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

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

WESTERN ENVIRONMENTAL LAW CENTER, et al. PETITIONERS.

CASE NO. 24683

OXY's PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted on behalf of OXY USA Inc. ("Oxy"), through undersigned counsel, as required by the Amended Prehearing Procedural Order issued in this matter and pursuant to NMAC 19.15.3.11.B.

INTRODUCTION AND SUMMARY OF POSITION ON PROPSOED RULES

Section 70-2-14 of the Oil and Gas Act authorizes the Oil Conservation Division/Commission to require New Mexico to provide reasonable financial assurance to cover the costs of plugging wells on state and fee lands.[1] Subsection A of this statute contains restrictions on this authority that must be kept in mind when reviewing WELC's proposed changes. Subsections B through D authorize forfeiture proceedings against these funds when a well is not properly plugged and abandoned by an operator. Subsection E further authorizes suit against an operator when the financial assurance is insufficient to cover the cost of plugging wells on state and fee lands. Accordingly, the financial assurance requirements exist to address the unusual circumstance when an operator does not have the assets to fulfill plugging obligations for wells on state and fee lands that have no further value.

Oxy supports reasonable and administratively efficient regulations governing financial assurance requirements to ensure adequate funds are available to cover the plugging of wells on state or fee lands in the event an operator becomes insolvent. However, as noted below, WELC has proposed a financial assurance structure that departs

[1] The financial assurance required for wells on federal lands are governed by federal regulations.

substantially from the current rules and does not account for the legislative restrictions in Section 70-2-14(A), particularly the request that the Commission create a new category of financial assurance for active wells that WELC seeks to define as "marginal."

PROPOSED CHANGES TO 19.15.8 (FINANCIAL ASSURANCE - WELC EX. 1-C)

A. The Current Rules

Current Rule 19.15.8.9 requires financial assurance for "active wells" (subpart C) and "inactive wells" (subpart D).[2] For "active wells," current subpart 8.9(C) provides New Mexico operators with two financial assurance options:

- The first option is a one-well financial assurance that starts at $25,000 plus $2 per foot of projected depth.
- The second option allows an operator to elect a blanket financial assurance in a graduated amount based on four ranges of active wells managed by the operator (1-5 wells, 11-50 wells, 51-100 wells, and over 100 wells). These existing categories recognize and stay within the $250,000 statutory cap for blanket financial assurances set forth in Section 70-2-14.

Subpart 8.9(D) addresses the financial assurance for "inactive wells," which includes wells that "have been in temporarily abandoned status for more than two years." The existing rule does not apply to wells that have been in approved temporarily abandoned status for less than two years because Section 70-2-14(A) authorizes increased financial assurance only after a well "has been held in temporarily abandoned status for more than two years…"[3] Existing subpart 8.9(D) provides similarly structured increased financial assurance options:

[2] "Inactive wells" are essentially defined by the timelines in current Rule 19.15.25.8.B for wells to be properly plugged and abandoned.

[3] Section 70-2-14(A) states: "The oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status."

- The first option allows a one-well assurance that commences at $25,000 plus $2 per foot of projected depth.
- The second option allows an operator to elect blanket financial assurance in graduated amounts based on four ranges of inactive wells managed by the operator (1-5 wells, 6-10 wells, 11-25 wells, and over 25 wells).

Oxy does not object to WELC's proposal to increase the required financial assurance for active or inactive wells. However, WELC's proposal to create a new category of financial assurance for what it defines as "marginal wells" clearly exceeds the statutory restrictions in Section 70-2-14(A). WELC's further effort to remove the two-year period provided in Section 70-2-14(A) for wells in temporarily approved status to remain under an operator's active blanket financial assurance is also improper and should be rejected.

