

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

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

CASE NO. 24683

DIRECT TESTIMONY OF JAMES WINCHESTER

Intervenor Independent Petroleum Association of New Mexico submits the following technical testimony of James Winchester:

1 **Q: Please introduce yourself to the Commission.**

2 **A:** My name is James Winchester. I am the Executive Director of the Independent
3 Petroleum Association of New Mexico which I will refer to as "IPANM."

4 **Q: What is the purpose of your testimony to the Commission, Mr. Winchester?**

5 **A:** IPANM solicited and got a lot of member comments about the rulemaking
6 proposed by Western Environmental Law Center and others (which I will call the "WELC
7 Proposal"). Different members commented on different parts of the rule. Most of our
8 association's focus, and a lot of the testimony we are proposing, concerns the marginal
9 well definitions and financial assurances. As to the other portions of the proposals, we
10 thought it most efficient to concentrate comments from multiple members in one set of
11 testimony and hope that this effort will assist the Commission in its work.

12 **Q: So, you are not offering your personal comments?**

13 **A:** I agree with and join in all the testimonial comments that I am making. I just wish
14 to be clear that all the matters to which I am testifying were also raised by IPANM
15 members who are the people who the proposed rules would actually affect if adopted.

1 These are not abstract comments by me alone. I also wish to point out that I will try to
2 avoid testifying about matters which other IPANM witnesses are testifying about.

3 **Q: How would we best proceed?**

4 **A:** I propose going sequentially through the WELC Amended Proposal.

5 **Q: What is your first comment about the WELC Proposal?**

6 **A:** The proposal for amending Rule 19.15.8.9 is vague and very broad. It would not
7 allow an operator to “proceed with any proposed...acquisition until the operator has
8 furnished the required financial assurance.” On one level, this may mean that an operator
9 cannot do anything to acquire a marginal well, even if that well is bonded properly, until
10 the prospective operator also bonds the well. Obviously, that is absurd and will not
11 happen. No matter how you interpret that language, no rational operator is going to bond
12 a well until after acquisition. This proposal seems to prohibit talks and negotiations over
13 a well acquisition absent both the seller and prospective buyer(s) are bonded. If adopted
14 and enforced, WELC’s proposal will halt sales and purchases of New Mexico oil and gas
15 wells. While IPANM agrees that an operator should not be authorized to conduct
16 operations by the OCD until approved (which approval should include any bonding
17 lawfully required), prohibiting “acquisition” or taking steps to acquire is unnecessary.

18 **Q: What is your next comment?**

19 **A:** The WELC Proposal suggests adding to Rule 19.15.5.9(A)(4) that for an operator
20 to be in good standing, the operator needs to meet the waste prevention requirements of
21 Sections 27 and 28 of the OCD Rules. Several IPANM members are concerned that a
22 single waste prevention violation would result in revocation of an operator’s ability to
23 operate any of its wells. The basic understanding in the industry is that, unless you are

1 the OCD-approved operator, you cannot “put your hands” on anything associated with
2 the well. Pulling the OCD-approved operator’s authority would thus create wells where
3 nobody can “put their hands” on the well which seems unnecessarily dangerous. It is also
4 disproportionately punitive. As the Division emphasized repeatedly during the civil penalty
5 rulemaking, the OCD has a number of what it called “tools” in its enforcement “toolbox.”
6 The Division should be given discretion to adjudge the severity of a waste prevention
7 violation based on the facts and circumstance in that case. It is imprudent and punitive
8 to impose an immediate, automatic termination of an operator’s right to operate any well
9 based on a single violation and without the process attendant to imposition of civil
10 penalties.

