asks the Commission to perform an ultra vires act.

88. Regulations must comply with the limited grant of statutory authority under the applicable enabling act. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, 146 N.M. 24, 206 P.3d 135. Nothing within the Act remotely discusses annual adjustments. Moreover, the annually adjusted inflation amounts are contrary to the plain language of the statute since, as discussed above in Part IV.A., there are statutory caps, which would be exceeded if adjusted for inflation.

89. In the event this overreach is found to be authorized, a New Mexico or interval-based standard should be used, as opposed to a national index that would be inappropriate for local market pricing.

90. Accordingly, the inflation adjustment linked to CPI is beyond the scope of OCD's authority and inappropriate. If retained, it should instead be tied to a New Mexico-specific index or a periodic rulemaking at 5–10-year intervals based on real-world plugging cost data, industry risk profiles, and bonding market conditions.

V. Proposed Regulations Improperly Affecting Asset Transfers

A. "Categories and Amounts of Financial Assurance for Well Plugging" – 19.15.8.9(A) NMAC

91. The current version of 19.15.8.9(A) NMAC requires an operator, before drilling or after acquiring a well, to provide acceptable financial assurance to OCD in the form of a letter of

credit, plugging insurance policy, or surety bond. The assurance is conditioned on the proper decommissioning, including plugging and abandonment, and site restoration of the well.

92. Currently, no pre-approval of the financial assurance is required as a precondition to drilling or acquisition. But WELC proposes adding the following sentence to the end of 19.15.8.9(A) NMAC: "The division shall not approve, and the operator shall not proceed with, any proposed drilling or acquisition until the operator has furnished the appropriate financial assurance."

93. This language would effectively bar drilling or acquisitions until financial assurance is furnished and approved, and extend to OCD gatekeeping authority over ownership transactions, not just operations. However, OCD's statutory authority under the Act does not include the authority to regulate acquisitions.

94. When it enacted the Act, the New Mexico state legislature created the Commission and gave "the Commission and Division two major duties: the prevention of waste and the protection of correlative rights." *Santa Fe Expl. Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 27, 114 N.M. 103, 835 P.2d 819 (N.M. 1992) (citing NMSA 1978, § 70-2-1 l(A)); *Cont'l Oil Co. v. Oil Conservation Com*m'n, 1962-NMSC-062, ¶ 26, 373 P.2d 809). Therefore, the scope of OCD's authority under the Act is to, as a result of oil or gas operations in New Mexico, (i) prevent waste and (ii) protect correlative rights.

95. The bounds of the Commission and OCD's authority to promulgate binding regulations are established by the statutes granting them rulemaking authority.[10] Moreover, agency

[10] "An agency may not create a regulation that exceeds its statutory authority." *Gonzales v. N.M. Educ. Ret. Bd.*, 109 N.M. 592, 595, 788 P.2d 348, 351 (1990) (citation omitted). *See, e.g., Epic Energy LLC v. Encana Oil & Gas (USA) Inc.,* No. CIV 19-0131 RB/JHR, 2019 U.S. Dist. LEXIS 154695, at *38 (D.N.M. Sep. 11, 2019) ("The Oil and Gas Act, however, does not empower the Commission to determine private causes of action for damages") (citing N.M. Stat. Ann. §§ 70-2-28-31).

regulations must be reasonably related to their legislative purpose; otherwise, the rule is arbitrary and capricious and thus invalid.[11] Accordingly, OCD's authority under the Act is limited to those powers expressly authorized thereunder.

96. No specific provision of the Act authorizes OCD to regulate ownership transfers. Under the Act, OCD's authority is specifically restricted to areas relevant "as a result of oil or gas operations." NMSA 1978 § 70-2-6.12

97. Ownership acquisition is a property transaction, not an "operation." OCD's statutory authority under the Act focuses on well operations, not upstream business deals. Imposing financial assurance requirements before acquisition, even for passive or non-operating interests, risks exceeding OCD's legal mandate.

98. While NMSA 1978, §§ 70-2-21 and 70-2-22 authorize OCD to regulate the sale, purchase, or acquisition of oil and gas produced in excess of the amount allowed by any New Mexico statute ("illegal oil" or "illegal gas"), these statutes only apply to ownership transfers involving illegal oil or illegal gas.

99. Further, nothing in NMSA 1978, § 70-2-12 (Enumeration of Powers) authorizes OCD to regulate ownership transfers, which WELC's proposed rule would now authorize OCD to regulate.