B. The Commission Is Not Authorized To Adopt WELC's Proposal To Require One-Well Financial Assurance for All Active "Marginal" Wells

WELC seeks to create a definition of "marginal well" and impose a new financial assurance requirement for these active wells that (a) removes them from the $250,000 blanket financial assurance option provided in Section 70-2-14(A), and (b) requires instead a "one-well" financial assurance at $150,000 "for each marginal well." See WELC Ex. 1-A at p. 6 (proposing a definition of "marginal well") and WELC Ex. 1-C at p. 2 (proposed 19.15.8.9.D). WELC's proposal is not authorized by and contrary to the unequivocal restrictions in Section 70-2-14(A).

Section 70-2-14(A) has been periodically modified as needed by the legislature, with the most recent amendments in 2015 and 2018. The 2015 amendment created a category of financial assurance for "temporarily abandonment status wells" and authorized this new category of financial assurance to exceed $50,000. At the time of this amendment, the statute did not allow financial assurance to exceed $50,000. This amendment therefore specifically authorized financial assurance for "temporarily

abandonment status wells" to exceed the general statutory restriction. In 2018, the legislature increased the general statutory restriction on financial assurance by a factor of five, increasing the authorized amount from $50,000 to $250,000. Accordingly, the statute today instructs:

- An operator is authorized to elect a "blanket plugging financial assurance" that cannot exceed $250,000;
- The "blanket plugging financial assurance for temporarily abandonment status wells" can exceed $50,000; and
- "One-well plugging financial assurance" is authorized for a well that "has been held in temporarily abandonment status for more than two years" but an operator has the option to place these wells under blanket financial assurance.[4]

WELC's proposed financial assurance for "active wells" recognizes and remains within the $250,000 restriction adopted by the legislature in 2018. *See* WELC Ex. C-1 at p. 2, proposed subpart C(2) (authorizing operators to post $250,000 blanket financial assurance for active wells). However, in an effort circumvent this statutory restriction for active "marginal" wells, WELC asks the Commission to:

(a) define a "marginal well;"

(b) remove these active wells from the $250,000 blanket financial assurance authorized by Section 70-2-14;

(c) require a "one-well" plugging financial assurance in the amount of $150,000 "for each" of these active "marginal" wells; and

(d) if "over 15 percent" of an operator's wells are considered "marginal or inactive, or a combination thereof," then that operator must provide financial assurance in

[4] Section 70-2114(A) states: "The oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status."

> the amount of $150,000 "for each" of the wells registered to that operator, including active wells producing above what WELC considers a "marginal" threshold.

See WELC Ex. 1-A at p. 6 (proposing a definition of "marginal well") and WELC Ex. 1-C at p. 2 (proposed 19.15.8.9.D).[5] WELC proposal to carve out this exception to the statutory restrictions on financial assurance is not authorized by the legislature and should not be adopted.

First, the legislature has instructed that operators may choose a "blanket plugging financial assurance" that shall not exceed $250,000. NMSA, 1978, §70-2-14(A).[6] Unlike 2015, when the legislature authorized "temporarily abandonment status wells" to exceed the statutory restriction on financial assurance, the legislature has not authorized the Commission to exceed this restriction for active "marginal" wells. Under WELC's proposal, if an operator has active wells that are considered "marginal," or when an operator's inactive plus "marginal" wells exceed 15%, then that operator is no longer allowed to keep these active wells under the $250,000 blanket financial assurance. Instead that operator must provide one-well financial assurance in the amount of $150,000 "for each" well. WELC's proposal exceeds the statutory restriction on financial assurance without statutory authority.

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[5] The opening clause to WELC's proposed subpart D on page 2 of WELC Ex. 1-C states: "Notwithstanding the provisions in Subsection C(2) in this Section," which references the blanket financial assurance of up to $250,000 authorized by Section 70-2-14. The remainder of proposed subpart D requires a "one well plugging financial assurance" in the amount of $150,000 "for each marginal well" and requires one-well bonding on all wells registered to an operator if that operator reaches the proposed 15% threshold.

[6] Section 70-2-14(A) states: "The oil conservation division shall establish categories of financial assurance after notice and hearing. 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)".

