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

REBUTTAL TESTIMONY OF T. CALDER EZZELL, JR.

Intervenor Independent Petroleum Association of New Mexico submits the following rebuttal testimony of T. Calder Ezzell, Jr.:

My name is T. Calder Ezzell, Jr. I have previously discussed my qualifications and background in my Direct Testimony submitted to the Commission on August 8, 2025. There is one other item in my background that is pertinent to this Rebuttal Testimony in addition to the qualifications I have already discussed. In particular, my wife served ten consecutive terms in the New Mexico House of Representatives and, in 2024, opted not to run for reelection to her House seat and successfully ran for an open New Mexico Senate seat. In short, she has served in the New Mexico Legislature for 21 consecutive years, through 2025. The names and duties of various committees in the House of Representatives can change over time. However, for almost all my wife's tenure in the House of Representatives and her one year in the Senate, she has served on committees responsible for considering proposed oil, gas and other energy legislation.

Although the amount of time can vary somewhat depending on whether we have someone looking after our agriculture properties and other demands for my time in Chaves County, for the past 21 years I spent most of the time in each Session of the Legislature with my wife in Santa Fe. Given my background, I generally assist her and

others on the various committees considering oil and gas legislation in analyzing bills and working up amendments. Additionally, during each of the Sessions my wife has served, I have actively participated in an ad hoc group organized by the New Mexico Oil and Gas Association that analyzes bills that effect the oil and gas industry and discusses the strategy respect to such legislation. In short, I have in depth personal knowledge regarding all the legislation pertaining to the oil and gas act and other statutes pertaining to oil and gas exploration and production activities in New Mexico for the past 21 years.

In my Direct Testimony, I mentioned that I have definitive views about the powers of this Commission to enact the current rulemaking but did not offer opinions. In my experience with judicial bodies, judges typically do not accept testimony from witnesses on such purely legal matters. However, from reviewing the testimony submitted by Applicants, there are non-lawyers commenting on this Commission's power to enact the proposed rulemaking. If the Commission is going to consider that testimony, I am submitting this Rebuttal Testimony to offer my opinions as well.

1. The Commission's Powers Generally.

As an initial matter, I observe that this Commission is a creature of statute. It has considerable authority granted to it by the Legislature (as approved by the Governor) in the form of the Oil and Gas Act. However, as a creature of statute and part of the executive branch, its powers are only those granted by statute, circumscribed by statute, and not implied. As the New Mexico Supreme Court stated: "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it."[1]

[1] *Continental Oil Co. v. Oil Conservation Comm'n,* 1962-NMSC-062, ¶ 11,373 P.2d 809 (citation omitted).

For instance, in 2005 this Commission adopted a rule allowing the Division the ability to assess civil penalties. At the time, the Oil and Gas Act authorized the Attorney General to file suit to pursue civil penalties for violations of the Act.[2] The Commission argued that its broad powers over matters covered by the Oil and Gas Act and the silence in the Act as to who assessed the penalties permitted the Commission to authorize the Division the power to impose civil penalties for violations of the Oil and Gas Act.[3] The Supreme Court clearly ruled that the Commission did not have that authority.[4] As the Supreme Court stated: "we defer, as we must, to the Legislature for the grant of that authority, and so too must the Commission."[5] Subsequently, the legislature amended the Oil and Gas Act to permit this Commission to adopt regulations concerning civil penalties and imposed civil penalties consistent with the provisions of the Oil and Gas Act and this Commission enacted rules concerning the imposition of civil penalties for violations of the Oil and Gas Act and regulations promulgated thereunder.

2. The Commission's Powers Concerning Financial Assurances.

Concerning financial assurances, the Oil and Gas Act provides:

> Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy pursuant to the provisions of this section to the oil conservation division of the energy, minerals and natural resources department running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division. The

---

[2] *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 8, 206 P.3d 135 (citing the versions of §§ 70-2-28 and -31 in force at the time).
[3] Id.
[4] Id. at ¶ 11.
[5] Id. at ¶ 23.

> 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), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts not to exceed fifty thousand dollars ($50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells, and such other factors as the oil conservation division deems relevant. 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.** All financial assurance shall remain in force until released by the oil conservation division. The oil conservation division shall release financial assurance when it is satisfied that the conditions of the financial assurance have been fully performed.[6]

The Applicants urge this Commission to adopt rulemakings concerning individual well bonding of so called "marginal wells." The proposal is contrary to Section 14 of the Oil and Gas Act in numerous ways.

a. Single Well Bonding Considerations Mandated by Section 14.

Applicants propose a $150,000 single well bond for thousands of wells that they define as "marginal wells." The Commission lacks the authority to promulgate such a rule. First, considering single well bonding, the statute mandates that one well financial assurance be set "in amounts determined sufficient to reasonably pay the cost of plugging." Additionally, the Oil and Gas Act requires that the OCD "shall consider the

[6] §70-2-14 NMSA (emphasis added).

depth of the well involved, the length of the time the well has produced, the cost of plugging similar wells, and other such factors as the Oil Conservation deems relevant."