100. The same is true even considering NMSA 1978, § 70-2-12(B)(8) which states that, "(B) [OCD] may make rules and order for the purposes and with respect to the subject matter

[11] *Jalapeno Corp. v. N.M. Oil Conservation Comm'n,* 2020 N.M. App. Unpub. LEXIS 292.

[12] "The division [OCD] shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash **as a result of oil or gas operations**." NMSA 1978, § 70-2-6 (emphasis added).

stated in this subsection…(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities." While this subsection does authorize OCD to make rules pertaining to the identification of the ownership of certain interests, it still does not authorize OCD to regulate the ownership transfers of these interests.

101. Neither of the rulemaking delegations granted under § 70-2-6 and § 70-2-12 authorize the regulation of ownership transfers. So, the "acquisition" portion of the proposed rule exceeds the rulemaking delegation granted by these two code sections.

102. Besides the failed proposal to allow annual increases of financial assurance amounts to reflect inflation, as I discuss above in Part IV.B., 2024 N.M. H.B. 133 also aimed to give the Division or Commission authority to regulate transfers of oil and gas assets. H.B. 133 did not pass. Later, 2025 N.M. H.B. 257 was introduced with the same proposal to amend § 70-2-12. H.B. 257 also failed. These unsuccessful attempts in H.B. 133 and H.B. 257 exemplify the lack of statutory authority for the Division or Commission to regulate acquisitions of oil and gas assets.

103. Moreover, WELC has previously acknowledged that OCD does not have the authority to block the transfer of oil and gas assets.[13]

[13] In its fact sheet for unsuccessful H.B 133, WELC remarked: "HB 133 protects against the growing orphaned and abandoned well problem **by providing new authority for the state to block the transfer of oil and gas assets**, when a company has a 'significant history of noncompliance with the Oil and Gas Act or its rules' or the transferee seeking to acquire the assets 'lacks sufficient financial capacity to manage liabilities associated with oil and gas wells or facilities.'" Western Environmental Law Center, *Fact Sheet: New Mexico Oil and Gas Act Amendments (HB 133)* (2024), available at: https://westernlaw.org/fact-sheet-new-mexico-oil-and-gas-act-amendments-hb-133/ (accessed Aug. 1, 2025) (emphasis added).

104. In Texas, express grants of authority over requiring assurance when approving acquisitions are in both the Texas Natural Resources Code[14] and Texas Administrative Code.[15] Notably, the authority is expressly limited to approving the transfer of the operator.

105. No such language is present in New Mexico's relevant statutes or regulations giving the Commission or OCD authority over any aspect of an asset's acquisition, and such authority cannot be read into the Act or its implementing regulations.

106. "An agency may not create a regulation that exceeds its statutory authority." *Gonzales v. N.M. Educ. Ret. Bd.,* 109 N.M. 592, 595, 788 P.2d 348, 351 (1990) (citation omitted). For example, in 2009, the Supreme Court of New Mexico rejected OCD's attempt to claim authority to assess civil penalties, which was expressly bestowed upon the Attorney General under the Act to bring an action and assess penalties for violations of the Act and rules, orders, and regulations issued thereunder. *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n,* 2009-NMSC-013, ¶ 7, 146 N.M. 24, 28, 206 P.3d 135, 139, *rev'g Marbob v. NM Oil,* 143 N.M. 156, 173 P.3d 763, 2007 N.M. LEXIS 614 (N.M., 2007). Here, the absence of statutory authority

[14] "If an active or inactive well is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to file a new bond, letter of credit, or cash deposit as provided by Section 91.104(b), and the financial security of the prior operator shall continue to be required and to remain in effect, and the commission may not approve the transfer of operatorship, until the new bond, letter of credit, or cash deposit is provided or the commission determines that the bond, letter of credit, or cash deposit previously submitted to the commission by the person acquiring the well complies with this subchapter. A transfer of a well from one entity to another entity under common ownership is a transfer for purposes of this section." Tex. Nat. Res. Code § 91.107 (emphasis added).

[15] 16 TAC § 3.78(j) (Well or Lease Transfer):

(1) **The Commission shall not approve a transfer of operatorship submitted for any well or lease unless the operator acquiring the well or lease has on file with the Commission financial security in an amount sufficient to cover both its current operations and the wells or leases being transferred.**

(2) Any existing financial security covering the well or lease proposed for transfer shall remain in effect and the prior operator of the well remains responsible for compliance with all laws and Commission rules covering the transferred well until the Commission approves the transfer.