Second, the legislature has not authorized the Commission to remove active wells from the $250,000 blanket financial assurance and require "one-well" financial assurance for each of these active wells. Instead, the legislature has limited the "one-well" financial assurance authority to a "well that has been held in a temporarily abandoned status for more than two years." NMSA 70-2-14(A). If, as WELC suggests, the Commission can always require one-well financial assurance for active wells, then the $250,000 financial assurance restriction and the specific one-well financial assurance authority set forth in Section 70-2-14 have no meaning and are rendered superfluous.

As noted in the statement filed by Tiffany Wallace, any concerns with "marginal wells" can be addressed by the notice of "no beneficial use" rule proposed by WELC under 19.15.25. *See* WELC Ex. 1-E at p. 1. As proposed by WELC, a notice of no beneficial use is triggered "if, in a consecutive 12-month period, the well has not produced at least 90 days and has not produced at least 90 barrels of oil equivalent." *Id.* This notice and subsequent required response by the affected operator can address any concerns with "marginal" wells without running afoul of the legislative restrictions in Section 70-2-14(A).

C. The Commission Is Not Authorized To Adopt WELC's Proposal To Remove The Two-Year Period For Temporarily Abandoned Status Wells To Remain Under The $250,000 General Blanket Financial Assurance.

Oxy does not object to WELC's proposal to increase the financial assurance for inactive wells. However, WELC's proposed changes to current 19.15.8.9.D (addressing inactive wells) do not comply with Section 70-2-14(A).

Current rule 19.15.8.9.D provides:

> D. Inactive wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC *that have been in temporarily abandoned status for more than two years* or for which the operator is seeking

> approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories: [emphasis added]

The italicized language in the current rule complies with Section 70-2-14(A), which authorizes increased financial assurance "on any well that has been held in a temporarily abandoned status for more than two years." In adopting this rule in 2005 the Commission recognized this statutory restriction, which rests on the fact that a well in approved temporary abandoned status has been vetted by the Division and can therefore remain covered by the $250,000 blanket financial assurance authorized by Section 70-2-14(A). This vetting process includes the submission of evidence and testing on the casing and cement required by current Rule 19.15.25.13 and 19.15.25.14.

WELC's proposed changes to subpart D removes the italicized language and thereby requires increased financial assurance for wells in approved temporary abandoned status immediately. *See* Ex. 1-C at p. 2 (proposed subpart E). This approach is contrary to the legislative directive in Section 70-2-14(A) allowing wells in approved temporary abandoned status to remain under the $250,000 general blanket financial assurance for the first two-year period.

D. WELC's Proposed CPI Adjustment Cannot Apply To The $250,000 General Blanket Financial Assurance Authorized By Section 70-2-14(A).

WELC has proposed a subpart G that authorized the Division to increase the "financial assurance amounts" proposed by WELC based upon changes to the consumer price index. *See* Ex. 1-C at p. 2, proposed subpart G. However, WELC's proposed CPI adjustment cannot apply to blanket financial assurance that is already at the statutory cap of $250,000 under Section 70-2-14 (A). Oxy's modifications therefore limit the applicability of the CPI adjustment to the financial assurance for inactive wells and wells in a temporarily abandoned status for more than two years.

WELC's PROPOSED CERTIFICATIONS IN 19.15.9 FOR OPERATOR REGISTRATION AND TRANSFER OF ASSETS (WELC EX. 1-D)

Oxy supports rule revisions designed to ensure new operators seeking authority to operate, and existing operators acquiring new assets in New Mexico, do not have a history of financial assurance forfeitures in other states. As noted in the self-affirmed statement of Tiffany Wallace, Oxy has proposed modifications to 19.15.9.8 (operator registration) and 19.15.9.9 (Change of Operator) that is the product of discussions with WELC and the Division. These modifications provide a certification that can be met by large operators, is administratively efficient, and provides the Division with information to gauge whether an operator has had difficulty meeting financial obligations in other states.

WELC has further proposed to modify existing 19.15.9.8.D to require all operators to certify to the Division "annually" whether "an officer, director partner or person with an interest exceeding 25 percent" was involved in a similar capacity with an operator not in compliance current rule 19.15.5.9.A. *See* Ex. 1-D at p. 2 (proposed 9.8.E). Tiffany Wallace's statement explains why this proposed annual certification by all operators in New Mexico is unwarranted and will place an unnecessary burden on the Division to monitor and review this annual requirement.