First, in setting any single well bond, the Division "shall consider the depth of the well involved." In briefly reviewing OCD Exhibits 21-23 which seem to be some sort of proxy for potential marginal wells, those include wells that I recognize as being drilled to the drilled in the Delaware Basin in the 1970's or 1980's, to produce natural gas from one or more Pennsylvanian sand formations.[7] The Morrow formation is the deepest of the five Pennsylvanian sand formations and was the most frequent target of producers in those days. While depths vary depending on general location, Morrow wells often exceed a depth of 12,000 feet. Those gas wells have been producing for decades and those still active tend to produce at low volumes. Conversely, those lists also include wells that are east of Roswell and drilled in the same basic time frame to the San Andres formation that are as shallow as 900 feet deep. Some of those wells mostly now produce at very low volumes. In my experience it is not uncommon to see both south Eddy County Morrow wells and Chaves County San Andres wells producing less than 1,000 BOE/year and therefore would be potential candidates for "marginal well" designation under the proposed rulemaking. Especially given New Mexico plugging requirements which require plugging various intervals between the producing formation and the surface,[8] there is simply no way that a "marginal" Chaves County San Andres well and a "marginal"

[7] In my testimony about depths, I use as exemplars some formations commonly found in the Permian Basin (southeastern New Mexico) which is the basin with which I have extensive experience as an attorney, investor and operator. There are also depth disparities in the San Juan Basin between the Basin Fruitland Coal, Pictured Cliffs, Mesaverde, and Dakota formations (to name some common target formations in that part of New Mexico).
[8] Rule 19.15.25.10(A) NMAC.

southern Eddy County Morrow well are going to have the same plugging cost—the deeper Morrow well will be more expensive. More importantly, the rulemaking makes no pretense of making depth considerations that the Legislature mandates be considered when setting the amount of a single well bond.

Second, the Division is mandated to consider "the cost of plugging similar wells." Those considerations are relevant as certain Division witnesses point out in describing a few expensive plugging jobs, the tubulars in a much older well generally may be expected to have more potential for deterioration than a younger well. Additionally, over the years, New Mexico has imposed additional casing requirements on wells which means that the casing integrity of older wells drilled prior the adoption of some of those requirements may be subject to more deterioration and pose greater risk than newer wells. Other factors that are relevant to "similar" wells is the prevalence of corrosive hydrogen sulfide (H2S) gas in the production stream of the well. H2S is most common in sour oil production, and its prevalence is ubiquitous a single pool (a formation that consistently is productive of oil underlying a discrete area as delineated by the Division). The only similarity that I can discern that Applicants are proposing is universal to all the wells—the amount a well produces in a 12 month period and the number of production days, neither of which have a thing to do with the cost of plugging.

Third, the proposal for a one size fits all marginal well bonding does not comply with the statue's requirement that the amount be "determined sufficient to reasonably pay the cost of plugging." The Division's testimony and Applicants' witnesses all acknowledge in some form or fashion that wells being plugged by the Division pursuant to the Reclamation Fund are generally those determined to be the most in need of plugging

activities and the result is anecdotal evidence of various very costly projects. The Division's witnesses testify to some of the most expensive and difficult examples.

Fourth, the proposal is based on a supposed average of OCD's costs to plug, abandon, and reclaim individual wells. Under the Oil and Gas Act, only "plugging" costs can be considered.

Finally, these individual bonding considerations mandated by the Legislature clearly contemplate individual well considerations and are not meaningful unless the operator has substantive opportunity to provide information about "similar[ity]" and "reasonableness" ("depth" is known) before a bond amount is set. The proposed rulemaking denies individual operators that process by setting a single amount for every "marginal well."

b. Legislative Grant of Single Well Bonding Authority.

The provisions in Section 70-2-14 also indicate that the legislature has considered the issues of wells that should be bonded individually in addition to the blanket bond authorized. In particular, the legislature has permitted one well bonding only for wells that have been temporarily abandoned for two or more years. This rulemaking proposes individual well bonds on "marginal wells" which are not and have never been on temporary abandonment (TA) status, let alone on that status for two years. It also proposes financial assurances at three times the highest amount authorized for wells on TA status for two years. The Oil and Gas Act provisions reflect legislative appreciation of the fact that wholly unproductive wellbores retain value and might be returned to some productive use. The legislature has made the judgment that the industry participants or operators may hold these wells in temporary abandonment status with no additional financial assurances

costs for a period of up to two years. After that, the legislature has made the judgment that the risk to the State is such that an individual bond should be posted so long as it "reasonably" reflects the costs of plugging considering issues of depth and age of the well. It makes absolutely no sense that the legislature circumscribed this Commission's and Division's authority to individually bond wells that are temporarily abandoned for two years and $50,000 maximum but allows this Commission to adopt rules and the Division to impose financial assurances requirements on individual well bonding on wells that have not even reached TA status at a level three times that of what is authorized for TA wells. Indeed, the entire provision concerning financial assurances for any current temporarily abandoned wells for less than two years and any future TA wells effectively is prospectively repealed if this rulemaking is adopted since each such well is "marginal" under the proposed definitions and will be bonded at 300% the maximum amount authorized by statute. In what I hope is needless to say, regulatory bodies have no authority to enact rules that effectively repeal or moot statutes granting that body limited authority.