11 **Q: What is the next comment you have?**

12 **A:** There were various concerns expressed with the WELC Proposal concerning
13 change of operator rule 19.15.9.9(B), the new operator can meet those requirements, and
14 the number of new requirements added that the OCD must evaluate. It is probably best if
15 I break them up. First, WELC proposes some form of “certification...that the new operator
16 is in compliance with the federal and state oil and gas laws and regulations in each state
17 in which the new operator does business.” WELC Revised Proposal, Ex. 1-D at
18 19.15.9.9.B. It is not clear what laws to which the proposed regulation is referring. For
19 instance, my understanding is that federal royalty reporting requirements are quite
20 detailed, especially for natural gas royalties. If an operator is out of compliance on certain
21 federal royalty calculations with respect to production from a federal lease in Wyoming,
22 is that operator now ineligible in New Mexico? More importantly, how is the Division to
23 check this? What happens if an operator certifies that it is in compliance and it is later

1 discovered there was some minor existing violation in some other state? A comment that
2 I will make a few times, is that I am not sure how the Division is supposed to devote
3 manpower and resources to enforce this proposed provision. For operators, the provision
4 is quite vague. For the Division, it is going to be very difficult to police.

5 **Q: What is your next comment about the change of operator proposal?**

6 **A:** Again, it is a policing comment like my last answer in that I am not sure how the
7 Division has the personnel or expertise to review and determine the adequacy of
8 “plugging and abandonment plan...in light of all the operator’s assets and liabilities.” and
9 how the Division is supposed to arrive at that determination. I am not aware of the
10 Division having any real experience in corporate finance issues. Additionally, if you follow
11 the stock market news cursorily, it is obvious that the financial situation of any entite can
12 change over time. . Assuming the Division obtains the internal expertise to evaluate
13 these financial matters as proposed, the Division is just going to be evaluating those
14 matters as of a date certain. Let me illustrate: the single, biggest offender in New Mexico
15 history orphaning wells was a publicly traded company called Cano Petroleum that went
16 bankrupt. The strength of Cano’s financial situation at the time it became operator (which
17 some OCD wells files indicate was in 2007) and when it obviously was not insolvent, is
18 not relevant to these now-abandoned wells. In 2012, Cano filed for bankruptcy and
19 abandoned its New Mexico wells some of which have been plugged by the OCD. Even
20 if OCD has the staff and expertise to conduct such financial reviews, those reviews would
21 do little to nothing to assure the State that the operator will have funds available in the
22 future to plug and abandon.

1 **Q: Do you have any other concerns you wish to express with the change of**
2 **operator provisions?**

3 **A:** Yes. WELC's proposal requires the "disclosure of any officer, director, partner in
4 the new operator or person with an interest in the new operator exceeding 25%," who
5 was in the past five years in any of those positions with another operator that is "currently"
6 or "is or was in the past five years" out of compliance with Rule 19.15.5.9(A). In addition
7 to being highly problematic for Division enforcement, this provision is very difficult for
8 operators to monitor and completely unfair.

9 **Q: How do you mean unfair?**

10 **A:** Well, for example, most of the independents are small shops with relatively few
11 employees. In addition to owners, there may be a single landman who is the "director" or
12 "officer" in charge of land issues. Assume a situation in which Ms. Landman works for
13 Company X as its Vice President of Land, leaves for the same job but better pay at
14 Company Y, and three years later, just before Company Y applies to be an operator in
15 New Mexico, Company X went out of compliance with the spill rule. Under the proposal,
16 Company Y is not eligible to be an operator in New Mexico despite the facts that (a) Ms.
17 Landman did not work at Company X when it had its violation; and, (b) Company X's
18 violation has nothing to do with the work Ms. Landman performed at either Company—it
19 was an operational violation, not a Land Department issue. In addition to the enforcement
20 and reporting difficulties attendant to this proposal, it is hard to see what purpose this
21 serves. It will work substantial injustices on prospective operators or individual
22 employees who could lose their jobs because of a former employer's current non-
23 compliance. It is complete overkill and much more likely to visit injustices than promote

1 any interest that the Commission has in making sure that the new operators are good
2 operators.

3 **Q: If the Commission is inclined to do something in this area, do you have any**
4 **suggestions?**

5 **A:** I realize that there have been a few operators in the past with a very poor history
6 of compliance with the important rules and policies of this Commission. The list of those
7 folks is, I think, discrete. If the Commission wants to empower the Division to create a list
8 of individuals, whether an operator or those who exercised significant control over an
9 operator, that have had material, serial compliance issues and have prospective
10 operators certify that those non-compliant individuals are not involved, that would reduce
11 the administrative burden on both sides and better address the “shell company” concerns
12 the Commission might perceive.