(3) A transfer of a well or lease from one entity to another entity under common ownership is a transfer for the purposes of this section.

controls. WELC is reading its proposed acquisition approval requirement into the enabling statute where that requirement does not exist.

107. Moreover, OCD's ability to assert preclearance authority over acquisitions would be subject to the constraints of the nondelegation doctrine and the ultra vires doctrine.

108. The nondelegation doctrine requires that OCD's authority must be exercised within the framework of the Act,[16] which, as explained above, does not extend to OCD possessing preclearance authority over acquisitions.

109. Similarly, the ultra vires doctrine also prohibits OCD from exceeding its authority as outlined in the Act,[17] which currently does not permit OCD to possess preclearance authority over acquisitions.

110. Numerous unintended legal, administrative, and commercial consequences would flow from unlawfully allowing OCD to exercise authority over acquisitions.

111. From a legal perspective, requiring pre-approval of financial assurance before drilling or acquisitions will likely create administrative bottlenecks and timing concerns via delayed development and transaction closings, overburdening OCD's already limited staff and systems, and developing inconsistencies for pending financial assurance (especially for new entrants or smaller entities).

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[16] "The Legislature may not vest unbridled or arbitrary authority in an administrative body . . . and must provide reasonable standards to guide it. This is because legislative power cannot be delegated, and the Legislature cannot confer upon any person, officer, or tribunal the right to determine what the law shall be. This is a function which the Legislature alone is authorized under the Constitution to exercise. This is not to say, of course, that the Legislature is precluded from delegating the implementation of a legislatively determined scheme, policy, or purpose. Rather, what the Legislature cannot do is delegate the right to determine, in the first instance and wholesale, what that scheme, policy, or purpose will be." *Unite N.M. v. Oliver,* 438 P.3d 343, 346 (N.M. 2019).

[17] "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The Oil and Gas Act gives the Commission and the Division the two major duties: the prevention of waste and the protection of correlative rights." *Santa Fe Exploration Co. v. Oil Conservation Comm'n,* 835 P.2d 819 (N.M. 1992) (establishing that OCD's actions must be consistent with its statutory duties as outlined in the Act).

112. From an administrative perspective, the language in proposed 19.15.8.9(A) NMAC creates ambiguity and implementation risks. Specifically, the terms "proposed drilling," "furnished," and "appropriate" are all ambiguous, give OCD excessive enforcement discretion, do not provide the regulated community with notice of the scope or requirements, nor give OCD an intelligible principle to follow in the exercise of its authority. It is unclear what constitutes a "proposed" acquisition, when a financial assurance submission is "furnished" or deemed "appropriate," and whether OCD will reject a drilling permit if financial assurance is being processed but not yet finalized.

113. From a commercial perspective, limiting acquisitions through 19.15.8.9(A) NMAC (without legal authorization as discussed above) will create barriers to entry for non-operators, smaller companies, and new market entrants, as well as greater financial burdens on smaller companies, which in turn can lead to bankruptcies. The unauthorized regulation will also stall capital mobility by reducing production and investment, in turn delaying drilling, production, and transactions, and leading to reduced royalty payments to the government. I would anticipate a chilling effect on farm-ins, joint ventures, asset transfers, acquisitions of distressed or legacy assets, even for cleanup purposes, resulting in an increase in stranded assets and a reduction in basin liquidity. Transactions that I have been a part of take several months, sometimes years, can progress with multiple bidding parties, and sometimes entice new entrants into a basin. Such a pre-clearance requirement would deter such parties from evaluating potential transactions and reduce competition and transferability of property for New Mexico.

114. Additionally, as previously mentioned, in at least one transaction that I was a part of, the purchaser went to great lengths for bonding, etc., after such transaction took place during a transition period. Further, the proposed language goes so far as to insert the OCD into transfers of

property, whether or not they include the operations of said property. The amount of non-operated working interest or royalty interest transfers that take place would be completely overwhelming, in addition to being outside the jurisdiction of the OCD.

115. Accordingly, WELC's proposed addition to the end of 19.15.8.9(A) NMAC constitutes an overreach of OCD's authority under the Act, which exceeds the limits of OCD's statutory authority. Neither the Commission nor the OCD possesses statutory authority to adopt the amendment to 19.15.8.9(A) NMAC because the amendment exceeds the OCD's statutory authority. To allow such overreach would lead to a myriad of legal and commercial consequences, in turn opening the floodgates to litigation surrounding these issues.

