

**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 MARK B. MURPHY

Intervenor Independent Petroleum Association of New Mexico submits the following technical testimony of Mark Murphy:

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

2 **A:** My name is Mark Murphy. I am a resident of Roswell, New Mexico, and the
3 President of Strata Production Company.

4 **Q: Describe Strata's business.**

5 **A:** Strata is a small, independent, family-owned oil and gas producer with 23
6 employees. Strata was formed as a New Mexico corporation in 1988 and it has been
7 continuously headquartered in Roswell, Mexico. Strata has made 11 field discoveries or
8 extensions in the Delaware Basin, drilling the first lateral in in the Delaware Basin in 1990
9 and the first well permitted as a long reach lateral in 2001. These discoveries include the
10 Nash Draw Brushy Canyon Pool and the Forty Niner Ridge ("FNR") Project, together
11 covering almost 15,000 acres in Eddy County, New Mexico. The FNR Project is planned
12 for almost 150 horizontal wells, with 31 drilled and producing as of the date of this
13 testimony. Strata currently operates 72 oil and gas wells in the Permian Basin of New

1 Mexico, situated in Eddy and Lea Counties on state, federal, and private lands. Stata
2 holds about 40 federal leases covering roughly 20,000 acres. As an operator in New
3 Mexico, we have also plugged and abandoned 38 wells during that time.

4 **Q: Describe your education after high school experience in the oil and gas**
5 **industry.**

6 **A:** I have a bachelor's degree in General Studies with an emphasis in geology from
7 the New Mexico Institute of Mining and Technology in Socorro, New Mexico. However,
8 my family has been in the oil and gas business for four generations. I went to work in the
9 oil fields of Southeast New Mexico and West Texas in 1976. At this point, I have over 40
10 years of oil and gas operational, geological, and management experience. I have also
11 served as a Director and President of the Independent Petroleum Association of New
12 Mexico, Treasurer of the New Mexico Oil and Gas Association, Chairman of Independent
13 Petroleum Association of America's Land and Royalty Committee, a member of the
14 National Petroleum Council, Chairman for the energy industry research consortium
15 Research Partnership to Secure Energy for America, and as an industry advisor to New
16 Mexico Tech's Petroleum Recovery Research Center.

17 **Q: What is your role at Strata?**

18 **A:** I bought Strata in 1991 with a small staff of 8, as the majority stockholder. I have
19 led the company in that role for the past 34 years, as we grew from 8 to 23. I have
20 overseen every aspect of the company, from leasehold acquisition, exploration and
21 development, through reclamation and remediation of the wells we drilled and operated.
22 For example, Strata drilled the Paisano Federal #002 in Lea County in July 1992, and
23 was the single operator of that well for over 20 years, and plugged the well in June 2024.

1 **Q: Are you familiar with the proposed rule makings submitted by Western**
2 **Environmental Law Center, et al. (WELC) and by the Oil Conservation Division**
3 **(OCD)?**

4 **A:** Yes, I have reviewed the proposed rule changes by WELC and the redlines
5 submitted by OCD as well.

6 **Q: Have you testified in rulemaking or committee hearings previously?**

7 **A:** Yes. I testified before the U.S. House Subcommittee on Energy and Mineral
8 Resources in March 2021 with respect to the federal ban on oil and gas leasing under the
9 Biden Administration and five proposed bills during that session. I also testified before
10 the House Committee on Natural Resources in April 2001. Both were on behalf of the
11 Independent Petroleum Association of American and the National Stripper Well
12 Association. On behalf of the organizations I am involved in and with Strata, I have also
13 been an active voice in State Legislative committee hearings and meetings over the past
14 20- to 30 years, prior to becoming a Representative in January of this year.

15 **Q: So you understand that you are submitting this written testimony as your**
16 **sworn testimony for consideration by the Oil Conservation Commission?**

17 **A:** Yes.

18 **Q: Were you involved in the 2018 Rulemaking following legislative enactment**
19 **of Senate Bill 189, which specifically authorized and directed OCC to increase**
20 **financial assurance requirements for blanket bonds and temporarily abandoned**
21 **status wells?**

1 **A:** Yes, through company representatives. Strata supported IPANM's proposed
2 revisions and the position that federally bonded wells should be excluded from the scope
3 of NMAC 19.15.8, which the Commission adopted.