13 **Q: Why are you sensitive to the enforcement practicalities of WELC’s proposal?**

14 **A:** I think it is telling that virtually all of WELC’s proposal comes from parties that have
15 little-to-zero understanding or experience on either side of the coin, be it government or
16 industry. And I see this play out in multiple ways. First, I worked at EMNRD for four years
17 and have spent the past eight years representing independent operators in New Mexico.
18 I am empathetic to the challenges at OCD, especially after the Legislature took most of
19 the Oil and Gas Conservation Tax, which was dedicated to enforcing the Oil and Gas Act,
20 enhancing the Reclamation Fund, and funding OCD, and rolled it into the general fund.
21 As New Mexico became the third-largest energy producing state, and second in oil
22 production, funding and capacity at the Division level has not kept pace. In FY24, OCD
23 was budgeted for 80 full time employees, but their July 2025 roster lists just 67 with 8

1 vacancies. Piling on labor-intensive reviews of annual certifications submitted by
2 compliant operators, as proposed by WELC, expends already-precious resources—time
3 and experience—in the wrong direction and in too many directions. Second, on the other
4 end of WELC’s proposal, increasing financial assurance on marginal wells does not put
5 more money in the State’s coffers to plug abandoned wells. At the recent Legislative
6 Finance Committee meeting in June 2025, which I was present for, ENMRD’s Deputy
7 Secretary Ben Shelton admitted that OCD has “barely pursued financial assurance, and
8 the answer is because the juice isn’t worth the squeeze. [EMNRD] has three attorneys to
9 process a hundred percent of the enforcements. It’s not worth the juice; is not worth the
10 squeeze....We don’t collect enough to make it worth our while.” LFC Transcript, 62:18-
11 63:9. At last report, OCD went after just one bond in the past 8 years. Raising FA levels
12 on individual wells will not save the State any money.

13 **Q: What problems do you see with OCD-led plugging initiatives?**

14 **A:** Even when OCD has accessible funds, like the \$66 million sitting in the Reclamation
15 Fund right now, the Division is not best suited to efficiently deploy that money to plug
16 wells. Deputy Secretary Shelton explained in that same meeting in Taos with the
17 Legislative Finance Committee that OCD only has 5 approved plugging contractors, all 5
18 are situated in the far Northwest corner of the state, yet the majority of wells are located
19 in the Southeast. This leads to increased travel and stand-by costs (sometimes referred
20 to as mobilization costs) and, as the LFC Report concluded, OCD “struggles to control
21 both the cost and quality of state contracted plugging and remediation work.” LFC
22 Transcript, 9:22-10:1, which is found in IPANM Exhibit 28. With industry plugging over
23 90% of the wells, and being more efficient in doing so, it bears to reason that Reclamation

1 Funds should be available to responsible operators to best deploy, especially since the
2 money in that fund originates with owners of oil and gas produced from existing wells. In
3 fact, the recent report by the Legislative Finance Committee supports an industry-led
4 approach, noting how inefficient OCD's well plugging program is in comparison and that
5 "OCD struggles to control both the cost and quality of state-contracted plugging" under
6 the current Statewide Price Agreement scheme. IPANM Ex. 27, LFC Report 24, 26-27.
7 Based on member feedback, when an operator sought to establish a plugging-focused
8 subsidiary to contract with OCD, leveraging their own decades of experience and
9 knowledge, the inefficiency wrought by OCD's piecemealing services and materials was
10 glaring. The "priority" list used by OCD ping-pongs crews across the state rather than
11 invite bids on regional or location-oriented packages of wells that could be plugged faster
12 and cheaper by operators. Invoices from 2023 plugging and reclamation contracts
13 indicate OCD is paid an average of \$153,000 per well that year, and the number increased
14 again in 2024 to \$163,000. The State is now under pressure to spend initial and follow-
15 on federal sums awarded under the IIJA. But without including current operators in the
16 effort, OCD will remain capacity-limited, endangering future awards.