116. Accordingly, I recommend that the Commission reject the WELC amendment as drafted as an ultra vires amendment which improperly extends OCD's jurisdiction into property acquisition transactions, risks regulatory overreach, and introduces substantial market and administrative harm. If the Commission proceeds with adding to 19.15.8.9(A) NMAC a limitation on what activities an operator may not proceed with absent OCD's approval that the operator is in compliance with applicable financial assurance requirements, then those activities should be limited to "operational activities" to align with OCD's limited statutory authority and other limitations set forth above. In the event the Commission does not wholly strike this proposal as I recommend, I propose alternative language reflected in the proposed amendments attached as **Exhibit A** to NMOGA's Prehearing Statement.

B. "Waste Prevention Requirements" – 19.15.5.9(A)(4)-(5) NMAC

117. WELC proposes amending 19.15.5.9(A) NMAC, which serves as a threshold test for permitting, transfers, and other regulatory functions, to add criteria under which an operator is considered "in compliance" based on financial assurance, absence of violations or unpaid penalties, and the number of noncompliant wells.

118. WELC proposed adding two new compliance criteria under subsections (4) and (5), requiring operators to currently meet the requirements of 19.15.25.8 NMAC (the inactive well rule)[18] and 19.15.27(8)(A) NMAC (which prohibits wasteful venting and flaring during drilling, completion, or production operations and establishes a performance-based general duty to maximize gas capture and allows venting or flaring only under certain exceptions like safety or technical infeasibility),[19] respectively.

119. Both proposals are redundant, would increase the likelihood of enforcement ambiguity, and are inflexible. In my opinion, if changes must be made to the current waste prevention rule, they should be limited, specific, and incorporate flexibility for transition and variance.

120. My overarching concern for WELC's proposals is that the amendments would expressly reference other unrelated and distinct provisions and insert them within the waste prevention requirements.

121. Compliance with 19.15.27.8 NAMC is already mandatory under existing rules. Including it in 19.15.5.9(A) NMAC is not only redundant and unnecessary, but it also risks improperly barring new entrants to the basin. New operators may acquire noncompliant wells and

[18] 19.15.25.8 NMAC (Wells to Be Properly Abandoned):

> A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

[19] 19.15.27.8 NMAC (Venting and Flaring of Natural Gas):

> A. Venting or flaring of natural gas during drilling, completion, or production operations that constitutes waste as defined in 19.15.2 NMAC is prohibited. The operator has a general duty to maximize the recovery of natural gas by minimizing the waste of natural gas through venting and flaring. During drilling, completion and production operations, the operator may vent or flare natural gas only as authorized in Subsections B, C and D of 19.15.27.8 NMAC. In all circumstances, the operator shall flare rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety, and venting is a safer alternative than flaring.

need time to bring them into compliance. A strict standard could punish otherwise responsible operators and discourage acquisitions that help improve legal compliance. For example, an entity may seek to enter the basin by virtue of acquiring a well that is then inactive, but for which it has plans to develop (either that same well in different zones) or the underlying lease. Said well may not then currently have proper flaring and venting set up, but the new owner/operator intends to put all of those things into place. I myself have done that—and gone on to oversee pipelines being laid and eventual horizontal development of the lease.

122. Inclusion of other provisions could also affect permits or transfers, which risks transforming the effect of the regulation and creating new enforcement requirements not originally intended when promulgated and which did not undergo mandatory rulemaking procedures.

123. Furthermore, 19.15.27.8(A) NMAC is a broad policy provision. From a legal perspective, it is inadvisable to cross-reference broad policy rules like 19.15.27.8 NMAC into binary compliance tests with yes or no answers. Doing so lacks nuance and may create enforcement confusion and lead to subjective enforcement, legal ambiguity, and disproportionate consequences for good-faith operators.

124. I recommend that the Commission not adopt either proposal and instead preserve the existing framework of 19.15.5.9(A) NMAC, which effectively governs operator compliance based on: financial assurance, timely penalty payments, absence of recent violation orders, and thoughtful tolerance for noncompliant wells.

125. If changes must be made, they should be limited, specific, and incorporate flexibility for transition and variance. Specifically, there should be a compliance grace period for newly acquired assets, exceptions for minor or temporary noncompliance, and a clarification that

references other rules (e.g., 19.15.27.8 NMAC) only apply to operator-owned wells, not inherited third-party compliance issues.