4 **Q: What are your thoughts on WELC's proposed rule changes?**

5 **A:** Strata has a number of concerns with WELC's proposal and the changes inserted
6 by OCD. If the Commission were to adopt WELC's changes wholesale, I feel it would be
7 the end of most if not all responsible, independent operators in the State of New Mexico.
8 Being involved in the industry as long as I have, I don't make that claim lightly. To start,
9 WELC's approach is not designed for success or compliance.

10 **Q: Why do you think that?**

11 **A:** On the surface, WELC's financial assurance scheme looks like it creates a much
12 bigger pot of money for OCD to use for plugging, reclamation, and remediation. But over
13 90% of the wells that get plugged in this state are plugged by operators—not OCD. The
14 wells that OCD does plug take longer and cost more. Raising bond amounts does not
15 solve the problem of orphaned wells and does nothing to protect the state against "bad
16 actors" who are responsible for most of the delinquency cases where abandoned wells
17 are left behind for others to plug, reclaim, and remediate. In reality, WELC's proposal to
18 introduce single-well bonding at \$150,000 will hold an enormous amount of capital
19 hostage for operators with little actual benefit to the State, because EMNRD freely admits
20 that it does not have the manpower or interest to pursue forfeited bonds. WELC's proposal
21 approaches the problem backwards: targeting operators at the back-half of a well's life
22 rather than using the funds already collected over that well's entire productive lifespan to
23 assist operators in plugging wells.

1 **Q: What fund are you referring to?**

2 **A:** The State of New Mexico has about \$66 million in its Reclamation Fund to plug
3 and abandon “orphaned” state and fee wells. Monies in the Reclamation Fund come from
4 the Oil & Gas Conservation Tax (which I will call the “Conservation Tax”), which is paid
5 by all industry participants on all products severed and sold, with limited deductions for
6 federal and state royalties and transportation expenses to first point of sale. That tax was
7 created in 1959 to enforce the Oil & Gas Act, and in 1977 the Legislature created the
8 Reclamation Fund created for the specific purpose of plugging and remediating
9 abandoned wells and well sites. However, depending on market prices, only 10-20% of
10 the Conservation Tax goes to the Reclamation Fund. Since 1991, when the Legislature
11 dissolved the Conservation Fund, the remaining 80-90% of the Conservation Tax has
12 been funneled to the General Fund. But this is controlled by statute and can only change
13 if the Legislature elects to act. As industry and I have consistently argued, were the
14 Conservation Tax redirected to its initial purpose rather than diverted to the General Fund,
15 the Reclamation Fund could easily exceed \$1 billion in principle in the next decade, likely
16 in the next 7 to 8 years. Since FY2019, the Oil and Gas Conservation Tax has collected
17 \$360 million, but only \$66 million has been earmarked (yet not used) to plug abandoned
18 wells. These are decisions that have been made by majorities in both houses of the New
19 Mexico Legislature with the approval of the Governor in the form of budgets.

20 **Q: How many taxes are there on oil and gas production?**

21 **A:** There are five that I am familiar with: the Emergency School Tax, Severance Tax,
22 Conservation Tax, Production Ad Valorem Tax, and Production Equipment Ad Valorem
23 Tax, which create an effective tax rate of roughly 8.15% for oil and 9% for gas with some

1 variance depending on where the well is located. Like any other business or employer,
2 we pay all the other associated taxes as well, which is why total contribution by the
3 industry to the state's economy is about \$15 billion.

4 **Q: What is the Conservation Tax?**

5 **A:** Created in the 1950s, the Conservation Tax, codified at NMSA 1978, § 7-30-4,
6 applies a tax rate of 0.19% - 0.24% to all production in the state, regardless of surface or
7 mineral ownership. Then, a piece of that \$100 or \$137 million is distributed to the
8 Reclamation Fund and administered by OCD under Section 70-2-38 to employ personnel
9 to service, inspect, and plug abandoned wells, well sites, and associated production
10 facilities. Before the Legislature terminated the Conservation Fund, the percentage
11 directed to the Reclamation Fund was much lower, but the funds remained within the
12 control of EMNRD to enforce the Oil & Gas Act. When the Legislature repealed the
13 Conservation Fund in 1991, it directed only 5% to plugging wells, and sent the other 95%
14 to the general fund.