WELC's PROPOSED "PRESUMPTIONS OF NO BENEFICIAL USE" In 19.15.25 (WELC Ex. 1-E at p. 1)

Oxy supports the "Presumptions of No Beneficial Use" proposed by WELC under 19.15.25.9. *See* WELC Ex. 1-E at p.1. As explained by Tiffany Wallace, Oxy has discussed this provision with WELC and the Division and proposed a few modifications that are designed to avoid the unnecessary submission of categories of information that are repetitive or may not fit a particular circumstance.

WELC's PROPOSED AMENDMENTS TO 19.15.25 GOVERNING THE PLACEMENT OF WELLS IN A TEMPORARILY ABANDONMENT STATUS (WELC EX. 1-E AT P. 3)

Oxy supports reasonable and administratively efficient regulations governing the placement of wells in a temporary abandonment status. Current rule 19.15.25.12 authorizes the placement of a well in a temporary abandonment status for a period ranging from one to five years, depending on the circumstances. That initial period can be

extended at the Division's discretion. The current rules further require that the initial request and any extension requests must be supported with the evidence and testing on the mechanical integrity of the casing and cementing outlined in Rules 19.15.25.13 and 19.15.25.14.

As discussed by Oxy's witnesses Tiffany Pollack and Kelley Montgomery, Oxy believes any amendments to the current process must continue to afford the Division flexibility to address current, and future unknown, oil and gas recovery techniques that may require an inventory of temporarily abandoned wells over an extended period of time. Assuming an operator can continue to show that the subject wells retain mechanical integrity at appropriate intervals determined by the Division, there is no reason to arbitrarily cap the period of time they can remain in a temporary abandonment status to no more than 7 years as proposed by WELC. *See* WECL Ex. 1-E at p. 3 (last sentence of proposed subpart B).

A. Oxy's Elimination Of Unnecessary Mandatory Submissions

Oxy's modifications to WELC's proposal to amend 19.15.25.12 seek to provide the Division with an efficient administrative process, but avoid unnecessary, mandatory submissions that may not apply in a variety of circumstances. Of importance is that Oxy's modifications retain WELC's proposal to require an operator to initially:

- Provide the evidence and conduct the testing on the mechanical integrity of the casing and cement required by current Rules 19.15.25.13 and 19.15.25.14;
- Explain why the well should be placed in temporary abandonment and how the well will be put to beneficial use in the future;
- Provide a plan that describes the ultimate disposition of the well and the time period for that disposition;
- Provide the Division with any other information it deems appropriate, including a current and complete well bore diagram.

Oxy's proposed modifications further require any operator seeking an extension of approved temporary abandonment status to:

- Demonstrate the well casing and cement continue to meet the mechanical integrity requirements in Rules 19.15.25.13(B) and (C)

- Address why the well was not brought back to beneficial use or plugged and abandoned during the initial period of temporary abandonment;
- Address why the well should remain in temporary abandonment and how the well will be put to beneficial use in the future, and
- Provide the Division with any other information it determines appropriate.

Oxy's modifications will allow the Division to tailor the information required to the unique circumstances presented by a particular well. Oxy's modification will further provide the Division with flexibility to extend wells in a temporary abandonment status as warranted for planned development or other beneficial projects.

B. WELC's Proposal To Require An Adjudicatory Hearing And Impose A Two-Year Time Limit For Any Extension Of Temporary Abandonment Status In Unwarranted And Unnecessary.

WELC has proposed that (a) all requests for an extension of approved temporary abandonment status proceed to an adjudicatory hearing, (b) the Commission eliminate the longstanding requirement that an interested party demonstrate "standing" to intervene in an adjudicatory hearing, and (c) the Division is prohibited from extending the temporary abandonment status beyond an additional two-year period. *See* WELC Ex. 1-E at p. 3 (proposed subpart B).