VI. Proposed Operator Registration and Change of Operator Restrictions

A. "Operator Registration" – 19.15.9.8(B)-(E) NMAC

i. Proposal to Deny Operator Registration and Prevent Commencing Operations if Out of Compliance with Other States and Federal Law

126. The current requirements to register with OCD and obtain an Oil and Gas Reporting Identification Number (OGRID) from OCD are codified at 19.15.9.8(B)-(E) NMAC.

127. WELC proposed adding new disclosure and certification requirements for an operator to be deemed in compliance, but it fails to introduce any materiality thresholds for "non-compliance" under existing grounds for denying operator registration and a newly proposed subparagraph (B) adding requirements that must be met before commencing operations.

128. Most notably, WELC proposes adding a required affirmative certification by an officer, director, or partner that the new operator is in compliance with all federal and state oil and gas laws and regulations in each state where that operator does business.

129. The OCD lacks statutory authority to enact parts of WELC's proposal. The OCD derives its powers from the Act, which limits its regulatory scope to preventing waste, protecting correlative rights, and enforcing environmental rules of the State of New Mexico. There is no statutory provision authorizing the OCD to demand certification of compliance with the laws of other states. Such a requirement would be ultra vires, exceeding delegated authority, as agencies cannot act beyond their enabling statutes.

130. While certification with federal programs and regulations is not uncommon for registration and renewals in the rules of New Mexico Agencies, the OCD's jurisdiction is territorially limited to the State of New Mexico by the Act. Requiring certification for out-of-state

operations violates principles of state sovereignty and federalism, as a state agency cannot exercise extraterritorial authority over activities in other jurisdictions. This could infringe on other states' regulatory domains and lead to conflicts, rendering the requirements unenforceable.

131. The proposal by WELC is also an administrative overreach. Imposing a broad certification obligation constitutes overreach by expanding OCD's role beyond in-state enforcement to policing nationwide compliance. This burdens operators with vague, potentially unlimited reporting on unrelated activities. While the Act allows the OCD to examine records, collect data, and provide for the keeping of records and reports relating to the ownership of oil and gas properties, the Act does not allow for the result of those examinations, inquiries, and records to serve as a barrier to commercial transactions within the state. The OCD may not enforce or condition operator registration on compliance with laws outside of New Mexico. Further, it could violate the Due Process Clause of the Fourteenth Amendment by being overly vague and burdensome, lacking fair notice of what "compliance" entails across varying federal and state laws. Operators may face permit or transfer denials based on unrelated or unverified out-of-state issues without adequate opportunity to contest, leading to arbitrary deprivation of property interests. Additionally, certifications of nationwide compliance are unreasonable given minor, often technical violations in complex regulatory frameworks.

132. For all these reasons, I recommend striking the provision mandating federal and out-of-state compliance in its entirety under both proposed 19.15.9.8(B) and (C).

ii. Proposal to Require Disclosure of Whether a Past 25% or More Interest Owner Was "Noncompliant" in Multiple Provisions

133. WELC also proposed requiring mandatory disclosure of whether any current or past officers or owners with more than 25% interest were affiliated with non-compliant operators in the past five years. This diverges from existing rules that allow an operator to deny registrations when

the applicant or a *present* owner of interest of 25% or more of an existing entity is not currently in compliance with the division.

134. WELC's proposal would extend that requirement and its newly proposed 19.15.9.8(B) NMAC, which would govern requirements prior to commencing operations, as well as adding to the change of operator provision in 19.15.9.9 NMAC, which I discuss below, to encompass past operator noncompliance.

135. WELC's proposal is unrealistic, burdensome, and a standard that is both unruly and unenforceable, and will result in substantial increases in compliance costs.

136. WELC's proposal inhibits career mobility and economic opportunity, severely restricts the ability of experienced professionals to move freely within the industry, creates risk-averse hiring and investment behavior, and disincentivizes otherwise qualified individuals from participating in new ventures.

137. WELC's proposals are punitive in nature and seek to sanction operators and business owners permanently if, at any one time, compliance issues arise in excess of the 25% ownership threshold. WELC's proposals seek to weaponize past and present compliance to prevent future transactions in New Mexico for all parties associated with the operators, not just the parties exercising control and decision-making, thereby bringing the long-term outlook of oil and natural gas activity in New Mexico to a halt due to the impending threat of a permanent ban imposed by the proposals should compliance issues arise.