15 **Q: Have there been prior legislative efforts to address use of the Reclamation**
16 **Fund or the Conservation Tax?**

17 **A:** Yes, legislators on both sides of the aisle have repeatedly proposed bills to redirect
18 more of the Conservation Tax to the Reclamation Fund. I have been active in discussing
19 legislative issues with legislators as a citizen and member of IPANM for decades and
20 there have been consistent concerns expressed by industry and responsible legislators
21 that more or all the Conservation Tax should be directed into the Reclamation Fund. In
22 this recent 2025 session, bills were proposed in the House and the Senate to restructure
23 use of the Conservation Tax and direct more funds into the original purpose of

1 reclamation. HB 403, sponsored by Representatives Meredith A. Dixon (D), Rod Montoya
2 (R), Elaine Sena Cortez (R), Jonathan A. Henry (R), and I proposed a phased approach
3 to shift 50, 75, and then 100% of the net receipts from the Conservation Tax to the
4 Reclamation Fund. In the Senate, Senators James Townsend (R) and George K. Munoz
5 (D) introduced SB-519, which targeted putting the Reclamation Fund to use. Both were
6 referred to a committee but not taken up on the floor. In the 2024 Session, Senators Greg
7 Nibert (R), Joseph Cervantes (D), George Munoz (D), and Steve McCutcheon (R)
8 introduced the bipartisan SB-249, which designated \$5 million monthly to the Reclamation
9 Fund from the O&G Conservation Tax and encouraged OCD to use the fund by reverting
10 unexpended funds over \$80 million to the general fund. This effort also stalled, but I am
11 encouraged after the most recent Legislative Finance Committee meeting this summer
12 that our elected representatives are starting to grasp the disconnect.

13 **Q: What other aspects of WELC's proposal concern you?**

14 **A:** From my perspective, WELC is asking the Commission to take steps that far
15 exceed its authority under the Oil and Gas Act. I am no attorney, but I have lived and
16 worked with the Oil and Gas Act and its regulations for the past 40 years. The
17 Commission's primary purpose has always been to prevent waste and protect correlative
18 rights. Although the Commission's enumerated powers have expanded since 1935, after
19 the 2015 and 2018 amendments, it was clear to me that the Legislature sets the upward
20 limits of financial assurance in Section 70-2-14 and directs the circumstances for single-
21 well bonding. For example, the 2018 amendment increased blanket bond levels from
22 \$50,000 to \$250,000, but only for state and private wells not otherwise covered by federal
23 financial assurance.

1 **Q: Does the WELC proposal exclude wells that are covered by other financial**
2 **assurance?**

3 **A:** Under the changes proposed, those federal wells, and state or private wells on
4 leases which are communitized with federal leases and covered by federal financial
5 assurance, are still excluded. NMAC 19.15.8.9(A), which is Exhibit 1-C to the WELC
6 revised proposal, maintains the language that the categories and amounts of increased
7 financial assurance applies only to those wells that are not “covered by federally required
8 financial assurance.” I point this out because the “windfall” anticipated under WELC’s
9 proposal will either not materialize or fall far short of expectations. From my review,
10 Colorado experienced the same following its financial assurance rulemaking in 2022.
11 IPANM fought for the federal assurance exception during the 2018 rulemaking and the
12 Commission agreed that operators should not be subject to double-bonding. In case the
13 Commission is not yet aware, the Bureau of Land Management finalized its own
14 rulemaking and increased its lease bonding requirements under 43 CFR § 3104 effective
15 June 22, 2024 from \$10,000 to \$150,000 per lease, from \$25,000 to \$500,000 for
16 statewide bonds, and abolished the nationwide bond option. Separately, the
17 Commissioner of Public Lands increased surface bond requirements from \$10,000 to
18 \$25,000. The State Land Office also adopted the interpretation that not only operators,
19 but also all lessees of record must maintain a bond for each active state lease to avoid
20 lease cancellation. And at the end of the day, bonds do not plug wells, responsible
21 operators do. Do you know the amount recovered in forfeited bonds by the OCD in
22 FY2023? \$0. FY2020 and 2021? Also \$0. It does not make financial or regulatory sense

1 to punish current, active small operators based on the actions of a few bad actors in the
2 past.