As noted by Tiffany Wallace, the Division's current dockets for adjudicatory hearings are at capacity. There is no reason to further burden that docket with requests for an extension of an approved temporary abandonment status. Indeed, the testing costs required by current Rules 19.15.25.13 and 19.15.25.14, and WELC's proposed additions to those existing requirements, will allow the Division to continue to address extensions requests efficiently and effectively with the more appropriate administrative process. If warranted, the Division has the authority to move administrative applications to an adjudicatory hearing.

WELC's companion request that the Commission eliminate the requirement that an interested party demonstrate "standing" to intervene in an adjudicatory hearing is likewise unnecessary, inappropriate, and will further burden the Division's crowded hearing docket. The "standing" requirement was confirmed by the Commission in 2005 under Commission Order R-12327-A entered in Case 13482. After receiving evidence and public comments the Commission concluded:

> 7. One of the more controversial subjects concerned who could participate in cases before the Commission and Division. Some participants at the hearing wanted the Commission to allow all participants who had a substantial interest in the subject matter. The Commission did not adopt this standard because it would have to be interpreted and then perhaps reinterpreted by the courts in order to provide guidance to someone who wanted to initiate a case. The Commission determined that "standing" would be required to initiate a case. No definition of the term was provided, because court decisions continue to refine the term and should be relied upon to define standing requirements. Some participants in the rulemaking hearing argued that anyone should be able to bring a case. This proposal was rejected because it would in effect create a citizens' lawsuit provision and that was not provided for in the statutes defining the Commission's powers.
>
> 8. "Standing" is also required to intervene in a case, but in the event a person wanting to participate in a case was found not to meet the requirements for "standing" then the person could ask the Commission to be allowed to intervene in the case if the person requesting intervention could show the Commission the intervention was important to the mandates of the Commission. To be permitted to intervene the person would have to show they had special expertise or interest the Commission determines would be helpful to its decision-making process. The Commission, exercising its discretion, would make this determination on a case-by-case basis.

Order R-12327-A at p. 2. There is nothing unique about requests for an extension of a temporary abandonment status that warrants departure from the traditional "standing" requirement.

WELC has further proposed to tie the Division's hands by imposing an arbitrary two-year limit on any extension of an approved temporary abandonment status. *See* WELC Ex. 1-E at p. 3 (last sentence of proposed subpart B). WELC similarly seeks to prohibit the Division from approving temporary abandonment status for any well that has been inactive for more than three

years. *See* WELC Ex. 1-E at p. 3 (proposed subpart D(1)). For the reasons set forth in the statements filed by Tiffany Wallace and Kelley Montgomery, Oxy believes the Division should retain full discretion on the eligible wells and length of time for approved temporary abandonment status to accommodate present and future development projects.

OXY's PROPOSED MODIFICATIONS, STATEMENT OF REASONS AND PROPOSED EVIDENCE

Oxy's modifications are reflected on OXY Exhibit A (entitled "OXY's Proposed Modifications"). WELC's proposed amendments are reflected in redline/strikeout format. Oxy's modifications to WELC's amendments are highlighted in green. Language in the current rule that WELC has proposed to delete and Oxy contends should be retained is highlighted in blue.

Oxy's reasons for the proposed modifications are contained in this Prehearing Statement and the Self-Affirmed Statements filed by the following witnesses:

Tiffany A. Wallace. Ms. Wallace has have previously testified before the New Mexico Oil Conservation Commission on rulemaking issues in her capacity as the Deputy Director of the New Mexico Oil Conservation Division. Ms. Wallace's qualifications and narrative of her direct testimony are contained in the self-affirmed statement filed with this prehearing statement. Oxy anticipates presenting a 60-minute summary of Ms. Wallace's testimony.