138. Moreover, imposing duties to track compliance of prior entities over a five-year period is unmanageable and potentially inaccurate, and will likely create barriers for new ventures by attaching liability to passive or former ownership interests. This suggestion is wholly impractical. Implementing this requirement would impose significant administrative burdens on

operators, requiring extensive investigations into the personal and professional histories of officers and owners, including tracking changes in ownership, affiliations with potentially hundreds of entities across jurisdictions, and verifying compliance records over five years. For large or publicly traded companies, where ownership stakes fluctuate frequently, this could involve costly third-party audits or database searches without standardized federal or state repositories for such data, leading to inconsistent and error-prone reporting. For smaller entities, this will be incredibly costly. Further, a lot of the owners are likely to be entities, and the information about the individuals involved may be extremely difficult to access.

139. The five-year (5) lookback certification also violates due process and is vague. Such a mandate could violate the Due Process Clause of the Fourteenth Amendment by being overly vague, lacking clear standards for what constitutes "affiliation" or "non-compliance," depriving operators of fair notice, and risking arbitrary enforcement. The Supreme Court has challenged similar "bad actor" provisions that rely on historical conduct without clear relevance to present qualifications on these grounds, potentially leading to unconstitutional deprivations of property interests in permits or operations without adequate procedural safeguards like hearings.[20] The Supreme Court has held the same in facial challenges, arguing vagueness in defining disqualification criteria.[21]

[20] *See, e.g., Schware v. Board of Bar Examiners*, 353 U.S. 232, 241 (1957) (reversing New Mexico's denial of bar admissions based on applicant's past political affiliations and arrests as unconstitutional because **denying membership based on past political associations and arrests alone, without evidence of current unfitness, violated due process**) ("The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense."); *see, e.g., Wieman v. Updegraff*, 344 U.S. 183 (1952) (invalidating Oklahoma law that required public employees to affirm they had never been affiliated with subversive organizations because **guilt by association without knowledge or intent violated due process**); *see also Goldberg v. Kelly,* 397 U.S. 254 (1970) (establishing that property interests like licenses and benefits require procedural due process before deprivation).

[21] *See, e.g, Johnson v. United States,* 576 U.S. 591, 606 (2015) (holding residual clause of Armed Career Criminal Act (ACCA), which imposes enhanced penalties on defendants with three prior convictions for "violent felonies," was **unconstitutionally vague in violation of the Due Process Clause of the Fifth Amendment**

140. Similarly, the reference to "non-compliant" is also vague and makes no reference to what level of non-compliance is applicable here. I recommend language be added clarifying that noncompliance must rise to the level of a final OCD order after notice and hearing to be considered noncompliance for purposes of this operator registration provision. Further, conflicts between compliance with state laws and federal laws will result in scenarios where operators may demonstrate compliance in the federal jurisdiction but not in the state jurisdiction, and vice versa. The ambiguity of "non-compliant" as present in WELC's proposals is ripe for exploitation and a likely mechanism for delay.

141. In my opinion, this requirement could chill investment by reducing buyers' willingness to acquire assets and hiring by penalizing experienced individuals for prior affiliations. Operators flagged for past trivial compliance issues in other states may be unfairly penalized in New Mexico based on this rule, as proposed. By forcing disclosure of potentially unrelated past affiliations, this provision would deter investment and entry into New Mexico's market, as operators fear denials over minor or unproven issues (or fear of being unable to comply for lack of access to information). This could reduce economic activity in a state reliant on the industry.

142. Accordingly, I recommend striking the proposed requirement to mandate disclosure if any current or past officers or owners with more than 25% interest were affiliated with non-compliant operators in the past five years. Or, at a minimum, limiting the disclosure requirement to individuals who exercised operational control at the time of a final adjudicated material violation. Additionally, the 25% threshold should be modified to exclude passive financial investors without managerial authority. Additionally, I recommend shortening the five-year look-

because it failed to give ordinary people fair notice of the conduct it punished and invited arbitrary enforcement by requiring judges to speculate about the "ordinary case" of a crime and its risk level).

back period to one year to allow operators to cure compliance issues in a timely manner and to be eligible for transactions within a reasonable time period after coming back into compliance.

B. New Certification of Compliance with Other State and Federal Laws Required for Change of Operator Approval – 19.15.9.9(B) NMAC

143. The current version of 19.15.9.9(B) NMAC defines when a change of operator occurs, how it's reflected in OGRID numbers, the information required in Form C-145s, and states when the Division may deny a change of operator request.