3 **Q: Have you worked with Legislature on any other projects related to plugging**
4 **or orphan wells?**

5 **A:** Yes, just this summer the Legislative Finance Committee drafted a Spotlight
6 Report on orphan wells. I discussed the effort with a LFC staff member shortly before it
7 was released. We mainly discussed the inefficiency and problems with the OCD's
8 plugging program. I would say overall that industry had virtually no input in the research
9 and drafting of that report, but it does highlight the inefficiencies in wells plugged by the
10 OCD versus operators. First, OCD only has 5 plugging contractors based in the
11 Northwest corner of the state, which means the "cost" of plugging includes substantial
12 expenses for travel related expenses. OCD is also requiring an extended cement curing
13 period than has not been historically followed, which drives the total plugging costs higher
14 due to crew and equipment standbys costs. In my opinion and experience plugging wells
15 with Strata, if the \$66.7 million in the Reclamation Fund were properly managed, the Fund
16 could be used to plug anywhere from 800-1,000 wells.

17 **Q: What would the effect of WELC's proposal be on Strata's operations?**

18 **A:** Strata operates 72 wells in the State of New Mexico, a large number of which are
19 1-2 mile lateral horizontal wells. So Strata today may not be as harmed by the bonding
20 increases for "marginal wells," but it would have been in the not too distant past. As a
21 small company, the increased administrative and reporting burdens would be difficult,
22 especially given the existing delays experienced by Operators with OCD being short-
23 staffed. Strata got its start, like most other independent operators, by smart and efficient

1 operation of lower-volume producing oil and gas wells, commonly referred to as “stripper
2 wells.” WELC’s proposed rule changes would shut that side of the industry down because
3 the capital demands on smaller operators would be too great to remain profitable, no
4 matter how small the margins.

5 **Q: Why are stripper wells important to New Mexico?**

6 **A:** Even after primary production, 60-70% of the original, recoverable hydrocarbons
7 remain in place in the reservoir. In 2021, New Mexico had about 27,000 stripper wells
8 which accounted for 10% of oil production and 20% of gas statewide, using a 2021
9 analysis from OCD. Using 2023 data, stripper wells in New Mexico generated roughly
10 \$890 million in revenue, and even the lowest producing wells contributed \$48 million to
11 the state—and this is in a single year. Even at lower levels, wells can continue to produce
12 steadily for another 20 to 30 years with an attentive operator. Not only would prematurely
13 plugging stripper wells forfeit annual revenue and create waste of natural resources, the
14 loss of the stripper well industry in New Mexico is predicted to eliminate well over 3,000
15 local jobs.

16 **Q: Are you familiar with the term “marginal well”—which WELC’s proposal**
17 **introduces as a new defined term?**

18 **A:** Yes, I know and use the term marginal well, but not in any sense as WELC has
19 defined it. Where stripper wells are identified by output, a marginal well generally refers
20 to the profit margin between the costs of extracting and producing oil or gas and market
21 price. A marginal well depends on the oil prices and the cost of production, so that when
22 the market price of barrel of oil is close to or greater than the cost of extracting that same

1 barrel of oil, or gas equivalent, the well is considered marginal. WELC has defined a
2 marginal well without any economic consideration, only an arbitrary production threshold.

3 **Q: What do you anticipate the broader effect of WELC's proposal the State of**
4 **New Mexico?**

5 **A:** Surviving as a small business in New Mexico is not easy. Being both a small
6 business owner and an independent oil and gas well operator compounds the difficulty,
7 and piling on financial assurance and administrative reporting requirements would
8 eliminate most small and mid-size operators from the state. We have seen the industry
9 consolidate in ways I could not have predicted 20 years ago, with mergers at the highest
10 levels and the immense capital requirements associated with development of horizontal
11 wells. In New Mexico in 2024, 60% of total oil and gas production was attributable to just
12 8 companies. Moreover, the effects of WELC's changes are far from limited to killing off
13 existing production, but will also create a chilling effect on exploration—an area small
14 operators, or “wildcatters” are famous for making discoveries and advances. Operators
15 like Strata have limited capital that is best utilized in making the next discovery. Our
16 segment of the industry fulfills a critical function for this reason and because we maintain
17 the domestic energy infrastructure during downtimes. The June 11, 2024 Legislative
18 Finance Committee report on oil and gas revenue in the State of New Mexico cited to
19 Rystad Energy's prediction that oil production in New Mexico will peak in the 2030s. But
20 that prediction relied on continuing exploration and development, where adoption of the
21 WELC and OCD changes will eliminate a large segment of the population in the industry
22 responsible for those advances. Finally, as responsible citizens looking to the future of
23 New Mexico, we cannot blindly ignore that our state is energy dependent and