3. Lack of Power to Regulate Transfers.

The proposed rulemaking includes provisions regulating or restricting acquisitions of New Mexico oil and gas properties. Those include:

1. An addition to Rule 19.15.8.9(A) which would allow the Division to decline to approve a change of operator simply because they did not have required financial assurances while proceeding with an "acquisition."
2. Adding a new Rule 19.15.9(B) containing disclosure and certification requirements for an operator.

3. Changes to Rule 19.15.9.9(B) and (C) requiring similar certifications.

When the seller and buyer of oil and gas properties in New Mexico are both located out of state, the very first activity concerning the transaction may be the recordation of the real property transfers evidencing the sale/acquisition and/or submissions of paperwork to the Oil Conservation Division or some other regulatory agency such as the SLO or BLM. The Commission and Division have no statutory authority to regulate such out of state activity such as negotiating the terms of an acquisition. The Commission likewise lacks the power to require financial assurances from a person or entity that is merely contemplating entry into New Mexico by acquiring existing oil and gas production.

4. The Legislature Has Declined to Grant Such Authority.

Importantly, there is substantial evidence that the Energy, Minerals, and Natural Resources Department agrees with me given recent legislative activity. In particular, the Department and the Executive strongly urge the passage of House Bill 133 in the 2024 Regular Session of the Legislature. A copy of that proposed legislation as introduced is IPANM Exhibit 41. In HB 133, the Department sought changes to the Oil and Gas Act to permit this Commission to adopt and the Division to increase financial assurances by increasing the blanket bond and grant the Division authority to regulate transfers of wells. HB 133 never passed the Legislature. With the Legislature having declined to expand financial assurances to address perceived present and future orphan well problems and to give the Commission the ability to regulate transfers as requested by EMNRD, the Commission has its answer that it has no authority to do so.

5. The Rulemaking is Contrary to the Commission's Paramount Duties.

On a more fundamental level, Applicants are proposing regulations that they effectively acknowledge will create "waste" by leaving otherwise economically recoverable oil, gas and other valuable hydrocarbons in the ground. The fundamental obligations of this Commission and the Division are to prevent waste and protect correlative rights:

> The commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights. * * * Actually, the prevention of waste is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights.[9]

The Oil and Gas Act defines "waste" as, first, underground waste:

> "waste," in addition to its ordinary meaning, shall include:
>
> A. "underground waste" as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;[10]

To be clear, at its most fundamental level, waste as "generally understood in the oil and gas industry" is leaving economically produceable oil or gas in the ground. Put another way, rules that "reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered" promote waste, not prevent waste. Applicants' witnesses are candid and unapologetic about encouraging this Commission to adopt rules that will leave

[9] *Continental Oil Co.*, 1962-NMSC-062, ¶ 11 (statutory citation omitted).
[10] §70-2-3 NMSA.

producible oil and natural gas in the ground. The concept of waste is not obviated because a witness characterizes it as insignificant. In defining waste, the Legislature did not give this Commission the ability to promote waste at the later stages of the life of an oil or gas well. Rules encouraging leaving recoverable reserves in the ground are contrary to this Commission's most fundamental duty as charged by the Legislature.

6. The Reclamation Fund and Making Policies Concerning it are the Legislature's Responsibility.

The Reclamation Fund is a creature of the Legislature.[11] The Division is charged with responsibly and properly spending that money on reclamation activities and regulation thereof as directed by the Legislature.[12] This Commission is not charged with protecting the Reclamation Fund by passing rules that supposedly are designed to "insure" against the Division using the Reclamation Fund for plugging, abandoning, and reclaiming some New Mexico wells. Indeed, in the two statutes concerning the Reclamation Fund that I cite in this paragraph, this Commission is not mentioned.

Funding for and protecting the Reclamation Fund are the duties of the Legislature, duties it has not delegated to the Commission. For instance, over industry objections, during a budget crisis occurring in the administration of Governor Martinez, the Legislature "raided" or spent all the money in the Reclamation Fund to balance the State's budget. While some of us may disagree with such decisions, those are decisions for the Legislature. There has been and likely will be continuing debate in the Legislature as to how to address the orphan well issues. IPANM, for whom I am testifying, most recently

[11] §70-2-37 NMSA.
[12] §70-2-38 NMSA.

supported more robust funding for the Reclamation Fund by putting all the Oil and Gas Conservation Tax revenues into that Fund. I agree with that position as only industry participants receiving revenue from production pay that tax and the tax imposed on those revenues will provide the necessary funding. Applicants may disagree but certainly are advocating a different set of policies that they claim will solve or mitigate the issues. It is my opinion that the Legislature, not this Commission, is where the issues should be resolved and the policy of the State of New Mexico is set.

T. Calder Ezzell, Jr.

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: 9/18/2025

T. Calder Ezzell, Jr.