144. WELC proposed adding to 19.15.9.9(B) NMAC all the same requirements it proposed adding to 19.15.9.8(B)-(E) NMAC discussed immediately above. My analysis and recommendations set forth above, legal overreach, jurisdictional conflicts, impractical and onerous disclosures, and the chilling effect on transactions and market mobility all apply equally here.

145. In addition, WELC proposed adding a plugging and abandonment plan certification requirement to 19.15.9.9(B) NMAC and giving OCD the ability to request additional records pertaining to operator solvency and ability to perform required decommissioning, provided such requests are narrowly tailored and reasonably necessary.

146. WELC also proposes requiring annual certifications for existing operators regarding compliance with all current/past leadership and ownership.

147. WELC attempts to stifle transfer of operatorship by raising the bar for acquiring operatorship, particularly for smaller companies, by judging the financial capability of applicants and by discriminatory screening of applicant ownership (see 25% discussion above) and by additional high-level managerial certifications that seek to hold officers hostage for plans, such as plugging and abandonment plans, that are subject to a high degree of change over time.

148. Requiring new certifications by operator officers is not outside of the OCD's authority; however, piling on inefficient, redundant, and excessive reports likely means that the

OCD will serve as a gatekeeper in regard to who may or may not become operators in the future. Such prohibitions on the transfer of operatorship run afoul of the New Mexico Constitution's ban on the impairment of obligations of contracts. Entering into an agreement for a transfer of operatorship, whether acquiring or transferring, is a cognizable contractual right and is protected from intrusion or overreach by both the Legislature and state agencies and regulations that act under authority of the legislative statutes.

149. WELC's proposals function to impair the contractual rights of buyers and sellers of oil and gas assets within the state who may enter into purchase and sale agreements or assignments for well transfers, but may be prevented from completing the transaction due to the certification and obligations put forth by WELC's proposals. The proposals substantially impair the operator's contract rights by imposing new legal conditions not contemplated when the agreement was executed or authorized by law.

150. The WELC proposals are intended to act as a remedy to protect the state from unfit operators, but by so doing, they also deny the rights that accrue by contract. The same is true for its proposals under 19.15.9.8(B)-(E), and 19.15.9.9, which I discuss below.

C. New Grounds for Change of Operator Denial – 19.15.9.9(C) and (E) NMAC

151. Under the current 19.15.9.9(C) NMAC, the Division may currently deny a change of operator if they are not in compliance with 19.15.5.9(A) NMAC or if the new operator is acquiring facilities that are subject to an existing compliance order and has not entered into an agreed schedule for bringing the site into compliance.

152. As proposed, the revisions to 19.15.9.9(C) NMAC would expand OCD's discretion to deny a change of operator request under the following circumstances.

153. Under proposed 19.15.9.9(C)(3)-(4) NMAC, OCD can deny a change of operator if any officer, director, or 25% percent or more interest holder who is or was in the past five (5) years involved with an entity not currently in compliance with 19.15.5.9(A) NMAC.

154. My analysis and concerns identified above are also true here, where OCD again attempts to add the same unnecessary and overly burdensome disclosure and compliance requirements I discussed above in Part VI.A.-B. of my testimony. For those reasons, I recommend striking these additions. These requirements are overly broad, unworkable in practice, and impose excessive due diligence and compliance burdens on companies and individuals.

155. Under proposed 19.15.9.9(C)(5) NMAC, OCD can deny a change of operator if an applicant is not properly registered or in good standing with the New Mexico Secretary of State.

156. In my opinion, this addition needs to be revised to refer only to legal registration and not "good standing," which is vague and may be misunderstood or inconsistently applied.

157. Under proposed 19.15.9.9(C)(6) NMAC, OCD can deny a change of operator if certifications or disclosures show a "substantial risk" that the new operator can't meet plugging and abandonment requirements.

158. I recommend striking this addition as overly broad, unworkable, and imposing unreasonable compliance requirements on regulated parties.

159. Finally, a new subsection (E) is proposed, which would prohibit the transfer of non-compliant wells or facilities unless brought into compliance or a compliance schedule is approved.

160. I recommend this requirement be amended to require either the seller or buyer to submit a compliance plan only where there is a material and ongoing compliance issue, using clear, existing definitions of "non-compliance."

That 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. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico.

Prepared by:

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

Name: Clayton Sporich

Respectfully submitted,

Dated August 8, 2025.