1 economically dependent on the extraction industry. The oil and gas industry funds \$15
2 billion in state and local governmental revenue, and makes up 49% of General Fund
3 spending. Paradoxically, initiatives like we see from WELC will result in substantially less
4 production and activity (which aligns with its publicly stated goal to end “oil and gas
5 leasing and drilling on our public lands”), but at the same time result in fewer operators to
6 plug wells, less revenue in the Reclamation Fund, and a drastically weakened economy
7 overall.

8 **Q: Does New Mexico have an orphan well problem and will WELC’s proposal**
9 **solve it?**

10 **A:** No to both. A lot of different numbers get thrown around when discussing wells
11 and well status in New Mexico. We do not have a regulatory definition for “orphan wells.”
12 So, first you need to distinguish between merely inactive wells and abandoned wells,
13 because not all inactive wells are orphan wells. Using OCD’s metric of 15 months without
14 production, there are about 3,100 inactive wells in New Mexico, which does not include
15 the 550 wells in approved temporary abandonment. Of those 3100, OCD has consistently
16 reported about 1700 orphan wells in New Mexico, representing around 2% of total wells.
17 But just 349 of those orphan wells are on state and fee land. I know I have already said
18 this, but it bears repeating: WELC’s proposal to increase financial assurance to \$150,000
19 per well will not plug a single one of those 349 orphan wells. Increasing bond amounts
20 simply puts more money in a bank or surety’s hands, not the State. Instead, if the
21 Legislature acted to redirect the Conservation Tax paid exclusively by owners of oil and
22 gas interests to the Reclamation Fund, at over \$100 million a year, those funds would be
23 immediately available to the State, without the administrative burden of compliance,

1 enforcement, or the bond claim process. In a decade, the state would have \$1 billion
2 principal in the Reclamation Fund, and even at \$150,000 plugging cost estimates, the
3 fund would be sufficient to plug, remediate and reclaim over 6,660 wells.

4 **Q: What do you say to the contention that failure to increase financial**
5 **assurances will leave the costs of plugging and abandoning wells to the**
6 **taxpayers?**

7 **A:** With one exception on a federal level, that is a false statement if “taxpayer” is
8 supposed to mean an average New Mexico taxpayer—either individual or a business
9 outside the oil and gas industry. The exception I mention is that New Mexico and other
10 states are allocated monies under the federal Inflation Reduction Act for plugging and
11 abandoning wells, such that some very small fraction of those federal funds is
12 conceivably born by New Mexico taxpayers. Based on my decades of experience with
13 government, there will be some motivation to spend the federal monies before state
14 monies. However, those monies are already allocated and there is nothing this
15 rulemaking could do to change that. As to the Reclamation Fund, the average New
16 Mexico taxpayer does not pay a dime. The Conservation Tax was designed to shift
17 certain costs from the average taxpayer to the oil and gas industry participants who
18 receive revenue from oil and gas production. Industry is paying for plugging and
19 abandoning orphan wells and a lot more under the Conservation Tax. If the New Mexico
20 Legislature and Governor determine that there is a need for more money for orphan wells,
21 they only need to apply more of those industry-generated dollars to the Reclamation Fund



MARK B. MURPHY

Direct Testimony of Mark B. Murphy

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Under penalty of perjury of the laws of the State of New Mexico, I hereby submit this direct testimony and swear or affirm that the statements above are true and correct to the best of my knowledge and belief.

DATE:

A handwritten signature in black ink, appearing to be "MBM", written over a horizontal line.A handwritten signature in black ink, appearing to be "MBM", written over a horizontal line.
MARK B. MURPHY