17 **Q: Do you know how much bonding the OCD is able to recover from financial**
18 **assurances bonds?**

19 A: Available evidence suggests that is slight or non-existent confirming Secretary
20 Shelton's testimony that I just quoted. IPANM Exhibits 10 through 13 are the Division's
21 annual reports concerning the Reclamation Fund for fiscal years 2020-2023. Combined,
22 those four reports indicate that OCD used the Reclamation Fund to plug 108 wells. Each
23 annual report has a line item for monies collected by the Reclamation Fund for "Bond

1 Forfeitures, Salvage and Reimbursement Recoveries” or a similar category that clearly
2 includes any monies that may have been recovered from financial assurance bonds.
3 Three of those four reports state that the Reclamation Fund received no revenues for that
4 category. The 2022 Report which is IPANM Exhibit 12 reflects \$161,250 of revenue for
5 that category and it is not clear what, if any, of that sum is bond forfeitures as opposed to
6 revenues from salvage or reimbursement. The LFC review also notes that even in
7 circumstances where OCD pursues forfeiture, investigations, bankruptcies, and litigation
8 frequently delay and diminish recovery, if any. Based on information available to me, I
9 do not fault the OCD. Rather, the record of almost no recovery is likely a product of the
10 proverbial “three D’s” of the insurance industry—delay, deny, and defend.

11 **Q: Did IPANM Members have other comments relative to plugging operations in**
12 **New Mexico?**

13 **A:** Yes, we heard from several of our members about how expensive and how difficult
14 plugging a well in New Mexico is currently, without even considering the effects of WELC’s
15 proposal. What is interesting is that the plugging cost in New Mexico, which is nominally
16 higher because of the requirement to plug each strata, does not appear to be the main
17 driver of cost, nor the primary complaint. Our members are experiencing extended
18 cement-curing requirements enforced by OCD without explanation, costly delays when
19 OCD staff are unavailable, non-responsive, or inexperienced, and difficulty in meeting
20 stringent and varying reclamation and remediation standards across state, federal, and
21 fee lands often divorced from native or background soil levels. For instance, the reported
22 average cost of OCD plugging in IPANM Exhibit 10 covering Fiscal Year 2020 was
23 \$31,600. The Applicants in this case are basing their request for individual well bonds at

1 what they claim is about OCD's current average at a figure about five times the 2020
2 average cost.

3 **Q: Can you go into more detail why increasing the FA levels impacts smaller**
4 **operators?**

5 **A:** The surety market is not just tighter, or more difficult for small operators, it is
6 unavailable. That means the only available method for a smaller operator to satisfy
7 financial assurance is to obtain a cash bond or irrevocable letter of credit from a financial
8 institution. For example, based on a discussion I had with one member, an increase from
9 a blanket bond tying up \$250,000 of operating capital, which was predictable and planned
10 for, to an unpredictable \$9,000,000 bond on sixty wells is fatal to a company without
11 access to the surety market. Even with a surety at the highest premium rates, operators
12 of stripper wells are not likely to be able to service those bonds at \$900,000 in annual
13 premiums and simultaneously maintain operations of existing wells, which provide the
14 income stream to service those bonds.

15 **Q: Does IPANM have any other suggestions or revisions regarding WELC's**
16 **proposal?**

17 **A:** We would remind the Commission of its source of authority and the direction from
18 the Legislature to protect correlative rights and prevent waste. IPANM has long been
19 involved in the rulemaking proceedings following legislative revisions to the Oil and Gas
20 Act. For example, the 2018 rulemaking followed explicit direction from the Legislature to
21 the Commission to develop rules which increased financial assurance levels and the
22 Legislature set a specific monetary cap in SB-189. Here, bipartisan bills on the plugging
23 of abandoned wells and use of the Reclamation Fund have been proposed for two

consecutive legislative sessions and failed. Therefore, it is IPANM's position that the legislative mandate to act which existed previously in 2018, and which the Commission honorably performed under, is absent today and should proceed with caution.


JAMES WINCHESTER

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

DATE: 8-8-25


JAMES WINCHESTER