Kelley A. Montgomery. Ms. Montgomery has a Bachelor of Science in Mechanical Engineering and is a registered Professional Engineer in Texas. Ms. Montgomery served as Oxy's Regulatory Manager for the Permian Basin, has testified before the New Mexico Oil Conservation Commission on enhanced oil recovery projects, and is familiar with the Division's regulatory process. Ms. Montgomery's qualifications and narrative

of her direct testimony are contained in the self-affirmed statement filed with the prehearing statement. Oxy anticipates presenting a 60-minute summary of Ms. Montgomery's testimony.

OXY'S HEARING EXHIBITS

Oxy has provided with this prehearing statement the following exhibits for admittance at hearing:

OXY Exhibit A, entitled "OXY's Proposed Modifications."[7]

OXY Exhibit B, the Self-Affirmed Statement of Tiffany A. Wallace

OXY Exhibit C, the Self -Affirmed Statement of Kelley Montgomery

PROCEDURAL MATTERS

None at this time.

Respectfully submitted,

HOLLAND & HART, LLP

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
Post Office Box 2208
Santa Fe, New Mexico 87504
(505) 988-4421
(505) 983-6043 Facsimile
mfeldewert@hollandhart.com
agrankin@hollandhart.com
pmvance@hollandhart.com

ATTORNEYS FOR OXY USA INC.

[7] As noted previously, WELC's proposed amendments are reflected in redline/strikeout format. Oxy's modifications to WELC's amendments are highlighted in green. Current rule language that WELC seeks to remove that Oxy contends should be retained is highlighted in blue.

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2025, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Kyle Tisdel
Morgan O'Grady
Tannis Fox
Matt Nykiel
Western Environmental Law Center
409 East Palace Avenue, #2
Santa Fe, New Mexico 87501
(575) 224-6260
tisdel@westernlaw.org
ogrady@westernlaw.org
fox@westernlaw.org
nykiel@westenlaw.org

Attorneys for Applicants Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, Sierra Club and WildEarth Guardians

Jesse Tremaine
Chris Moander
Michael Hall
Assistant General Counsels
New Mexico Energy, Minerals, and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 741-1231
(505) 231-9312
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov
michael.hall@emnrd.nm.gov

Attorneys for New Mexico Oil Conservation Division

James P. Parrot
Miguel A. Suazo
Jacob L. Everhart
James Martin
Beatty & Wozniak, P.C.
500 Don Gaspar Ave.
Santa Fe, NM 87505
(505) 946-2090
jparrot@bwenergylaw.com
msuazo@bwenergylaw.com
jeverhart@bwenergylaw.com
jmartin@bwenergylaw.com

Attorneys for New Mexico Oil and Gas Association

Andrew J. Cloutier
Ann Cox Tripp
HINKLE SHANOR LLP
P.O. Box 10
Roswell, NM 88202-0010
(575) 622-6510
(575) 623-9332 FAX
acloutier@hinklelawfirm.com
atripp@hinklelawfirm.com

Attorneys for Independent Petroleum Association of New Mexico

Mariel Nanasi
422 Old Santa Fe Trail
Santa Fe, New Mexico 87501
mnanasi@newenergyeconomy.org

Attorney for New Energy Economy

Jennifer L. Bradfute
Matthia Sayer
Bradfute Sayer P.C.
P.O. Box 90233
Albuquerque, NM 87199
505-264-8740
jennifer@bradfutelaw.com
matthias@bradfutelaw.com

Jordan L. Kessler
EOG RESOURCES, INC.
125 Lincoln Avenue, Suite 213
Santa Fe, New Mexico 87501
(432) 488-6108
Jordan_kessler@eogresources.com

Attorneys for EOG Resources, Inc.

Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
inspector@sunshineaudit.com

Zachary A. Shandler
Assistant Attorney General
New Mexico Department of Justice
P.O. Box 15098
Santa Fe, NM 87504
zshandler@nmdoj.gov

Oil Conservation Commission Counsel

Sheila Apodaca
New Mexico Energy, Minerals, and
Natural Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
occ.hearings@emnrd.nm.gov

Oil Conservation Commission Clerk

Felicia Orth
New Mexico Energy, Minerals, and
Natural Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
felicia.l.orth@gmail.com

Oil Conservation Commission Hearing Officer

Michael H. Feldewert