By: _____

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APPENDIX A

Curriculum Vitae

Clayton Sporich

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PROFESSIONAL EXPERIENCE

Tap Rock Resources, LLC, June 2016 – February 2024 Dallas, TX/Denver, CO

Executive Vice President – Land & Legal

Vice President – Land & Legal

- Co-found Tap Rock Resources, LLC, Tap Rock Resources II, LLC, Tap Rock Resources III, LLC and Tap Rock NM10 Minerals, LP (collectively, "Tap Rock") with a commitment from private equity firm, NGP
- Lead and managed the Land, Legal, Regulatory, Land Administration and HR Departments during my entire tenure with Tap Rock, with an in-house team of ~20 people
- Coordinated the business development effort to acquire ~40,000 acres in the Delaware Basin
- Secretary on the board for Tap Rock entities, and was a participant in every board meeting for the entities
- Negotiated ~$250MM DrillCo with Benefit Street Partners for the early development of Tap Rock wells
- Legal review and negotiation for ~$1B revolving borrowing base, with up to 12 different banks
- Successfully divested assets to Civitas Resources for ~$2.5B and to multiple private buyers for ~$1.2B

Headington Energy Partners, LLC, November 2014 – June 2016 McKinney, TX

Staff Attorney & Landman

- Business development land lead, where I met with various Permian brokers and worked on bringing prospects to upper management
- Draft, review and negotiate agreements including: master service agreements, confidentiality agreements, independent contractor agreements, purchase and sale agreements, joint operating agreements
- Manage corporate and regulatory filings
- Supervise field Landmen and outside attorneys, for both leasing acquisition and title work
- Sole counsel for an active and growing E&P company
- Provide legal support to Land and Operations Departments

Matador Resources Company, October 2013 – November 2014 Dallas, TX

Senior Staff Attorney

Landman

- Identify and research properties for potential land acquisition and securing drilling locations
- Review, draft and negotiate agreements for upstream and midstream operations including, gathering agreements, processing agreements, gas purchase agreements, joint operating agreements, surface use agreements, production sharing agreements, purchase and sale agreements and oil and gas leases
- Work with operations, geology, and legal teams to facilitate a development plan for area of responsibility
- Ensure compliance with state and federal rules and regulations governing the regulation of oil and gas operations
- Prepare and submit various state and federal filings, including highway right-of-way unit declaration for State of Texas and potash applications with the BLM
- Represent the Land department in regulatory hearings in New Mexico and Texas
- Interpret laws, rulings and regulations for the company

Chesapeake Energy, October 2010 – October 2013 Fort Worth, TX

Landman
Associate Landman
District Lease Analyst

- Coordinate with geology, operations, and permitting teams to facilitate a development plan for area of responsibility
- Educated community and neighborhood groups on basic tenets of oil and gas drilling in the Barnett Shale
- Experienced with various aspects of permitting wells with the Texas Railroad Commission including representing the company on Rule 37 hearings
- Draft, negotiate and interpret complex urban oil and gas leases, joint operating agreements, surface use agreements, pooling designations, assignments, and farmout agreements
- Assisted management with $100MM divestiture of company assets
- Managed budgets for acquisitions and development

Glazer's Distributors, May 2004 – December 2006 Farmers Branch, TX

Sales Representative

- Continually achieved market growth distribution and sales goals
- Built and maintained account relations through rapport and consistent customer service
- Coordinated strategic business plans between account base and suppliers

PROFESSIONAL LICENSES, MEMBERSHIPS AND AWARDS

- Admitted to the State Bar of Texas, November 2011
- State Bar of Texas, Oil Gas and Energy Resources Law Section
- D CEO 2021 Corporate Counsel Award, Outstanding General Counsel, Small Legal Department, 2021

EDUCATION

South Texas College of Law Houston, TX

Juris Doctor, December 2009

- South Texas Advocacy Scholarship
- Board of Advocates Officer 2008 – 2009
- Board of Advocates Director 2007 – 2008
- Garland Walker Intramural Mock Trial Tournament
- Spurgeon Bell Memorial Intramural Moot Court Tournament
- T. Gerald Treece Mock Trial Academy
- National Moot Court Competition

University of Mississippi Oxford, MS

Bachelor of Business Administration, August 2003

- Major: Real Estate and Finance
- Chancellor's Honor Roll
- Dean's Honor Roll
- Castle Hills Merit Scholarship
- Academic Excellence Scholarship
- George F. Holmes Scholarship

CERTIFICATE OF SERVICE

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

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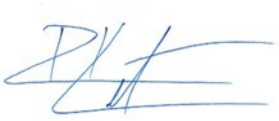

Rachael Ketchledge